

# Supplementary Departmental Disclosure Statement

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| Taxation (KiwiSaver HomeStart and Remedial Matters) Bill |
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A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

The original disclosure statement for the Taxation (KiwiSaver HomeStart and Remedial Matters) Bill, dated 25 November 2014, can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2014/2>.

This supplementary disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 March 2015

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## **The Main Areas of Change to the Original Disclosures**

This is a supplementary disclosure statement for the Taxation (KiwiSaver HomeStart and Remedial Matters) Bill.

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

Where the Bill now also incorporates changes made by a select committee of the House, the supplementary disclosure statement will note these if relevant but will not explain them further.

The main areas of change to the original disclosure statement ensure that the KiwiSaver first home withdrawal rules are clear and function as intended in respect of the four issues listed below and that the first home withdrawal can be used to make payments before the purchase agreement goes unconditional:

- Purchase of a first home outside of New Zealand
- Trans-Tasman Savings Portability
- Interests in Māori land
- Complying Superannuation funds

## Part One: General Policy Statement

This Bill proposes amendments to the following Inland Revenue Acts:

- KiwiSaver Act 2006
- Income Tax Act 2007.

The main proposals are in relation to the following issues:

- withdrawal of member tax credits for KiwiSaver members purchasing their first home
- corrections to the tax, social policy, and KiwiSaver treatment of income replacement payments for some veterans and other claimants
- withdrawal of member savings to purchase a first home before the purchase agreement goes unconditional
- clarifications to the KiwiSaver first home withdrawal rules to ensure that the rules are clear and function as intended
- consequential protection from non-compliance with securities laws.

### **Withdrawal of member tax credits**

KiwiSaver members who are purchasing their first home are currently able to withdraw the contributions they and their employers have made to their KiwiSaver funds. They are not able to withdraw the \$1,000 kick-start or member tax credits paid by the Government.

This Bill amends the KiwiSaver Act 2006 to allow KiwiSaver members to withdraw their member tax credits when purchasing their first home.

This change takes effect from 1 April 2015.

### **Treatment of income replacement payments for veterans**

This Bill provides that income replacement payments for veterans are treated the same for the purposes of taxation, social policy, and KiwiSaver as are the income compensation payments provided by the ACC. The payments are taxable, they are taken into account for social policy calculations, and they do not trigger the application of the rules relating to auto-enrolment and compulsory employer contributions for KiwiSaver.

Changes relating to the treatment of lump sum retirement payments come into force on 7 December 2014. Other changes come into force on the day on which the Act receives the Royal assent.

### **Withdrawals before the purchase agreement goes unconditional**

KiwiSaver members who wish to withdraw their savings to purchase their first home are currently unable to do so until the agreement for sale and purchase is unconditional. Consequently, they are unable to use their savings to make a deposit, because the agreement for sale and purchase is usually conditional when a deposit is paid.

This Bill amends the KiwiSaver Act 2006 to allow KiwiSaver members to withdraw their savings to purchase their first home before the agreement is unconditional, provided any payment is made to a stakeholder (usually the vendor's solicitor) who can only release the funds in appropriate circumstances.

This change takes effect from 1 June 2015.

## **Clarifications to the KiwiSaver first home withdrawal rules**

The following changes take effect from 1 April 2015.

### *Purchase of a first home outside of New Zealand*

The KiwiSaver first home withdrawal rules are currently silent on the location of the home, resulting in confusion, inconsistent decisions between KiwiSaver providers, and negative publicity.

This Bill amends the KiwiSaver Act 2006 to clarify that a first home withdrawal can only be made for the purposes of purchasing a first home in New Zealand.

### *Trans-Tasman Savings Portability*

The KiwiSaver withdrawal rules currently imply that a KiwiSaver member who has permanently migrated to Australia cannot make any KiwiSaver withdrawal (including withdrawal on death or withdrawal in the case of serious illness).

This Bill clarifies that the trans-Tasman savings portability arrangements are only an exception to the ability to withdraw funds upon permanent emigration and are not an exception to the other KiwiSaver early withdrawal provisions.

### *Interests in Māori land*

The KiwiSaver first home withdrawal provisions are drafted in such a way that a first home withdrawal is not generally available for a home on Māori land.

This Bill clarifies that the first home withdrawal rules are available for home ownership on Māori land, which is in line with the original policy intent and with the Government's Māori home ownership and land use goals.

### *Complying Superannuation funds*

The KiwiSaver first home withdrawal rules currently imply that, if a complying superannuation fund member transfers to KiwiSaver, their membership in the complying superannuation fund does not count towards the three year membership requirement. This is contrary to the treatment of complying superannuation funds in the KiwiSaver Act.

This Bill clarifies that membership in a complying superannuation fund counts towards the three year membership requirement for a first home withdrawal.

