Ministry of Economic Development
Manatū Ōhanga

Inland Revenue
Te Tari Taake
Policy Advice Division

THE TREASURY
Kaitohutohu Kaupapa Rawa

Treasury Report: KiwiSaver – Issues for Supplementary Drafting Instructions

Date:	21 October 2005	**Treasury Priority:**	High
Security Level:	IN-CONFIDENCE	**Report No:**	T2005/1974, PAD2005/186

Action Sought

	Action Sought	Deadline
Minister of Finance	Agree to all recommendations Refer to Ministers of Education and Housing	28 October 2005
Minister of Commerce	Agree to recommendations r to dd	28 October 2005
Minister of Revenue	Agree to recommendations e to q	28 October 2005
Associate Minister of Finance (Hon Phil Goff)	Note	None
Associate Minister of Finance (Hon Trevor Mallard)	Note	None
Associate Minister of Finance (Hon Clayton Cosgrove)	Note	None

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
	Senior Analyst, Markets, Infrastructure and Government, The Treasury			✓
	Senior Policy Analyst, Regulatory and Competition Policy Branch, MED			
Michael Nutsford	Policy Manager, Inland Revenue			

Enclosure: **No**

21 October 2005 SH-13-0-7

Treasury Report: KiwiSaver – Issues for Supplementary Drafting Instructions

Executive Summary

Officials have provided the Parliamentary Counsel Office (PCO) with an initial set of drafting instructions on KiwiSaver. However, in preparing these drafting instructions, a range of further issues came to light. We are seeking decisions on these matters now so that officials can provide supplementary drafting instructions to PCO by early November.

Officials understand that a meeting may be arranged between Ministers and officials for late next week to discuss the issues contained in this report and on the overall KiwiSaver timeline. A separate report discussing the timeline for KiwiSaver and the work on the taxation of qualifying collective investment vehicles will be provided to you early next week. A further report will be provided to you in early November with revised estimates of the Savings Allocation following a broad review of the model.

Key issues where we are seeking to update you and obtain your feedback are with respect to the role of savers and product providers. These issues fall into the following broad areas:

- Savers joining KiwiSaver (protections around the opting in mechanism and eligibility for non residents);
- Ongoing saving in KiwiSaver (mortgage diversion, multiple job holders, sources of payment and government contribution to fees); and
- Selection of providers.

Appendix One of this report provides an overview of the KiwiSaver scheme.

Savers joining KiwiSaver

Protections around opting in

Cabinet agreed that existing employees would be able to opt-in to KiwiSaver [CAB Min (05) 13/9 para 2.3 refers]. There is a risk that existing employees who opt-in to KiwiSaver via their employer at the time of changing their tax code may do so by mistake.

Inland Revenue has an eight week discretion from the point that it receives the first contribution to consider opt-out forms from people who have been automatically enrolled in KiwiSaver but from whom an opt-out form was received or processed late. Officials consider that this same discretion should cover people who may have opted in to KiwiSaver by mistake when changing their tax code via their employer.

Non residents

You have agreed that those who are non-residents for tax purposes working in New Zealand should be able to participate in KiwiSaver [PAD2005/39, T2005/268 refers]. Officials consider that the ability to withdraw the $1000 government contribution on permanent emigration could be abused by non-residents temporarily or not working in New Zealand. To minimise this risk, officials recommend that a person should only be eligible to join KiwiSaver if the person lives in New Zealand and is entitled to work here on a permanent basis. Officials will develop a definition of residents along the lines of those used by family assistance (tax resident and having lived in New Zealand for 12months). This will not allow New Zealand citizen's living overseas to join.

Ongoing saving in KiwiSaver

Mortgage diversion

Cabinet agreed that KiwiSaver members will have the option of diverting their contributions to repay their mortgage, subject to consultation [CAB Min (05) 13/9 para 3.12 refers]. Consultation with banks suggests that mortgage diversion may be feasible, but have indicated that they would not be interested in providing this service, due to the mechanism providing little benefit to customers, the time delay before funds would reach the banks and the risks of having payments made via a third party. In addition, consultation with has indicated little support for the mechanism as it is likely to reduce the retirement focus of the scheme and add complexity. Hence, officials recommend that mortgage diversion not be part of the initial launch of KiwiSaver.

Multiple job holders

The employment sources and payment types that savers can make contributions to KiwiSaver from will be important for participation and the level of ongoing saving. Officials have been considering how multiple job holders should be treated. There are three options:

- requiring contributions from all employment sources;
- requiring contributions from the primary employment source only; and
- allowing members to choose whether to contribute from any or all employment sources.

Officials prefer giving individual employees the choice of joining and making deductions from any or all of their employment sources in order to encourage greater participation. This flexibility could be provided through the contribution holiday mechanism with employees having the flexibility to apply any contribution holiday to all or some employment sources.

Sources of payment

You have agreed to exclude a range of employment related payments from the definition of salary and wages [PAD2005/39, T2005/268 refers]. Officials consider that you should allow contributions from more employment related payments, upon request, to enable more people to participate in KiwiSaver. Therefore, we recommend that KiwiSaver deductions should be made at source, upon request, from payments of ACC, payments to partners that are treated as salary or wages, payments of salary or wages to election day workers and casual agricultural employees and paid parental leave payments, subject to further consultation with relevant employers, the Accident Compensation Corporation and the Department of Labour. These payments would not be subject to the automatic enrolment mechanism.

Government contribution to fees

You have agreed that the government will contribute to the fees of all KiwiSaver members. However, once a member's funds are no longer locked into KiwiSaver, the rationale for continuing the fee subsidy is weaker, as a member may withdraw or transfer their funds, and potentially could use the scheme as a subsidised bank account to avoid fees. Hence, officials recommend that the fee subsidy cease when a member becomes eligible to withdraw all of their funds (when eligible for New Zealand Superannuation or after 5 years, which ever is the later), even though this may discourage continuing saving by those who continue to work and contribute beyond this point.

Selection of Providers

The selection of default providers is at the core of KiwiSaver given a high proportion of people will end up in default products and it will influence the decision of people to participate in KiwiSaver. Hence, it is important that the appropriate providers of default products are selected.

Officials recommend that the tender process be used to select default *providers*, rather than as was earlier envisaged, default *products* (i.e. not just a conservative product). This approach will allow the negotiation of fees across a range of products (for example, conservative, balanced and growth), and provides a core group of providers of a range of products that are stable, reputable and able to handle high volumes. In addition, it recognises that the default conservative product may not be appropriate for all savers.

In addition, any provider would be able to register a KiwiSaver product as an active choice product, subject to meeting minimum criteria, including a requirement that active choice providers charge fees that are fair and reasonable.

