MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement:

Assessment of options to amend the KiwiSaver Act rules for first home withdrawals to remove uncertainty and unintended consequences

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business Innovation and Employment (MBIE).

2. It provides an analysis of options to clarify the KiwiSaver first home withdrawal rules to ensure that the first home withdrawal scheme functions as intended with clear and consistent outcomes.

3. Analysis in this RIS relies on data obtained from the Financial Markets Authority (FMA) where possible. However there are some limitations that make it difficult to accurately quantify the size of the problem. In particular, FMA does not gather data on the total number of applications for first home withdrawals nor quantify or break down the reasons for declined applications. Some analysis and our determination of the size of the problem has relied in part on anecdotal evidence obtained from KiwiSaver providers, Housing New Zealand, and the Māori Land Court.

4. Consultation with KiwiSaver members has not been possible. However the analysis has incorporated some views of members through the Banking Ombudsman and through specific complaints received from individual members.

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Introduction

1. The purpose of KiwiSaver is to improve retirement outcomes for New Zealanders. A KiwiSaver member's funds are generally 'locked-in' until the age of 65.
2. However, the KiwiSaver Act recognises that there are situations in which people should be able to access their KiwiSaver savings early. These situations include withdrawal for the purchase of a first home, as it is recognised that individuals who own their own home are likely to achieve a higher standard of living in retirement (known as the first home withdrawal provisions).
3. KiwiSaver has become a highly significant source of individual savings and New Zealand's biggest retirement savings scheme. Currently there are approximately 2.35 million members with total assets invested in KiwiSaver exceeding $21.4 billion. Substantial government investment has incentivised membership and savings. With KiwiSaver's growing maturity, a strong and established brand has developed. Members have come to perceive KiwiSaver as being long-term, stable and certain.
4. The first home withdrawal scheme is one element of a broader Government suite of initiatives to assist KiwiSaver members purchase a first home, recognising both the value of asset accumulation and associated investment returns, as well as the social benefits of home ownership including providing families with greater security, control, and independence as well as better health and education outcomes, and social cohesion (*Cabinet Policy Committee Paper: 2005 Budget Savings Package: Home Ownership Assistance)*.
5. In August 2014, the Government announced the HomeStart package for first home buyers. The HomeStart package includes one change to the KiwiSaver first home withdrawal provisions: to allow larger KiwiSaver first home withdrawals by allowing withdrawal of the member tax credit (previously this could not be used as part of the first home withdrawal).
6. The change to allow withdrawal of member tax credits requires amendment to the KiwiSaver Scheme Rules in the KiwiSaver Act. Cabinet invited the Minister of Revenue to submit the amendment to the Act to the Cabinet Legislation Committee in time for the amendment to be enacted and in effect by 1 April 2015 [CAB Min (14) 28/9 refers].
7. Several issues have been brought to our attention regarding the operation of the first home withdrawal rules. In particular, the rules are light on detail in some areas and silent in others. This has resulted in KiwiSaver providers interpreting aspects of the scheme inconsistently and appears to be resulting in unintended outcomes for some KiwiSaver members. The areas of concern are as follows:
   a. It is currently unclear whether the first home withdrawal can be used to purchase a first home outside of New Zealand.
   b. The rules appear to preclude the use of the first home withdrawal for home ownership on Māori land.[1]
   c. The trans-Tasman savings portability arrangements are silent on the treatment of KiwiSaver funds that are not transferred to an Australian scheme.
   d. The rules are silent as to whether the years of membership in a complying superannuation fund, which is transferred to a KiwiSaver scheme, should count towards the three year qualifying period for the first home withdrawal.

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[1] Māori land is defined by Te Ture Whenua Māori Act 1993 as Māori Customary Land (still held in customary title) and Māori Freehold (for which ownership has been determined and titles have been issued).

8. This RIS covers (a) and (b) above. Issues (c) and (d) are clearly remedial, involving clarification of existing legislative intent and resolution of inconsistencies, as follows:

- The silence in the trans-Tasman savings portability arrangements on the treatment of KiwiSaver funds that are not transferred to an Australian scheme is clearly a drafting error with unintended consequences. The current drafting prevents a KiwiSaver member living in Australia from utilising *any* of the KiwiSaver withdrawal provisions, including withdrawal upon retirement or for serious illness or death. While the title of the rule indicates that it is intended only as an exception to the rules for permanent migration, the rule itself is not drafted accordingly. Clearly this is an error requiring remedial clarification of existing intent.

