



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Withdrawal of KiwiSaver for life-shortening congenital conditions	Date to be published	21 July 2019

List of documents that have been proactively released		
Date	Title	Author
1 July 2019	<i>Withdrawal of KiwiSaver for life-shortening congenital conditions</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
26 June 2019	<i>DEV-19-MIN-0176</i>	Cabinet Office

Information redacted **YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. 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 Economic Development Committee

Withdrawal of KiwiSaver for life-shortening congenital conditions

Proposal

1. I am seeking the Committee's agreement to amend the KiwiSaver Act 2006 in order to allow people with life-shortening congenital conditions to withdraw their KiwiSaver savings early.

Executive Summary

2. I am proposing to create 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. It is important for people with these conditions to have the opportunity to use KiwiSaver to save for their retirement and to access their savings at a point that would allow them to spend a reasonable amount of their adult life in retirement.
3. Currently KiwiSaver is not an appropriate product for people with life-shortening congenital conditions. The majority of people in these circumstances would be advised not to join KiwiSaver and therefore they miss out on the benefits that are specific to KiwiSaver, notably the Government contribution and compulsory employer contributions.
4. The existing serious illness withdrawal category is not useful for people with life-shortening congenital conditions because withdrawal can only be made on the basis of imminent risk of death or permanent incapacity to work.
5. The new withdrawal category would establish a set list of conditions named in regulations that would automatically qualify for withdrawal. An alternative process would also be available to people that have a life-shortening congenital condition that is not named in the regulations to apply to their KiwiSaver provider for withdrawal.

Background

6. 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. Therefore, the majority of people with life-shortening congenital conditions would be advised not to join KiwiSaver.
7. This issue was brought to my attention last year when Tim Fairhall and his mother Joan Fairhall wrote to me raising concerns that the current withdrawal provisions in KiwiSaver discriminate against people with Down syndrome. Tim Fairhall has Down syndrome and an effect of this condition is that he is aging prematurely. His life expectancy is approximately 57 years. He has been contributing to KiwiSaver for a number of years, but under the current withdrawal settings, Mr Fairhall may not live long enough to gain access to those savings. Tim and Joan Fairhall then made a submission to the Finance and Expenditure Committee on the Taxation (Annual Rates for 2018-19, Modernising Tax

Administration, and Remedial Matters) Act 2019 to this effect.

8. There is an existing serious illness withdrawal category in the KiwiSaver Act but it would not be useful for Mr Fairhall and others with life-shortening congenital conditions. Withdrawal under the serious illness 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 withdrawal 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.

A new KiwiSaver withdrawal category for life-shortening congenital conditions

9. I propose to create a new withdrawal category in the KiwiSaver Act allowing people with life-shortening congenital conditions to withdraw their savings before the age of 65. I believe that it is important that these people have an opportunity to have a positive retirement and to support their financial wellbeing in retirement through KiwiSaver.
10. It is particularly important for KiwiSaver to work for these New Zealanders because there are some benefits that are specific to KiwiSaver that cannot be accessed through privately run retirement savings schemes, notably the Government contribution and compulsory employer contributions.
11. These changes will also apply to complying superannuation funds. Complying superannuation funds are retirement savings schemes that have similar benefits to KiwiSaver funds (the Government contribution and compulsory employer contribution) because savings are locked-in until a person is 65. They are typically workplace savings schemes like those run by the Fire Service or New Zealand Post.

Details of how the new withdrawal category would work

12. The KiwiSaver Act's purpose is to support saving for retirement. To preserve this purpose there are a limited number of situations where a person can make a withdrawal before the age of 65. I have taken care to create a withdrawal category that is sufficiently targeted to those it is intending to serve and make it relatively easy to administer. Targeting the withdrawal category also mitigates the impact a broad withdrawal category might have on the purpose of KiwiSaver as a retirement savings vehicle. KiwiSaver is designed so that the majority of people will access their funds once they are 65 years old.

A set list of conditions would trigger withdrawal and there would be flexibility to apply for other congenital conditions not on the set list

13. In order to define who would be eligible for withdrawal under the new category a set list of life-shortening congenital conditions would be established through regulations allowing a person to withdraw their retirement savings before the age of 65. This list would be limited to congenital conditions where it is known the condition is likely to shorten a person's life below the age of 65. The list of set conditions is being developed by officials in consultation with the medical profession. The list would also be subject to review to ensure it stays up-to-date.
14. Establishing a set list of conditions that qualify for withdrawal will give certainty to people with those conditions about their ability to withdraw their KiwiSaver savings. It also provides clarity to KiwiSaver providers about the types of conditions that will typically form

the basis of the majority of applications and make the administration process a relatively simple task.

15. 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.
16. I consider the proposed administrative process for the new withdrawal category provides certainty about who can apply for withdrawal in the majority of cases, and flexibility for other conditions to be considered for withdrawal.

