

Regulatory Impact Statement

KiwiSaver Annual Reports - Setting of detailed requirements

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Economic Development.

This statement outlines the analysis of options regarding the provision of guidance on the detailed requirements of annual reports for KiwiSaver Schemes. The analysis assesses the options for further guidance on the content of KiwiSaver Annual Reports given the requirement in the KiwiSaver Act 2006 for all schemes to produce an annual report.

The analysis of options does not include detailed monetary costs associated with each option. Quantifying the monetary costs of each option is not justified because all schemes have to prepare an Annual Report. The difference between the options is the degree to which the content is mandated and by whom. Furthermore, the preferred option is similar, but less onerous, than the arrangements that existed when schemes last prepared an annual report. As a result the costs and benefits of the options are in terms of the relative implications.

The preferred option should reduce uncertainty and will not impair private property rights, market competition, or the incentives on businesses to innovate and invest, or override fundamental common law principles. It clarifies and consolidates the previous requirements, which will minimise compliance cost while maintaining the valuable information distribution and public accountability functions.

The preferred option largely replicates, clarifies and consolidates the previous annual reporting requirements under the Superannuation Schemes Act 1986 and the KiwiSaver Act 2006, with minor simplifications. Hence, the preferred option is less onerous but not substantially different from the previous requirements, and so it does not impose an additional regulatory burden on providers.

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Status quo and Problem Definition

The KiwiSaver Act regime has been in place for approximately five years. There are now 52 approved KiwiSaver Schemes, with a current membership in excess of 1.7 million individuals.

Section 123 of the KiwiSaver Act 2006 requires all schemes to prepare annual reports and to distribute this report in hard copy to their members and the regulator (the Financial Markets Authority (FMA)). Prior to the 2011 KiwiSaver Amendment Act the annual report requirements were set by reference to Schedule 2 of the Superannuation Schemes Act 1989. The reports produced under this regime were generally short (6-10 pages); however, the preparation and distribution to all members does impose a substantial cost on schemes. Given the requirement to distribute the report to all members it is important to ensure the report achieves its objectives.

The KiwiSaver Amendment Act 2011 made a number of changes to KiwiSaver schemes. The main change was a change to the governance structure, placing more responsibility and greater accountability on the manager as opposed to the trustee.

The previous requirements for annual reporting have always posed some difficulty for schemes. The primary reason was that the requirements were spread over two pieces of legislation. In addition, some of the certification requirements were unsuited to KiwiSaver schemes as the requirements were developed for superannuation schemes of a quite different nature. With the changes to the governance structure the need to update the annual reporting requirements became even more evident. As a result, the 2011 Amendment Act removed from the KiwiSaver Act of the references to the Superannuation Schemes Act, leaving only the requirement to prepare an annual report. The intention was that regulations under the KiwiSaver Act would clarify the content of these annual reports. This has not yet occurred.

The changes under the 2011 amendments require all non-restricted KiwiSaver schemes to change their governance structure by the end of October, 2012. However, schemes are able to elect to make these changes before that time. It is anticipated that many schemes will make these changes before 1 April 2012, as this will mark the start of the standard 2012-2013 KiwiSaver financial year. Once schemes make these changes, all amendments, including those to the annual reporting requirements, take effect. The result is that for schemes that make the change in the coming months, no clear guidance will exist as to what needs to be included in the annual reports for the 2011-2012 year. The lack of guidance will result in uncertainty for schemes.

Schemes may respond to the uncertainty in a number of ways, such as:

- over-disclosing in an attempt to avoid the risk of being deemed to have failed to sufficiently disclose.
- different schemes preparing annual reports that are inconsistent in their content;
- seeking guidance from the Government on the content of their annual reports.

All these responses will create an additional compliance cost and are unlikely to provide benefit to investors, the regulator or the market generally. This regulatory impact statement contains an assessment of the alternatives. The preferred option should simplify and clarify the requirements and so reduce costs.

A summary of the proposed reporting framework noting both the previous requirements and proposed changes is included in the Conclusions and Recommendations section of this report.

Objectives

The policy objectives for the KiwiSaver annual reporting requirements are to:

- Ensure appropriate public disclosure;
- Require relevant certification by trustees and managers to ensure appropriate governance and management accountability; and
- Minimise the compliance burden on schemes.

