Inland Revenue
Te Tari Taake

POLICY ADVICE DIVISION

THE TREASURY
Kaitohutohu Kaupapa Rawa

Joint Treasury/IRD Report: Outstanding Issues for KiwiSaver and the Enhanced KiwiSaver Package

Date:	5 April 2007	**Treasury Priority:**	HIGH
Security Level:		**Report No:**	T2007/512 PAD2007/085

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Dr Michael Cullen)	**Agree** to the recommendations	16 April 2007
Minister of Revenue (Hon Peter Dunne)	**Agree** to the recommendations	16 April 2007

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
[information deleted in order to protect the privacy of natural persons, including deceased people]			✓
Peter Martin	Director, Economic Performance Group	*[information deleted in order to protect the privacy of natural persons, including deceased people]*	
Mike Nutsford	Policy Manager, Inland Revenue Department		

Enclosure: **No**

5 April 2007 SH-13-5

Joint Treasury/IRD Report: Enhanced KiwiSaver Package – Outstanding Issues

Executive Summary

1. This report seeks ministerial direction on a range of outstanding issues relating to the enhanced KiwiSaver package and KiwiSaver more generally. These issues relate to:

   - asset allocation requirements, including socially responsible investment;
   - the first home owners' subsidy (whether members of complying funds should receive it);
   - options for the fee subsidy; and
   - the treatment of casual workers.

2. Decisions on some of these issues will need to agreed by Cabinet on Thursday 19 April (e.g., the level of the fee subsidy).

Recommended Action

We recommend that you:

Asset Allocation

1. **agree** that officials will not undertake further work on imposing asset allocation restrictions on KiwiSaver funds under management.

   Agree/disagree. *Agree/disagree.*

2. **note** that issues concerning responsible investment and the scope for employers to channel KiwiSaver contributions back into their own business could be considered as part of the Review of Financial Products and Providers.

   Noted. *Noted.*

Housing Deposit Subsidy

3. **agree** to:

   EITHER

   i. make no change to eligibility for the subsidy (i.e. the subsidy is available to KiwiSaver members and members of exempt employer schemes).

   Agree/disagree. *Agree/disagree.*

OR

   ii. limit eligibility to the deposit subsidy to KiwiSaver members only.

   Agree/disagree. *Agree/disagree.*

OR

iii. extend eligibility to the deposit subsidy to members of complying funds.

Agree/disagree. *Agree/disagree.*

4. **direct** officials to consult with Housing Corporation New Zealand to confirm the take-up and fiscal cost of the housing deposit subsidy under enhanced KiwiSaver and changes under any of the options described in (4), (5) and (6) and report back to Ministers.

Directed/Not Directed *Directed/Not Directed*

Fee Subsidy

5. **agree** that the level of the fee subsidy level be set at:

EITHER

i. $40 per member per annum to fully cover the most expensive administration fee charged by a default provider for a default investment product, at a total cost of $8 million in 2007/08 *(Inland Revenue and Treasury preferred option)*

Agree/disagree. *Agree/disagree.*

OR

ii. $55, the amount budgeted under pre-enhanced KiwiSaver, at a total cost of $11 million in 2007/08 *(Ministry of Economic Development preferred option)*.

Agree/disagree. *Agree/disagree.*

Casual Employees

6. **agree** to:

EITHER

i. Exclude all casual employees from the automatic enrolment rules:
   - employees on a fixed term contract of 28 days or less would be excluded from automatic enrolment but could opt-in; and
   - casual employees (including casual agricultural workers) would not be automatically enrolled but could opt-in. *(Inland Revenue and Treasury preferred option.)*

Agree/disagree. *Agree/disagree.*

OR

ii. Exclude only casual agricultural workers from the automatic enrolment rules.
   - employees on a fixed term contract of 28 days or less would be excluded from automatic enrolment but could opt-in;

- casual employees (excluding casual agricultural workers) would be automatically enrolled; and

- casual agricultural workers would not be automatically enrolled but could opt-in.