- The silence in the rules implies that if a complying superannuation fund member switches to KiwiSaver, prior years of membership do not count towards the three year membership requirement for a first home withdrawal. However, Inland Revenue has issued a directive on this matter, relying on the Income Tax Act, and stating that a complying superannuation fund member who transfers into a KiwiSaver fund should be treated as having continuity of membership for the purposes of the three year qualifying period. In addition, there is equivalent treatment for complying superannuation fund members generally in the KiwiSaver Act and complying superannuation fund members have the same entitlement to the deposit subsidy as KiwiSaver members. Clarification will resolve this inconsistency.

Status Quo

9. The overarching policy objective of the KiwiSaver Act is to encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to their standards of living in pre-retirement. To facilitate this policy objective, the KiwiSaver Act allows members to make an early withdrawal to assist in the purchase of a first home. Schedule 1, Rule 8 sets out the eligibility criteria for a first home withdrawal. A KiwiSaver member can access KiwiSaver funds to purchase a first home if the member:

    i. has been a KiwiSaver member for at least three years

    ii. has not made a withdrawal from any KiwiSaver scheme to buy a home

    iii. intends the property to be the principal place of residence (i.e. not an investment property)

    iv. has never owned a property (this does not include previously holding an estate in land as a bare trustee or a leasehold estate), or can demonstrate that he/she is in the same financial situation as a first-home buyer (the second chance)

    v. is purchasing an estate in land. “Estate” is defined as “a fee simple estate, a leasehold estate or a stratum estate”.

10. If the eligibility criteria are satisfied, members can withdraw all or part of their savings, employer contributions and all investment returns towards the purchase of a first home. Members cannot withdraw the $1000 government kick-start or member tax credits (the annual government contribution to a member’s KiwiSaver account). However, from 1 April 2015 when the HomeStart changes come into effect, members will also be able to withdraw their member tax credits.

11. The first home withdrawal scheme is part of a broader suite of initiatives to assist KiwiSaver members into home ownership. The other products are:

- provision of a deposit subsidy. After three years of contributing to KiwiSaver, a member who meets certain income criteria may be entitled to a grant for the purchase of a lower priced home. From 1 April 2015 this grant will be renamed HomeStart.

- provision of a higher value grant called HomeStart Plus to support first home buyers who meet the income and property value criteria purchasing newly built homes (from 1 April 2015)
- assisting KiwiSaver members who have previously owned a house but who are in the same financial position as a first home buyer purchase a home (the same rules apply as for the first home withdrawal with additional asset and income testing requirements). This is known as the second chance scheme.

12. The Government also has a number of schemes and strategies in place to specifically assist Māori into home ownership.
13. The first home withdrawal scheme is administered by KiwiSaver providers. Housing New Zealand Corporation (HNZC) administers the second chance scheme and the deposit subsidy. In addition to the relevant asset/income/property value criteria, HNZC applies broadly the same eligibility criteria as for the first home withdrawal rules.
14. Currently there are 45 KiwiSaver providers. FMA regulates the providers and maintains a register of schemes. The FMA publishes an annual KiwiSaver Report that contains statistics relating to the number of first home withdrawals made each year, but does not collect data on the type or location of the estate in land, or data relating to declined applications.
15. The first year in which members could utilise the first home withdrawal 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 for first home withdrawals. 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.
16. Permanent migrants to countries other than Australia can withdraw all of their KiwiSaver contributions (excluding member tax credits) after one year. In mid-2013, the trans-Tasman savings portability arrangements came into effect. These arrangements are a part of the Single Economic Market work programme, which aims to reduce barriers that may impede the movement of people, trade and capital across the Tasman. The policy intent of retirement savings portability is to support and add to the degree of integration between the two countries by allowing New Zealanders and Australians to consolidate their financial affairs in their country of residence. It was also implemented to strengthen the policy intent of KiwiSaver by encouraging long-term savings and asset accumulation. Under these arrangements KiwiSaver members migrating to Australia can either transfer their retirement savings to certain Australian superannuation funds or retain their KiwiSaver fund, but they can no longer withdraw all of their KiwiSaver contributions after one year.