Discretion to choose a retirement date

17. The new category would allow the individual to choose the age at which they retire. Whilst this discretion would be unusual in the context of how KiwiSaver currently operates, I consider it is appropriate for these circumstances. Two individuals with the same condition may have very different life expectancies due to the severity of their condition and a number of other influencing factors. Because of this variation in life expectancy I believe it is appropriate to allow those with life-shortening congenital conditions to withdraw their KiwiSaver at the point at which they choose to retire.

Process for withdrawal

18. To apply for withdrawal a person with a life-shortening congenital condition would go through a similar process to the current serious illness withdrawal process.
19. In the case of a person that has a condition named on the set list, they would:
 - a. Apply in writing to their KiwiSaver supervisor or manager with accompanying medical evidence verifying that they have a life-shortening condition named in the regulations.
 - b. Supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver savings.
 - c. Supply any additional information that the KiwiSaver supervisor or manager requires to reasonably satisfy themselves that the person has a condition qualifying for withdrawal.
20. In the case of a person that has a life-shortening congenital condition that is not on the set list, they would:
 - a. Apply in writing to their KiwiSaver supervisor or manager stating that they have a congenital condition with medical evidence verifying that the condition is expected to reduce their life below the age at which funds are locked-in under the KiwiSaver Act.
 - b. Supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver savings.
 - c. Supply any additional information that the KiwiSaver supervisor or manager requires to reasonably satisfy themselves that the person has a condition qualifying for

withdrawal.

21. In regards to the set list of conditions named in regulations, I propose that these would be subject to review. I do not propose a set review period, instead I would expect that the information gained through the alternative process for application – namely the frequency with which other congenital conditions are being granted access – would inform the need for a review.

Partial retirement

22. I propose that following approval of withdrawal under this new category a person could continue to contribute to KiwiSaver if they decide to stay in some form of employment, or decide to resume employment at a later date. I believe this is consistent with allowing people the opportunity to have a positive retirement. They would also have the ability to make immediate withdrawals on these savings.
23. I am also proposing that if a person continues to contribute to KiwiSaver during partial retirement then they would not be eligible for the Government and compulsory employer contributions. This is consistent with how other KiwiSaver members are treated when withdrawing for the purpose of retirement.

Impact on social assistance

24. Once KiwiSaver funds are no longer 'locked-in' they are treated as an available asset for the purpose of social assistance, and income earned from that asset is treated as income. Therefore if people withdraw their KiwiSaver savings under the new category their funds are 'unlocked' and it will most likely reduce or stop any social assistance they are eligible to receive. The effect of this is that a person with a life-shortening congenital condition may actually be made worse-off if they withdraw their KiwiSaver relative to a person retiring at age 65.
25. The issue outlined above is related to other questions about how the early withdrawal of KiwiSaver funds interacts with asset and income tests under the 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 Confidential advice to Government

Consultation

26. In order to scope the problem and to seek advice on possible solutions a report was commissioned from two independent advisers: Dr Claire Matthews of Massey University and Donna Mitchell from IHC. In formulating their report they undertook a range of targeted consultation with people that have health and disability knowledge and expertise, and those within the KiwiSaver industry. The majority of those consulted expressed 'in principle support' for a new withdrawal category to be created for people with life-shortening congenital conditions.
27. There will also be an opportunity for further public consultation through the Select Committee process.
28. The following agencies and departments have been consulted the Treasury, Inland

Revenue, the Ministry of Social Development, the Financial Markets Authority, the Commission for Financial Capability and the Ministry of Justice.

29. The Department of the Prime Minister and Cabinet has been informed.

Financial Implications

30. The purpose of the proposed changes is to make KiwiSaver an appropriate retirement savings vehicle for a larger number of New Zealanders. As a result, there would likely be a small increase on the total amount of Government contribution made towards KiwiSaver.
31. As noted above, work will be undertaken to assess how the early withdrawal of KiwiSaver interacts with eligibility for social assistance. If changes are made to the way in which early withdrawal of KiwiSaver funds are treated for the purpose of asset and income tests relating to assessments for social assistance then this could increase the amount of social assistance spending.

Legislative Implications

32. Changes to the KiwiSaver Act will be required to implement the proposals. These changes will be made through a Supplementary Order Paper to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill which is scheduled for introduction at the end of June 2019. It holds a category 3 priority on the 2019 Legislation Programme.
33. Associated changes to the KiwiSaver Regulations 2006 will also be required in order to specify the list of conditions that qualify for withdrawal. A regulation making power will need to be inserted into the KiwiSaver Act in order to enable this.
34. To apply the changes to complying superannuation funds, changes will also be required to the Income Tax Act 2007.

Impact Analysis

35. The Ministry of Business, Innovation and Employment's (MBIE) Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the criteria necessary for Ministers to make informed decisions on proposals in this paper. This is because there has been limited consultation on the proposal which may mean that the potential consequences identified in the Regulatory Impact Statement are not fully understood.