Agree/disagree. *Agree/disagree.*

OR

iii. Subject all casual employees to the automatic enrolment rules.

- employees on a fixed term contract of 28 days or less would be excluded from automatic enrolment but could opt-in; and

- casual employees (including casual agricultural workers) would be automatically enrolled.

Agree/disagree. *Agree/disagree.*

7. **agree** that an amendment to implement recommendation 6 be made in the next bill to give effect to the member tax credit, to be introduced on Budget day and enacted under urgency.

Agree/disagree. *Agree/disagree.*

If you agree to recommendation (5)(i):

8. **agree** that “casual employment” be defined by reference to the Holidays Act, ie employment that is “intermittent or irregular”

Agree/disagree. *Agree/disagree.*

9. **note** that officials will monitor the size of the casual workforce and will report to Ministers if there are concerns that the carve-out is undermining the intent of the automatic enrolment rules.

Noted *Noted*

Peter Martin
Director, Economic Performance Group
for Secretary to the Treasury

Mike Nutsford
Policy Manager
Inland Revenue Department

Hon Dr Michael Cullen
Minister of Finance

Hon Peter Dunne
Minister of Revenue

Analysis

Asset Allocation

1. Given recent experience with the New Zealand Superannuation Fund (NZSF) and other Crown Financial Institutions (CFIs), pressure to impose restrictions on how KiwiSaver funds are invested is likely to emerge over time. Key areas of concern may include the proportion of KiwiSaver funds invested abroad and the approach of KiwiSaver providers to 'responsible' investment. [1] As the proposed enhancements to KiwiSaver significantly enhance the government incentive to save through KiwiSaver, public pressure for the government to confront these issues is likely to materialise more quickly than was the case under the original KiwiSaver package.

2. Imposing restrictions on the foreign asset holdings of KiwiSaver providers would be very risky. In particular, such restrictions could:

   - reduce the returns that savings funds can generate and therefore compromise one of the government's main policy objectives of ensuring income security in the future,

   - limit the ability of the managed funds to diversify their portfolios to cover their level of risk appetite (they have the best set of information to make these decisions), including changes over time to reflect changing circumstances, and

   - place upward pressure on domestic asset prices.

3. The impact of imposing some additional requirements on KiwiSaver providers to invest 'responsibly' is less clear cut. Responsible investment is now generally defined as the integration of environmental, social and corporate governance (ESG) concerns into investment management and ownership practices. Some advocates claim that there is a link between good ESG performance and financial performance i.e., attention to ESG enhances the selection of products with good long-term value. Although figures on the performance of responsible investment funds have too short a history to be meaningful, at this stage there is no evidence that a focus on ESG has a negative impact on returns. Perhaps reflecting this, there has been a rise in responsible investment products, services and initiatives in recent years.

4. Imposing responsible investment requirements on KiwiSaver providers that are too onerous could have significant costs in terms of Board and management time. These may flow through into higher fund management fees, in return for relatively little benefit. In particular, if having regard for ESG concerns is expected to positively impact on returns over the longer term, then it is unclear why such restrictions would be necessary, or have any impact on the policies that KiwiSaver providers would adopt.

5. A lower cost way of encouraging responsible investment may be through disclosure and reporting requirements. For example, the UK government passed legislation in 2000 requiring all pension funds to disclose the extent to which they consider social, ethical or environmental issues in their investment process. The Australian government

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[1] Treasury reported on the issue of responsible investment in relation to CFIs in T2006/1853 and T2007/140.

also requires similar disclosure of all investment product providers, with the addition of labour standards. Disclosure requirements would allow providers to market themselves as responsible investors, but also ensure that fund members are aware of the portfolio decisions that are being made on their behalf

6. The Ministry of Economic Development (MED) is examining the supervisory and regulatory arrangements of non-bank financial institutions, including superannuation providers, in its review of non-bank financial products and providers (RFPP). Ministers have agreed that already agreed that the RFPP reforms relating to existing schemes and KiwiSaver schemes should be introduced at the same time as the employer tax credit and compulsory employer contributions (1 April 2008) if the enhanced KiwiSaver package is endorsed by Cabinet. As part of this review, consideration could be given to low-cost ways of encouraging responsible investment by KiwiSaver providers, including through additional disclosure and/or reporting requirements. This would need to be discussed with the Minister of Commerce.