Problem Definition

17. The first home withdrawal rules are light on detail in some areas and silent in others. This has resulted in KiwiSaver providers interpreting aspects of the scheme inconsistently and appears to be resulting in unintended outcomes for some KiwiSaver members. In particular:
    - There is a lack of clarity about whether a first home withdrawal can be used for a home overseas. This has resulted in inconsistent interpretation of the rules by KiwiSaver providers, creating uncertainty and inconsistent entitlements for KiwiSaver members. This is likely to undermine member confidence and be particularly damaging to the KiwiSaver brand.

- The rules are silent in respect of Māori interests in land and forms of home ownership. This has resulted in a first home withdrawal generally being unavailable for a home on Māori land.

18. Each of these issues is discussed separately below, including further details on the nature and size of each problem.

Objectives

19. The options in this RIS are measured against a number of objectives for the first home withdrawal rules:

    - *consistent entitlements* – this objective relates to achieving consistent entitlements through both (a) having unambiguous rules so that providers interpret them consistently (important for the KiwiSaver brand and to minimise the likelihood of KiwiSaver members swapping between providers for unintended reasons), and (b) having rules that, themselves, provide for consistent treatment of KiwiSaver members.

    - *facilitate asset accumulation and a long-term savings habit* – this is the overarching objective of the KiwiSaver Act.

20. MBIE considers that the above objectives are the key criteria, given that the first criteria (consistent entitlements) directly responds to the problem definition and the second criteria (facilitate asset accumulation and long-term savings habit) is the overarching objective of KiwiSaver. There are also three additional complementary objectives which have been given less weighting:

    - *broad alignment with the other KiwiSaver-based housing initiatives* – this objective relates to both (a) alignment with the underlying policy of other KiwiSaver housing initiatives (recognising that asset accumulation by way of home ownership also fosters wider social benefits), and (b) consistency with the rules of the deposit subsidy and the second chance scheme (to minimise confusion).
    - *ease of enforcement* – to ensure that the scheme is able to be monitored and applications processed with minimal compliance costs and minimal risk of misuse of KiwiSaver funds.
    - *alignment with the Government's Māori Housing and land use goals and strategy* – this objective applies only to Māori interests in land.

21. Options that best achieve these objectives are those most likely to meet the overarching objectives of the KiwiSaver Act, ensure the integrity of the KiwiSaver brand and best align with other complementary Government objectives.

22. Each of the options will be assessed against the criteria, concluding with an overall assessment of that option. A table summarising and comparing all of the options is set out at the end of each issue.

Issue 1: First Home Withdrawal Overseas

Options and regulatory impact analysis

23. We have considered three options, including the status quo, against the objectives for purchase of a home overseas:

    Option 1: Status Quo.

    Option 2: Amend the rules to make clear that a KiwiSaver member *can* use a first home withdrawal for the purchase of a first home outside of New Zealand, (excluding member tax credits in order to remove the incentive for permanent migrants to use a first home withdrawal to access these credits).

    Option 3: Amend the rules to make clear that a KiwiSaver member *cannot* use a first home withdrawal for the purchase of a first home outside of New Zealand.

Option 1: Status Quo

Consistent entitlements

24. The first home withdrawal rules are currently silent as to where the house can be bought. The only New Zealand-based restriction in the rules is a requirement that the member's funds are paid to a conveyancing practitioner who holds a New Zealand practicing certificate. However, this requirement was the result of a consequential amendment in 2013. It was not part of a conscious decision to prohibit overseas first home purchases and does not have this effect.

25. This issue originally came to our attention through a complaint to the Banking Ombudsman after a New Zealand couple moved to Australia and submitted first home withdrawal applications to their respective KiwiSaver providers. One provider agreed to the withdrawal while the other did not. This lack of clarity has since been the subject of several media articles.

26. MBIE surveyed KiwiSaver providers about their treatment of first home withdrawal applications for homes overseas. Providers indicated that applications for a withdrawal for a first home overseas are relatively rare. We estimate that there are less than 40 per year. The majority of these applications or inquiries are for the purchase of a home in Australia and the rate of applications is increasing. This could be the result of the trans-Tasman savings portability rules that prevent permanent migrants to Australia from withdrawing their KiwiSaver funds.

27. The responses MBIE received confirmed that providers are interpreting the rules inconsistently, with some approving withdrawals for a first home overseas and others declining them. Of the 10 providers who responded to our request for information, three said that they would approve such applications, while four said that they would decline them. One provider said it would not approve for Australia, but would approve for the rest of the world. The remaining two providers had either never had an application of this kind, or their policy was unclear.