Other Issues

This report also seeks decisions on a number of other detailed issues. These remaining issues are very detailed, and in general they are in areas where you have already given guidance on the broad direction, or we are recommending existing practice or law applies.

Recommended Action

We recommend that you:

<u>Minister of Finance</u>

Authority

a **note** that you are required to consult with the Ministers of Education and Housing in making detailed design decisions;

b **refer** this report to the Ministers of Education and Housing;

Referred: Yes/No

Minister of Finance

c **agree** that officials instruct PCO to draft the necessary legislation/include the necessary provisions in the KiwiSaver legislation currently being prepared on the basis of the decisions in this report;

Agree/disagree

Minister of Finance

d **agree** that officials will provide you with a draft copy of the KiwiSaver Bill in early December and at that time seek any further policy authority on detailed policy issues. Substantive issues will still be submitted for your decision as they arise;

Agree/disagree

Minister of Finance

Savers joining KiwiSaver

Protections around opting in

e **agree** that Inland Revenue's eight week discretion cover persons who the Commissioner of Inland Revenue is satisfied may have opted-in to KiwiSaver by mistake via their employer at the time of changing their tax code;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

Participation by non-residents

f **agree** that a person should only be eligible to join KiwiSaver if that person lives in New Zealand and is entitled to work here on a permanent basis. Officials will draft an appropriate test to achieve this that will limit compliance costs on employers and limit the scope of abuse;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

Employers hiring new employees

g **agree** that automatic enrolment is required of non-resident employers only where they are required to deduct PAYE for New Zealand residents (paragraph 39);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

h **agree** that for the purposes of automatic enrolment:

i an employee who transfers to a related employer will be automatically enrolled only if that employer has a separate payroll and the transfer is not between branches or divisions of the same employer (paragraphs 40-41);

Agree/disagree	*Agree/disagree*
Minister of Finance	**Minister of Revenue**

ii an employee does not become automatically enrolled when the employer provides IRD with the necessary information to establish that the employee is:

- an existing employee of an amalgamating company;
- an existing employee of a partnership that has been dissolved and reconstituted; or
- an existing employee of a business purchased as a going concern (paragraph 42);

Agree/disagree	*Agree/disagree*
Minister of Finance	**Minister of Revenue**

i **agree** that employers who select a default for their employees must disclose the implications, and provide an investment statement, to their employees (paragraphs 44-46);

Agree/disagree	*Agree/disagree*
Minister of Finance	**Minister of Revenue**

Ongoing saving in KiwiSaver

Mortgage diversion

j **agree** that, in light of feedback from unions, savers and providers, mortgage diversion not be part of the initial launch of KiwiSaver;

Agree/disagree	*Agree/disagree*
Minister of Finance	**Minister of Revenue**

Multiple job holders

k **agree** that employees may make contributions from any or all primary and secondary sources of salary and wages to encourage scheme participation;

Agree/disagree	*Agree/disagree*
Minister of Finance	**Minister of Revenue**

l **agree**, subject to your agreement to recommendation k, that a KiwiSaver member can use their contribution holiday on a job-by-job basis or for all their employment sources;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

m **agree** that a multiple job holder will be required to contribute from all jobs during the three month period immediately after joining KiwiSaver, and could cease contributions from any or all jobs after the three-month period has ended;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

n **agree** that where an employee who is a KiwiSaver member submits an opt–out notification, he or she be treated as having applied for a contribution holiday (paragraph 25);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

Payments employees can contribute from

o **agree** that subject to further consultation with relevant employers, the Accident Compensation Commission and the Department of Labour, a person can request KiwiSaver deductions be made at source from payments of ACC, payments to partners, election day workers and casual agricultural employees that are treated as salary or wages, and paid parental leave payments;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

p **agree** that payments of student allowance be excluded from the definition of salary and wages for the purposes of automatic enrolment (paragraph 21);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

Government contribution to fees

q **agree** that eligibility for the fee subsidy will cease when a member becomes eligible to withdraw all of their funds;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Revenue**

Withdrawals from KiwiSaver

r **agree** that in relation to withdrawals:

i schemes must provide an option of lump sum withdrawal of retirement benefits (paragraph 32);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

ii trustees will administer all withdrawals (paragraph 33);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

iii the upfront $1000 government contribution will be released to a member's estate upon death of a member (paragraph 34);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

iv a statutory declaration to the effect that the member plans to permanently emigrate and proof of overseas address will be required for permanent emigration (paragraphs 35);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

v a member who plans to withdraw funds for permanent emigration provide evidence that they were a resident and entitled to the government contributions at the time of joining KiwiSaver (paragraphs 35);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

vi funds will be released one year after permanent emigration (paragraphs 35);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

vii allowance will be made to recognise foreign superannuation schemes to which funds could be released without the one year deferral period having been observed (paragraphs 36);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

viii members will be required to advise the trustee if they return to New Zealand to live within one year of permanent emigration (in which case funds are not to be released) (paragraphs 35);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

s **agree** that current bankruptcy laws apply to KiwiSaver (paragraph 37);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

Selection of Providers

t **agree** that default providers will be chosen through the tender process rather than default products, allowing consideration of, among other things, a provider's suite of products (not just a conservative product);

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

u

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

v **agree** that the government will aim to negotiate down fees on all the KiwiSaver products offered by default providers – both their default product (a conservative product) and their active choice products;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

w **agree** that any provider be able to register an active choice KiwiSaver product if they meet minimum criteria;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

x **agree** that part of the minimum registration criteria for all active choice products would be a requirement to charge fees that are fair and reasonable;

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

y **note** that what was fair and reasonable for this purpose would be assessed against a variety of factors but these would include consideration of the fees charged by the default providers for similar products;

z **note** that fee disclosure will be considered as part of MED's Review of Financial Products and Providers, with any necessary reforms being expected to be introduced in 2008, and that these reforms may increase competition and may reduce fees;

Agree/disagree	*Agree/disagree*
Minister of Finance	**Minister of Commerce**

Contract – when an offer is deemed to be made and accepted

aa **agree** that an offer will be deemed to have been made by the member to the default provider by virtue of and upon the transfer of a member's funds to that provider, where the member has not selected an active choice scheme, and a legal contract will be formed when a person's funds are accepted by the provider (paragraph 64-65);

Agree/disagree	*Agree/disagree*
Minister of Finance	**Minister of Commerce**

bb **note** that, while in principle it is important that KiwiSaver providers accept all members who wish to join, there may be a set of limited circumstances where providers wish to or are obliged by law to not accept the member (e.g. suspected money laundering). Officials will explore this matter further;

Other issues

cc **agree** that any scheme that converts and that is fully or partially (hybrid scheme) a defined benefit scheme is required to ring-fence the KiwiSaver funds to ensure they are separate from the defined benefit funds (paragraphs 66-67); and

Agree/disagree	*Agree/disagree*
Minister of Finance	**Minister of Commerce**

dd **agree** that the existing void and voidable allotment rules under the Securities Act apply, with the exception that members will be transferred with their funds, including any interest payable, to another KiwiSaver scheme rather than being refunded their contributions if an allotment is void or voidable, subject to consultation by officials with the Securities Commission (paragraphs 68-69).

