



KiwiSaver Amendment Regulations 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 5th day of March 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 228 of the KiwiSaver Act 2006, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the KiwiSaver Amendment Regulations 2012.
- 2 Commencement**
These regulations come into force on 31 March 2012.
- 3 Principal regulations**
These regulations amend the KiwiSaver Regulations 2006 (the **principal regulations**).
- 4 New regulations 5A and 5B inserted**
Before regulation 6, insert:
- “5A Purpose of regulation on requirements for annual report**
The purpose of regulation 5B is to prescribe the information, statements, certificates, and documents that must be contained in, or attached to, the annual report required under section 123 of the Act.
- “5B What is required in annual report**
“(1) The information, statements, certificates, and documents specified in Schedule 1A are prescribed for the purposes of section 123(3) of the Act.
“(2) The annual report must contain or, if that is impractical, have attached to it the information, statements, certificates, and documents specified in Schedule 1A that are applicable.”
- 5 New Schedule 1A inserted**
Before Schedule 1, insert the Schedule 1A set out in Schedule 1 of these regulations.

6 Schedule 1 amended

Amend Schedule 1 as set out in Schedule 2 of these regulations.

Schedule 1

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New Schedule 1A inserted**Schedule 1A**

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Information, statements, certificates, and documents to be contained in, or attached to, annual report**1 Description of scheme**

- (1) The following details, as are applicable, relating to the scheme as at the end of the period covered by the annual report:
 - (a) the name of the scheme:
 - (b) the name of the manager of the scheme:
 - (c) the name of the trustee of the scheme:
 - (d) the name of every promoter of the scheme:
 - (e) the name of every administration manager of the scheme:
 - (f) the name of every investment manager of the scheme:
 - (g) the names of every registrar, custodian, and auditor of the scheme.
- (2) The registration date of the most recent prospectus for the scheme that has been registered under the Securities Act 1978.

2 Key information

- (1) A brief description of the investment performance of the scheme (or, if the scheme has more than 1 fund, for each fund in the scheme) for the financial year covered by the annual report, and the basis upon which the performance information has been calculated.
- (2) The total amount of fees (specifying direct and indirect fees separately) that were charged by each of the persons or class of persons specified in clause 2 of the KiwiSaver scheme rules during the financial year covered by the annual report.

Schedule 1A—*continued*

- (3) A statement of the numerical changes in the membership of the scheme during the financial year covered by the annual report, specifying the totals required at letters A, B, C, I, and M in table 2 of form 1 of Schedule 1.
- (4) The number of members of the scheme who during the financial year covered by the annual report made a withdrawal and, in each case, the total amount withdrawn by those members—
 - (a) for the purchase of a first home under clause 8 of the KiwiSaver scheme rules:
 - (b) on the grounds of significant financial hardship under clause 10 of the KiwiSaver scheme rules:
 - (c) on the grounds of serious illness under clause 12 of the KiwiSaver scheme rules:
 - (d) on the grounds of permanent emigration under clause 14 of the KiwiSaver scheme rules.
- (5) The total amount of each type of contribution received by the provider for the financial year covered by the annual report, and the number of members credited with each type.
- (6) The total amount of members' accumulations at the end of the financial year covered by the annual report, and the number of members with accumulations.
- (7) The number of members of the scheme who during the financial year covered by the annual report transferred money from an Australian complying superannuation scheme, and the total amount transferred in by all those members.

3 Changes relating to scheme

- (1) A summary of all changes that were made during the period covered by the annual report to—
 - (a) the trust deed:
 - (b) the terms of the offer of interests in the scheme:
 - (c) the investment objectives and policy for the scheme or, if the scheme has more than 1 fund, for each fund of the scheme.
- (2) Details, as are applicable, of any changes during the period covered by the annual report in relation to—

Schedule 1A—*continued*

- (a) the manager and any directors of the manager:
- (b) the trustee or, in the case of a corporate trustee, any directors of the trustee:
- (c) the promoter of the scheme:
- (d) the administration manager or investment manager of the scheme:
- (e) the registrar, custodian, or auditor of the scheme.