28. Unclear rules and inconsistent interpretation has resulted in a lack of consistency in entitlements for KiwiSaver members and has created incentives for KiwiSaver members to switch providers for the wrong reasons (i.e. not based on investment decisions). This is harmful to the KiwiSaver brand and undermines the purpose of the scheme.

Encourage asset accumulation & long-term savings

29. Confusion around the permitted use of KiwiSaver funds and associated damage to the KiwiSaver brand – including through negative media coverage – may dis-incentivise individuals from joining KiwiSaver.

Alignment with other KiwiSaver-based housing initiatives

30. It is unclear if the status quo aligns with either the underlying policy or the specific rules of the deposit subsidy and the second chance scheme.

31. In addition, in light of the pending HomeStart changes, the status quo will result in a lack of alignment with the rule for permanent migrants (who are able to withdraw all of their KiwiSaver contributions excluding member tax credits, which are returned to the Government). If a KiwiSaver provider allows a withdrawal for a purchase overseas, a migrant will be able to withdraw all of their contributions including their member tax credits. This loophole may result in members who have permanently migrated 'gaming' the rules by applying for a first home withdrawal to access all of their KiwiSaver funds, including their tax credits (as opposed to withdrawing their contributions minus their tax credits as a permanent migrant).

Ease of enforcement

32. The lack of clarity in the rules makes it very difficult for KiwiSaver providers to monitor or determine misuse as there is no clear benchmark.

Overall assessment of Status Quo

33. The main cost of the status quo for KiwiSaver members is significant uncertainty around what is allowed and inconsistent entitlements. It also may dis-incentivise joining KiwiSaver. There are no benefits to KiwiSaver members. The main costs to Government are harm to the KiwiSaver brand, the potential for migrants to game the member tax credit and a disincentive to join KiwiSaver (which the Government has invested substantial sums in incentivising). There are no benefits to the Government. The costs to providers are also related to damage to the KiwiSaver brand, losing customers who may switch between providers for unintended reasons and possible damage to the provider's own brand. The status quo does not achieve the objectives.

Option 2: Allow First Home Withdrawal for Purchase Overseas

Consistent entitlements

34. Under this option a KiwiSaver member could withdraw their contributions in order to purchase a first home outside of New Zealand.

35. Given that permanent migrants to countries other than Australia can withdraw all of their KiwiSaver contributions, we expect that demand for overseas home withdrawals will primarily come from New Zealanders who have migrated to Australia, either permanently or temporarily. Anecdotal evidence suggests that there is limited demand for first home withdrawals for other countries, given that permanent migrants have the option of withdrawing their contributions regardless.

36. This option ensures clear and unambiguous rules in regards to the location of the property. KiwiSaver providers will have certainty in terms of what is allowed and what is not allowed. In addition a KiwiSaver member migrating to Australia is not disadvantaged. This will ensure consistent outcomes and entitlements and avoid KiwiSaver members switching between providers for unintended reasons. It will also minimise damage to the KiwiSaver brand.

Encourage asset accumulation & long-term savings

37. Encouraging a long-term savings habit and asset accumulation is met regardless of where the house is located. If a member is living overseas at a stage in life where they have accumulated sufficient funds to 'get on the property ladder', then the first home withdrawal scheme could help them to do so and improve their retirement outcomes. In MBIE's view, there is not likely to be a substantial difference in the permanence of these savings compared to withdrawals for a first home purchase in New Zealand.

Alignment with other KiwiSaver-based housing initiatives

38. This option aligns with the underlying policy of the deposit subsidy and the second chance scheme, which is to assist KiwiSaver members purchase their first home. However, the deposit subsidy and the second chance scheme are necessarily restricted to purchases in New Zealand due to asset/income/property value thresholds and, in the case of the subsidy, substantial Government investment. This lack of consistency may lead to confusion.

Ease of enforcement

39. Under this option it would be more difficult to verify that the funds were used in accordance with the rules (e.g. it would be difficult to check if a member decides to sell the house immediately or use it as a rental property). There may be greater complexity and additional costs for KiwiSaver providers associated with monitoring transactions in any overseas jurisdiction. The risk of misuse for early withdrawal for purposes other than long-term savings is increased, as providers cannot review foreign transaction documentation to the same extent as they can for New Zealand purchases. Although New Zealand transactions are not usually monitored after the fact, there is less likelihood of gaming in New Zealand because the threat of monitoring is much higher.

