

Regulatory Impact Statement

Amending the KiwiSaver Act 2006 to broaden first homebuyers' access to funds.

Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (MBIE).
- 2 It provides an analysis of options to broaden the terms of first homebuyers' access to the KiwiSaver First Home Withdrawal Scheme (the Scheme), so that funds can more easily be used to help finance a first home that is still in the planning stage or under construction. If agreed, these changes would be made by Supplementary Order Paper when the Taxation (KiwiSaver HomeStart and Remedial Matters) Bill is reported back to the House by the Finance and Expenditure Select Committee.
- 3 The options presented in this document to amend the Scheme are either to make it possible to use the Scheme to pay a deposit only, or to pay both a deposit and progress payments. While aimed at supporting the purchase of homes that are still in the planning or construction phase, the proposed changes would also apply to purchases of existing homes where an initial deposit is required.
- 4 Due to time constraints we have not been able to assess what percentage of contracts for homes that are yet to be built require a deposit only and what percentage require progress payments. However, we understand that progress payments are standard practice when the purchaser is constructing a new home on vacant land they already own; whereas progress payments are not usually required when the purchaser is buying a house-and-land package "off the plans", such as in the case of apartments that are yet to be built.

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Introduction

- 5 This RIS assesses potential options for amending the terms of the KiwiSaver First Home Withdrawal Scheme (the Scheme) so that funds can more easily be used to help finance a first home that is still in the planning stage or under construction.

Background

- 6 Existing housing stock is largely unaffordable for first home buyers¹, and the supply and type of new dwellings is not keeping pace with population growth. These factors, together with increasing land prices, are contributing significantly to housing affordability issues - particularly in Auckland.
- 7 Two programmes currently assist KiwiSaver members to purchase their first homes: the KiwiSaver deposit subsidy (the Subsidy) and the Scheme. The Subsidy provides government assistance to eligible KiwiSaver members and the Scheme allows all KiwiSaver members to access their KiwiSaver savings to help them purchase their first home. The Subsidy and the Scheme are widely used, with younger people (under 35 years) being the highest users of both the Subsidy and the Scheme:
 - a. The first year in which members could utilise the Scheme was in 2010 (a minimum of three years membership is required). In the year to June 2013, 10,733 members withdrew \$120.2 million under the Scheme; and in the year to June 2014, 13,821 members withdrew \$168.7 million – an increase of 40%. We anticipate that this rate will continue to grow as membership numbers and fund balances grow.
 - b. An MBIE study showed that as at December 2012, there had been more than 5,800 recipients of the Subsidy.
- 8 In August 2014 the Government announced the HomeStart package for first home buyers, to come into effect on 1 April 2015. The KiwiSaver HomeStart grant will replace the Subsidy and incentivise an increase in the supply of affordable housing by widening eligibility criteria, including making the grant available for new builds off plans, and doubling the value of the grant for purchases of dwellings that are new or yet to be built to a maximum of \$20,000 for a couple with five or more years' membership in KiwiSaver. The HomeStart package will also allow KiwiSaver members to access more of their savings by amending the Scheme to allow withdrawal of the member tax credit (previously this could not be used as part of the first home withdrawal).

Status quo

- 9 The *KiwiSaver Act 2006* (the 'Act') currently allows first home buyers to withdraw their KiwiSaver savings, less any Crown contribution, to assist with purchasing their first home. We note that the Taxation (KiwiSaver HomeStart and Remedial Matters) Bill currently seeks to amend the Act to allow first home buyers to withdraw all Crown contributions excluding the initial \$1,000 'kick-start' payment.
- 10 The Act currently requires the following:
 - a) any withdrawal made [to purchase a first home] must be paid to a practitioner (within the meaning of [section 6](#) of the Lawyers and Conveyancers Act 2006) acting on behalf of the member; and

¹ The 11th Annual Demographia International Housing Affordability Survey: 2015 states that in 2014 "New Zealand had a severely unaffordable major market Median Multiple of 8.2 and a severely unaffordable Median Multiple of 5.2 overall."

- (b) the manager may require from that practitioner, before payment of the withdrawal,—
 - (i) a copy of an agreement for the sale and purchase of the estate in land showing the member as purchaser; and
 - (ii) an undertaking that the agreement is unconditional at the time the manager makes the request; and
 - (iii) an undertaking that the funds will be paid to the vendor as part of the purchase price or, if the settlement is not completed by the due date or any extended date, repaid to the manager on account of the member.