Agree/disagree *Agree/disagree*

Minister of Finance **Minister of Commerce**

Senior Analyst, Markets, Infrastructure and Government for Secretary to the Treasury	**Kirstie Hewlett** Manager, Financial Sector Team Regulatory and Competition Policy Branch Ministry of Economic Development	**Michael Nutsford** Policy Manager Policy Advice Division Inland Revenue

Hon Dr Michael Cullen Minister of Finance	**Hon Lianne Dalziel** Minister of Commerce	**Hon Peter Dunne** Minister of Revenue

Treasury Report: **KiwiSaver – Issues for Supplementary Drafting Instructions**

Purpose of Report

1. This report seeks further decisions on the KiwiSaver design that are relevant for the preparation of supplementary drafting instructions. These decisions relate to:

   - savers (joining the scheme, saving in the scheme, and withdrawing from the scheme);
   - requirements for employers hiring new employees; and
   - product providers (in particular, the selection of providers).

Analysis

Savers joining KiwiSaver

2. Cabinet has agreed that employees will be automatically enrolled in KiwiSaver when they begin a new job but have the opportunity to opt-out, and existing employees can choose to opt-in to the scheme [CAB Min (05) 13/9 para 2.2 and 2.3 refers]. Further decisions are required around the process for existing employees to opt-in and automatic enrolment for non-residents.

   Protections around the opting in mechanism for existing employees

3. Existing employees will have the choice to opt-in via their employer or via a provider (in the case of making an active choice). There is a risk that an employee who opts in via their employer (by a tax code declaration) may complete a new declaration for another purpose and complete the KiwiSaver part of a tax code by mistake – effectively opting-in to KiwiSaver by mistake.

4. Cabinet has agreed that Inland Revenue has the discretion to consider opt-out forms that are received or processed late up until eight weeks after the first contribution is received [CAB Min(05)15/2 para 15 refers]. We consider that this discretion should extend to existing employees who mistakenly opt-in via their employer when changing tax codes for other reasons (a mistake would not occur if the employee has only completed the KiwiSaver part of the form). It would be both reasonable and administratively simple for the same eight week time period to apply. In this case, Inland Revenue would inform the employer to cease deductions and refund any contributions held.

   Participation by non-resident employees

5. You have previously agreed that those who are non-residents for tax purposes working in New Zealand should be able to participate in KiwiSaver to minimise compliance costs on employers, because an employer may not know whether an employee is non-resident for tax purposes or not [PAD2005/39, T2005/268 refers] (this decision was not considered by Cabinet).

6. Officials have been further considering the participation of non-residents. There would be little benefit from non-residents not working in New Zealand (i.e. those with no New Zealand connections) from participating in KiwiSaver.

7. In addition, officials consider that the ability to withdraw the $1000 government contribution once a member emigrates permanently could be abused by non-residents who may be working in New Zealand with the intention of returning to their home country in the near future (e.g. people on short-term work permits). Although mechanisms could be put in place to reduce this risk (for example, clawing back part of the $1000 on permanent emigration if a member has made few contributions), these mechanisms are likely to add complexity to the scheme and be difficult to administer.

8. Given this potential risk, officials consider that *all* non-residents should not be eligible to join KiwiSaver. The exact definition of non-residents is yet to be determined, but is likely to be a different definition of non-residents than that used for tax purposes. For example, the definition of resident for the purposes of family income assistance would cover someone who is a tax resident and presently living in New Zealand for a 12 month period but would exclude someone in New Zealand on a visitors permit, temporary work permit, or student permit, or those illegally in New Zealand. Officials do not consider that a definition along these lines would place high compliance costs on employers, as employees are already required to disclose how they are legally eligible to work in New Zealand. A temporary resident would be able to join KiwiSaver if they subsequently gained permanent residency. Similarly, an existing KiwiSaver member could continue to contribute to KiwiSaver if they subsequently become a non-resident. Officials recommend that a non-resident should not be eligible to join KiwiSaver unless the person is living in New Zealand and able to undertake work on a permanent basis.

Ongoing saving in KiwiSaver

9. Employees saving in KiwiSaver will be able to save at 4% or 8% of income, and non-employees will be able to make voluntary contributions [CAB Min (05) 13/9 para 3.4, CAB Min (05) 15/2 para 22 refer]. This section seeks changes to existing decisions regarding the mortgage diversion option and the payments employees will be able to contribute from, and new decisions regarding employees with more than one job and the fee subsidy.

Mortgage diversion

10. Cabinet has agreed that KiwiSaver members will have the option to divert their savings contributions to repay the mortgage on the principal family home for a time, subject to further consultation on whether this is feasible for mortgage providers [CAB Min (05) 13/9, para 3.12 refers].

11. Officials have consulted with

on this proposal.

12. were not very supportive of the mortgage diversion option as it would shift the focus of KiwiSaver away from retirement savings and make the scheme unnecessarily complex. In addition, they were concerned that:

- mortgage diversion is only worthwhile where a member is receiving an employer contribution given the delays in funds being paid to the member's mortgage;
- mortgage repayments may be long lasting, including as people change houses;
- mortgage repayments could be handled through education and contribution holidays;
- potential savers could be faced with too many choices; and
- the repayments may not be locked in as people can draw down equity in their home.

13. favoured reconsidering mortgage diversion after the scheme has operated for a period, such as 12 months, if there is demand for this option and its absence is adversely impacting on take up.

14. Initial consultation with some banks indicated that mortgage diversion was likely to be feasible as part of an individual's mortgage repayment [T2005/779 refers]. It did not test whether providers would be interested in providing this service or the implementation issues. In our more recent consultation, indicated that they were not interested in providing this service given it would require significant systems and administrative changes, introduce risks through the involvement of a third party (in this case Inland Revenue) and is likely to provide little financial benefit, if any, to the borrower. believe that they would lose control over monitoring and thereby enforcing the mortgage repayments if a third party was involved.

15. was generally supportive of the mortgage diversion option but were not able to comment on whether the proposal could be implemented and whether would want to offer this option. identified that any mortgage payment would need to be an additional payment over and above any contractual obligation given timing issues and the potential for contribution amounts to vary.

16. Officials recommend that mortgage diversion not be part of KiwiSaver when it is launched given feedback. The mortgage diversion feature could be revisited at a later date.

