



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Supplementary Order Paper – Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill	Date to be published	23 September 2019

List of documents that have been proactively released		
Date	Title	Author
23 September 2019	<i>Supplementary Order Paper – Taxation (KiwiSaver, Student Loans and Remedial Matters) Bill</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
23 September 2019	<i>LEG-19-MIN-0113</i>	Cabinet Office

Information redacted

YES

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This may include information that would be redacted if this information was requested under Official Information Act 1982.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

Supplementary Order Paper - Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Proposal

1. I seek the Committee's approval of a Supplementary Order Paper (SOP) making changes to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill. The SOP creates a new early withdrawal category in the KiwiSaver Act 2006 for people with life-shortening congenital conditions.
2. The Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill (the Bill) has had its first reading and is currently being considered by the Finance and Expenditure Committee. Subject to Cabinet approval, when I publicly release a copy of the SOP, I will invite the Chair of the Finance and Expenditure to include the SOP as part of its consideration of the Bill.

Policy

3. The policy to be implemented through the SOP creates a new withdrawal category in the KiwiSaver Act that would allow people with life-shortening congenital conditions (a condition they are born with) to withdraw their savings early for the purpose of retirement. This policy was approved by the Cabinet Economic Development Committee on 26 June 2019 [DEV-19-MIN-0176 refers].
4. People with life-shortening congenital conditions can join KiwiSaver to save for their retirement but, under the current withdrawal settings, cannot access their savings before the lock-in date of 65 years old (being the age of qualification for New Zealand superannuation). Having such a condition means a person may not live until 65 years old and will not be able to use their KiwiSaver savings to support their financial wellbeing in retirement.
5. There is an existing serious illness withdrawal category in the KiwiSaver Act but withdrawal under this category can only be made on the basis that a person is totally and permanently unable to engage in work for which they are suited or has a condition that poses a serious and imminent risk of death. This existing category would not allow people with life-shortening congenital conditions to withdraw their KiwiSaver at a point that would allow them to spend a reasonable portion of their adult life in retirement.
6. The SOP creates a new withdrawal category in the KiwiSaver Act allowing people with life-shortening congenital conditions to withdraw their savings before the

age of 65. There would be two ways that a person with such a condition could qualify for early withdrawal under the new category:

- 6.1. A set list of conditions would be named in regulations as qualifying for withdrawal. Establishing a set list is intended to give certainty to the majority of applicants that they are eligible for withdrawal.
 - 6.2. There would also be a process where a person could apply to their KiwiSaver provider for withdrawal for a life-shortening congenital condition that is not on the set list. This flexibility is needed because this is a complex area. This alternative process would be appropriate for people with rare congenital conditions that shorten their life below the age of 65.
7. People withdrawing under this new category will have discretion to choose their retirement date. This discretion is needed because people with life-shortening congenital conditions can have a wide variation in life expectancy. Even two people with the same condition can have very different life expectancies due to the severity of their condition and other associated medical conditions.
 8. People withdrawing under this category may continue to contribute to KiwiSaver as working part-time or resuming some form of employment can be considered part of a positive retirement. However following withdrawal under this new category a person will no longer receive the government contribution or compulsory employer contribution. This is consistent with how other KiwiSaver members are treated when they reach 65 years old.

Matters that may be contentious

9. The new withdrawal category is for people that are born with a condition that shortens their life. Questions may be raised about whether the category should be broadened to capture a wider range of conditions.
10. I believe that opening up a broad withdrawal category in the KiwiSaver Act risks undermining KiwiSaver as a retirement savings vehicle. The current design of the KiwiSaver Act restricts early withdrawal to a limited number of circumstances in order to ensure that, for most New Zealanders, their savings will be available for them in retirement.

Outstanding policy issues

11. The list of congenital conditions to be named in regulations as qualifying for withdrawal is still under development in consultation with members of the medical profession.
12. The early withdrawal of KiwiSaver funds interacts with cash asset and income tests under social assistance regulations. Early withdrawal of KiwiSaver for significant financial hardship, serious illness and first home withdrawal can impact on the amount of social assistance a person is entitled to receive. Work will be undertaken to investigate the interface issues between early withdrawal of KiwiSaver and social assistance regulations and any recommendations for change will be made by

Confidential advice to Government

Impact analysis

13. A Regulatory Impact Assessment was prepared and submitted at the time that Cabinet considered and approved the policy to be implemented through the SOP [DEV-19-MIN-0176 refers].

