

## **KiwiSaver Act 2006**

### **KiwiSaver Default Provider (Mercer) Notice 2014**

Pursuant to section 177 of the KiwiSaver Act 2006 (“the principal Act”), the Minister of Finance and the Minister of Commerce jointly give the following notice.

#### **1 Title**

This is the KiwiSaver Default Provider (Mercer) Notice 2014.

#### **2 Commencement**

This notice comes into force on 1 July 2014.

#### **3 Interpretation**

Terms used in this notice and defined in the principal Act have the meanings so defined.

#### **4 Appointment of provider**

Mercer (N.Z.) Limited (**Mercer**) is appointed to provide-

- (a) the default KiwiSaver scheme referred to in clause 5; and
- (b) the default investment product referred to in clause 6.

#### **5 Default KiwiSaver scheme**

The KiwiSaver scheme described in Schedule 1 is a default KiwiSaver scheme.

#### **6 Default investment product**

The investment product described in Schedule 2 is a default investment product.

#### **7 Terms and conditions**

This notice is subject to the terms and conditions specified in Schedule 3.

#### **8 Expiry**

Subject to clause 9, this notice expires on the close of 30 June 2021.

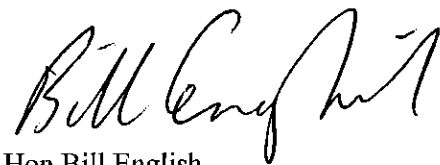
#### **9 Renewal**

- (1) The Minister may extend the expiry date in clause 8 by up to 6 months, as specified in a further notice given by the Minister at any time before 1 January 2021.
- (2) In addition, the Minister may renew this notice by a further notice in writing, subject to such terms and conditions and for such further term as the Minister in his or her discretion specifies in that notice.
- (3) However, the Minister must not renew this notice under subclause (2) unless the Minister has consulted the person appointed under clause 4 about the proposed renewal.

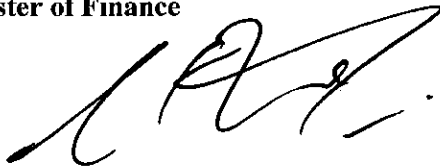
**10 Variation, revocation and suspension**

- (1) This notice may be varied by the Minister by notice in writing.
- (2) However, the Minister must not vary this notice unless the Minister has consulted the person appointed under clause 4 about the proposed variation.
- (3) The Minister may revoke the appointment made under clause 4, or require suspension of the provisional allocation of new default members to the default KiwiSaver scheme in accordance with Part 9 of Schedule 3, by notice in writing.
- (4) Further provisions relating to revoking the appointment and suspending the provisional allocation of new default members to the default KiwiSaver scheme are set out in Part 9 of Schedule 3.

DATED at Wellington this 16<sup>th</sup> day of April 2014



Hon Bill English  
Minister of Finance



Hon Craig Foss  
Minister of Commerce

## **Schedule 1**

### *Clause 5*

#### **Default KiwiSaver Scheme**

The following KiwiSaver scheme is a default KiwiSaver scheme:

The scheme called the Mercer KiwiSaver Scheme, currently governed by a trust deed dated 7 September 2012 signed by Mercer (N.Z.) Limited as manager and Trustees Executors Limited as trustee.

## **Schedule 2**

### *Clause 6*

#### **Default Investment Product**

The following investment product is a default investment product:

The investment product called the Mercer KiwiSaver Conservative Portfolio, established under the trust deed referred to in Schedule 1.

### Schedule 3

#### Clause 7

#### Terms and Conditions

##### Part 1 – Preliminary

#### 1 Interpretation

In this Schedule and the Appendices, unless the context otherwise requires-

**central administrator** means the Inland Revenue Department

**Commissioner** has the meaning given to it by section 4 of the KiwiSaver Act

**default investment product** means the default investment product described in Schedule 2

**default KiwiSaver scheme** means the KiwiSaver scheme described in Schedule 1

**default member** means any member of the default KiwiSaver scheme who became a member in accordance with sections 50 to 52 of the KiwiSaver Act (or pursuant to any regulations made under section 230(1)(ba) of the KiwiSaver Act) and who has not chosen an investment product in the default KiwiSaver Scheme

**default product assets** means the assets held in the default investment product

**default provider** means the person appointed under this notice as the provider of the default KiwiSaver scheme and the default investment product

