

Chair
CABINET LEGISLATION COMMITTEE

KIWISAVER BILL: APPROVAL FOR INTRODUCTION

Proposal

1. This paper seeks approval for introduction of the KiwiSaver Bill at the end of February 2006, subject to final approval by government caucuses.

Policy

2. The purpose of the Bill is to introduce the KiwiSaver scheme, a work based saving scheme, to encourage voluntary saving for retirement and home ownership. Details of the policy were announced in Budget 2005 and modified slightly subsequently [CAB Min (05) 13/9, CAB Min (05) 15/2, CBC Min (05) 12/1 and CBC Min (06) 3/7 refer].
3. KiwiSaver is designed to facilitate a change in the savings behaviour of individuals and to complement New Zealand Superannuation for those who wish to have more than a basic standard of living in retirement.
4. The KiwiSaver scheme provides a mechanism for employees to make contributions to long term savings products via the PAYE tax system. KiwiSaver contributions will be administered by the Inland Revenue Department in order to minimise compliance costs for employers and to work off existing processes where possible.
5. The Bill is likely to be contentious in some quarters as it imposes some additional compliance costs on employers (although these have been minimised in the design of the scheme), automatically enrolls new employees in the scheme (unless they opt out), requires employee members to contribute for a initial 12 month minimum period, requires all employers to provide access to the scheme, excludes those aged 65 or above from opening an account and locks funds in until retirement except for withdrawals for financial hardship, to purchase a first home and upon permanent emigration.
6. Legislation is needed to establish the KiwiSaver scheme, including the obligations on employees, non-employees, employers, providers and role of the Inland Revenue Department and the Government Actuary, and to ensure adequate protection for savers. Legislative amendments are also required to limit liability to the Crown. The legislation also makes consequential amendments to a

range of Acts, including the Income Tax Act 2004 and the Tax Administration Act 1994.

7. Note that a bid for the KiwiSaver Bill has been included in submissions for the 2006 Legislative Programme. In that submission, I recommended that the KiwiSaver Bill be given a legislative priority of category 2: must be passed in 2006.
8. Cabinet Business Committee agreed that all KiwiSaver providers should have in place or be prepared to put in place anti-money laundering policies and procedures [CBC Min (06) 3/7]. However, given that Cabinet Policy Committee has agreed that compliance with the OECD's Financial Action Task Force recommendations should be progressed as part of the anti-money laundering supervisor work being undertaken by the Ministry of Justice, which is being undertaken in conjunction with the Ministry of Economic Development and Treasury, I consider that it is appropriate for the anti-money laundering policies and procedures for KiwiSaver providers to be considered as part of that work [POL Min (05) 18/3 refers]. Hence, I propose that the earlier Cabinet Business Committee decision be rescinded.

Compliance

9. The Bill is consistent with the principles of the Treaty of Waitangi.
10. The Bill is consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
11. The Bill raises some privacy issues with the principles and guidelines set out in the Privacy Act 1993 with the use of personal information. Possible privacy issues have been identified with the use of a unique identifier (IRD number), the collection and use of address information collected by third parties, such as employers, the Inland Revenue Department using and sharing individual address information across the department for administering KiwiSaver and its other statutory obligations and verifying the identification of clients in accordance with the Financial Transactions Reporting Act 1996. Officials have consulted the Office of the Privacy Commissioner on these issues.
12. The unique identifier is central to the administration of the KiwiSaver scheme and will be included on all communications between the Inland Revenue Department, and employers, providers and savers. Officials consider that the scheme can be administered in a way as to not breach the principle relating to the use of a unique identifier and will work with the Office of the Privacy Commissioner to ensure this.
13. The collection and use of address information by third parties is necessary for the administration of the automatic enrolment and opt out rules and ensures that potential members of KiwiSaver schemes receive the Investment Statement of the default scheme that they may be allocated to. This is inconsistent with the privacy principles but I consider it reasonable in the given circumstances to enable the information to be collected efficiently and avoid the information needing to be requested direct from employees.

