

House of Representatives
Supplementary Order Paper

Tuesday, 24 March 2015

Taxation (KiwiSaver HomeStart and Remedial
Matters) Bill

Proposed amendments

Hon Todd McClay, in Committee, to move the following amendments:

Clause 2

Replace *clause 2(3)* with:

- (3) **Sections 5BA, 5B, and 6** come into force on 1 April 2015.
- (4) **Section 6B** comes into force on 1 June 2015.

New clause 5BA

After *clause 5* (after line 28 on page 2), insert:

5BA Section 228 amended (Regulations)

Replace section 228(1)(l) with:

- “(l) prescribing circumstances for the purposes of clause 8(3)(a) and **(3B)(a)** of the KiwiSaver scheme rules or prescribing who is a qualifying person for the purpose of clause 8(3)(c)(ii) and **(3B)(c)(ii)** of the KiwiSaver scheme rules.”

Clause 5B

In *clause 5B, new section 239(a)* (line 9 on page 3), replace “**section 6**” with “**sections 6 and 6B**”.

In *clause 5B, new section 239(a)* (line 13 on page 3), replace “from 1 April 2015” with “on and after 1 April 2015”.

In *clause 5B, new section 239(b)* (lines 14 to 21 on page 3), replace “1 April 2015” with “1 June 2015” in each place where it appears.

Clause 6

Replace *clause 6* (lines 25 to 30 on page 3) with:

6 Schedule 1 amended (KiwiSaver scheme rules)

- (1) After schedule 1, clause 8(1)(a), insert:

“(ab) the person has been a member of a complying super-annuation fund for a period of 3 years or more; or”.
- (2) In schedule 1, clause 8(3), replace “for the purchase of an estate in land” with “for the purchase of an estate in land located in New Zealand”.
- (3) After schedule 1, clause 8(3), insert:

“(3B) A member to whom this clause applies may make a withdrawal from the KiwiSaver scheme of which the member is currently a member for the purchase of an interest in a dwellinghouse on Maori land if—

 - “(a) the purchase is made in the prescribed circumstances; or
 - “(b) both of the following apply:
 - “(i) the dwellinghouse is, or is intended to be, the principal place of residence for the member or for the member and the member’s family; and
 - “(ii) the member has not, at any time before applying to make a withdrawal under this clause (whether before or after becoming a member of the Kiwi-Saver scheme) held an estate in land (whether alone or as a joint tenant or tenant in common); or
 - “(c) both of the following apply:
 - “(i) the dwellinghouse is, or is intended to be, the principal place of residence for the member or for the member and the member’s family; and
 - “(ii) the member is a qualifying person under the regulations.”
- (4) Replace schedule 1, clause 8(4)(a) with:

“(a) the amount of the contribution made by the Crown under section 226 (disregarding any positive or negative returns for the purpose of calculating the amount of that contribution):”.
- (5) In schedule 1, clause 8(5), replace “subclause (3)(b)(ii)” with “subclauses (3)(b)(ii) and **(3B)(b)(ii)**”.
- (6) After schedule 1, clause 8(5)(ab), insert:

“(ac) the estate in land is an interest in Maori land:”.
- (7) Replace schedule 1, clause 8(6) and (7) with:

“(6) In this clause,—

“**dwellinghouse** means a building that is intended to have as its principal use occupation as a private residence

- “**estate** means a fee simple estate, a leasehold estate, or a stratum estate
- “**Maori land** has the same meaning as in the Te Ture Whenua Maori Act 1993.
- “(7) It is a condition of subclauses (3) and **(3B)** that—
- “(a) any withdrawal made under the relevant provision must be paid—
- “(i) first, from the member’s accumulation excluding the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of that contribution) paid in respect of the member; and
- “(ii) second, from the Crown contribution excluding the amount described in **subclause (4)(a)**; and
- “(b) any withdrawal made under the relevant provision must be paid to a practitioner (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006) acting on behalf of the member; and
- “(c) the manager may require from that practitioner, before payment of the withdrawal,—
- “(i) a copy of an agreement for the sale and purchase (the **agreement**) of the estate in land or of the interest in a dwellinghouse on Maori land, showing the member as purchaser; and
- “(ii) for an interest in a dwellinghouse on Maori land, evidence of the member’s right to occupy the Maori land; and
- “(iii) an undertaking that the agreement is unconditional at the time the manager makes the request; and
- “(iv) an undertaking that the funds will be paid to the vendors as part of the purchase price or will be repaid to the manager on account of the member if settlement of the agreement is not completed by the due date or any extended date.”
- (8) In schedule 1, clause 14(1), replace “Subject to clause 14B” with “Unless clause 14B applies”.
- (9) In schedule 1, clause 14(2), replace “Subject to clause 14B” with “Unless clause 14B applies”.
- (10) Replace schedule 1, clause 14B(1) with:
- “(1) This clause applies for a KiwiSaver scheme (but not for a complying superannuation fund) after a member’s permanent emigration to Australia.”