**Department** has the meaning given to it by section 4 of the KiwiSaver Act

**FMA** has the meaning given to it by section 4 of the KiwiSaver Act

**FMC Act** means the Financial Markets Conduct Act 2013

**good industry practice** means the standard of care specified in clause 4

**implementation date** means 1 July 2014

**KiwiSaver Act** means the KiwiSaver Act 2006

**Minister** has the meaning given to it by section 4 of the KiwiSaver Act

**new default allocations** means provisional allocations of new default members to the default KiwiSaver scheme under section 50 of the KiwiSaver Act

**non-default investment product** means an investment product of the default KiwiSaver scheme, other than the default investment product

**person** includes a corporation sole and also a body of persons (whether corporate or unincorporate)

**proposal** means the proposal dated 13 December 2013 submitted to the Department by the default provider in response to the Request for Proposal (Provision of Default KiwiSaver Schemes) issued by the Department on or about 29 October 2013

**quarter** means a period of 3 months commencing on the 1<sup>st</sup> day of January, April, July, or October

**records** means all original and copy records, documents, books, files, reports, accounts, plans, correspondence, letters and papers of every description and other material regardless of its form or medium relating to the default KiwiSaver scheme, the default investment product or a default member

**related company** has the meaning given to it by section 2(3) of the Companies Act 1993

**relevant member** means a default member and any other member of the default KiwiSaver scheme who has invested in the default investment product

**relevant requirements** means-

- (a) the provisions of the KiwiSaver Act (and regulations made under it) that are in force and apply to the default KiwiSaver scheme;
- (b) the provisions of the FMC Act (and regulations made under it) that are in force and apply to the default KiwiSaver scheme;
- (c) this notice;
- (d) the trust deed; and
- (e) all other applicable legislation

**trust deed** means the trust deed of the default KiwiSaver scheme

**trustee** means the independent trustee corporation designated as the trustee of the default KiwiSaver scheme in the trust deed, or its successors

**working day** means a day of the week other than-

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

## **Part 2 – Provision of default KiwiSaver scheme and default investment product**

### **2 Provider to ensure default KiwiSaver scheme and default investment product provided**

From the implementation date, the default provider must ensure that:

- (a) the default KiwiSaver scheme and default investment product are provided to the default members in accordance with the relevant requirements; and
- (b) the default investment product is offered to all other current and prospective members of the default KiwiSaver scheme as an elective investment option in accordance with all applicable relevant requirements.

### **3 Provider to accept allocated members**

- (1) The default provider must accept and register as a member of the default KiwiSaver scheme each person allocated to the default KiwiSaver scheme by the central administrator as a default member in accordance with the KiwiSaver Act and the trust deed.
- (2) Each default member's account must be credited with contributions paid to the default provider in respect of that member by the central administrator.
- (3) Each default member's account must be credited with other contributions paid to the default provider by or for the benefit of the default member in accordance with the relevant requirements, including the amount transferred from another KiwiSaver scheme pursuant to any regulations made under section 230(1)(ba) of the KiwiSaver Act.

### **4 Standard of care**

The default provider must ensure that when exercising any powers or performing any duties in relation to relevant members, the default investment product or default product assets-

- (a) it exercises the care, diligence and skill that a prudent person engaged in the profession of acting as the manager of a KiwiSaver scheme (other than a restricted scheme) would exercise in the same circumstances; and
- (b) it acts in a proper, business-like, timely, and efficient manner.

## **Part 3 – Investment of default product assets**

### **5 Investment of default product assets**

The default provider must ensure that, in relation to the default investment product-

- (a) the default provider-
  - (i) has and maintains a statement of investment policies and objectives that reflects good industry practice; and
  - (ii) invests the default product assets in accordance with the statement; and
- (b) subject to clause 6, the statement of investment policies and objectives is and remains consistent with good industry practice as to the allocation of investments for a conservative investment product; and
- (c) all Crown contributions which are received in respect of default KiwiSaver scheme members and are required to be credited to the default investment product are applied in accordance with the requirements of the KiwiSaver Act; and

- (d) as a minimum, default product assets are held and otherwise dealt with in accordance with good industry practice and all applicable relevant requirements.

## **6 Default investment product asset allocation**

Subject to the relevant requirements, the default provider in relation to the default investment product may not invest less than 15% or more than 25% of default product assets in growth assets without the prior written approval of the Minister, except while any breach of these limits is caused by an external event or circumstance which is beyond its reasonable control and does not arise directly or indirectly from its breach of any relevant requirement.