14. Cabinet agreed that the Inland Revenue Department may use and share personal information across the department for administering KiwiSaver and its other statutory obligations [CBC Min (06) 3/7 paragraph 19 refers]. This is inconsistent with the principle that information obtained for one purpose should not be used for any other purpose. There is a risk that the collection and use of such information as part of the wider administration of the tax system may negatively impact on the participation in KiwiSaver and have adverse consequences for some people. It is not possible to estimate the likely impact but officials consider it would be small.
15. Cabinet agreed that providers need to take reasonable efforts to verify the identity of new members and verify the identity before a voluntary payment, withdrawal or voluntary transfer happens [CBC Min (06) 3/7]. This may have privacy implications depending on how it is implemented. It is too early to know whether this is the case and officials will continue to work with the Office of the Privacy Commissioner on this issue.
16. The Bill is consistent with international standards and obligations.
17. The Bill is consistent with LAC Guidelines: Guidelines on Process and Content of Legislation.

Consultation

18. The Inland Revenue Department and the Ministry of Economic Development have been involved in developing the overall policy and detailed design of KiwiSaver.
19. The project has been overseen by a Steering Group of senior officials from the Treasury, the Inland Revenue Department, the Ministry of Economic Development, Housing New Zealand Corporation and the Ministry of Social Development. These agencies have also been consulted on the draft Bill and were consulted during the policy development stage.
20. The following other government departments have been consulted on the draft Bill and were consulted during the policy development stage: Department of Prime Minister and Cabinet, State Services Commission, Department of Labour, Ministry of Justice, Te Puni Kokiri, Ministry of Pacific Island Affairs, Ministry of Youth Development, and Ministry of Women's Affairs.
21. The Securities Commission and the Government Actuary was consulted on the draft Bill and the interaction with the securities legislation.
22. Discussions were held with a number of interest groups and relevant private sector organisations: [text deleted]

a number of employers, employer groups, and the trustees of a range of employer superannuation schemes. Feedback has been useful and has informed policy development. Overall, there is general support for a scheme to increase private savings. However, providers and employers were keen to minimise compliance costs, concerned that demand for a new savings product may be low, concerned to avoid any significant wind up of registered superannuation schemes and consider employer support vital to the success of KiwiSaver.

23. The Government caucus will be consulted. The following political parties: New Zealand First, United Future, and Green party have been consulted.

Binding on the Crown

24. Due to an omission during the policy development stage, a decision has not been made by a Cabinet committee on whether the Bill should be binding on the Crown. Provisions in this Bill relevant to the Crown include the obligations on the Crown as an employer to offer KiwiSaver to its employees. Failure to bind the Crown by this Act would reduce the coverage of KiwiSaver and not subject the Crown to the same obligations as other employers.
25. In some areas, however, the Bill explicitly limits the liability of the Crown, these are:
- there is no Crown guarantee of KiwiSaver schemes and providers;
 - the Crown or any other person will not be liable under the Investment Advisers (Disclosure) Act 1996 for factual descriptions of or transmission of information about the KiwiSaver scheme; and
 - the Crown or an employer will not be a promoter for the purposes of the Securities Act 1978 if they comply with the requirements of the Act or choose an employer preferred scheme.
26. I propose that the Bill be binding on the Crown in keeping with the general principle that the Crown should be bound by Acts unless the application of a particular Act to the Crown would impair the efficient functioning of Government.

Creating new agencies or amending law relating to existing agencies

27. The legislation does not create new agencies. It does amend law relating to existing agencies. The Bill makes the Inland Revenue Department the central administrator for KiwiSaver, extends the supervisory role of the Government Actuary to include KiwiSaver schemes and requires the Ministry of Economic Development to administer the government contribution to KiwiSaver members' fees.

Allocation of decision making powers

28. The draft legislation allocates decision-making powers between the executive and the courts. In particular, it gives the Government Actuary:
 - powers to issue directions to the trustees, administration manager or investment manager of a KiwiSaver scheme; and
 - the power to order that a KiwiSaver scheme be wound up.
29. The Government Actuary has similar power currently over registered superannuation schemes under the Superannuation Schemes Act 1989.
30. The Bill does not affect the statutory independence of the Commissioner of the Inland Revenue in relation to his or her administration of the KiwiSaver scheme.