Overall assessment of allowing a first home withdrawal overseas

40. The only cost of this option for both KiwiSaver members and the Government is possible confusion arising from other KiwiSaver-based housing initiatives being restricted to New Zealand purchases. However we think this risk is low given that those schemes have different and higher thresholds anyway, and in the case of the deposit subsidy, clearly involve Government investment. The benefits to members are significant, with consistent entitlements and the facilitation of asset accumulation and savings. The benefits to Government are maintaining and protecting the KiwiSaver brand and ensuring optimal settings to achieve the overarching objective of the KiwiSaver Act. The main costs to providers are the potentially greater complexity and additional costs associated with monitoring transactions overseas. The major benefit to providers is protecting both the KiwiSaver brand and the provider's own brand. This option is clearly superior or equal to the status quo across all objectives.

Option 3: Disallow First Home Withdrawal for Purchase Overseas

Consistent entitlements

41. Under this option a first home withdrawal would apply only to New Zealand home purchases and would not be available for purchase overseas.

42. This option ensures clear and unambiguous rules in regards to the location of the property. KiwiSaver providers will have certainty in terms of what is allowed and what is not allowed. While this will ensure consistent interpretations by KiwiSaver providers and avoid KiwiSaver members switching between providers for unintended reasons, it will not produce consistent entitlements. This is because KiwiSaver members who permanently migrate to Australia have no mechanism to access retirement savings to purchase a first home as they are unable to (a) utilise the first home withdrawal, (b) withdraw their funds as a permanent migrant (due to the trans-Tasman savings portability rules), or (c) make a first home withdrawal from a complying Australian superannuation scheme (Australian schemes do not allow first home withdrawals).

Encourage asset accumulation & long-term savings

43. This option meets the overriding objective of long-term savings and asset accumulation. However, it may dis-incentivise individuals who are considering migrating to Australia, or temporarily migrating anywhere else in the world, from joining KiwiSaver at all.

Alignment with other KiwiSaver-based housing initiatives

44. There is alignment with the New Zealand-based restriction of other KiwiSaver initiatives

such as the deposit subsidy and the second chance scheme. This reduces confusion and complexity given that all of the KiwiSaver housing-based initiatives are linked in other ways. However, the underlying policy objective of the KiwiSaver housing-based initiatives is to assist KiwiSaver members into their first home and this objective is not achieved.

Ease of Enforcement

45. By restricting the first home withdrawal to New Zealand-only purchases, this option allows ease of monitoring and minimises any risk of misuse. Providers are able to verify the use of the funds after a property purchase if the need arises. Providers are also easily able to check that the estate in land meets the requirements of the Act, as the sale and purchase agreement and various undertakings will be specific to New Zealand.

Overall assessment of Option 3

46. The cost of this option for KiwiSaver members is that there is an inconsistent entitlement outcome. This has potential flow on costs for both the Government and the provider industry in protecting the KiwiSaver brand. However, the rules are clear, generally well aligned and easy to enforce, so brand damage is likely to be small and there is no risk of members switching between providers for unintended reasons. There are also benefits to providers with reduced complexity and ease of monitoring if restricted to New Zealand. This option is clearly superior or equal to the status quo across all objectives.

47. Table 1 sets out the three options compared to the criteria.

Table 1: Summary assessment of options against objectives

	Consistent entitlements	Encourage asset accumulation & long-term savings	Alignment with other KiwiSaver-based housing initiatives	Ease of enforcement
Option 1: Status Quo	Evidence indicates that the silence in the rules is producing inconsistent outcomes and confusion. ✗	A lack of clarity and potential damage to the KiwiSaver brand may discourage asset accumulation and long-term savings. ✗	Varying interpretations with some members barred from accessing their funds for a first home withdrawal. ✗	It is not possible to effectively monitor or determine misuse when the rules are unclear. ✗
Option 2: Allow	Would ensure rules are clear and unambiguous with consistent entitlements. ✓✓	Both asset accumulation and long-terms savings encouraged. ✓✓	Aligns with underlying policy but inconsistency across KiwiSaver-based housing initiatives restricted to New Zealand. ✓	Difficult to verify funds used in accordance with rules. Potentially greater complexity and additional monitoring costs. ✗
Option 3: Disallow	Would ensure rules are clear and unambiguous but would result in inconsistent entitlements for migrants to Australia. ✓	Long-term savings asset accumulation encouraged but may dis-incentivise joining KiwiSaver for those considering migrating. ✓	All KiwiSaver-based housing initiatives restricted to New Zealand but does not align with underlying policy of facilitating home ownership for KiwiSaver members. ✓	Restricting to New Zealand allows ease of verification and monitoring, as well as simpler processes. ✓✓