7. A further risk that may emerge in respect of the investment of KiwiSaver funds is the role of the employer in such investment decisions. The requirement for compulsory matching contributions potentially creates scope for abuse of KiwiSaver funds by employers who seek to channel their contributions back into their business. This issue will need to be addressed in conjunction with the introduction of compulsory employer contributions. As the RFPP reforms could come in sooner this may be a mechanism through which this issue could be investigated further. This would also need to be discussed with the Minister of Commerce.

First Home Subsidy

8. Housing New Zealand Corporation (HNZC) has reported to Ministers on the eligibility criteria (income and house price caps) for the housing deposit subsidy (BN/06/131 refers). As part of this report, officials noted that the extension of the SSCWT exemption to complying funds raised the question of whether access to the housing deposit subsidy should also be extended to members of these funds.

9. In light of the wider policy decisions on the access of non-KiwiSaver schemes to the tax credits of enhanced KiwiSaver and other KiwiSaver benefits, officials believe there are three options for access to the deposit subsidy:

- Option One - Status quo (subsidy available to KiwiSaver and exempt employer schemes[2]).
- Option Two - Limit access to the deposit subsidy to KiwiSaver members only.
- Option Three - Extend access to the deposit subsidy to complying funds.

10. The implications for take-up and fiscal cost of the housing deposit subsidy under enhanced KiwiSaver or as a result of the changes under any of the options have not been modelled due to the restrictions on consultation with HNZC. However, officials have reached the broad conclusion that there will be no material change. This is because take-up and cost is driven by the income and regional house price caps. Further, the majority of schemes which satisfy the requirements for exemption from automatic enrolment are the same schemes that either have established, or will establish, a complying fund. Hence extending access to the subsidy to complying funds will not greatly increase the number of schemes (and members) that are already

[2] An employer who offers access to such a scheme is exempt from automatically enrolling new employers.

entitled to apply for the subsidy. Officials can confirm the impacts and report back to Ministers following consultation if Ministers wish.

Option One: Status quo (subsidy available to KiwiSaver and exempt employer schemes).

11. Currently the deposit subsidy is available to members of KiwiSaver and members of work-based schemes that are exempt from automatic enrolment. This option requires no change to be made. However, it could be perceived as punitive for those saving into complying funds, although these members could join KiwiSaver if they wished to access the subsidy.

Option Two: Limit access to the deposit subsidy to KiwiSaver members only

12. This option would rescind a previous policy decision to enable members of schemes that are exempt from automatic enrolment to access the subsidy.

13. The exemption from automatic enrolment recognises that some employers operate work-based schemes and that membership of these schemes meets the government's objectives of encouraging a long-term savings habit and asset accumulation. Enabling access to the housing deposit subsidy for members of these schemes encourages a 'level playing field' with KiwiSaver.

14. Officials do not believe that this option would not materially reduce take-up or fiscal cost of the subsidy. HNZC's estimate of take-up of the subsidy is modelled on the number of members of KiwiSaver and schemes that are exempt from automatic enrolment. Under this option take-up would only be available to KiwiSaver members, which potentially limits the number of those eligible for the subsidy. However as eligibility is largely driven by the income and regional house price caps, officials believe that the extent of any decrease is likely to be marginal.

Option Three: Extend access to the deposit subsidy to complying funds

15. This option would allow members of complying funds to access the housing deposit subsidy. This option promotes a more level playing field between enhanced KiwiSaver and complying funds, and creates consistency with Ministers' decisions on the access of tax credits to complying funds. Officials note that there is a risk that if the deposit subsidy is extended there may be calls for access to other KiwiSaver benefits to be extended, such as the $1000 kick-start and the fee subsidy.