6B Schedule 1 amended (KiwiSaver scheme rules)

Replace **schedule 1, clause 8(7)(c)**, as inserted by **section 6(7)**, with:

- “(c) the manager must require from that practitioner, before payment of the withdrawal,—
- “(i) a copy of an agreement for the sale and purchase (the **agreement**) of the estate in land or of the interest in a dwellinghouse on Maori land, showing the member as purchaser; and
 - “(ii) for an interest in a dwellinghouse on Maori land, evidence of the member’s right to occupy the Maori land; and
 - “(iii) an undertaking that the agreement is unconditional at the time the manager makes the request or, if the agreement is conditional, an undertaking that—
 - “(A) payment of any amount of the withdrawal will be held by a stakeholder; and
 - “(B) the stakeholder is obliged to hold the amount while the agreement is conditional; and
 - “(iv) if the agreement is unconditional at the time the manager makes the request, an undertaking that the amount will be paid to the vendors as part of the purchase price or will be repaid to the manager on account of the member if settlement of the agreement is not completed in accordance with the agreement by the due date or any extended date; and
 - “(v) if the agreement is conditional at the time the manager makes the request, an undertaking that—
 - “(A) the stakeholder is obliged to repay the amount to the practitioner if settlement of the agreement is not completed in accordance with the agreement by the due date or any extended date (**non-completion**), but excepting non-completion due to the purchaser’s default; and
 - “(B) the practitioner will repay the amount that the practitioner receives from the stakeholder to the manager on account of the member.”

Clause 10

Replace *clause 10* (line 34 on page 4 to line 13 on page 5) with:

10 Section MA 7 amended (Meaning of full-time earner for family scheme)

Replace section MA 7(3), other than the heading, with:

“(3) The incapacity referred to in subsection (2)(b) and (d) is an incapacity due to—

“(a) personal injury by accident for which an accident compensation earnings-related payment has been, is being, or will be paid:

“(b) a **service-related** (as defined in section 7 of the Veterans’ Support Act 2014) injury, illness, condition, or whole-person impairment for which a payment has been, is being, or will be paid, under the Veterans’ Support Act 2014, and the payment is—

“(i) weekly income compensation paid under Part 3, subpart 4 of that Act:

“(ii) weekly compensation paid under Part 4, subpart 5 of that Act:

“(iii) weekly compensation or aggregated payments, as applicable, paid under schedule 2, part 4, clause 54 or 55 of that Act.”.

Explanatory note

This Supplementary Order Paper proposes amendments to the *Taxation (KiwiSaver HomeStart and Remedial Matters) Bill* (the **Bill**). The amendments are focused on the KiwiSaver scheme rules relating to members’ withdrawals. Currently, it is proposed in *clause 6* of the Bill to allow a first home withdrawal to include all Crown contributions already paid, other than the initial kick-start payment. The proposed new amendments to *clause 6* of the Bill in this Supplementary Order Paper—

- ensure that membership in a complying superannuation fund for 3 years may count towards qualifying for a first home withdrawal:
- ensure that a first home withdrawal can only be used for New Zealand homes:
- allow a first home withdrawal in relation to a dwellinghouse on Maori land that is intended to have as its principal use occupation as a private residence, if evidence of the right to occupy Maori land is provided:
- allow a first home withdrawal to be used to make payments, including deposit payments, before the agreement for sale and purchase is unconditional, provided the savings can be returned to the member’s KiwiSaver account if the agreement fails to settle:

- ensure that existing interests in Maori land do not preclude access to a first home withdrawal:
- clarify, as a drafting matter, that an Australian emigration withdrawal overrides a general emigration withdrawal, but does not override all other withdrawals.

An ordering rule is also proposed for first home withdrawals, to ensure that Crown contributions are paid out last from a member's account. Members withdraw their own contributions and their employer contributions first.

Proposed *new clause 5BA* updates 2 cross-references in a regulation-making power, consequential to the proposed new amendments to *clause 6*.

Also, *clause 10* of the Bill is replaced to correct a fault of expression / cross-reference in proposed new *section MA 7(3) of the Income Tax Act 2007*.

Departmental disclosure statement

The Ministry of Business, Innovation and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2015&no=60&>

Regulatory impact statement

The Ministry of Business, Innovation and Employment produced regulatory impact statements on 25 November 2014 and 3 March 2015 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

A copy of these regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/about-us/publications/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>