Key:
✓✓ Meets the policy objectives
✓ Partially meets the policy objectives
✗ Does not meet the policy objectives

48. While both options 2 and 3 are clearly preferable to the status quo, which of these two options is most preferable will depend on the relative weighting given to the objectives. Given that we have assigned a higher weighting to the objective of clear and unambiguous rules and encouraging asset accumulation & long-term savings, on balance we prefer option 2, as it best promotes these objectives. We note that Treasury prefers option 3. This option better addresses the objectives to which we have given lesser weighting.

Issue 2: Māori interests in land and forms of home ownership

Options and regulatory impact analysis

49. We have considered two options, including the status quo, against the objectives in respect of interests in Māori land and common forms of home ownership on Māori land:

    Option 1: Status Quo.

    Option 2: Amend the rules to specifically allow a first home withdrawal for those with an interest in Māori land. This requires two clarifications:

    a. that a first home withdrawal can be used in relation to the purchase of a house on Māori land, and

    b. that an interest in Māori land that cannot be economically realised should be disregarded for the purposes of determining whether the member has previously held an estate in land.

Option 1: Status Quo

Consistent entitlements

50. Anecdotal evidence obtained from HNZC, MBIE's Chief Māori Housing Officer, and officials' enquiries with KiwiSaver providers indicates that applications for first home withdrawals to purchase or build a home on Māori land are generally declined.

51. The most common reason cited is that the first home withdrawal must be for the purchase of "*an estate in land*". This requirement appears to exclude people who have an interest in Māori land as they are not purchasing an estate in land. Rather, they want to use the first home withdrawal to purchase or build a house on land which usually remains with all of the owners as Māori land (as tenants in common). [2]

52. Applications have also been declined due to the tenancy in common status of Māori land. The rules state that a member with a previous interest in land, including any interest as a tenant in common, is not eligible for a first home withdrawal. A narrow interpretation of the rules automatically excludes Māori land owners due to their existing interest in that land, despite the fact that the interest in land is extremely small and cannot be economically realised.

53. It appears that the rules are being interpreted consistently between providers with relatively little confusion. However Māori are being penalised due to the way in which Māori land is held. The objective of consistent entitlements is therefore not achieved.

54. One of many illustrative examples in which Māori families have been unable to access the first home withdrawal scheme to purchase in these circumstances involves a family that has lived in a HNZC rental on Māori freehold land for the past 10 years. The family members are a few of many beneficiaries who jointly own (but do not control or manage) the land. Housing New Zealand is selling down their housing stock on Māori land and the family has been advised that they can purchase their home for $16,000. The family jointly has $47,000 in KiwiSaver but their KiwiSaver provider has declined their first home withdrawal application on the basis that the withdrawal is not for the purchase of an estate in land as defined in the rules.

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[2] Generally an owner of Māori land obtains a lease, license or occupation order which grants exclusive use and occupation of an area of the land. There is no payment for the license or occupation order. In the case of a lease, where a land owner is involved, the rent is nominal (usually $1 per annum) for the term of the lease. What they then choose to do with that land, or place on that land, is entirely up to them (within the bounds of their lease, license or occupation order). In addition, the owner (or owners) of Māori land can also put a house on the land - without a lease, license or occupation order - so long as all of the owners agree.

55. It is difficult to determine exactly how many KiwiSaver members have been detrimentally affected since there is no requirement for providers to maintain statistics around declined withdrawals. The Māori Land Court has advised that the anecdotal examples we have received are likely to be representative of a far larger problem.

56. Further, the problem is likely to grow as new builds on Māori land increase (in line with the goals of He Whare Āhuru and the Kāinga Whenua funding programmes) and as HNZC sells down housing stock it owns on Māori land. HNZC reports that difficulty accessing first home withdrawals is a substantial issue for potential purchasers.

Encourage asset accumulation and long-term savings

57. This option makes asset accumulation difficult and may dis-incentivise KiwiSaver membership for those people with an interest in Māori land. Officials from the Māori Land Court, Te Puni Kōkiri, and HNZC have advised that:

- Inability to access a first home withdrawal removes an essential means of financing a purchase – access to capital is the major hurdle in building or purchasing a home on Māori land due to the difficulties of taking security over multiply-owned land. In some cases access to KiwiSaver funds, including as their deposit, may be the members' only mechanism to finance the purchase.