16. Officials do not believe that this option would have a materially increase the take-up or fiscal cost of the subsidy as the majority schemes that satisfy the requirements for exemption from automatic enrolment are the same schemes that either have established, or will establish, a complying fund. Hence extending access to the subsidy to complying funds will not greatly increase the number of schemes (and members) that are already entitled to apply for the subsidy.

17. If this option is agreed then features and benefits applying to enhanced KiwiSaver, schemes exempt from automatic enrolment and complying funds would be as follows:

Benefits	**Enhanced KiwiSaver**	**Exempt employer schemes**	**Complying Funds**
Automatic enrolment on change of job, can opt-out, and can choose to opt-in	✓	X	X
Locked-in savings (broadly) until age 65	✓	X	✓

Scope to withdraw funds for purchase of first home, and to divert contributions to pay mortgage	✓	✓[3]	✓[4]
Approved providers with competitive tax treatment[5]	✓	X	✓
Requirement that fees are not unreasonable and fee subsidy is paid	✓	X	X
$1,000 initial contribution from government on opening account	✓	X	X
Housing deposit subsidy	✓	✓	✓
Employer can make additional voluntary contributions to their employees' accounts if they choose	✓	✓	✓
Tax credit to saver, matching first $20 per week of their contributions	✓	X	✓
Compulsory matching from employer on a $ for $ basis	✓	X	✓
Tax credit for employer, reimbursing the first $20 per week of their matching contributions	✓	X	✓

18. The pros and cons of each option is summarised in the following table:

Option	**Pros**	**Cons**
Option One: Status quo (subsidy available to KiwiSaver and exempt employer schemes).	Does not require any changes to policy announcements	Does not create a 'level playing field' with KiwiSaver. Could be perceived as punitive for those choosing to save in schemes other than KiwiSaver and exempt employer schemes. Inconsistency that a member could save into a scheme that has tighter lock-in rules, yet the subsidy is not available.
Option Two: Limit to KiwiSaver schemes only	Creates a 'unique selling point' for KiwiSaver. Encourages people to save into KiwiSaver.	Does not create a more 'level playing field' with KiwiSaver. Requires a change to a previous policy decision, which could result in confusion. Could be perceived as punitive for those choosing to save in schemes other than KiwiSaver.
Option Three: Extend to complying funds	Creates a more level playing field with KiwiSaver. Consistency with policy decisions governing access to member and employer tax credits. Encourages people to begin saving into these scheme.	Could encourage calls for other KiwiSaver benefits (e.g. $1000 kick start and fee subsidy) to also be extended

KiwiSaver Fee Subsidy

19. The process for paying the KiwiSaver fee subsidy has been agreed by Cabinet (EDC Min (07) 5/1 refers), but the decision on the level of the fee subsidy was deferred by

[3] This will only apply where a scheme offers such a feature.
[4] This will only apply where a scheme offers such a feature.
[5] This includes the SSCWT exemption and the Portfolio Investment Entities regime.

Ministers and currently remains outstanding. Given policy decisions are being made on the enhanced KiwiSaver scheme, it is timely to reconsider the decision on the level of the fee subsidy. Further, the changes in the take-up of KiwiSaver resulting from the enhanced features will also impact on the annual cost of the fee subsidy.

20. Cabinet previously agreed that the fee subsidy be set at a flat dollar amount per member per annum, and that the amount should aim to cover the administration fee of the default schemes (CBC Min (06) 3/7 refers). Funding for the fee subsidy was set aside in the savings allocation at approximately $55 per member per annum, prior to any information being available on fees charged by default providers. It is now estimated that the most expensive fee to be charged by a default scheme (for a default investment product) is $37 per member per annum. Officials consider there are two options for the level of the fee subsidy. However these costs needs to be considered in the wider Budget context.

Option One – Fee subsidy of $40 (Inland Revenue and Treasury preferred option):

21. This option sets the fee subsidy at $40 to fully cover the most expensive administration fee charged by a default provider for a default investment product.