Regulatory Impact Analysis

Given the requirements to prepare and distribute these reports are in the primary legislation they set the scope of the project. Given this scope four options are considered:

1. **No prescription – self-regulating [the status quo]:** leave it up to schemes, the regulator and the industry to determine appropriate content;
2. **No prescription – non-binding guidance:** leave it up to schemes, the regulator and the industry to determine appropriate content, which would become non-legislative guidance;
3. **Updated regulation:** amending the pre-2011 requirements under both the Superannuation Schemes Act and the KiwiSaver Act by removing redundant requirements and adapting the remainder to better reflect the nature of KiwiSaver schemes; or
4. **Expanded regulation** amending the pre-2011 requirements under both the Superannuation Schemes Act and the KiwiSaver Act as under option 3, and in addition extending the scope of the annual report to include additional information.

Analysis of options

Option	Costs	Benefits
<p>No prescription – self regulating</p>	<p>No direct cost to government. But the FMA is likely to be requested to prepare guidance. Schemes would incur a cost as they would have to consider what to include.</p> <p>Risk of schemes over-disclosing due to a desire to cover all bases ‘just in case’. This would impose additional costs, and it is unlikely that it will provide additional benefits.</p> <p>Alternatively, firms may under-disclose, which will reduce the amount of public information and accountability, to the detriment of investors.</p> <p>Schemes are likely to base their annual reports on past reports and the pre-2011</p>	<p>No regulations required.</p> <p>Easier policy process, as it would not require reassessment of the details.</p> <p>If disclosure is based on the previous requirements it would retain the information and accountability standards that previously applied. These standards are viewed as a useful tool for investors to obtain information about the fund’s performance, and provide some assurance that Trustees and managers are satisfactorily carrying out their roles.</p>

	<p>requirements. The past requirements are ill-suited to KiwiSaver schemes once they change their governance structure. If this were to occur, the certification requirements would not reflect the 2011 changes, which may reduce the effectiveness of the public accountability aspect of the annual report. In addition, it may cause confusion and additional costs as firms attempt to adapt the requirements to KiwiSaver funds.</p> <p>The Act contemplates regulation, and this option fails to meet this objective, which is bad regulatory practice.</p> <p>This option imposes no formal standards for the content of reports. As a result, there will be no method for holding schemes accountable for the scope of information disclosed. The only accountability will be for not producing a report, or intentionally making false and misleading statements in the report.</p>	
<p>No prescription – non-binding guidance</p>	<p>No direct cost to government. But the FMA is likely to be requested to prepare guidance, which may mean that no guidance is in place by April 2012 as the FMA would have to consult on proposed guidelines. Schemes would incur a cost as they would have to consider what to include, and if the FMA consults them, the cost of consultation.</p> <p>Risk of schemes over-disclosing due to a desire to cover all bases ‘just in case’. This would impose additional costs, and it is unlikely to provide additional benefits.</p> <p>Alternatively, firms may under-disclose, which will reduce the amount of public information and accountability, to the detriment of investors.</p> <p>Schemes are likely to base their annual reports on past reports and the pre-2011 requirements, in which case the</p>	<p>The reassessment of the details might lead to the development of an industry standard, which may result in better disclosure.</p> <p>Would retain the information and accountability standards that previously applied. These standards are viewed as a useful tool for investors to obtain information about the fund’s performance, and provide some assurance that Trustees and managers are satisfactorily carrying out their roles.</p>

	<p>certification requirements may not reflect the 2011 governance changes.</p> <p>Some confusion and additional costs as firms attempt to adapt the requirements to KiwiSaver funds and work through the preparation of the guidance.</p> <p>The Act contemplates regulation, and this option fails to meet this objective, which is bad regulatory practice.</p> <p>This option imposes no formal standards for the content of reports. As a result, there will be no method for holding schemes accountable for the scope of information disclosed. The only accountability will be for not producing a report, or intentionally making false and misleading statements in the report.</p>	
Updated regulation	<p>The cost of determining the content of the report is minimal and incurred in the preparation of this paper. No cost to schemes.</p>	<p>This option would provide greater clarity to schemes as to the requirements, resulting in reduced compliance costs.</p> <p>The annual report would serve its purpose and look quite similar to past annual reports, imposing minimal transition costs for providers.</p> <p>The annual reports of all schemes would contain consistent material.</p> <p>The regulations would reinforce and clarify the roles of the Trustees and the managers.</p> <p>This option largely replicates the previous requirements, and so would impose minimal transition costs for providers.</p>
Expanded regulation	<p>A wider scope would involve a more extensive policy process, which may delay the passage and fail to alleviate the uncertainty faced by schemes having to report for the 2011-2012 year.</p> <p>Schemes and the FMA would incur cost by engaging in the consultation process accompanying the process of developing</p>	<p>Expanding the scope of the annual reports would enable them to be used to contain more, and more extensive, information, which may result in an additional benefit for investors and the regulator.</p>