## **Protection from non-compliance with securities laws**

To prevent a person from incurring liability under securities law for statements that become incorrect as a result of the changes made in this Act, non-compliance with an enactment related to securities is ignored if the non-compliance is the result of statements made in disclosures dated before 1 June 2015.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

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| <b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>  | <b>YES</b> |
| <p>A <i>Commentary on the Bill</i> will be made available at <a href="http://taxpolicy.ird.govt.nz/publications/type/bill-commentary">http://taxpolicy.ird.govt.nz/publications/type/bill-commentary</a> shortly after the Bill is introduced. This commentary will provide a comprehensive explanation of the proposed legislative changes in the Bill.</p> <p>The Law Commission's review of the War Pensions Act 1954 is available here: <a href="http://www.lawcom.govt.nz/project/review-war-pensions-act-1954">http://www.lawcom.govt.nz/project/review-war-pensions-act-1954</a></p> |            |

### Relevant international treaties

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| <b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b> | <b>NO</b> |
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### Regulatory impact analysis

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| <b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>  | <b>YES</b> |
| <p>A regulatory impact statement was not required for the HomeStart change.</p> <p>A regulatory impact statement was provided for the Veterans' Act 2014 and can be found here: <a href="http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-defence-wpa-sep13.pdf">http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-defence-wpa-sep13.pdf</a></p> <p>Two regulatory impact statements were provided for the KiwiSaver first home withdrawal, one in respect of the clarifications relating to the purchase of a first home outside New Zealand and interests in Maori land and the other in respect of the ability to withdraw savings before the purchase agreement goes unconditional. Both statements can be found here: <a href="http://www.mbie.govt.nz/about-us/publications/ris">http://www.mbie.govt.nz/about-us/publications/ris</a></p> |            |

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| <b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>  | <b>NO</b> |
| <p>The RIA Team provided the following opinion on 6 July 2011:<br/>The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.</p> <p>A Panel comprising Treasury and Ministry of Justice representatives has reviewed the RIS prepared by Veterans' Affairs New Zealand and associated supporting material, and considers that, given the RIS is limited to analysis of whether to accept the recommendations from the Law Commission's review of the War Pensions Act 1954, the information and analysis summarised in the RIS meets the quality assurance criteria.</p> <p>No independent opinion was given on the first home withdrawal clarifications or the ability to withdraw funds before a purchase agreement goes unconditional because neither RIS met the threshold for RIA Team assessment.</p> |           |

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| <b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b> | <b>YES</b> |
| The clarifications relating to trans-Tasman portability and complying superannuation funds were not covered by the RIS because they were minor clarifications.   |            |

### Extent of impact analysis available

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| <b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b> | <b>NO</b> |
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| <b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>                             |           |
| <b>(a) the size of the potential costs and benefits?</b>  | <b>NO</b> |
| <b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>         | <b>NO</b> |
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| <b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:</b> |           |
| <b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>                  | <b>NO</b> |
| <b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>                          | <b>NO</b> |
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## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

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| <b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b> |
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| The items contained in the Bill were reviewed and found to be entirely domestic in scope. The proposed tax treatment of payments to veterans was reviewed against New Zealand obligations under double tax agreements and no conflicts were identified. The proposed amendment relating to savings portability was found to be consistent with New Zealand's obligations under the trans-Tasman savings portability arrangements. |
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### Consistency with the government's Treaty of Waitangi obligations

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| <b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b> |
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| The policy to be given effect by the Bill was reviewed and did not specifically impact on the rights and interest of Maori, other than the proposals relating to interests in Maori land which were found to positively impact on the rights and interests of Maori. |
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### Consistency with the New Zealand Bill of Rights Act 1990

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| <b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b> | <b>YES</b> |
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| Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/</a> |
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### Offences, penalties and court jurisdictions

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| <b>3.4. Does this Bill create, amend, or remove:</b>  |           |
| (a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)? | <b>NO</b> |
| (b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?        | <b>NO</b> |
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### Privacy issues

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| <b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b> | <b>NO</b> |
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## External consultation

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| <b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>  | <b>YES</b> |
| During the policy development process, policy options for clarifying the first home withdrawal rules were discussed with industry representative group Workplace Savings and an informal survey was conducted of KiwiSaver providers about their treatment of first home withdrawal applications for homes overseas. Feedback on policy options was also sought from the Maori Land Court and Financial Markets Authority. Feedback was universally in favour of clarification of the first home withdrawal rules. |            |

## Other testing of proposals

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| <b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>   | <b>YES</b> |
| The policies clarifying the first home withdrawal rules have been developed in collaboration with the Treasury, MBIE, MSD and Veterans' Affairs and Te Puni Kokiri. Operational experts and legal experts have been involved in testing the robustness of the amendments. |            |

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

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| <b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b> | <b>NO</b> |
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### Charges in the nature of a tax

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| <b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b> | <b>NO</b> |
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### Retrospective effect

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| <b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>  | <b>YES</b> |
| <p>The bill applies prospectively in the main however amendments relating to retirement lump sum payments apply retrospectively back to December 7 2014.</p> <p>Both the retirement lump sum payments and the other affected payments were intended to be taxable, taken into account in social policy calculations and were not intended to trigger auto-enrolment or compulsory employer contributions for KiwiSaver. However, only the amounts involved with regard to the retirement lump sum payments were significant enough to warrant retrospective application.</p> |            |

### Strict liability or reversal of the burden of proof for offences

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| <b>4.4. Does this Bill:</b>  |           |
| <b>(a) create or amend a strict or absolute liability offence?</b>   | <b>NO</b> |
| <b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b> | <b>NO</b> |
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### Civil or criminal immunity

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| <b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b> | <b>NO</b> |
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### Significant decision-making powers

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| <b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b> | <b>NO</b> |
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### Powers to make delegated legislation

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| <b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b> | <b>NO</b> |
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| <b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b> | <b>NO</b> |
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### Any other unusual provisions or features

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| <b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b> | <b>NO</b> |
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