### **Part 4 – Administration of the default KiwiSaver scheme**

## **7 General responsibilities**

The default provider must ensure that the default KiwiSaver scheme is administered in accordance with good industry practice and the relevant requirements.

## **8 Specific responsibilities**

Without limiting clause 7, the default provider must ensure that-

- (a) proper records are kept of relevant members, default product assets, and the default KiwiSaver scheme's activities in accordance with good industry practice, and as necessary to enable the default KiwiSaver scheme to comply with the relevant requirements; and
- (b) financial statements of the default KiwiSaver scheme are prepared and audited in accordance with good industry practice and all relevant requirements; and
- (c) it prepares and maintains:
  - (i) while required under the Securities Act 1978, a prospectus and concise investment statement for the default KiwiSaver scheme; then
  - (ii) when the relevant provisions of the FMC Act are in force and apply to the default KiwiSaver scheme, a product disclosure statement relating to the default investment product;

which comply with all relevant requirements and are consistent in all material respects with the principles expressed in relevant guidance from the Financial Markets Authority; and

- (d) it provides such number of copies of (as applicable) the investment statement for the default KiwiSaver scheme or the product disclosure statement relating to the default investment product as are reasonably requested by the central administrator; and
- (e) statements about default product assets and reports about the default KiwiSaver scheme's activities are provided to members in accordance with good industry practice and the relevant requirements; and
- (f) contributions are received and held, and withdrawals and switches from the default investment product are processed, in accordance with good industry practice and the relevant requirements; and



- (g) overpaid contributions by or in respect of relevant members are refunded to the central administrator in accordance with the KiwiSaver Act and otherwise in the manner, and within the timeframes, specified by the central administrator; and
- (h) the transfer of a relevant member between KiwiSaver schemes is processed in accordance with (as applicable) the KiwiSaver Act or the FMC Act and otherwise in the manner specified by the central administrator; and
- (i) throughout the term of its appointment under this notice:
  - (i) it meets the minimum service standards set out in Appendix 3, except where any timing delay:
    - (A) is necessitated by an external event or circumstance which is beyond its reasonable control (and does not arise directly or indirectly from its breach of another relevant requirement); or
    - (B) is necessary in order to comply with another relevant requirement (and it has notified the FMA in advance, specifying the reasons for the delay); and
  - (ii) it complies with the service undertakings set out in the proposal (including, without limitation, the undertakings relating to member education initiatives).

#### **Part 5 – Portfolio investment entity tax rules**

#### **9 Default KiwiSaver scheme and default investment product to comply with rules**

The default provider must ensure that the default KiwiSaver scheme and default investment product comply with any tax rules in force for portfolio investment entities that apply.

#### **Part 6 – Reporting, audit and performance management**

#### **10 Report to FMA**

The default provider must ensure that, no later than 20 working days from completion of the annual report required:

- (a) under section 123 of the KiwiSaver Act; or
- (b) under regulations made pursuant to the FMC Act;

it provides a report to the FMA containing the information specified in paragraph 1 of Appendix 1.

## **11 Quarterly report by trustee**

- (1) The default provider must ensure that, no later than 30 working days after the end of each quarter, the trustee provides the FMA with a report for the quarter that contains the information specified in paragraph 2 of Appendix 1.
- (2) Each report must be in a form that the FMA may specify.

## **12 Further information**

The default provider must provide to the FMA such information relating to the default KiwiSaver scheme or the default investment product as the FMA may reasonably require by notice in writing to the default provider as soon as reasonably practicable after the FMA requests it, and in any case no later than 10 working days after the default provider receives the request (or by such later date as the FMA may allow).

## **13 Access to information**

- (1) The default provider must ensure that the FMA, and its representatives authorised in writing for the purpose, have such access to, and (where relevant) copies of, such records, premises, employees, and agents of the default KiwiSaver scheme as they may reasonably request from time to time in order to review the default provider's compliance with any relevant requirements.
- (2) Without limiting subclause (1), records that may be requested under that subclause include:
  - (a) external audit or agreed procedures reports;
  - (b) internal audit reports;
  - (c) external auditors' management letters.