11 In particular, under the Act a KiwiSaver fund manager may require from the lawyer verification that the agreement is unconditional at the time of a withdrawal request. While the legislation does not currently require a fund manager to obtain this confirmation, in practice fund managers typically do request such an agreement before making a KiwiSaver withdrawal payment.

12 For apartments purchased ‘off the plans’, developers typically require payment of an initial deposit when the contract is signed. The amount varies, but can require that as much as 10% of the purchase price is paid. Alternatively, where the land is already owned by the purchaser and they contract a builder to construct their new home on the site, the builder typically requires progress payments throughout the course of construction.

Homes purchased ‘off the plans’

13 Contracts for the purchase of an apartment ‘off the plans’ are typically structured as a conditional agreement for sale and purchase of the land. The purchaser is required to pay a deposit which is then held by a ‘stakeholder’ in trust or escrow until title to the land and a code of compliance certificate in respect of the completed house have both been issued.

14 The transaction is structured so that the deposit is never released to the developer before the house has been completed. This protects the purchaser from the developer’s financial failure or from the development not proceeding. It is also in the developer’s interests not to receive the deposit, as it will give rise to a GST obligation at a time when there will be no expenses against which GST can be offset.

15 The deposit paid is not released by the stakeholder to the developer and is not available to the developer to finance construction. The deposit is held in trust or escrow. Once the developer has sufficient conditional agreements for sale and purchase to proceed with the development, it will arrange for funding from a bank or other financial institution to complete the development. This funding provides the progress payments to the developer while the homes are being constructed. Hence, the purchaser is not typically required to make any further payments before settlement in this scenario.

Problem definition

16 When purchasing off the plans, the agreement is conditional upon completion of the home. Consequently, it is only after the title and code compliance certificate have been issued that the purchase agreement becomes unconditional. Given that a first home buyer may only withdraw their KiwiSaver funds once an agreement is unconditional, this has the consequence of limiting first home buyers to being able to buy established dwellings only.

- 17 From 1 April 2015 the HomeStart grant will have the effect of encouraging the creation of new affordable housing stock by incentivising the purchase of newly built homes and homes purchased off-the-plans. Many first home buyers who are eligible for the HomeStart grant will also require access to their KiwiSaver savings to meet the initial deposit price but will be unable to do so because the Scheme is still tied to the sale and purchase agreement going unconditional. This will result in policy incoherency between the grant, which will incentivise the purchase of homes off-the-plans, and the Scheme, which is effectively only able to be used towards the purchase of established dwellings.
- 18 Not being able to access KiwiSaver savings for the initial deposit, and any additional progress payments may reduce the ability of first home buyers to purchase homes off the plan or under construction. This in turn could disincentivise the construction industry from building housing stock that is affordable and otherwise suitable for first home buyers.

Objectives

- 19 The intention of changes to the KiwiSaver HomeStart package is to:
- a. help eligible first home buyers purchase homes; and
 - b. in doing so, to support and incentivise the market for new residential property as a supply-side response to housing affordability issues across New Zealand.

Options and impact analysis

- 20 There are three options available to Cabinet. The options are:
- a. Option 1: retain the Scheme rules, enabling eligible KiwiSaver users to access their savings to purchase their first home only when the contract to purchase is unconditional, or
 - b. Option 2: amend the Scheme rules, so that access to the Scheme for a deposit payment is available for purchasers when the contract to purchase is still conditional, or
 - c. Option 3 (preferred): amend the Scheme rules, so that access to the Scheme for a deposit payment and progress payments is available for purchasers when the contract to purchase is still conditional.
- 21 For both options 2 and 3, the intention is that the deposit and progress payments would be held in trust or escrow, and would not be directly available to the developer or redirected to the purchaser at any point. Option 3 has been included to cover off those contracts where progress payments are required on the construction of a new home – for example where the first home buyer already owns the land and has a contract with a builder to construct the house. Progress payments are typically not required when purchasing apartments off the plans.

Benefits and costs

- 22 The principal benefit of amending the Scheme to allow purchasers to use KiwiSaver funds to make a deposit and progress payments under conditional contracts, is that it better enables first home buyers using their KiwiSaver to purchase new homes.
- 23 This removes a source of inequity between those using KiwiSaver to buy existing homes and those buying off the plans. It also creates a potential incentive for the residential construction sector to deliver smaller, more affordable homes, given that purchasers of these properties would be more likely to access their KiwiSaver to fund their purchase

than would otherwise be the case under option 1. The flow-on effect of this incentive and greater access to funding options for new homes is that it could result in greater supply of new, affordable residential property.

