

2 November 2009

Chris Gillion
Inland Revenue
Policy Advice Division
P O Box 2198
Wellington

Dear Chris,

WORKPLACE SAVINGS NZ Submission on the Retirement Savings Portability Consultation Document

We wish to submit the attached in respect Retirement Savings Portability Consultation document released on 21 October 2009

Workplace Savings NZ is a national, not-for-profit, apolitical membership organisation.

Our current membership comprises around 100 major workplace superannuation and KiwiSaver schemes and another 50 organisations and individuals representing the various product and service providers for workplace savings arrangements. We have recently reviewed the principal goals and objectives of our organisation and changed name from ASFONZ to better reflect our objectives.

From the perspective of assets under management, the membership of Workplace Savings NZ covers around 90% of retirement savings held through workplace retirement saving arrangements (i.e. Corporate and Master Trust superannuation schemes and KiwiSaver).

Workplace Savings NZ's objective is to be the Voice of Workplace Savings; advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved – including the core workplace superannuation scheme members who remain at the heart of the organisation. It does this through:

- Advocating – advancing legislative and public policy initiatives beneficial to workplace savings and participation in the workplace savings industry, making submissions, engaging with policy-makers and officials and issuing media commentary to advance those causes.
- Education – promoting trustee, employer and member financial and regulatory education through dedicated training programmes, newsletters and special interest seminars.
- Networking – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.
- Promotion – publicising the benefits of workplace savings, and helping to improve public confidence in workplace savings.

Contact:

Bruce Kerr
Executive Director, Workplace Savings N.Z.
PO Box 19-194, Wellington, NZ
Ph. (04) 381 3382
Mob. (027) 284 0481
Email Bruce.kerr@workplacesavings.org.nz
Web Site www.workplacesavings.org.nz

I would be pleased to discuss our comments or answer any queries in relation to the submission.

Thank you for the opportunity to make this submission.

Yours sincerely



Bruce Kerr
Executive Director

Workplace Savings NZ

Te māngai penapena ā-mahi

Submission to the

Inland Revenue, Policy Advice Division

on the

**Retirement Savings Portability Consultation
document released on 21 October 2009**

2 November 2009

Summary of our submission

Workplace Savings NZ supports the intended objectives of Trans-Tasman portability.

However, we consider that the implications for savers and providers alike should be carefully examined, and where appropriate, legislative alignment that facilitates seamless portability of accumulated retirement savings between the two jurisdictions should be adopted.

Retirement Savers:-

- Workplace Savings NZ believes that in order to incentivise expatriate New Zealanders to repatriate their Australian accumulated retirement savings back to New Zealand, Government should strongly consider alignment of the tax rate applied to the investment earnings on the locked-in repatriated retirement savings amount, with the rate applied in Australia. That is 15% versus the proposed 33% (or any lesser rate applicable under the PIE regime).

KiwiSaver Providers:-

- The introduction of Trans-Tasman Portability will undoubtedly have cost consequences for KiwiSaver Providers. These will include:-
 - Increased operational costs arising from the need to ring-fence and maintain records for amounts transferred and subsequent applicable investment returns;
 - Additional costs that will arise from the need to produce new compliant product disclosure documentation (e.g. Prospectus's and Investment Statements).
- Recovery of these costs may be difficult under the "unreasonable fees" regime, and as such, may act as a disincentive for provider support across the entire KiwiSaver universe.

Comment

Workplace Savings NZ welcomes the opportunity to comment on the Retirement Savings Portability Consultation document and the draft Spareparts Bill - KiwiSaver Portability prior to the draft being introduced into Parliament. We believe that seeking submissions from interested parties on the wording of such a technical piece of legislation, in addition to the usual Select Committee process, will result in a more workable Act.

Workplace Savings NZ would be pleased to discuss the issues raised at any time and to work with the Department with the objective of introducing workable legislation that best meets the needs of all parties concerned.

Workplace Savings NZ submission on questions raised in the Discussion Document

- 1 *Will providers be able to check the eligibility of KiwiSaver applicants when they ask to transfer their savings from Australia? Or will they just accept any transfer of savings from an Australian scheme provider?*
 - A. We believe New Zealand providers should be able to rely on written confirmation from the Australian provider, when accepting the transferred funds, that the funds come from an Australian complying superannuation scheme.
- 2 *What information from Australian providers will be required for KiwiSaver providers for a specific member? Such as the person's Australian tax file number (Australian equivalent), the Australian scheme's tax file number. See section 56 of the KiwiSaver Act 2006.*
 - A. There appears to be no obvious additional Australian scheme data relevant to the transfer.

- B. We question whether Section 56 is relevant to a transfer of this nature? This Section appears to be aimed at preventing multiple KiwiSaver accounts and ensuring that the old scheme provider gives information relevant to a KiwiSaver transfer?
- 3 *Can KiwiSaver providers also ring-fence any earnings or losses on Australian-sourced savings (in addition to ring-fencing the principal amount), so that the earnings of a member's account are separately identifiable as being on New Zealand-sourced savings and Australian-sourced savings?*
- A. KiwiSaver providers asked have suggest that there is no technical impediment to having a third KiwiSaver account for receipt of the amount transferred and collection of the relevant scheme earnings.
- B. Such an account would be deemed only for receipt of "Trans-Tasman" transfers and as such would not attract a Member Tax Credit.
- 4 When the Australian-sourced savings are transferred back to the person's Australian superannuation account after their membership is deemed invalid, what happens if the Australian account has been closed? Will the savings be able to be transferred to an Australian superannuation scheme of the person's choice?
- A. We consider it would be preferable to provide for return to the previous scheme as a default position if that scheme is still open and is able to reopen the account. Otherwise, a mechanism using an Australian government agency might be needed to accommodate returns of this nature. Alternatively, the individual concerned may be allowed to override this by having chosen another provider. This does pose a potential problem in that the KiwiSaver provider would not have any obvious way of knowing that the scheme chosen by the member is a complying scheme in Australia.
- 5 *Is a person's KiwiSaver account closed after their membership is deemed invalid and all of their savings have been paid to Inland Revenue or back to the Australian provider?*
- A. The theory would be that it was never open in the first place – it related to an invalid membership. Most trust deeds would provide for the account to be closed if the balance is zero.