4 Financial statements and auditor's report

- (1) A reference to the financial statements for the scheme that comply with, and have been registered under, the Financial Reporting Act 1993 for the period covered by the annual report, and the date of registration.
- (2) The date of the auditor's report on those financial statements, and a statement as to whether or not the report referred to a fundamental uncertainty or was qualified in any respect and, if so, an explanation of that uncertainty or qualification.
- (3) Either—
 - (a) a reference to the summary financial statements that have been included in the prospectus for the scheme for the period covered by the annual report; or
 - (b) summary financial statements that meet,—
 - (i) in the case of a restricted scheme, the requirements specified in clause 5 of Schedule 6 of the Securities Regulations 2009:
 - (ii) in any other case, the requirements of clause 7 of Schedule 5A of the Securities Regulations 2009.
- (4) A statement to the effect that the most recent prospectus, and financial statements and other documents of, or relating to, the scheme, are filed on a public register at the Companies Office of the Ministry of Economic Development and available for public inspection (including at <http://www.business.govt.nz/companies>).
- (5) A statement describing member's rights to receive, on request, a copy of the most recent financial statements, auditor's report, an estimate of the member's benefits, or a copy of the most recent registered prospectus relating to the scheme.

Schedule 1A—*continued***5 Statement by trustee or manager**

- (1) A statement by the trustee (in the case of a restricted scheme) or the manager (in the case of any other KiwiSaver scheme)—
- (a) as to whether or not—
 - (i) all the benefits required to be paid from the scheme in accordance with the terms of the trust deed and the KiwiSaver scheme rules have been paid:
 - (ii) the market value of the assets of the scheme at the close of the financial year equalled or exceeded the total value of benefits that would have been payable had all members of the scheme ceased to be members at that date and had provision been made for the continued payment of all benefits being paid to members and other beneficiaries as at the close of the financial year:
 - (iii) there is a scheme provider agreement between the Commissioner and the provider of the scheme that remained in force throughout the period covered by the annual report:
 - (b) that, if there has been an increase in a fee referred to in clause 2 of the KiwiSaver scheme rules during the year, the fee as increased is not unreasonable in the trustee's or manager's opinion (as the case may be), having regard to any matters prescribed under section 228(1)(p) of the Act and any guidelines published by the FMA under section 127 of the Act:
 - (c) that contributions received in respect of each member, including contributions paid by way of the Commissioner in respect of that member, have been applied in accordance with the trust deed and the Act.
- (2) In the case of a restricted scheme, a statement by the trustee as to whether or not more than 10% of the market value of the assets of the scheme is invested directly or indirectly (in a way it would be reasonable for the trustees to be aware of) in any employer who is a party to the scheme or in any company or

Schedule 1A—*continued*

entity associated with any such employer and if so, details of all such investments held during the year.

- (3) In the case of any KiwiSaver scheme not referred to in sub-clause (2), a statement by the trustee as to whether or not, in respect of the relevant financial year, the trustee is satisfied that the manager has not breached an issuer obligation (as defined in section 4(1) of the Securities Trustees and Statutory Supervisors Act 2011) in a material respect.

6 Inquiries and complaints

- (1) The names, or descriptions, and contact details (which must include an address and a business telephone number) of the officers, employees, or agents of the trustee (in the case of a restricted scheme) or manager (in the case of any other Kiwi-Saver scheme) to whom inquiries about the scheme may be made.
 - (2) The names, or descriptions, and contact details (which must include an address and a business telephone number) of the officers, employees, or agents of the trustee or manager (as the case may be) to whom complaints regarding the scheme may be made.
 - (3) A statement explaining how to make a complaint about the trustee or manager (as the case may be), and the names and contact details (which must include an address and a business telephone number) of the persons to whom such a complaint may be made.
 - (4) A statement explaining how to make a complaint to an approved dispute resolution scheme about the manager or the trustee, and the name and contact details (which must include an address and a business telephone number) of the relevant dispute resolution scheme.
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Schedule 2 Amendments to Schedule 1

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Form 1, table 1

In form 1, table 1, under the heading “**Categories of income for annual return year**”, after the item relating to transfers of members’ accumulations into scheme from registered superannuation schemes, insert:

Transfers of members’ accumulations into scheme from Australian super- annuation schemes	[<i>number</i>]	[<i>amount</i>]
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In form 1, table 1, under the heading “**Categories of expenditure for annual return year**”, after the item relating to transfers of members’ accumulations out of scheme into other KiwiSaver schemes, insert:

Transfers of members’ accumulations out of scheme into Australian super- annuation schemes	[<i>number</i>]	[<i>amount</i>]
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In form 1, table 1, under the heading “**Categories of expenditure for annual return year**”, after the item relating to amounts required to be paid under other enactments, insert:

Invalid enrolment withdrawals	[<i>number</i>]	[<i>amount</i>]
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In form 1, table 1, under the heading “**Categories of expenditure for annual return year**”, after the item relating to other scheme expenses, insert:

Taxation	[<i>amount</i>]
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In form 1, table 1, under the heading “**Notes:**”, replace the second bullet point with:

- “• income and expenditure should be entered on an accruals basis:
- “• closing balance should equal scheme’s net assets.”

