

DRAFT FOR CONSULTATION

KiwiSaver (Compassionate Consideration) Amendment Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to address an anomaly in the KiwiSaver Act 2006 which unfairly excludes some people from accessing their KiwiSaver funds prior to death.

The current KiwiSaver Act makes the wrong and unjust presumption that all KiwiSaver contributors will live until they are 65. This Bill recognises that some individuals have a chronic illness or health condition that means it is highly unlikely they will live until age 65, which is the KiwiSaver end payment date when withdrawals are normally permitted. This means that some KiwiSaver fund holders have been prevented from accessing the KiwiSaver funds they have contributed to and built-up over time and that they wish to use in their retirement. This is inconsistent with the aims of Kiwisaver which are to encourage the development of a savings-habit and to allow all New Zealanders to provide for their own well-being and financial independence in retirement.

The Bill resolves this problem by providing a mechanism to permit an individual with a life-shortening medically-certified illness or condition to apply to the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) for compassionate consideration, in order to make withdrawals from their Kiwisaver account prior to reaching age 65, in order to support their own well-being and financial independence.

The new mechanism would sit alongside existing Kiwisaver 'opt-out' clauses which currently permit fund holders to withdraw their funds in a limited range of prescribed circumstances.

The Bill is consistent with the purpose of the Kiwisaver Act 2006. It ensures that all New Zealanders, including those with life-shortening chronic illnesses or health conditions, can make contributions to Kiwisaver secure in the knowledge that they will

be able to access those funds to provide for their own well-being and financial independence in retirement.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill will commence on the day after the date it receives the Royal assent.

Clause 3 provides that the Act being amended is the KiwiSaver Act 2006 (the **principal Act**).

Clause 4 inserts a *new clause 12A* into the KiwiSaver scheme rules in Schedule 1 to permit a person to apply to the manager or supervisor of the scheme for a permitted withdrawal if they have a chronic illness or health condition that causes them to have a limited life expectancy. The manager or supervisor must be reasonably satisfied that a withdrawal reflects the aims of this clause, which are to encourage a long-term saving habit and asset accumulation while the individual is working and to provide for the individual's well-being and financial independence when they are no longer working. The manager or supervisor may direct a limited amount be withdrawn if that would reflect those aims.

Clause 5 amends clause 13 of Schedule 1 to provide that applications for limited life expectancy withdrawals under *new clause 12A* must be in the form required by the manager or supervisor.

Nicola Willis

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the KiwiSaver (Compassionate Consideration) Amendment Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the KiwiSaver Act 2006 (the **principal Act**).

4 Schedule 1 amended

(1) In Schedule 1, after clause 12, insert:

12A Withdrawal in cases of limited life expectancy

- (1) If the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) is reasonably satisfied that a member has a chronic illness or a health condition that causes them to have a limited life expectancy, the member may, on application to that manager or supervisor in accordance with clause 13, make a limited life expectancy withdrawal in accordance with this clause.
- (2) The amount of that limited life expectancy withdrawal may be up to the value of the member's accumulation.
- (3) In this clause, **limited life expectancy** means that the person is highly likely to die before the age of 65 years despite available medical care and treatment.
- (4) The manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme)—
 - (a) must be reasonably satisfied that the withdrawal reflects the following aims—
 - (i) encouraging a long-term saving habit and asset accumulation while the individual is working:
 - (ii) providing for the individual's well-being and financial independence:
 - (b) may direct that the amount withdrawn be limited to a specified amount that, in the opinion of the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme), is required to reflect the aims in **subsection (a)**.
- (2) In Schedule 1, in the heading to clause 13, delete “**for significant financial hardship or serious illness**”.
- (3) In Schedule 1, in clause 13(1), insert “or 12A ” after “clause 10 or 12”.