## **14 Performance Management**

- (1) If and whenever the FMA determines that the default provider has committed or suffered a breach of the relevant requirements which is capable of remediation and should be remedied, the FMA may give notice to the default provider requiring the default provider to prepare a remedial plan in accordance with this clause 14. The default provider will prepare and provide that remedial plan to the FMA within 10 days of receiving that notice, or any longer period allowed by the FMA.
- (2) Each remedial plan prepared under this clause 14 must include:
  - (a) a report outlining the relevant breach and its underlying causes;
  - (b) a detailed plan setting out the steps that the default provider intends to take to remedy the breach and prevent further like occurrences;
  - (c) a timetable for those remedial steps, providing for the breach and underlying causes to be fully remedied within a period of no more than 3 months from approval of the remedial plan; and
  - (d) full details of how the default provider's progress under the remedial plan will be monitored, verified and reported back to the FMA.

- (3) The FMA will review, and either approve or reject, each remedial plan received from the default provider under this clause 14.
- (4) If the FMA rejects a remedial plan it will notify the default provider of the reasons for rejection. Within 10 days of receiving that notice, the default provider must prepare a revised remedial plan (having due regard to the matters notified by the FMA) and submit that revised remedial plan to the FMA for review under subclause (3).
- (5) If and whenever the FMA approves a remedial plan, the default provider will promptly implement the remedial plan in accordance with its terms, and will monitor, verify and report on its progress in accordance with the remedial plan.
- (6) The preparation, review and/or approval of a remedial plan under this clause 14 will not in any way relieve the default provider of any responsibility for complying with this notice and other relevant requirements, or (subject to clause 18(1)(f)(ii)(B)) limit the exercise of any other powers of the Minister, the Department or the FMA, whether under this notice or otherwise.

## **Part 7 - Fees and costs**

### **15 Fees and costs**

- (1) No fees, costs, or other amounts in the nature of fees or costs may be charged directly or indirectly to default members, or met directly or indirectly from default product assets, other than the fees and costs specified in Appendix 2 and actual market trading costs incurred in respect of the default investment product (which include actual market trading costs incurred in respect of underlying funds).
- (2) The default provider must ensure that any fee, cost or other amount in the nature of fees or costs indirectly charged to default members, or indirectly met from default product assets, is no more than would usually be charged for a fee or cost of that nature in accordance with good industry practice.

### **16 Review of fees**

- (1) Except as provided in Appendix 2, the fees and costs specified in Appendix 2 must not be increased before the expiry of 3 years after the commencement of this notice.
- (2) The Minister may amend Appendix 2 by written notice.
- (3) The Minister must not amend Appendix 2 unless the Minister has first consulted the default provider.
- (4) The Minister will review the fees and costs specified in Appendix 2 within 3 months following the date-
  - (a) 3 years after the commencement date of this notice; and
  - (b) 5 years after the commencement date of this notice.
- (5) As part of the Minister's review, the default provider must provide the Minister with any reasons why the fees and costs specified in Appendix 2 should be amended.

## **Part 8 – Review of appointment**

### **17 Review of appointment**

- (1) The Minister may at any time review any aspect of the appointment of the default provider under this notice, over such time and taking into account such matters as the Minister considers appropriate.
- (2) The default provider must provide such information to the Minister, and such access to its records, premises, employees and agents, as the Minister may request for the purpose of the review.
- (3) The Minister may, following a review, do 1 or more of the following things-
  - (a) exercise the Minister's power to terminate the appointment (or to suspend new default allocations) under Part 9:
  - (b) vary any of the terms or conditions of this notice.

## **Part 9 – Termination and suspension**

### **18 Circumstances in which appointment may be terminated or new default allocations may be suspended**

- (1) The Minister may terminate the appointment of the default provider, or require the suspension of new default allocations, in accordance with clauses 19 to 22 if any of the following occurs:
  - (a) the default provider gives notice in writing to the Minister that the default provider wishes to cease acting as a default provider:
  - (b) the default KiwiSaver scheme is removed from the KiwiSaver schemes register under section 170 of the KiwiSaver Act (or ceases to be registered as a KiwiSaver scheme on the register of managed investment schemes kept under Schedule 2 of the FMC Act):
  - (c) the Minister determines that a change of control (as defined in subclause (3)) has occurred in respect of:
    - (i) the default provider (other than by reason of the default provider coming under the control of, or under common control with, another entity that is for the time being also a default KiwiSaver provider); or
    - (ii) any person named in Schedule 1 or Schedule 2 and involved in the administration management or investment management of the default KiwiSaver scheme and default investment product:
  - (d) the FMA recommends to the Minister that the appointment of the default provider be terminated, or that new default allocations be suspended, in circumstances where the FMA has given notice requiring the default provider to prepare and provide a remedial plan in accordance with clause 14 and the default provider -