22. A subsidy of this level would ensure that the most significant cost for savers in default schemes is covered, particularly for those in the early years of saving, whose contributions are small, or savers with small balances. As this option is less than originally budgeted, there is surplus funding available in the savings allocation that could be applied to the additional cost of the higher take-up under enhanced KiwiSaver.

Option Two – fee subsidy of $55 (Ministry of Economic Development preferred option):

23. This options sets the fee subsidy at $55, the amount budgeted under KiwiSaver (pre-enhanced KiwiSaver).

24. A subsidy of $40 would likely only cover the most significant cost for savers in a default investment product and not the administration fee for savers who have actively chosen their scheme. A subsidy of $55 would allow for some coverage of other fees and potential fee increases over time, and is approximately equal to what has been set aside in the KiwiSaver savings allocation. Work conducted by the Retirement Commission and actuarial consultants show that average administration fees for schemes currently operating range from $60 - $200 per member per annum.

25. The fiscal costs of both options are outlined below:

Year	Option one: subsidy of $40 ($m)	Option two: subsidy of $55 ($m)
2006/07	-	-
2007/08	8	11
2008/09	17	23
2009/10	23	32
2010/11	28	39
2011/12	32	44
2012/13	34	47
2013/14	37	50

Casual Employees

26. The policy intention for KiwiSaver was for employees to be exempt from the automatic enrolment rules if they were employed for a continuous period of 28 days or less. If employment was extended beyond 28 days, the employee would then become subject to the automatic enrolment rules (as if they had started new employment). This second rule was put in place to avoid contracts being structured in such a way so as to avoid the automatic enrolment rules. Casual agricultural workers are also excluded from the automatic enrolment rules (if an employee ceases to be a casual agricultural worker, the automatic enrolment rules then apply).

27. The rules are simple to apply in circumstances where employers and employees are fully aware of the length of employment when it is contracted. Employment law, however, has shown that in the case of 'casual' employment, there is not continuous service between assignments. In these situations an employer would need to have a tracking system in place to determine whether an employee is employed for a continuous 28 day period. Employer groups are concerned that this would place undue compliance costs on employers.

28. A further problem arises when the initial contract is for less than 28 days and, before it ends, is extended beyond 28 days. Case law has shown that in these circumstances employment is deemed to be one assignment, meaning that the employee should have been automatically enrolled on day one (because the contract lasts longer than 28 days). In this circumstance employers inadvertently breach their obligations.

29. Officials have informally consulted with the Council of Trade Unions (CTU) who said that these issues had not been raised with them, but recognise that the current rules could be an issue for employers.

Options for Dealing with Casual Employees

30. The Employers and Manufacturers Association (EMA) considers that any solution must be one whereby the payroll staff can easily determine how an employee should be treated. The EMA also considers that any exclusion from automatic enrolment based on the length of an individual engagement will not work for casual employees because it is unrealistic to expect that the person who hires the employee will always pass on information about the length of that engagement to payroll (ie to the people who will administer the employer's KiwiSaver obligations on a day-to-day basis)[6].

31. If casual employees are to be treated in such a way that payroll staff can determine employees' treatment without having to communicate with the staff member who contracts with the employee, the feasible options are:

   - Option one: Exclude all casual employees from the automatic enrolment rules;
   - Option two: Exclude only casual agricultural workers from the automatic enrolment rules; or
   - Option three: Subject all casual employees to the automatic enrolment rules.

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[6] Officials have discussed this with three payroll companies. Two of the companies consulted agreed that any rule regarding casuals must be one where payroll staff can ascertain the correct treatment for the employee on their own (ie without having to receive information about the time period the person has been employed for). The other company consulted had no view on the matter.

32. The EMA consider that all casual employees should be exempt from automatic enrolment so as to minimise compliance costs on employers (option one above).