	<p>the expanded requirements.</p> <p>The inclusion of more extensive information is likely to impose implementation costs on schemes. In addition, it may also increase on-going compliance costs.</p>	
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Consultation

The proposals in this paper have been developed in consultation with Inland Revenue and the FMA, the primary agencies that have an interest in this work. In addition the Treasury was consulted with on the final proposals. The FMA sought to ensure that the revised requirements maintained the information disclosure and the accountability functions of the annual report. The FMA has indicated that they are satisfied that the preferred approach achieves these objectives. Inland Revenue and the Treasury were both comfortable with the proposals in this paper.

In addition, informal discussions have been had with the Investment Savings and Insurance Association and Workplace Savings as representatives for schemes. Both groups were broadly happy with the preferred approach and were satisfied that it did not negatively impact on the interests of schemes.

Conclusions and Recommendations

1. The preferred option is option 3 (Updated regulation). Under this proposal schemes will be required to disclose:
 - a. The accounts for the scheme, either full or abridged, and if abridged an appropriate auditor's assurance that they accurately reflect the full accounts. (Identical to previous requirements);
 - b. Key information about the scheme, including contact information for the manager and information regarding any changes to the Directors or the Trustee. (Identical to previous requirements);
 - c. Statistical information about the scheme including:
 - Total value of assets held;
 - Accumulations;
 - Returns;
 - Fees;
 - Membership numbers; and
 - The activities of members including transfers and withdrawals.

Compared to the previous requirement these statistical disclosures are unchanged except for the inclusion of information regarding transfers of funds to and from Australian complying superannuation schemes under the soon to be available trans-Tasman portability arrangements

- d. Certification by the manager and the trustee regarding the operation of the scheme. These certificates will be based on those that were previously required. Redundant certificates, such as those relating to defined benefit schemes only and those related to government fee subsidies will be removed. Other certificates, including those relating to proper management of the scheme, proper payment of benefits and the ability to meet liabilities from the scheme assets, will be retained in a redrafted form to better reflect the nature of KiwiSaver scheme. One additional certificate will be included requiring the Trustee to certify it has carried out its duty to monitor the manager and is satisfied that the manager has not breached its obligations. This addition reflects the new governance framework required for KiwiSaver schemes.

The preferred approach largely retains the current level of information disclosure and public accountability, but simplifies it and makes it more KiwiSaver specific, easing the compliance burden for schemes. Not preparing any regulations is highly likely to result in the FMA being requested to provide guidance. Such guidance is likely to replicate the regulations proposed at this time. Regulations make it clear and unambiguous for the FMA and investors. This ease of compliance is the primary benefit over and above options 1&2.

Options 1 and 2 would result in uncertainty and the high likelihood of inconsistent disclosure created by no prescription. The uncertainty, along with demands for clarity, outweighs the costs associated with promulgating the regulations.

Option 4 would fail to resolve the uncertainty in time. While this option may result in some additional benefits, we believe that the value of any possible gains are small and are outweighed by the uncertainty created by this option.

Updated regulation at this time reduces uncertainty, clarifies the roles of the Trustee and the Manager, clearly delineates the role of the annual report and the annual return and minimises the compliance costs for schemes.

Implementation

The primary risk associated with implementation is timing. While the drafting process should not be difficult, the period within which we are aiming to draft and promulgate regulations is short. This may cause difficulty should any challenges arise in the drafting of these regulations. However, we do not anticipate that any difficulties should arise.

Monitoring, Evaluation and Review

The role of annual reports in the wider disclosure and reporting framework for KiwiSaver funds is likely to be reviewed in 2012 as part of the on-going work on the Financial Markets Conduct Bill. This would include a review of the need for annual reports more generally, including how they should be published and distributed, and, if they are to be retained, the exact content of these reports.