- (i) has failed to provide the FMA with a corresponding remedial plan (or revised remedial plan) in accordance with the timeframes and other requirements of clause 14; or
  - (ii) has obtained the FMA's approval of a corresponding remedial plan in accordance with clause 14, but the default provider has failed to implement, monitor, verify and/or report on that remedial plan in accordance with its terms; and/or
  - (iii) at any time following the scheduled date for completion of the corresponding remedial plan, has committed or suffered a breach of a relevant requirement, and the FMA has determined that the breach is due to an underlying cause which should have been rectified under the remedial plan:
- (e) the Minister determines that the default provider has, in respect of the default KiwiSaver scheme, committed a material breach of the Securities Act 1978, the KiwiSaver Act or the FMC Act:
  - (f) the Minister determines that the default provider has committed a material breach of any terms or conditions of this notice, and the breach-
    - (i) is not capable of being remedied; or
    - (ii) is capable of being remedied, but is not remedied by the later of:
      - (A) 10 working days after the default provider became aware of the breach (or such later date as the Minister may specify by notice in writing to the default provider); or
      - (B) where the FMA has approved under clause 14(3) a remedial plan in respect of the relevant breach, the date when the remedial plan requires the breach to be remedied; or
    - (iii) is one of three or more material breaches that have occurred during the term of this notice, regardless of whether the breach (or any past breach) has been remedied or is (or was) capable of being remedied:
  - (g) a receiver, liquidator, administrator, statutory manager or similar person under the law of any jurisdiction is appointed (other than for the purposes of an amalgamation or solvent reconstruction) in respect of the default provider or the trustee or the default provider or the trustee makes a composition or arrangement with its creditors, or an order is made or an effective resolution passed for the dissolution or winding up of the default provider or trustee:
  - (h) the Minister becomes aware that any material information provided to the Minister on which the Minister based his or her decision to appoint the default provider was incorrect or misleading in any material respect.
- (2) Without limiting the Minister's discretion, the Minister is entitled to treat any breach referred to in subclause (1)(e) or (f) as material if the Minister considers that the breach, either alone or in combination with any other event or action, is of such seriousness that it compromises the default provider's ability to provide the default KiwiSaver scheme in accordance with the relevant requirements.

- (3) For the purposes of subclause (1)(c) and this subclause (3)-
- (a) a “change of control” occurs in respect of an entity if (and whenever) a person gains or relinquishes ultimate control of that entity:
  - (b) control of an entity includes-
    - (i) having the power to appoint, determine or control the appointment of more than half the members of its governing body (or members of its governing body who together hold more than half of the rights to vote exercisable generally at a meeting of that body); and/or
    - (ii) having the power to exercise, or control the exercise of, more than half the votes exercisable on an ordinary resolution of its members or shareholders (as the case may be); and/or
    - (iii) having the power to direct, determine or significantly influence all or a substantial part of the business or general management of the entity:
  - (c) control of an entity also constitutes control of all other entities that the entity controls, whether directly or indirectly (for example, through a chain in which each successive entity controls the next):
  - (d) an entity is under the ultimate control of a person if that person controls the entity within the meaning of this subclause (3) and is not under the control of any other single person:
  - (e) where the Minister determines that two or more persons have an agreement, arrangement, or understanding to act, generally or often, jointly or in concert in relation to a power or control referred to in this subclause (3)-
    - (i) those persons will be regarded as one person; and
    - (ii) a change in the parties to that agreement, arrangement, or understanding will be regarded as one person relinquishing and another person gaining the power or control:
  - (f) it does not matter whether a power or control referred to in this subclause (3) is express or implied, direct or indirect, legally enforceable or not, or exercisable presently or in future or alone or jointly with another person or persons (but a mere power to cast one of many votes is not, in itself, a joint power within the meaning of this subclause (3)).