Associated regulations

31. Regulations will be needed to bring some aspects of the Bill into operation:
 - prescribe forms;
 - prescribe requirements for documents;
 - prescribe fees payable to the Commissioner or the Government Actuary;
 - recognise specific foreign superannuation schemes in named countries as schemes to which funds can be transferred on permanent emigration;
 - prescribe the maximum number of default providers that may be appointed;
 - specify information to be contained in an instrument of appointment;
 - specify information or matters to be used in information packs;
 - provide for the payment of a fee subsidy to members of KiwiSaver schemes and set the fee subsidy, including any cap;
 - prescribe matters relevant to determining whether a fee is unreasonable;
 - declare an interest in property to be a first home;
 - prescribe matters to be regarded as causing serious financial hardship;
 - exempt any person or transaction from compliance with all or some provisions of Securities Regulations 1983;
 - specify what constitutes reasonable steps for the purpose of compliance with the requirement to verify identity in accordance with the Financial Transactions Reporting Act requirements;
 - specify what is included in the definition of “fees”;
 - provide for any transitional or saving provisions; and
 - provide for any other matters necessary for the administration or to give full effect to the Act.
32. Some of these regulations may need to come in force shortly after the Bill receives Royal Assent to enable default providers to be appointed. These regulations include prescribing the maximum number of default providers, if any.
33. Drafting these regulations may be a major task given the number of regulations and complexity of some regulations. However, not all regulations will need to be in place when the scheme commences.

Deemed regulations

34. Not applicable.

Definition of Minister/department

35. The Bill contains generic definitions of the terms "Minister" and "Department". The Cabinet Office has been consulted, and agrees with the drafting that has been used.

Commencement of legislation

36. The Bill will come into force on a date appointed by the Governor-General by Order in Council. This approach reflects a desire for some flexibility in the commencement provisions and uncertainty over what will be practically possible. For example, there is some uncertainty over whether it will be possible to appoint providers immediately following Royal Assent and the length of time providers will need to make the necessary system changes. The intention is for the KiwiSaver scheme to commence on 1 April 2007 which assumes that the KiwiSaver Bill receives Royal Assent in early October 2006 and default providers can be appointed shortly after that.
37. Different commencement dates may be set for different provisions. Some provisions, such as registration of providers, applications for employer exemptions from the automatic enrolment provisions and preparation of the information packs and investment statements, may need to happen prior to the scheme becoming fully operational.
38. I consider that it is important that the provisions in the Bill are consistent with the selected commencement date(s). Hence, I propose that the provisions in the Bill be consistent with the actual commencement date(s) rather than 1 April 2007.

Parliamentary stages

39. Indicative Parliamentary stages of the Bill are:
- 39.1 Introduction in late February 2006.
- 39.2 The Bill to be passed by end September 2006.
40. I propose that the Bill be referred to the Finance and Expenditure Committee.

Recommendations

41. The Minister of Finance recommends that the Committee:
1. **agree** that the KiwiSaver Bill has a priority Category 2 on the 2006 legislative programme;
 2. **note** that the Bill introduces the KiwiSaver scheme, a work based saving scheme, announced in Budget 2005;

3. **approve** for introduction the KiwiSaver Bill, subject to final approval of government caucuses;
4. **agree** that the Bill be introduced on 20 February 2006;
5. **agree** that the government propose that the Bill be:
 - a. referred to the Finance and Expenditure Committee for consideration; and be
 - b. enacted by early October 2006;
6. **agree** that the Act should be binding on the Crown;
7. **note** that on 7 February 2006, Cabinet Business Committee agreed that all KiwiSaver providers have, or be prepared to put in place, anti-money laundering policies and procedures;
8. **rescind** the decision referred to in paragraph 7;
9. **agree** that the Act should override the privacy laws to enable personal information to be collected and used by third parties and across the Inland Revenue Department for administering KiwiSaver and for its other statutory obligations; and
10. **agree** that the provisions in the Bill be consistent with the actual commencement date(s) rather than 1 April 2007.

Hon Dr Michael Cullen
Minister of Finance