Human Rights

36. This policy seeks to positively discriminate for people with life-shortening congenital conditions so that KiwiSaver becomes a viable retirement savings vehicle for them by allowing them to withdraw their savings at a point that would allow them to have a positive retirement.
37. Creating a withdrawal category that names certain conditions as qualifying for withdrawal could have discriminatory effects upon those people that also have a life-shortening congenital condition that is not on the named list because the evidence burden may be higher under the alternative process for withdrawal. However the policy is seeking to

provide certainty for the majority of people that will utilise this withdrawal category whilst still providing an avenue for people with other life-shortening congenital conditions to also withdraw their KiwiSaver for early retirement.

38. There are also potential discriminatory effects for people that have a non-congenital life-shortening condition. The existing serious illness withdrawal category can be relied upon by people in these circumstances. However the proposed changes may raise questions about the current scope of the serious illness category. There may be reasons to reconsider the existing serious illness withdrawal provisions in the future.

Gender Implications

39. There are no gender implications arising from the policy proposals in this paper.

Disability Perspective

40. The proposals in this paper seek to positively influence the wellbeing of people with disabilities in retirement.
41. The advice provided to me has been informed by people with knowledge of intellectual disability, health and disability experts, a legal expert specialising in health and disability, and further consultation with Tim Fairhall and his mother Joan Fairhall.

Publicity

42. Subject to Cabinet's agreement to the recommendations in this paper, I intend to issue a press release announcing Cabinet's decisions.

Proactive Release

43. I intend to release the paper proactively in whole within 30 days. MBIE 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 majority of New Zealanders are able to withdraw their KiwiSaver savings at the time they qualify for New Zealand superannuation.
- 2 **note** that there are currently a limited number of situations where a person can withdraw their savings before the age of 65, being first home withdrawal, serious illness and financial hardship, and permanent emigration.
- 3 **agree** that a new withdrawal category will be created in the KiwiSaver Act 2006 allowing people with life-shortening congenital conditions to withdraw their savings before the lock-in date specified in the KiwiSaver Act, being the New Zealand superannuation qualification age.
- 4 **note** that the new category has been designed with the specific needs of those with life-shortening congenital conditions in mind.
- 5 **agree** that the withdrawal category allow the individual applying for withdrawal to determine their date of withdrawal.

- 6 **agree** a set list of congenital conditions be specified as guaranteeing withdrawal established through regulations under the KiwiSaver Act 2006.
- 7 **note** that the list of congenital conditions to be detailed in regulations is being developed by officials in consultation with the medical profession and that these will be finalised through the drafting process.
- 8 **agree** that individuals that have a congenital condition that is not on the set list named in regulations may also apply for withdrawal.
- 9 **note** that making a withdrawal under the new category does not prevent a person from continuing in paid employment.
- 10 **agree** that a person who has made a withdrawal under the new category may continue to keep contributing to KiwiSaver.
- 11 **agree** that the process for withdrawal for a person that has a congenital condition named in the regulations will be:
- 11.1 apply in writing to the KiwiSaver manager or supervisor with accompanying medical evidence verifying that they have a life-shortening condition named in the regulations;
 - 11.2 supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver savings; and
 - 11.3 supply any additional information that the KiwiSaver manager or supervisor requires to reasonably satisfy themselves that the person has a condition qualifying for withdrawal.
- 12 **agree** that the process for withdrawal for a person that has a life-shortening congenital condition that is not named in the regulations will be:
- 12.1 apply in writing to the KiwiSaver manager or supervisor stating that they have a congenital condition with medical evidence verifying that the condition is expected to reduce their life below the New Zealand superannuation qualification age;
 - 12.2 supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver saving; and
 - 12.3 supply any additional information that the KiwiSaver manager or supervisor requires to reasonably satisfy themselves that the person has a condition qualifying for withdrawal.
- 13 **agree** that the amount that can be withdrawn by a person that qualifies for withdrawal under the new category described in recommendation 3 above may be up to the value of the KiwiSaver member's accumulation.
- 14 **agree** that a regulation making power will be inserted into the KiwiSaver Act 2006 to allow for a list of congenital conditions to be specified in regulations.
- 15 **agree** that these changes will be made through a Supplementary Order Paper to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill.

- 16 **note** that work will be undertaken to examine the interface issues between early withdrawal of KiwiSaver and asset and income tests for the purpose of eligibility for social assistance under social assistance regulations.
- 17 **authorise** the Minister of Revenue to issue drafting instructions to Inland Revenue to give effect to the above recommendations.
- 18 **authorise** the Minister of Commerce and Consumer Affairs to release exposure drafts of the legislative amendments and regulations for targeted consultation as required.
- 19 **authorise** the Minister of Commerce and Consumer Affairs and the Minister of Revenue the power to make decisions consistent with the policy proposals in this paper on minor issues that arise during the drafting process.

Authorised for lodgement
Hon Kris Faafoi
Minister of Commerce and Consumer Affairs

PROACTIVELY RELEASED