## **19 Process for termination of appointment**

If the Minister considers that any of the things specified in clause 18(1)(c) to (h) may have occurred, the Minister-

- (a) may, by written notice to the default provider and the Commissioner, suspend new default allocations under clause 20;
- (b) may, in the circumstances specified in clause 18(1)(c), give one or more notices to the default provider requiring it to supply information which the Minister considers relevant to determining whether the appointment of the default provider should

continue notwithstanding those circumstances (and the default provider will promptly comply with each such notice); but

- (c) may not take any other action until the Minister has-
  - (i) given the default provider written notice of the grounds that the Minister considers may justify termination of the appointment of the default provider, and any evidence on which the Minister bases his or her view; and
  - (ii) given the default provider an opportunity to make submissions to the Minister within a reasonable time specified by the Minister; and
  - (iii) considered any submissions made by the default provider within that time; and
- (d) will not terminate the appointment of the default provider on the grounds specified in clause 18(1)(c) if, on the basis of the submissions made by the default provider under paragraph (c), the Minister is satisfied that the default provider-
  - (i) will continue to have substantially the same resources, capability and operational priorities as those that were represented in the default provider's proposal; and
  - (ii) will continue to comply with all of the relevant requirements:
- (e) may, by notice in writing to the default provider, give notice of the Minister's intention to terminate the appointment of the default provider under this notice.

## **20 Suspension of new default allocations**

- (1) A notice of suspension of new default allocations may specify the terms and conditions of the suspension, including (without limitation)-
  - (a) the term of the suspension;
  - (b) if applicable, what action the default provider must take for the suspension to be removed and the time within which the action is required to be taken;
  - (c) that the appointment of the default provider will be revoked if that action is not taken in that time.
- (2) During a suspension, the Commissioner:
  - (a) will not provisionally allocate any person as a default member to the default KiwiSaver scheme; but
  - (b) will continue completing the allocations to the default KiwiSaver scheme, in accordance with sections 51 to 52 of the KiwiSaver Act, of persons already provisionally allocated as default members to that scheme before the suspension took effect.
- (3) In relation to a suspension imposed on the grounds specified in clause 18(1)(c), the Minister will lift the suspension if on the basis of the submissions made by the default provider under clause 19(c) the Minister is satisfied that the default provider-

- (a) will continue to have substantially the same resources, capability and operational priorities as those that were represented in the default provider's proposal; and
  - (b) will continue to comply with all of the relevant requirements.
- (4) If the default provider comes under the control of, or comes under common control with, another entity that is for the time being also a default KiwiSaver provider then (without limiting the Minister's discretion under any other provision of this notice) that change of control:
- (a) will not entitle the Minister to terminate the appointment of the default provider; but
  - (b) will entitle the Minister (by written notice to the default provider and the Commissioner) to suspend new default allocations for as long as the other default KiwiSaver scheme managed by the other default KiwiSaver provider continues receiving provisional allocations to its default investment product in accordance with section 50 of the KiwiSaver Act.
- (5) To avoid doubt, a notice of suspension under this clause does not affect the default provider's obligations to comply with the terms and conditions specified in this notice.

## **21 Determination by Minister to terminate appointment**

- (1) The Minister may determine that the appointment of the default provider should be terminated if-
- (a) the default provider has given notice under clause 18(1)(a); or
  - (b) the default KiwiSaver scheme is removed from the KiwiSaver schemes register under section 170 of the KiwiSaver Act (or ceases to be registered as a KiwiSaver scheme on the register of managed investment schemes kept under Schedule 2 of the FMC Act); or
  - (c) the Minister-
    - (i) is satisfied that one or more of the things specified in clause 18(1)(c) to (h) has occurred; and
    - (ii) has complied with clause 19.
- (2) If the Minister makes a determination under subclause (1)-
- (a) the Minister may then at any time give written notice to the default provider and the Commissioner revoking this notice; and
  - (b) if the Minister has already suspended new default allocations under clause 20, the Minister must extend the suspension, if necessary, until this notice is revoked; or
  - (c) if the Minister has not already suspended new default allocations, the Minister must give notice of suspension under clause 20 to remain in force until this notice is revoked.
- (3) The default provider must comply with any directions given in writing by the Minister to the default provider following a determination under subclause (1).



- (4) Directions given under this clause may include (without limitation)-
- (a) 1 or more directions requiring the default provider to notify default members of the default KiwiSaver scheme-
    - (i) that the Minister has determined that the appointment of the default provider is to be terminated; and
    - (ii) of any other matters relating to the termination as the Minister specifies, or as the Minister and the default provider agree;
  - (b) 1 or more directions requiring the default provider (in anticipation of the entry into force of any regulations made, or to be made, under section 230 of the KiwiSaver Act regarding transfers to other default KiwiSaver schemes) to do any act or thing to facilitate or enable the subsequent transfer of default members, following the expiry of this notice, to 1 or more other default KiwiSaver schemes.

## **22 Revocation of appointment**

A notice revoking this notice has effect from the date specified in the notice.