Compliance

14. The SOP complies with the following:
 - 14.1. the principles of the Treaty of Waitangi;
 - 14.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. However, it should be noted that.
 - 14.2.1. the changes to be implemented through the SOP seek to positively discriminate for people with life-shortening congenital conditions (so that KiwiSaver becomes a viable retirement for them). However, creating a withdrawal category which names certain conditions could have discriminatory effects upon those who have a congenital life-shortening condition that is not named, because the evidence burden for withdrawal may be higher. This approach has been taken to provide certainty for the majority of people, while still providing an avenue for those with other life-shortening conditions to withdraw their KiwiSaver for early retirement;
 - 14.2.2. there are also potential discriminatory effects for those who have a non-congenital life-shortening condition. It is likely that in creating a new category for early withdrawal, it would introduce some form of inconsistency relative to other conditions that might have been included. The existing serious illness withdrawal category can be relied on by people in certain circumstances, although there may be reasons to reconsider the existing serious illness withdrawal provisions in the future;
 - 14.3. the disclosure statement requirements (a draft revised disclosure statement for the Taxation (KiwiSaver, Student Loans, and Remedial Matters Bill has been prepared and is attached to this paper);
 - 14.4. the principles and guidelines set out in the Privacy Act 1993;
 - 14.5. relevant international standards and obligations; and
 - 14.6. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

Relevant Government departments and other public bodies

15. The following agencies and departments have been consulted: the Department of the Prime Minister and Cabinet (the Policy Advisory Group), the Treasury, Inland

Revenue, the Ministry of Social Development, the Financial Markets Authority, the Commission for Financial Capability and the Ministry of Justice on the SOP as well as the policy that informed it.

16. The Office of Disability Issues, within the Ministry of Social Development, is supportive of the intent that those with life-shortening congenital conditions should be able to access their KiwiSaver funds early. However, they are concerned to ensure fairness in how this works and, as far as possible, to reduce anomalies between the treatment of different congenital life-shortening conditions. Officials will continue to work with the Office of Disability Issues on these points.

The government and other parties represented in Parliament

17. Both Government caucus and coalition and support parties will be consulted on this SOP prior to its proposed release.

Relevant private sector organisations and public consultation process

18. The policy in the SOP was informed by a report written by two independent advisers: Dr Claire Matthews of Massey University and Ms Donna Mitchell of IHC. In developing that report, they carried out targeted consultation with people that have health and disability knowledge and expertise and those within the KiwiSaver industry.

Binding on the Crown

19. The SOP makes changes to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill. This Bill amends the KiwiSaver Act 2006, together with a number of other Acts. Some, but not all, of these Acts currently bind the Crown. This SOP does not alter the status quo in this respect – the amendments will follow the position of the principal Acts.

Creating new agencies or amending law relating to existing agencies

20. The SOP will not create a new agency.
21. The SOP will not amend existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision making powers

22. The SOP does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

23. Regulations will be needed to ensure that all aspects of the changes are operating. These will comply with the 28 day rule. They are likely to be of small size and low complexity.

Other instruments

24. The SOP does not contain any provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

25. The SOP does not contain any definitions of Ministers and departments because the KiwiSaver Act already does this.

Commencement of legislation

26. The proposal will come into force when the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill is passed, which is intended to be by March 2020.

Parliamentary stages/publicity

27. The Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill was introduced on 27 June 2019, and is intended to be passed by March 2020. It has been referred to the Finance and Expenditure Committee.
28. Subject to Cabinet approval, I will publicly release a copy of the SOP, and invite the Chair of the Finance and Expenditure Committee to include the SOP as part of its consideration of the Taxation (KiwiSaver, Student Loans, Remedial Matters) Bill. The letter to the Chair of the Finance and Expenditure Committee notes the Committee may wish to call for public submissions on the SOP.

Disability Perspective

29. The SOP seeks to positively influence the wellbeing of people with disabilities in retirement.

Proactive Release

30. I intend to release this paper proactively in within 30 days, subject to withholdings that are consistent with the Official Information Act 1982. The Ministry of Business, Innovation and Employment will publish a copy of this paper on its website.

Recommendations

The Minister for Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill holds a category 3 priority on the 2019 Legislation Programme (to be passed if possible by the end of the year);
2. **note** that the Supplementary Order Paper creates a new early withdrawal category in the KiwiSaver Act 2006 for people with life-shortening congenital conditions [DEV-19-MIN-0176 and CAB-19-MIN-0317 refers];

3. **approve** the Supplementary Order Paper for release, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
4. **delegate** the Minister of Commerce and Consumer Affairs and Minister of Revenue authority to make minor amendments of a technical nature to measures recommended in this paper without further reference to Cabinet; and
5. **invite** the Minister of Commerce and Consumer Affairs to provide a copy of the Supplementary Order Paper to the Chair of the Finance and Expenditure Committee, with an invitation that the Supplementary Order Paper form part of their consideration of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Authorised for lodgement

Hon Kris Faafoi
Minister of Commerce and Consumer Affairs

PROACTIVELY RELEASED