- The likelihood that the first home withdrawal is not currently available for homes on Māori land is a potential barrier to Māori land owners engaging with KiwiSaver at all.

Alignment with other KiwiSaver-based housing initiatives

58. The underlying policy objective of the KiwiSaver housing-based initiatives is to assist KiwiSaver members into their first home and this objective is not achieved. The *Cabinet Policy Committee Paper: 2005 Budget Savings Package: Home Ownership Assistance* explicitly referred to assisting households into home ownership, with a particular focus on low home ownership rates amongst Māori.

59. The status quo also does not align with the rules of the other KiwiSaver housing-based initiatives. Under current HNZC policy, both second chance applications and applications for a deposit subsidy are generally approved for houses on Māori land.

Ease of enforcement

60. As a house on Māori land appears to be precluded, there is nothing to monitor.

Consistent with Māori Housing goals and strategy

61. Under the status quo a first home withdrawal is not generally available for a home on Māori land. This does not appear to align with the policy intent of the Kāinga Whenua funding programmes [CAB Min (13) 38/8 refers]. It also appears to be inconsistent with the Government's Māori home ownership and land use goals as set out He Whare Āhuru He Oranga Tāngata – the Māori Housing Strategy and He Kai Kei Aku Ringa – The Crown-Māori economic growth partnership.

62. He Whare Āhuru provides an overview of government support for Māori people's aspirations to have reliable and appropriate housing and for Māori-led housing programmes. He Kai Kei Aku Ringa presents a shared vision for Māori economic development, with one of its goals being that home ownership for Māori households equals national averages by 2040. Home ownership rates for Māori are still significantly lower than average. According to the 2013 Census 28.2% of Māori people aged 15 years and over owned or partly owned the home they lived in, compared to the national average of 49.8%.[3]

[3] Data obtained from Statistics New Zealand http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-housing/home-ownership-individuals.aspx.

Overall assessment of the Status Quo

63. The status quo imposes significant costs on those with an interest in Māori land, essentially penalising those people because of the way in which Māori land is held. The status quo makes it very difficult for those with an interest in Māori land to ever own their own home on Maori land because other forms of finance are very difficult to obtain. The costs to Government are also significant, including the negative publicity risks around the lack of consistency with the original policy intent and lack of alignment with the Government's Māori home ownership and land use goals, and the difficulty in selling down HNZC stock. There are no benefits under the status quo.

Option 2: Specifically allow for first home withdrawal on Māori land

Consistent entitlements

64. This option will ensure clear unambiguous rules with consistent outcomes between providers and consistent entitlements for Māori land owners.

65. Those with an interest in Māori land will not be penalised for the way in which Māori land is held. There will also be alignment with the existing exceptions in the first home withdrawal rules for previous interests in land (previously holding an estate in land as a bare trustee or a leasehold estate are specifically disregarded for the purposes of eligibility for a first home withdrawal).

Encourage asset accumulation and long-term savings

66. Under this option asset accumulation and long-term savings are encouraged. By specifically allowing first home withdrawals for homes on Māori land, this option provides an essential means of financing a purchase by enabling access to capital and overcoming a major hurdle in building or purchasing a home on Māori land (due to the difficulties of taking security over multiply-owned land).

67. Further, in combination with an advice and education programme, specifically allowing a first home withdrawal for the purchase of a house on Māori land may incentivise people with an interest in Maori land to join KiwiSaver. This will provide additional benefits in encouraging long-term savings more generally.

Alignment with other KiwiSaver-based housing initiatives

68. This option will give effect to the policy objective of KiwiSaver-based housing initiatives, recognising that asset accumulation has importance beyond the building of long-term wealth. Security of tenure associated with home ownership also confers further benefits in terms of health and education outcomes, and social cohesion. This is especially true for a house built or purchased on Māori land, which remains for future generations with additional benefits in terms of inter-generational security and connection with the land over the longer term.

69. This option would also be consistent with HNZC's treatment for the deposit subsidy and the second chance scheme, ensuring treatment of Maori land would be aligned across all KiwiSaver housing initiatives and any risk of confusion is minimised.