Payments employers can contribute from – definition of salary and wages

17. In order to reduce administrative and compliance costs, you have agreed that if an employer pays the following salary or wages automatic enrolment will not apply nor will this salary or wages be subject to deductions:

- payments to partners of a partnership that are treated as salary or wages;
- payments of employer contributions to superannuation savings that are treated as salary or wages;
- ACC payments;
- pensions;

- income tested benefits;
- New Zealand Superannuation;
- veteran's pension;
- paid parental leave (PPL);
- salary or wages of shareholder-employees (which is not subject to PAYE);
- payments of salary or wages to casual agricultural workers;
- payments of salary or wages to election day workers; and
- withholding payments [PAD2005/39, T2005/268 refers].

18. Officials have reviewed the list of the payments excluded from automatic enrolment to assess whether it may be appropriate to allow individuals in receipt of these payments to be able to contribute, upon request, via their employers (these payments would not be subject to the automatic enrolment mechanism). As a result, we consider that employers should be required to make deductions, if requested to, for:

    - payments to partners of a partnership;
    - ACC payments;
    - PPL;
    - payments of salary or wages to casual agricultural workers; and
    - payments of salary or wages to election day workers.

19. These payments relate to employment, and may be subject to PAYE already or provide some form of income replacement for a break in employment. Allowing deductions from these payments will enable more people to participate in KiwiSaver and assist people being able to continue to contribute. This approach would be consistent with the requirement to have any child support and student loan payments made from PPL.

20. Officials will consult with relevant employers, including the Accident Compensation Corporation on the practicalities of making KiwiSaver deductions from ACC, the Department of Labour (in respect of PPL payments, which are currently administered by Inland Revenue), and the Electoral Commission (regarding election day workers).

21. In addition, officials consider that payments of student allowance should also be excluded from the definition of salary or wages for the purposes of both automatic enrolment and deductions made at source. Student allowances are means tested, meant to provide for a minimum level of income to meet living costs, and automatic enrolment would increase administrative and compliance costs. Such persons will be able to contribute directly to a KiwiSaver provider or via Inland Revenue.

Multiple job holders

22. The employment sources that a person may contribute to KiwiSaver from will be important in determining the number of people who may participate in KiwiSaver, the likely savings balance and the complexity of the scheme. Officials have been considering how the automatic enrolment, opt-in and contributions holiday rules will apply to the employment income of multiple job holders. There seem to be three options:

Options	Advantages	Disadvantages
All employment sources treated identically (if contribute from one source of employment you must contribute from all)	• simplicity for employees and employers • higher level of savings for those that contribute • lower administration costs • easier to align with housing deposit subsidy criteria	• lowest participation likely given need to contribute from all employment sources • inflexible
Primary employment source only	• simple for employees and employers • medium level of participation likely	• precludes employees being able to save out of other employment sources • primary employment source may change • costs for employers in distinguishing between primary and secondary employment earners • beneficiaries use primary tax code making any employment secondary • is likely to pose issues for housing deposit subsidy criteria
Any or all employment source at the choice of the individual	• flexibility for employees but adds complexity • highest participation likely given able to contribute from any or all employment	• may end up with lower saving balances • may not align with housing deposit subsidy criteria

23. Officials preferred option is giving individual employees the choice of joining and making deductions from any or all of their employment sources.

24. This flexibility can be facilitated through the contribution holiday mechanism. Where a person is a member of KiwiSaver but does not wish to contribute from a particular job they would apply for a contribution holiday and use this on a job-by-job basis. Inland Revenue will notify the employer where Inland Revenue is advised that the contribution holiday will apply to that specific employer. Where an employee who is a KiwiSaver member submits an opt–out notification, we suggest he or she be treated as having applied for a contribution holiday in respect of that employment.

25. Cabinet has agreed that contribution holidays should not be available unless the person has been contributing for at least three months [CAB MIN(05) 15/2, para 18 refers]. Should you agree that persons can participate on a job-by-job basis, we consider no person should be able to apply for a contribution holiday during this three month period, even where they are a multiple job holders, otherwise a member could effectively stop their contributions during this period (if they leave the job within the three months and then take a contribution holiday from their new job). Therefore a person will be required to make contributions during the initial three month period for any new job that is started within that period (but not from jobs held subsequent to joining KiwiSaver). In practice this may be difficult to enforce, particularly if people do not advise their new employer that they were previously a KiwiSaver member, and the three-month period may be almost over by the time Inland Revenue advises the employer to start deductions.

26. This approach has implications for the housing subsidy. Officials will carry out further work and report back on this issue.

Government contributions – fee subsidy

27. Cabinet has agreed that the government will negotiate down fees and pay the remaining ongoing fees, and that there will be some cap on the fee subsidy [CAB Min (05) 13/9 para 3.14, CAB Min (05) 15/2 para 8 refer]. The fee subsidy is designed to encourage ongoing contributions, increase the net rate of return, and reduce the likelihood that small balances will be eroded by fees. At this stage we are seeking decisions on when a member will cease to be eligible for the fee subsidy and possible requirements on providers. Officials are continuing to work on the fee subsidy and do preparation for fee negotiations. Further decisions on the fee subsidy, including the level of any cap, will be required at a later stage.

28. Once a member's funds are no longer locked into their KiwiSaver, the rational for continuing the fee subsidy is weaker, as a member may withdraw their funds, and potentially could use the scheme as a subsidised bank account. Officials recommend that eligibility for the fee subsidy cease when a member becomes eligible to withdraw all of their funds even though this may reduce the incentive of members beyond the age of eligibility for New Zealand Superannuation to continue to work and save.

29. An alternative option would be to continue the fee subsidy after funds may be withdrawn while a member is continuing to contribute to KiwiSaver and not making any withdrawals, possibly subject to a maximum year cap. Officials do not favour this option as it would increase complexity, compliance costs on providers and the potential fiscal costs.

Withdrawals from KiwiSaver

30. Members of KiwiSaver can withdraw their funds from the scheme at the age of eligibility for New Zealand Superannuation (NZS) or after five years in the scheme, whichever is greater [CAB Min (05) 12/1 para 4 refers]. In addition, withdrawal is possible for first home ownership, permanent emigration, or financial hardship [CAB Min (05) 13/9 paras 3.7 and 3.8 refer].

31. This section seeks further detailed decisions around the ability to make withdrawals as a lump sum, the administration of withdrawals, funds that are released upon death of a member, the test of permanent emigration, and situations of bankruptcy.