Form 1, table 2

In form 1, table 2, under the heading “**Categories of entries of members for annual return year**”, after the item relating to members transferring into scheme from other KiwiSaver schemes, insert:

Members transferring into scheme from Australian super- [number]
annuation schemes

In form 1, table 2, under the heading “**Categories of membership exits for annual return year**”, after the item relating to transfers out of scheme into other KiwiSaver schemes, insert:

Transfers out of scheme into Australian superannuation [number]
schemes

In form 1, table 2, under the heading “**Categories of membership exits for annual return year**”, after the item relating to other permanent exits, insert:

Invalid enrolment withdrawals [number]

Form 2, table 1

In form 2, table 1, under the heading “**Categories of income for annual return year**”, after the item relating to transfers of members’ accumulations into scheme from registered superannuation schemes, insert:

Transfers of members’ ac- [number] [amount] [number] [amount]
cumulations into scheme
from Australian super-
annuation schemes

In form 2, table 1, under the heading “**Categories of expenditure for annual return year**”, after the item relating to significant financial hardship withdrawals, insert:

Transfers of members’ ac- [number] [amount] [number] [amount]
cumulations out of scheme
into Australian superannu-
ation schemes

In form 2, table 1, under the heading “**Categories of expenditure for annual return year**”, after the item relating to amounts required to be paid under other enactments, insert:

Form 2, table 1—*continued*

Invalid enrolment with- [number] [amount] [number] [amount]
drawals and late opt-outs

In form 2, table 1, under the heading “**Categories of expenditure for annual return year**”, after the item relating to insurance premiums, insert:

Taxation [amount] [amount]

In form 2, table 1, under the heading “**Notes:**”, replace the second bullet point with:

- “• income and expenditure should be entered on an accruals basis:
- “• closing balance should equal scheme’s net assets.”

Form 2, table 2

In form 2, table 2, under the heading “**Categories of entries of members for annual return year**”, after the item relating to members transferring into scheme from other KiwiSaver schemes, insert:

Members transferring into scheme [number] [number]
from Australian superannuation
schemes

In form 2, table 2, under the heading “**Categories of membership exits for annual return year**”, after the item relating to transfers out of scheme into other KiwiSaver schemes, insert:

Transfers out of scheme into Aus- [number] [number]
tralian superannuation schemes

In form 2, table 2, under the heading “**Categories of membership exits for annual return year**”, after the item relating to other permanent exits, insert:

Invalid enrolment withdrawals [number] [number]

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 31 March 2012, amend the KiwiSaver Regulations 2006 (the **principal regulations**) by—

- inserting *new regulations 5A and 5B*, which set out the purpose of the new regulation on the requirements for the contents of an annual report and prescribe the information, statements, certificates, and documents that are required to be contained in the annual report or, if it is impractical for those materials to be contained in the annual report, be attached to the report (*see regulation 4*). The requirement for such material is provided for in section 123(3) of the KiwiSaver Act 2006:
- inserting a *new Schedule 1A*, which sets out details of the material prescribed by *new regulation 5B* (*see regulation 5*). The prescribed matters are—
 - a description of the scheme:
 - key information about the scheme:
 - a summary of all changes made to the scheme during the period covered by the annual report:
 - information regarding the financial statements and auditor's report for the period covered by the annual report:
 - a statement by the trustee (in the case of a restricted scheme) or the manager (in the case of any other KiwiSaver scheme), containing confirmation of prescribed matters:
 - information regarding persons to whom inquiries and complaints regarding the scheme may be made:
- amending Schedule 1, form 1, tables 1 and 2 (which relate to KiwiSaver schemes other than default KiwiSaver schemes), and form 2, tables 1 and 2 (which relate to default KiwiSaver schemes) (*see regulation 6*). These amendments extend the scope of the information that is required to be included in annual returns (*see regulation 9* of the principal regulations). The new requirements relate to—
 - the collection of information about—

- movements in funds to and from Australian complying superannuation funds:
 - invalid enrolments to, and late opt-outs from, the scheme:
 - taxes paid by the scheme:
 - the notes to the tables, providing that, in an annual return,—
 - the income and expenditure should be entered on an accrual basis:
 - the closing balance should equal the scheme's net assets.
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These regulations are administered by the Ministry of Economic Development.