Ease of enforcement

70. This option broadens the existing criteria from an 'estate in land' to a house. However, it is clearly restricted only to a house on Māori land so any risk of misuse is unlikely. It will also reduce existing additional complexity by allowing those with an interest in Māori land to access the first home withdrawal rather than having to use the second chance scheme.

Consistent with Māori Housing goals and strategy

71. This option will give effect to the original policy intent and align with the Government's Māori home ownership and land use goals, both from the original KiwiSaver policy and He Whare Āhuru. This option would be a significant positive step towards better achieving a cohesive and joined up strategy to support Māori home ownership.

Overall assessment of Option 2

72. Option 2 will provide significant benefits to those with an interest in Māori land, essentially providing a finance mechanism for home-ownership on Māori land because other forms of finance are very difficult to obtain. It is likely to support development of Māori land by Māori and provide additional intergenerational benefits due to the way Māori land is held. The benefits to Government are also significant, including a step towards achieving the Government's Māori home ownership and land use goals, and facilitating the sale of HNZC stock. There are no costs under this option and it provides substantial net benefit.

73. Table 2 sets out a summary assessment of the options compared to the criteria.

Table 2: Summary assessment of the options compared to the criteria

	Consistent entitlements	Encourage asset accumulation and long-term savings	Alignment with other KiwiSaver-based housing initiatives	Ease of enforcement	Consistent with Māori Housing goals and strategy
Option 1: Status Quo	The rules are silent and providers generally decline which penalises Māori ×	A disincentive to join KiwiSaver and asset accumulation not encouraged. ×	Treatment of those with interest in Māori land inconsistent with policy intent and other initiatives ×	Preclusion means there is nothing to monitor ~	Treatment of Māori land inconsistent with Māori Housing goals and strategy ×
Option 2: Provide for withdrawal for Māori land	Clear rules with certainty ✓✓	Opportunity to incentivise joining KiwiSaver and asset accumulation encouraged ✓✓	Aligns to policy intent and operational guidance for other housing initiatives ✓✓	Rules are clearer and less complex by avoiding second chance process ✓	A cohesive and joined up strategy to support Māori home ownership ✓✓

74. Overall we consider that option 2 best addresses the issues identified and clearly meets the objectives outlined above.

Consultation

75. MBIE officials have worked closely with Inland Revenue and the Treasury. We have also consulted Te Puni Kōkori and the Māori Land Court and have obtained detailed advice on Māori land ownership arrangements. Standard interdepartmental consultation on the Cabinet paper has also taken place.

76. MBIE also consulted with FMA, HNZC, Workplace Savings (a superannuation industry body), dispute resolution bodies and individual providers.

77. Feedback was universally supportive of specifically catering for Māori interests in land. All departments consulted also agreed that clarification is necessary for the purchase of a property overseas, with MBIE and Treasury taking different views on how this can best be achieved. This RIS reflects these views.

Conclusions and recommendations

Issue 1: First Home Withdrawal Overseas

78. We consider that on balance option 2 – amending the rules to make clear that a KiwiSaver member *can* use a first home withdrawal for the purchase of a first home outside of New Zealand – best meets the policy objectives.

79. Both options 2 and 3 would address the problems identified as both will minimise any risk of providers interpreting the rules inconsistently. Due to the relative weighting we have given each of the objectives, MBIE prefers option 2 as it better ensures consistent entitlements and more fully meets the overarching objective of KiwiSaver to encourage retirement savings and asset accumulation. However, option 3 provides greater benefits in terms of ease of compliance.

Issue 2: Māori interests in land and forms of home ownership

80. We consider that amending the rules to specifically allow a first home withdrawal for a home on Māori land will address the problems identified and clearly meets the policy objectives.

Implementation plan

81. The changes will be made through legislative change. We expect these changes to be progressed as part of the HomeStart Bill.

82. KiwiSaver providers administer applications and will be the key parties in the implementation process. MBIE will engage with the providers and Workplace Savings to ensure they are aware of the changes and amend their processes accordingly.

83. Inland Revenue will publicise and communicate these changes by updating the Inland Revenue website.

84. An advice, information and education campaign will be run in parallel with the legislative change to ensure that those with an interest in Māori land are aware of the change to the rules to encourage their uptake of KiwiSaver generally and the first home withdrawal provision specifically.

Monitoring, evaluation and review

85. The FMA 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.

86. MBIE will also continue to keep in touch with the Māori Land Court and HNZC on the Māori land issue to review the effectiveness of the amendment to the rules.