Lump sum withdrawals

32. A small number of older superannuation schemes *require* that members take their funds as an annuity, which may not be a cost effective option. Officials recommend that the KiwiSaver legislation requires that all KiwiSaver schemes allow, at a minimum, payment of retirement benefits as a lump sum, even if other withdrawals options are available. This would not preclude members purchasing annuities.

Administration of withdrawals

33. Currently, trustees administer hardship and other withdrawals for registered superannuation schemes (RSS). Officials recommend that trustees of KiwiSaver schemes be required to administer the withdrawal provisions. Although there is a risk that trustees may interpret the various tests for withdrawals differently, this can be mitigated by the definitions in the legislation, which will apply to all KiwiSaver schemes.

Death

34. Officials recommend that all of a member's funds, including the $1000 contribution, are released to the member's estate upon the member's death, regardless of how long the member has been in the scheme. This treatment is the same as that applicable to most RSS.

Permanent Emigration

35. You agreed that funds, including the $1000 government contribution, may be withdrawn once a member emigrates permanently [T2055/1099 refers]. To avoid the risk of this withdrawal being abused, officials recommend:

- the trustee of the scheme must be satisfied that the member plans to permanently emigrate. To this end, the member could be required to provide a statutory declaration to the effect that the member plans to permanently emigrate and proof of an overseas address;
- a deferral period of 1 year could be imposed before the trustee releases the funds to a member. Members who return to New Zealand permanently within the 1 year deferral period should not be eligible for the payment and must notify the trustee that they are no longer emigrating permanently; and
- a member who plans to withdraw funds for permanent emigration could be required to provide evidence to the trustee that they were a resident and entitled to the government contributions at the time of joining KiwiSaver.

36. It would be possible to allow for flexibility in the legislation to waive the 1 year period, where the funds are to be released directly to an accepted foreign superannuation scheme. These would be superannuation schemes in countries like Australia, where there is an equivalent lock in provision. While the administrative costs of such a scheme may, after investigation, outweigh the costs, officials believe it would be prudent to allow at least for the potential for such regulations to be made.

Bankruptcy

37. Current bankruptcy law allows control over the funds to pass to the Official Assignee when a member of a superannuation scheme becomes bankrupt. The Assignee can only access the funds when the member would have otherwise been entitled to the funds (in this case when the member becomes eligible for NZS or after 5 years, whichever is later) and this power only exists until the member is discharged from bankruptcy. The law balances the need to give the Official Assignee some powers of all the funds of a bankrupt member against the desire to protect the terms and conditions of any funds placed in a scheme on the basis that the funds would be locked in. Officials recommend that the current bankruptcy law apply to KiwiSaver funds without amendment.

Employers hiring new employees

38. Given KiwiSaver operates by deducting savings at source for employees, employers will be required to automatically enrol new employees in KiwiSaver, to provide an information pack to new employees and may voluntarily select an initial default provider for their employees [Cab Min (05) 13/9 paras 2.2, 3.18 and 3.19 refer]. Further decisions are required around requirements for non-resident employees, the definition of "new employment", and obligations on employers that choose to select a default provider for their employees.

Non-resident employers

39. Officials consider that non-resident employers that employ resident New Zealanders should be required to automatically enrol and deduct KiwiSaver contributions where they are required to make deductions for these people for PAYE. There are issues to be worked through around the provision of information packs to these non-resident employers but these are not considered to be significant as Inland Revenue currently engages with these employers for PAYE purposes.

Definition of new employment

40. Cabinet has agreed that employees will be automatically enrolled when they begin a new job, but have the opportunity to opt out to encourage scheme participation and savings [CAB Min (05) 13/9 para 2.2 refers]. However, many employees transfer between jobs within an employer, or between related employers. Therefore the question of what constitutes a new job is not always straightforward. This is particularly the case when an employee transfers within a company where:

- the employer files a single tax return but operates a number of payrolls on a branch or division basis (a multi-payroll employer); or

- the employer comprises of a number of separate tax entities, such as a group of companies, but operates one payroll for the whole group (a single-payroll group).

41. For simplicity, officials recommend that automatic enrolment should be required every time an employee starts a job where the employer operates a separate payroll, except where this involves a transfer between branches or divisions of a multi payroll employer. For a multiple payroll employer, this would only capture employees who transfer between companies within a consolidated group of companies. For a single payroll, this would not capture any employee who transfers within the company or group of companies. It will be relatively straightforward to exclude employees who move between branches or divisions of a multi-payroll employer without placing any additional compliance costs on employers, as Inland Revenue has the necessary information to determine when an employee moves between branches or divisions (but not between companies within a group).

42. However, in some instances this approach would mean that automatic enrolment is triggered where there has been no change of actual employment. For example the employee is an employee of an amalgamating company, an employee of a partnership that is dissolved and reconstituted or is an employee of a business purchased as a going concern. In these situations officials consider automatic enrolment should not apply. This can be achieved if the employer provides IRD with the necessary information so Inland Revenue can verify who should be automatically enrolled and who should not. However, if an employer does not notify Inland Revenue of the information, all employees in these circumstances would be subject to automatic enrolment. It would be voluntary for employers to notify Inland Revenue and any compliance costs incurred in doing so would be lower than the alternative of automatically enrolling all employees, providing an incentive to employers to notify Inland Revenue with the relevant information.

43. An alternative option would be to require automatic enrolment when an employee starts work with a new employer only if that employer is not associated with the previous employer (economic unit basis). In other words, when an employee begins work with a company that is associated with their previous employer (such as in the same group of companies), the employee would be treated as an existing employee and therefore would not be subject to automatic enrolment. This option would minimise compliance costs for employees who would not be subject to automatic enrolment when they moved within the economic entity. However, this option would involve additional compliance costs for employers, who would be required to identify when a person has moved within an economic unit. These requirements could be significant for consolidated companies. Officials do not favour this option.

Employer selected defaults

44. Cabinet has agreed that employers may voluntarily select an initial provider for their employees who do not select their own provider, and may voluntarily contribute to their employees' account to facilitate employer support and contributions [CAB Min (05) 13/9 para 3.19 and 3.20 refer]. Merely selecting a KiwiSaver default and/or contributing to an employee's KiwiSaver account will not make the employer a promoter under the Securities Act.[1]

45. However, there may be risks to employees from the employer selecting a default, as the employer may not choose carefully or may consider other benefits to the business offered by the provider that are unrelated to the KiwiSaver scheme. The ability of an employee to override their employer's selected default through an active choice and employers fiduciary duties to their employees will provide some protection. In addition, officials recommend that when an employer chooses a default for their employees they be required to:

- disclose the fact that the employee will be automatically enrolled with an employer-selected default provider if the employee fails to make an active choice (as opposed to a government selected default); and
- provide an investment statement from the provider that complies with the requirements of the Securities Act to the employee along with the KiwiSaver information pack.