Option One – All casual employees excluded from automatic enrolment

33. During the KiwiSaver select committee process concerns were raised that casual employees were going to be a time-consuming category for employers as it was expected that the majority of employees would opt out. Some submitters considered that a carve-out of such employees would vastly reduce the compliance costs imposed on employers by KiwiSaver. Officials agree that the compliance burden should be reduced on employers, if possible, but should not be done so that the policy intent of the automatic enrolment rules is undermined.

34. The EMA has suggested that existing Holidays Act legislation could be used to carve-out casual employees from the automatic enrolment rules. Officials considered this as an option when the issue of casual employees was raised during the select committee process. The Holidays Act does not define "casual employment". However, employers are able to regularly pay annual holiday pay with an employee's pay if the employee works "on a basis that is so intermittent or irregular that it is impractical for the employer to provide the employee with four weeks annual holiday". Essentially the concept of casual employment in the Holidays Act is employment that is "intermittent or irregular". The EMA have suggested that those employees who are regularly paid holiday pay should be excluded from automatic enrolment.

35. Officials' primary concern with using the Holidays Act legislation was that it would potentially exclude a large number of employees from the automatic enrolment rules – employees that KiwiSaver was intended to target. It is not known how many employees would meet the definition in the Holidays Act, but officials suspect that it could potentially be significant. It is likely that such employees would be in the agricultural, hospitality and aged care industries.

36. Under this option there is the potential for employers to structure their employment contracts so as to avoid the automatic enrolment rules. Officials do not know the extent to which this is likely to occur but consider the risk to be low.[7]

37. This option is likely to be favoured by employers, because it avoids the compliance costs associated with automatically enrolling new employees (and it would also reduce the compliance cost for those employees who were likely to opt out). Employees who are not automatically enrolled would still have the ability to join KiwiSaver by opting in and as employees moved into permanent employment would be subject to the automatic enrolment rules. Under the enhanced KiwiSaver package the incentives for employees to opt in are much greater, particularly for low-income employees.

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[7] However, officials understand that it is not uncommon for employment contracts to be structured in such a way so that sick leave is not payable to an employee. Sick leave is payable after an employee has completed six months continuous employment – a contract where there is not continuous employment for six months would most likely meet the test of being "intermittent or irregular". This means that where contracts are structured so as to avoid having to pay sick pay, automatic enrolment would most likely be avoided.

Option Two - Only casual agricultural workers excluded from automatic enrolment

38. There is a special tax rate that applies to casual agricultural workers.[8] Under this option, only those casual employees who meet this test would be excluded from the automatic enrolment rules. There are currently approximately 60,000 employees who are employed on the casual agricultural employee tax code.[9]

39. This option would be easy for payroll staff to administer because it utilises a definition which staff are already using. It could be argued, however, that it is unfair that casual agricultural workers are excluded from automatic enrolment when other types of casual employees are not.

40. This option is unlikely to be favoured by employers, because of the compliance costs associated with automatically enrolling all other new employees who are not casual agricultural workers.

Option Three - All casual employees subject to automatic enrolment

41. Option three is the opposite to option one (all casual employees would be subject to the automatic enrolment rules. The EMA considers that most casual employees are likely to opt out anyway, so believe that it is a large compliance burden on employers to subject such employees to the automatic enrolment rules. This option is likely to result in negative publicity from employer groups.

Summary of Options

42. A summary of the pros and cons of the three options is outlined in the below table. Officials consider that all three options would be relatively easy for employers to understand their obligations (particularly so when compared with the existing legislation), therefore, this is not listed as a pro.

Option	Pros	Cons
One (all casual employees excluded from automatic enrolment)	Low compliance burden on employers. Low compliance burden for those employees likely to opt out. Lower administration costs (less information packs required to be provided to employers etc).	Could potentially undermine the intent of automatic enrolment, given that a potentially significant proportion of people who start new employment would be excluded. Excluding casual employees from the automatic enrolment rules would not give such employees the opportunity to overcome inertia (however under enhanced KiwiSaver the incentives to opt-in are much greater which may help in overcoming inertia).