Other comments on the content of the Discussion Document

- 1 *Any New Zealand-sourced retirement savings that are transferred to Australia will not be able to be transferred to a third country. To withdraw savings after emigration to a third country, a member will need to transfer the savings back to New Zealand so any member tax credits can be recovered by the Crown.*
- A. If payments out of Australia are to be allowed, a mechanism would need to be established for this to happen through an appropriate Government agency, such as Inland Revenue. This is because the person's previous KiwiSaver account will have been closed after the transfer and, in the circumstances described, the person would not be eligible to apply to join KiwiSaver (i.e. not NZ resident). Additionally we consider that KiwiSaver Providers would be reluctant to agree to receive the funds solely for the purpose of refunding Crown contributions to the Crown and the balance of the residual accumulated savings to the person in their new country of residence.
- 2 *If a member permanently emigrates from New Zealand to a country other than Australia, any Australian-sourced retirement savings may not be transferred from New Zealand to the third country.*
- A. This seems to be the contra position to the point made at 1 above. Presumably the alternatives is to seek a return of funds to Australia or to retain them here in KiwiSaver until a benefit becomes payable.

- 3 *A retired member may access the Australian-sourced savings at age 60. This is consistent with the Australian rules on the withdrawal of retirement savings, and ensures that a person is not disadvantaged by moving from Australia to New Zealand.*
- A. It would be useful for the legislation to spell out what "retiring" means (e.g. actually ceasing all work, leaving the current employer being 60+ or just reaching age 60?) as it is described in the applicable Australian legislation.
- 4 *The member tax credit will not be calculated on Australian-sourced retirement savings after they have been transferred to New Zealand.*
- A. Transfers of this nature are not generally considered to be "contributions". They are a separate category of deposit and are usually recorded as such (Note the Government Actuary's report to Parliament which distinguishes transfers from contributions in the statistical data.)
- 5 *Australian-sourced retirement savings may not be diverted to a member's mortgage repayments under the mortgage diversion facility.*
- A. We would point out that Mortgage Diversion is no longer available to new KiwiSaver members.
- 6 *Australian superannuation funds are taxed on their earnings at concessional rates (15 percent) and pensions paid out of such funds are typically tax-free after 60. Therefore, Australia imposes a limit (a "non-concessional contributions cap") of AU\$150,000 on the amount of contributions that an individual can make from non-wage sources in a particular year.*
- A. We consider that the Australian legislation should recognise that transfers of this nature, from a KiwiSaver Scheme, are not considered to be "contributions" under the New Zealand rules, and as such that there should be a mechanism for similarly distinguishing Trans-Tasman transfers into complying Australia Schemes. Surely the Australian regulations allow for the transfer of accumulated benefits between schemes without the transferred amount being regarded as a 'new' contribution?
- 7 *Transfers from KiwiSaver to an Australian superannuation scheme will be subject to the cap.*
- A. Applying the salary cap to transferred amounts will, over time as accumulated balanced grow, discourage transfers and thus encourage the proliferation of accounts. Not applying the salary cap to amounts transferred from other schemes should encourage the aggregation of accounts.
- 8 *Any increase or decrease in the amount transferred due to investment returns/losses or fluctuations in the exchange rate will need to be borne by the member, not the KiwiSaver provider or the Crown. This is consistent with the policy intention of section 59D.*
- A. Section 59D could possibly be deficient when considering the position of an amount transferred to an invalid membership account from a previous KiwiSaver account that was not invalid. 59D can work only if, for this purpose, the amount transferred is considered to be a contribution. Then, under 59D (4) the Commissioner would refund the transferred amount to the old scheme provider, being the "other person making a contribution". This assumes that the old scheme trust deed allows for the funds to be returned and for the account to be reinstated, possibly without the consent of the person concerned – the ex member. An amendment to 59D could perhaps be used as the base for providing specifically for the return of any amounts transferred from a previous scheme, whether it be another KiwiSaver scheme or one from Australia.

Observations on the Draft Legislation

- 1) Section 6(1):

- a) Should the clause number be 4A to follow 4?
 - b) Cross reference to Australian legislation at this point is unhelpful. Preferable to agree a definition to be used in NZ (otherwise it is likely to be taken to be attaining age 60 in practice). Meaning of necessary modifications for K/S scheme trustees is not clear.
- 2) Section 6(3):
- a) Again, should the clause number be 14A to follow 14?
 - b) It would be helpful for the heading for clause 14 be changed to say "other than Australia"? Should subclauses (1) & (2) be said to be "subject to clause 14A"?
 - c) Subclause (1) of clause 14A seems to preclude the option to take a cash payment after a year, excluding Crown contributions, if moving to Australia? Is this intended?

Submission Ends