46. Officials do not believe that these requirements will substantially increase compliance costs for employers or discourage employer contributions.

Product providers

47. Cabinet has previously agreed that:

- the KiwiSaver scheme will involve private provision of competing investment vehicles [CAB Min (05) 13/9 para 3.22];
- product providers will be selected by a competitive tender process and/or a requirement to meet a set of minimum specified criteria [CAB Min (05) 13/9 para 5.1 refers] (agreed in principle); and
- the government will negotiate down fees payable to KiwiSaver providers, and pay the remaining ongoing fees to increase the rate of return to savers [CAB Min (05) 13/9 para 3.14].

48. Officials had previously advised that negotiating for the selection of default products for individuals who do not select a savings product would be desirable to enable the maximum number of providers to participate and increase the government's negotiating leverage [T2005/708 refers].

49. This section provides more detail on the selection of providers, ongoing monitoring of providers, contracts between providers and savers, requirements for converted RSS, and voidable allotment rules.

1 This differs from employers who currently offer an RSS, which are considered promoters.

Selection of providers

50. This report proposes an approach to provider selection balancing the ability to obtain negotiation leverage, and broader tools to influence fees along with the best use of resources, considering the tight KiwiSaver timeline.

51. The proposals recommend a shift to a default provider approach from a default product approach. After further work we have concluded that this approach is the most practical way to obtain low cost default and active choice products. It also provides a core group of active choice providers that are stable, reputable and able to handle high volumes.

Selection of Default Providers

52. Officials recommend that the selection process be used to select default providers, rather than as was earlier envisaged, default products. A default provider approach would enable the government to negotiate a range of low cost and basic products while recognising that one product type, such as a conservative fund, may not be appropriate for all savers.

53.

More general fee discipline

54. Officials also recommend that the KiwiSaver legislation allow any provider to register a KiwiSaver product as an active choice product, subject to meeting minimum criteria. As well as the lock in and the housing withdrawal etc, these minimum criteria would include a requirement that active choice providers charge fees that are fair and reasonable. There would be an ability for the government to intervene if fees charged were not fair and reasonable. The reasonableness of the fees would be assessed by taking into account a range of factors but these factors would include the fees set in the negotiations with default providers for their suite of products. This approach would allow the downward price pressure achieved through the fee negotiations to be spread across other active choice products to some extent.

55. Hence, KiwiSaver members would have access both to low cost active choice products through the default providers and a variety and niche products, if offered.

56. Open access will encourage competition and will likely lead to lower fees and will allow for the development of new products while maintaining the power to intervene if fees were not fair and reasonable. Downward pressure on fees will also be provided as an outcome of work on the Review of Financial Products and Providers (to be implemented in 2008), by improving disclosure requirements for example.

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Other Details

61. KiwiSaver default providers could be selected by the Minister of Commerce, possibly in consultation with you, advised by an informal group of experts, which would be appointed to consider the RFPs, and to make recommendations.

62. The providers would be appointed on certain terms. The terms of appointment would specify factors such as: how long default providers could supply default products for (for example, 10 years), what happens when that period elapses (whether there would be a review and/or a re-tender), the fee levels that had been negotiated, and what sanctions there would be for breach of any of the terms of appointment.

63. Note that the recommendation outlined above may mean that a slightly larger group of default providers would be necessary, given the larger role that the default providers would be playing, and in recognition of the possibility that where default providers also offer active choice products they will likely end up with a significant portion of the superannuation market.

Contract

64. As new employees will be automatically enrolled in unless they opt-out or make an alternative active choice, the investment statement will be very important to ensure members are aware of the nature of the default investment. In addition, the mechanism of automatic enrolment implies that members who do not make any active choice will not fill out any application forms. As previously reported, these forms constitute a part of the legal definition of a “contract”, so in such

cases, a legal contract will not have been formed [T2005/717 refers]. To overcome this situation, officials recommend that the legislation:

- deems that an offer has been made by the member to the provider by virtue of and upon the transfer of a member's funds to the provider; and
- ensures that a legal contract is formed at the point when IRD passes the $1000 contribution and the member's 3 months contributions to the default provider (either government or employer selected) and these are accepted by the provider. The contract would likely be on the same terms and conditions as applies to other members who have signed a standard form.

65. This approach still allows a provider to decide not to accept a person as a KiwiSaver member where there is good reason not to. Although in principle it is important that KiwiSaver providers accept all members who wish to join, there may be a set of limited circumstances where providers wish to or are obliged by law to not accept the member. For example, if the provider believes that a person is not who they say they are or wishes to use the scheme to launder money. These limited situations will be specified and included in legislation or regulations or terms of appointment.

Converted registered superannuation schemes

66. Cabinet has agreed that an existing RSS be able to convert to a KiwiSaver scheme by establishing a discrete section within their scheme that meets the minimum KiwiSaver criteria and permitting members individually to voluntarily transfer to that section [CBC Min (05) 12/1 para 5 refers]. Officials consider that employee members who contribute to a converted section of RSS be required to do so through Inland Revenue. This will allow Inland Revenue to oversee the automatic enrolment and contribution holiday processes with respect to these schemes. This requirement would apply to employee contributions, but any employer could choose whether to make any employer contribution direct or via Inland Revenue. However, employers may not support this approach given it would change their current procedure and may require different payments methods for different RSS members.

67. Defined benefit schemes or hybrid schemes (schemes that have both defined benefit and defined contribution parts) that convert to a KiwiSaver scheme by establishing a discrete section within their scheme should be required to "ring-fence" the KiwiSaver funds from the funds available in the defined benefit section, to ensure that the KiwiSaver funds are not used to top up defined benefit schemes that have insufficient funds. Officials will do further work on how these funds will be "ring fenced".

Void and voidable allotments

68. Under existing securities law, a security (including a superannuation scheme) may not be allotted unless the securities law obligations were complied with at the point of allotment. This is one of the most important protections of the Securities Act, as it ensures that people are able to exit from a contract where the information they have been provided, upon which they based their decision was false, misleading or unavailable. For example, an unregistered or false and misleading prospectus enables the allotee to void the subscription within 1 year and have their money refunded.

69. Officials recommend that these existing protections around void and voidable allotments apply to KiwiSaver but that instead of having the investment funds refunded to them (as currently happens), the funds are transferred to another KiwiSaver scheme (either of their choosing, or a default if they make no choice) to prevent the lock in of funds being avoided and people exiting KiwiSaver. The transfer of funds would also include any interest that may be payable under the Securities Act by the provider to the KiwiSaver member This approach would ensures that providers are still incentivised to make sure the information they publish is accurate and up to date. Officials still need to discuss the proposed recommendations with the Securities Commission.