8 That is, to people who are engaged on a day to day basis for a period of no more than three months as a casual seasonal worker for the exclusive purpose of doing seasonal agricultural, horticultural, market gardening, nursery, orchard or tobacco farming work, or other seasonal work that, in the opinion of the Commissioner of Inland Revenue, is work of a similar nature.

9 Some of these people will be shearers and shed hands, who are not currently excluded from the automatic enrolment rules.

		Potential for employment contracts to be structured so as to avoid the automatic enrolment rules, although this risk is considered to be low.
Two (only casual agricultural workers excluded from automatic enrolment)	Low compliance burden for those employers who employ casual agricultural workers.	Higher compliance burden on most employers (relative to option one). Could be difficult to justify a different treatment based solely on the type of work that is undertaken by an employee.
Three (all casual employees subject to automatic enrolment)	Ensures that the automatic enrolment rules are not undermined. Ensures that casual employees will be given the opportunity to overcome inertia. Reduces administrative complexity (Inland Revenue not required to interpret whether an employee falls within the Holidays Act definition).	Higher compliance burden on employers (relative to option one). Higher administration costs

43. On balance, officials prefer option one. Officials would monitor the size of the casual workforce (using the more enhanced information that the DoL will be obtaining) and therefore the extent of the carve-out from the automatic enrolment rules and would report to Ministers (by the end of 2008) if there were any concerns. Casual employees who are not automatically enrolled still have the ability to opt-in to KiwiSaver, either through their employer or through contracting directly with a provider. Under enhanced KiwiSaver the incentives to opt-in are much greater, particularly for low-income employees.

Data on Casual employees

44. Little is known about the extent or characteristics of non-standard work in New Zealand. The main data sources (Census, Household Labour Force Survey and Quarterly Employment Survey) report on part-time and self-employment but not on casual, temporary or fixed-term employment.

45. The Department of Labour (DoL) undertook surveys in 1993 and 1997 that found that 11% of the labour force was employed as casual labour either full-time or part-time. A 2002 evaluation by DoL of the Employment Relations Act appears to arrive at a similar share. It is unclear, however, what proportion of these workers are employees and what proportion are independent contractors.

46. The DoL is currently involved in the design of a supplement to the Household Labour Force Survey that aims, amongst other things, to identify the numbers and characteristics of employees who do not have long-term employment relationships, including those with fixed-term, casual, and seasonal employment relationships, and

those who work as temporary agency workers. This data will be collected as a supplement to the December 2007 quarter Household Labour Force Survey.

Temporary Fixed Term Employment

47. One of officials' concerns with requiring temporary fixed term employees to be subject to automatic enrolment was that it was likely that such employees would not realise they would have to opt out of KiwiSaver if they did not want to be a member, even though employment had ceased. In such instances a KiwiSaver account would be created, despite few contributions being made.

48. Therefore, under each of these options employees who are employed on a fixed term contract of 28 days or less would continue to be excluded from the automatic enrolment rules. Officials consider that this rule should remain, so as to remove compliance costs for both employers and employees in respect of very short-term fixed employment. Such employees could, however, opt in to KiwiSaver if they wished.

Legislative Vehicle

49. If Ministers decide to make a change to the current treatment of casual employees, it is recommended that an amendment be made in the bill that will give effect to the member tax credit for the enhanced KiwiSaver package, which will be introduced on Budget day and enacted under urgency.

50. This would enable the employer guide to reflect a revised rule for the treatment of casual employees (which Ministers have now agreed to be circulated shortly after Budget day).

Consultation

51. This report has been jointly prepared by the Treasury and Inland Revenue. The Ministry for Economic Development were consulted in the preparation of this report.

52. The Department of Labour, the Ministry of Women's Affairs, the Ministry of Pacific Island Affairs, the Ministry of Social Development (Working Age People's Policy) and Te Puni Kokiri were previously consulted on the issue of the treatment of casual employees under KiwiSaver. All of those consulted supported option one. [These Departments have not been consulted on the changes for the enhanced KiwiSaver package].