## **23 Expiry**

- (1) Unless and until the default provider is appointed for a further term under a renewal or replacement of this notice, at any time after the date that is 6 months before this notice is due to expire, the default provider must comply with any directions given in writing by the Minister to the default provider.
- (2) Directions given under this clause may include (without limitation)-
  - (a) 1 or more directions requiring the default provider to notify default members of the default KiwiSaver scheme-
    - (i) that the appointment of the default provider is to expire on the relevant expiry date; and
    - (ii) of any other matters relating to the expiry as the Minister specifies, or as the Minister and the default provider agree;
  - (b) 1 or more directions requiring the default provider (in anticipation of the entry into force of any regulations made, or to be made, under section 230 of the KiwiSaver Act regarding transfers to other default KiwiSaver schemes) to do any act or thing to facilitate or enable the subsequent transfer of default members, following the expiry of this notice, to 1 or more other default KiwiSaver schemes.

## **Appendix 1**

### **Reporting**

#### **1 Return to FMA**

The report to be provided under clause 10 must contain the following information:

- (a) a copy of the most recent audited annual financial statements of the default provider and its parent company;
- (b) a copy of (as applicable) the current registered prospectus and investment statement for the default KiwiSaver scheme and default investment product or the product disclosure statement relating to the default investment product;
- (c) copies of the latest quarterly and annual disclosure statements produced for the default investment product under (as applicable) the KiwiSaver (Periodic Disclosure) Regulations 2013 or regulations made under the FMC Act;
- (d) a copy of the current statement of investment policies and objectives for the default investment product;
- (e) the default provider's market capitalisation (if any) and credit rating (if any) as at the date of the report;
- (f) details of any material change to the financial backing or support provided by the default provider's parent company;
- (g) copies of the most recent auditors' management letters.

#### **2 Trustee report**

The report to be provided under clause 11 must contain the following information:

- (a) a certificate from the trustee stating whether or not in the performance of the trustee's duties anything has come to the trustee's attention to indicate that the default provider has failed to comply with this notice during the previous quarter, including any failure to comply continuously with the statement of investment policies and objectives for the default investment product;
- (b) a general comment from the trustee on the administration of the default KiwiSaver scheme during the period;
- (c) a report from the trustee on any material event during the previous quarter which the FMA could reasonably expect the trustee to bring to its attention, including-
  - (i) failure by the provider to comply with applicable minimum service standards (including those set out in Appendix 3) or applicable service undertakings (including those set out in the proposal);
  - (ii) key personnel changes to the provider, any administration manager or the trustee;

- (iii) changes to any provider or other person named in Schedule 1 or Schedule 2 in relation to the default KiwiSaver Scheme and default investment product:
- (d) a report from the trustee on all actions taken by or on behalf of the provider during the previous quarter to address the financial literacy of members (and in particular default members) of the default KiwiSaver scheme, including details of:
  - (i) communications to default members to encourage them to choose an investment product within the default KiwiSaver scheme; and
  - (ii) the number of default members becoming non-default members:
- (e) a report from the trustee on all member complaints received in the previous quarter, detailing-
  - (i) the number of complaints received:
  - (ii) the nature of the complaints:
  - (iii) information as to how the complaints have been resolved:
- (f) a copy of every certificate given by the provider to the trustee in relation to the default KiwiSaver scheme - these must include:
  - (i) certification as to whether or not the service standards set out in Appendix 3, and the service undertakings set out in the proposal, have been complied with:
  - (ii) for each provider service set out in Appendix 3, information on:
    - (A) the volume of transactions (including dollar amounts in the case of contributions, transfers in and withdrawals):
    - (B) the number of transactions completed within (respectively) 1, 2, 3, 4, 5 to 10 and more than 10 working days:
    - (C) the percentage of transactions which complied with the relevant service standard (and an explanatory note where not all transactions complied):
- (g) a copy of every certificate or statement given by the auditor of the default KiwiSaver scheme to the trustee in relation to the default KiwiSaver scheme:
- (h) such other information as the FMA may reasonably require by written notice.

## Appendix 2

### Fees and costs

#### 1 Default investment product fees and costs

The fees and costs listed in the table below are for the default investment product within the default KiwiSaver scheme. All fees and costs are stated gross of taxation. GST may be added to the fees and costs as applicable.