Further report backs

70. Further decisions are likely to be required in the following areas:

- savers (investment statements, information packs and unclaimed money held by Inland Revenue);
- ongoing role of employers (any record keeping obligations);
- providers (remaining issues on the provider selection, possible fee regulation, QCIV status of KiwiSaver providers and any ongoing monitoring);
- government (which agency administers the fee subsidy, payments details for fee subsidy, fee subsidy cap, privacy issues with personal data, and a KiwiSaver disputes mechanism); and
- the central administrator's role in the transfers of KiwiSaver balances between funds.

71. Some of these decisions will be required closer to the tender process, while other decisions, such as the exact dollar amount of the fee subsidy cap, may be required after the default providers have been selected. Other issues may also arise as work on KiwiSaver continues.

72. Officials are also planning to report to you with revised costings, following a broad review of the estimates underlying the Savings Allocation. This review incorporates a simplification of the model used to develop KiwiSaver costings and the impact of policy changes since the Budget. You have committed to report back to Cabinet later this year to seek agreement to any change in the Savings Allocation if this review suggests that the current Savings Allocation is not adequate. We are planning to report to you in early November, in time for any new allocations to be decided prior to the budget round.

Appendix One – Background for KiwiSaver

Encouraging New Zealanders to save for their retirement and helping them into their first home was a key theme of Budget 2005. The creation and administration of a work-based savings scheme, KiwiSaver, is a core component of the wider savings initiative, Securing Your Future.

The KiwiSaver scheme builds on the recommendations of the Savings Product Working Group, chaired by Peter Harris and provides a mechanism for employees to make contributions to long term savings products via the PAYE tax system. KiwiSaver contributions will be administered by Inland Revenue in order to minimise compliance costs for employers and to work off existing processes where possible.

While KiwiSaver will be principally for the purpose of accumulating retirement savings, one withdrawal will be allowed for first home ownership. This is in recognition that a retired person's quality of life is higher if they own their own home freehold upon retirement.

Key features of the scheme are:

- Participation not compulsory for individuals;
- Automatic enrolment of new employees (aged 18-65);
- Others can opt in (e.g. current employees, self-employed, beneficiaries);
- Contributions of 4% (default) or 8% of salary/wages;
- Government will provide a contribution ($1000 up-front payment, fee subsidy up to a cap, housing deposit subsidy for eligible participants);
- Contributions locked-in until age of eligibility for NZ Superannuation or five years, which is later;
- One-time withdrawal of the balance in the account (except for the government up-front contribution) to assist with the purchase of a first home;
- Withdrawal also for financial hardship or permanent emigration;
- Can cease contributions by taking a contribution holiday for up to five years;
- Inland Revenue will be central administrator;
- Money invested in private providers;
- Portability between providers;
- Withdrawals may be taken as a lump sum or as an annuity (assuming such products are offered).

Timeline

The Government has announced an application date of 1 April 2007. The Parliamentary Council Office has commenced drafting legislation. To meet the application date legislation will need to be introduced in early 2006 and enacted by October 2006 at the latest. A tender process will be used to select the default scheme providers.

The applicable regulatory regime

The Superannuation Schemes Act 1989 framework will apply to regulate KiwiSaver. KiwiSaver will be subject to the same regulatory framework and legislation that applies to other investment products such as the Securities Act and Investment Advisors (Disclosure) Act. KiwiSaver will consist of privately provided investment vehicles such as managed products (funds) and there will be no government guarantee of providers or their products. Some will be designated as a default fund. If a person does not choose a provider and fund, then that person's contributions will be forwarded to a default fund. A person will have only one fund at any one time.

Who is eligible to participate?

Participation will not be compulsory. In order to overcome inertia which operates to prevent some people saving, KiwiSaver uses the mechanism of automatic enrolment whereby new employees are automatically enrolled in the scheme and must actively opt-out. For all new employees aged between 18 and 65 (age of eligibility for NZS) who begin a job on or after 1 April 2007, such persons will be automatically enrolled in the scheme unless they opt-out. This means that people who do nothing will end up enrolled in the scheme.

Existing employees will be able to opt in to the scheme. Employers that have an approved registered superannuation scheme will be able to apply for an exemption from the automatic enrolment requirements (see existing Registered superannuation schemes below).

Persons who are not employees such as self-employed will be able to opt in to the scheme on a voluntary basis and make voluntary contributions. Persons aged under the age of 18 years of age will be able to opt-in.

Certain persons who are treated as receiving salary or wages for tax purposes will not be treated as employees for the purposes of automatic enrolment. This includes:

- income-tested benefits, New Zealand superannuation, and veteran's pension;
- ACC weekly compensation;
- parental leave payments paid under the Parental leave and Employment Protection Act;
- election day workers and casual agricultural employees;
- salary or wages paid to shareholder-employees that is not subject to PAYE; and
- withholding payments.

Such persons will be able to opt-in and be able to make contributions.

Contributions

The contribution rates from salary or wages will be either 4% or 8% of the gross salary or wages paid by the employer. The 4% rate will be the default rate unless the higher rate has been elected by the employee.

An employee after an initial contribution period of three months will be able to apply to Inland Revenue for a contribution holiday. The contribution holiday will be for a period of up to 5 years. If it is not renewed at the end of the period, Inland Revenue will advise the employee's current employer that deductions are to commence. If an employee has applied for a contribution holiday, that employee will be excluded from automatic enrolment if the employee starts a new job.

Automatic enrolment process

The automatic enrolment and opt-out process is as follows:

Week one	Employee start new job and is given a saving information pack by the employer
Weeks two and three	Consideration period for employee to decide whether or not to opt-out, and to advice Inland Revenue in writing or electronically
Weeks four to six	Inland Revenue processes opt-out forms and advises employers when an employee has opted out.
Weeks seven to eight	Employer receives notification from Inland Revenue if an employee has opted-out. Employer will make changes to payroll system to begin deductions at the first pay day after eight weeks at the new job, unless advised otherwise by Inland Revenue
Week nine onwards	Deductions begin at the next pay day.
Further three months	Contributions held by IRD. Employee to decide on provider.

This process will require employers to make system changes to ensure that contributions commence after the end of week 8, unless notified by Inland Revenue not to deduct.

There will be an initial holding period of three months for initial contributions received. The holding period will run from the date of the receipt of the first contribution by Inland Revenue. For an eight week period after receipt of the first contribution, Inland Revenue will have some flexibility to process opt-out applications. At the end of the three month holding period the members contributions, employer contributions plus the up-front government contribution will be forwarded to a provider.

The employee will have up until the end of the holding period to make a decision on the fund provider and investment risk/profile. If no election received the contributions received will be paid into a default fund unless the employee's employer has nominated a default provider for their employees.