- 24 Currently, the KiwiSaver Act protects against the misuse of savings by preventing the first home buyer from accessing the money directly. The funds manager releases the money to the first home buyer’s solicitor, who then pays the money to the vendor on the date of settlement, meaning the money never passes through the first home buyer’s bank account. The same protections would need to be put in place for options 2 and 3 for any initial deposit or progress payments. These protections would need to be put in place through the amendments made to the Act in the Supplementary Order Paper and clarified through any associated guidance material and communications.
- 25 Beyond the drafting process, however, we anticipate no additional costs for funds managers of options 2 and 3 - the costs of putting the protections in place are likely to be very low given that it is standard practice already. Under both options the member’s entire KiwiSaver savings would be transferred to their solicitor’s trust account at the time of the initial deposit. The amount of the deposit would then be transferred to the developer. The balance of funds would remain on deposit with the solicitor, where it would be available to contribute to further progress payments (if any) and to the final settlement. There would therefore still be only one processing cost for providers, and it would be the responsibility of solicitors to manage and retain security of funds held in trust or escrow.

26 A summary of the potential benefits and costs is set out below:

Option	Benefits	Costs
1. Retain current Scheme terms: contracts must be unconditional	Allows first home buyers access to funds at the point closest to when they are likely to take possession of the property. Minimal time elapses between funds being withdrawn from KiwiSaver and the purchaser taking possession.	Purchasers eligible for assistance are not able to use KiwiSaver funds to pay deposits or other payments under conditional contracts. This means the funds cannot be used for homes still under construction or in the planning stage.
2. Amend Scheme terms: funding is available for deposits on conditional contracts	<p>Allows first home buyers access to deposit funds for homes still under construction, in the planning stage, or where other conditions (e.g. building reports) exist.</p> <p>Reduces inequity between purchasing existing homes and purchasing homes under construction or off the plans.</p> <p>Creates potential incentive for the construction sector to deliver more smaller, affordable new homes.</p>	Funding is held in trust or escrow until released. Adequate protections will need to be put in place so that if the development is not completed or the contract does not go unconditional for any other reason, the funds are returned to KiwiSaver.

Option	Benefits	Costs
3. Amend Scheme terms: funding is available for deposits <u>and</u> progress payments on conditional contracts	<p>Allows first home buyers access to deposit funds for homes still under construction, in the planning stage, or where other conditions (e.g. building reports) exist.</p> <p>Removes inequity between purchasing existing homes and purchasing homes under construction or off the plans.</p> <p>Creates potential incentive for the construction sector to deliver more smaller, affordable new homes.</p> <p>Enables access to the withdrawal for a broader range of new builds.</p>	Funding is held in trust or escrow until released. Adequate protections will need to be put in place so that if the development is not completed or the contract does not go unconditional for any other reason, the funds are returned to KiwiSaver.

Consultation

27 MBIE officials have consulted Inland Revenue, the Treasury, and Housing New Zealand on the formation of this advice and policy options. We have also discussed the problem definition and potential remedies with a key developer in the Auckland urban housing market. Consultation with KiwiSaver members has not been possible.

Conclusions and recommendations

28 We consider that all three options outlined in this document meet the policy objective of helping eligible first home buyers purchase homes.

29 Both options 2 and 3 address the policy incoherency created by amending the HomeStart grant but not the Scheme. We consider it is important to address this incoherency and amend the Scheme terms so that both can be used to purchase of homes off-the-plans. Options 2 and 3 also meet the objective of supporting and incentivising the market for new residential property as a supply-side response to housing affordability issues.

30 On balance, option 3 provides coverage for more contract types than option 2 because it enables progress payments to be made from the Scheme as well as the deposit. Although we have not been able to quantify the extent of the benefit obtained through option 3 versus option 2, we also envisage no additional cost or risk in pursuing this option - the costs of putting the protections in place are equal for both options and are likely to be very low given that it is standard practice already.

31 Our preferred option is to amend the Scheme rules so that access is available for a deposit payment and progress payments when the contract to purchase is still conditional, and consider this option best addresses the problem definition.

Implementation plan

- 32 The changes will be made through legislative change. We expect these changes to be progressed as part of the HomeStart Bill.
- 33 KiwiSaver providers administer applications and will be the key parties in the implementation process. MBIE will engage with the providers to ensure they are aware of the changes and amend their processes accordingly.
- 34 Inland Revenue will publicise and communicate these changes by updating the Inland Revenue website.

Monitoring, evaluation and review

- 35 The Financial Markets Authority plays a key role in the ongoing monitoring of the KiwiSaver withdrawal provisions. MBIE will also continue to engage regularly with stakeholders, including providers, trustees, and Workplace Savings.