Fee or cost type	Amount (gross of taxation)
Fund management fees	0.50% per annum, calculated on the net asset value of the default investment product whenever the default investment product's unit price is calculated.
Trustee fees	A maximum of 0.03% per annum, calculated on the net asset value of the default investment product whenever the default investment product's unit price is calculated.
Other fund fees	Actual costs associated with managers of underlying funds may be deducted from the returns received from those managers.
Membership fees	\$2.50 per default member per month. This fee is deducted each month from the default member's account.
Any other fees or expenses	Costs for ordinary expenses such as audit fees, tax fees and legal fees will be met by the default provider except to the extent that they relate to Exceptional Services as described in clause 2.  Performance based fees charged by managers of underlying funds may be deducted from the returns received from those managers.
Expense reimbursement and indemnity	As provided in the trust deed (and in addition to the indemnities at law). Anticipated ordinary expenses will be met by the default provider as described above under any other fees, costs or expenses. The trustee and, through the trustee, the default provider may receive further recovery of unexpected extraordinary expenses under the relevant provisions of the trust deed. Any amounts paid to the trustee out of default KiwiSaver scheme property under those provisions will be passed on to default members by such mechanism as the trustee shall determine.

#### 2 Exceptional services

- (1) In addition to the fees and costs specified above, a fee may be charged to default members, or met from default members' assets, in relation to any of the following exceptional services:
- a) the exercise by the default provider or trustee of any discretion, right, power, duty or privilege under its terms of appointment of an extraordinary nature;

- b) any breach or threatened breach of any relevant requirement by anyone other than the person receiving the fee involved in the management or administration of the default KiwiSaver scheme;
  - c) obtaining a court direction in relation to the default KiwiSaver scheme;
  - d) a meeting of members;
  - e) any other event or circumstance which, having regard to the nature of the default KiwiSaver scheme, can reasonably be regarded as out of the ordinary.
- (2) However, subclause (1) does not apply if the exceptional service arose directly or indirectly from a breach of any relevant requirement by the provider that charges the fee.
- (3) A fee for any of the exceptional services referred to in subclause (1) must be charged on a time and attendance basis in accordance with usual charge-out rates for work of this nature.

### Appendix 3

#### Minimum service standards

Provider service	Description	Service Standard (working days)
Processing new default member applications	Member record and account created and welcome letter sent.	Within 3 days of receiving data from central administrator.
Processing initial contributions in respect of default members	All initial payroll-sourced and Crown contributions received from central administrator are credited to member accounts and invested, and an initial opening statement is issued.	Within 3 days of transfer of those initial contributions from central administrator.
Processing ongoing contributions in respect of default members	Ongoing contributions received from IR are reconciled and credited to member accounts and invested.	Within 2 days of transfer of regular contributions from central administrator.
Making online account access available to default members	Online account access is available to members and members are provided with the option of receiving information electronically or by hardcopy.	Within 5 days of receiving initial contributions from central administrator.
Maintaining default member's account	Updating member account as required (change of address, change of name, change of investment election).	Within 2 days of receiving request from member (or within 5 days in the case of address changes necessitated following a large mail-out).
Processing default member's full payment after KiwiSaver end payment date	Processed and confirmation letter sent.	Within 5 days of receiving fully completed request from member, all required supporting information (including from central administrator) and final payment from central administrator.
Processing default member's partial withdrawals after KiwiSaver end payment date.	Processed and confirmation letter sent.	Within 5 days of receiving fully completed request from member and all required supporting information.
Processing default members' hardship withdrawals	Processed and confirmation letter sent.	Within 10 days of receiving fully completed request and all required supporting information.
Processing default members' other permitted withdrawals.	Processed and confirmation letter sent.	Within 3 days of receiving fully completed request, all required supporting information (including from central administrator where required) and trustee approval where required.
Default member switches	Processed and confirmation letter sent.	Within 3 days of receipt of request.

Default member transfers in	Processed and confirmation letter sent.	Within 3 days of receiving full data from old provider.
Default member transfers out	Processed and confirmation letter sent.	Within 10 days of the new provider confirming acceptance of the transfer.
Trans-Tasman portability – transfers in	Processed, money credited to member accounts and invested and confirmation letter sent	Within 3 days of receiving full transfer value and complete documentation from former provider.
Member reporting	Maintain a clear and concise investment statement while Securities Act 1978 applies, then (when Financial Markets Conduct Act 2013 applies) product disclosure statement relating to default investment product.	Available to members and potential members on request.
Member enquiries of general nature	Respond to verbal or written queries - as appropriate.	Within 2 days from receipt of a simple request, and within 5 days from receipt of a complex request (such as one which requires detailed calculations).