The role of employers

An employer will be required to provide all new employees from 1 April 2007 with a savings information pack. This pack will contain information about KiwiSaver, the opt-out form and information about default providers and products. Packs will be put together by Inland Revenue and supplied to employers.

The employer will need to ensure that the payroll system allows for contributions to commence from week 8 for all new employees if no advice is received from Inland Revenue that the employee has opted out.

An employer will be required to make deductions from the gross salary or wages paid to the employee and pays this amount along with PAYE etc to Inland Revenue. Employers will also be able to make a contribution to their employee's savings.

If an employer is merely acting as a conduit or passing on information about the KiwiSaver, the employer will not be liable as an investment adviser and promoter under the investment advisers and securities legislation.

Employees will be able to selecting a provider. An employer may elect an initial provider for their employees who do not select their own provider. However, members can choose to switch at any time.

If an employer fails to deduct contributions when so required, the employer will commit an offence. The offence will be the same as not deducting PAYE. The government will fund any contribution deduction made on behalf of an employee but not paid. IRD will recover the unpaid contributions from the employer.

If employers so wish, they will be able to make employer contributions to KiwiSaver. Generally, an employer will be able to determine their own rules and conditions around such contribution.

The role of the central administrator

Inland Revenue will be the central administrator. This will involve:

- Developing the information in conjunction with other agencies, issuing the information pack to employers and dealing with enquires;
- Processing opt-out applications and advising employers;
- Processing contribution holiday application and advising employers and employees;
- Advising employers when not to deduct;
- Receiving contributions deducted by employers and on-paying that amount to the employee's KiwiSaver;
- Receiving voluntary contributions from non-employees such as self-employed, beneficiaries and ACC recipients and on-paying that amount to the person's KiwiSaver provider.
- Holding initial contributions for the three month holding period and paying that amount together with up-front government contribution to the provider;
- Administering and on paying the government's contribution to providers;
- Holding small balances until the balance can be on-paid to a provider;
- Paying interest on the contribution held by Inland Revenue (this interest will be calculated net of tax and when the contributions are on-paid);
- Ensuring that employers are deducting deductions when so required;
- Collecting from employers deducted but un-remitted contributions;
- Developing and maintaining systems to keep detailed individual records of scheme participates;
- Developing systems and ensuring information is provided to the appropriate parties;
- Responding to queries from employers and members of the schemes; and
- Monitoring eligibility for the various government contributions and assistance such as the up-front contribution and housing withdrawal.

Where an employer fails to account for KiwiSaver contributions, the un-remitted amount will be subject to the same rules that apply in respect of un-remitted PAYE (such as Use Of Money Interest, late payment penalties, relief for financial hardship, debt recovery mechanisms etc). Furthermore in respect of such un-remitted amounts, Inland Revenue will pay the un-remitted contribution to the provider and the un-remitted amount will be a debt to the Commissioner.

The employee's IRD number will be used as the identifier in relation to communication between Inland Revenue and employers and providers.

The role of fund providers

KiwiSaver products will need to be approved by the Government Actuary. Employees and others who enrol in to the scheme will be able to choose any KiwiSaver provider and fund offered by that provider.

Approved providers will receive contributions from Inland Revenue and will invest those contributions. The provider will be required to provide the necessary information of accumulated balances, returns etc. in accordance with regulatory requirements.

Trustees of schemes will be required to consider and approve early withdrawals applications for housing, hardship or permanent emigration. Upon reaching the age of eligibility for NZS, providers will have the option of allowing lump-sum withdrawals or providing an annuity.

The government contribution

The government will contribute an up-front contribution of $1000 when contributions are first paid by Inland Revenue to the provider. This up-front contribution will not be able to be withdrawn until the age of eligibility for NZS or 5 years in the scheme, whichever is longer (i.e. it cannot be withdrawn for housing or hardship).

The government will also negotiate fees down with providers and pay a capped subsidy to providers to meet some on-going fees.

Existing registered superannuation schemes

An existing registered superannuation scheme will be able to establish a separate KiwiSaver section within an existing scheme structure. Members of the KiwiSaver section of the scheme would need to meet all the characteristics of the KiwiSaver. Such converted schemes would be entitled to all the government contributions (up-front contribution and fees subsidy and housing deposit subsidy).

For those schemes that do not convert, employers will be exempt from the automatic enrolment rules if they have an existing scheme that meet the following criteria:

- portability (balances can be transferred to similar schemes);
- open to all new permanent employees;
- the minimum prescribed employee contribution plus the maximum that an employer will contribute of at least 4 % of the gross salary or wages.

Such schemes will need to be approved by the Government Actuary.

Employees whose employer is exempt from automatic enrolment will be able to choose to join the employment-based registered superannuation scheme or a KiwiSaver by opting-in. Employees who join employment based registered superannuation schemes will be eligible for the housing deposit subsidy but not the up-front government contribution or fee subsidy.

Employers who are exempt from automatic enrolment will be required to make contribution deductions if an employee is a member of KiwiSaver.

Access to housing assistance

A member of KiwiSaver will be:

- able to make a one-time withdrawal from their KiwiSaver to assist with the purchase of their first home (the up-front contribution will not be able to be withdrawn); and
- eligible to a first home deposit subsidy of $1,000 (maximum $5,000) for each year that the person has been making regular contributions to a KiwiSaver (the person will have to have been saving for minimum period of three years to access this deposit subsidy).

For self-employed and other non-employees to be for eligible the first home deposit subsidy, the person will have to have made regular contributions for three to five years of at least 4% of the person's taxable income over the previous three years (up to a maximum of 5 years). Further work is required in this area regarding how it will be calculated and policed.

Members of registered superannuation schemes that qualify for the automatic enrolment exemption, and who are employed by that employer, will be eligible for the first home deposit subsidy on the same terms and conditions. That is the members have saved for at least three years after the commencement of KiwSaver and made contributions of at least 4% of their salary or wages per year. The contributions level of 4% can include employer contributions that have vested.

To be eligible for the first home deposit subsidy, a person will have to:

- have never owned a house or had an interest in a home;
- use the deposit for the purchase of home up to a regional house price cap, which will be the recipient's primary place of residence (that is not for investment/ rental properties or holiday homes);
- have not previously accessed the deposit subsidy or the first home ownership drawdown;
- have a total household income below $100,0002[1] gross per annum for one or two borrowers and around $140,000 for households with three or more borrowers; and
- purchase a home with a purchase price at or below the lower-quartile house price in their region at the time.

The first home deposit subsidy will be administered by HNZC. The links to Inland Revenue have not yet been clarified or worked through. Further work on the administration of the housing subsidy is required.

2 [1] Note that the income cap amounts are not final.