

## NEWSLETTER NO. 63 March 2008

This Newsletter contains:

1. **KiwiSaver Participating Employer Agreements**
2. **Trustee obligations relating to unpaid and short paid employer contributions to KiwiSaver schemes**
3. **Complying Superannuation Fund Register**
4. **KiwiSaver Statistical Return**
5. **KiwiSaver Guideline KSGN2: Performance Fees and Ethical Fund Fees**
6. **General comment regarding recent Legislative changes affecting fee disclosure**

### **1. KiwiSaver Participating Employer Agreements**

I draw trustees and administration manager's attention to the requirements relating to the amendment of participation agreements for KiwiSaver schemes. Effective 17 December 2007 section 129 was amended to require any amendment to a participation agreement to be amended in accordance with section 129 of the KiwiSaver Act 2006 ('the Act') with a copy lodged with my office within 14 days of execution. Please also note the broad definition of participation agreement in the Act.

### **2. Trustee obligations relating to unpaid and short paid employer contributions to KiwiSaver schemes**

Clause 1(d) of Schedule 2 of the Superannuation Schemes Act 1989 requires the trustees of a superannuation scheme to state in the scheme's annual report whether all contributions required to be made to the scheme in accordance with its deed have been made. Whilst section 123(3)(b) of the Act only requires the trustee of a KiwiSaver Scheme to state on an annual basis that they have applied contributions received in respect of each member in accordance with the Trust Deed, legal advice received confirms there is a general duty on a trustee to reconcile amounts that have been received against amounts that the trustee reasonably expected to receive from each employer. Where the two amounts do not match up, the general duty of a trustee is to then follow up this discrepancy and take appropriate action to address the discrepancy. Whether or not a trustee ought reasonably to be aware of contributions that are not directly apparent on the face of a trust deed or participation agreement or scheme

disclosure documentation, and the appropriate action to take in respect of any discrepancies, will depend in each case upon the circumstances of the scheme. The key point is that the relief provided under section 123(3)(b) of the Act, when compared with the annual report requirements of the Superannuation Schemes Act 1989, does not go so far as to relieve scheme trustees from their general trustee obligations.

### **3. Complying Superannuation Funds**

With effect from 1 April 2008 the “Requirements for Complying Fund Rules” have changed. A revised checklist is attached to this Newsletter and I note that existing complying fund deeds are being updated. A register of Complying Superannuation Funds can be found on the Insurance and Superannuation Unit’s website [www.isu.govt.nz](http://www.isu.govt.nz)

### **4. KiwiSaver Statistical Return**

The Act requires Trustees to prepare a statistical return for the period ending 31 March each year. To facilitate the completion of the return I will shortly be sending out a Microsoft Excel spreadsheet return for completion and return by 31 May 2008 to this Office. If Trustees or the administration manager would like the electronic return form (in excel format) to be sent to a specific person could they please email the persons address to [isu@isu.govt.nz](mailto:isu@isu.govt.nz).

### **5. KiwiSaver Guideline KSGN2: Performance Fees and Ethical Fund Fees**

The Act envisages the possibility of guidelines on unreasonable fees from this office. This guideline KSGN2 is the second and considers how my office will view performance fees and ethical fund fees.

Other guidelines may follow over the course of time.

A copy of the Guideline is attached to this Newsletter and will also shortly be available on the website.

### **6. General comment regarding recent Legislative changes affecting fee disclosure**

- **Reporting of fees**

Section 189B of the Act gives information on the duty to give notice to the Government Actuary about fee increases. The Act identifies that notice must be given “as soon as reasonably practicable” after the increase has taken effect.

It is of note that there are two distinct types of KiwiSaver scheme.

Firstly there is the employer scheme where the KiwiSaver element may be either a “bolt-on” to a normal registered superannuation scheme or a stand-alone employer KiwiSaver scheme for the employees of that employer. For this type of KiwiSaver scheme, it is more usual for all fees to be charged directly to the scheme. The legislation requires any person who increases a fee to notify the Government Actuary. In the extreme, a policy decision to use a “fastpost” postage stamp instead of an ordinary stamp for all correspondence is such an increase. Clearly this is not what is needed or required.

I would envisage the most appropriate approach for this type of KiwiSaver scheme would be to provide a statement at the time of the annual reporting which would identify all changes which had happened or were planned. The Act identifies that fees must not be unreasonable under five separate headings. The statement should separately provide details of each of the five types of fee charges identified in section 2(1) of Schedule 1 of the Act.

The second type of Kiwisaver scheme covers both the retail scheme of a KiwiSaver provider and the scheme which has similar fee structure to a retail scheme but is a scheme for an employer where there is a participating agreement to link to a provider’s KiwiSaver scheme.

For this type of KiwiSaver scheme the fees are in the main identified numerically except for certain fees which are charged directly to the fund and are covered by KSGN1. Any increase to a numerically defined fee or to a component of the non-numeric fee would be classed as an increase in fees. In order to minimise problems when an increase is deemed unreasonable, it is recommended that advice of proposed increases is provided to my office well before the increase takes place. For the non-numeric fee, confirmation is required that the fee level does not exceed the band identified in KSGN1. Any proposed non-compliance with KSGN1 is to be reported immediately.

This advice approach has worked well prior to the original Kiwisaver Schemes introduction (pre July 2007).

- **Timing of advice to Government Actuary about fee increases**

I would expect the most appropriate timing for a KiwiSaver scheme would be to provide a statement at the time of the annual reporting, which would identify all significant changes which had happened to the fees in place, as well as any planned changes.

- **Complying Superannuation Funds**

In general terms I would expect a complying superannuation scheme section to have a similar fee structure to the underlying Superannuation Scheme, as long as the fees for that Superannuation Scheme were reasonable.

Section 39 of the Superannuation Schemes Act 1989 identifies the requirement to advise the increase to a fee being charged as soon as reasonably practicable after the increase takes effect.

Most complying superannuation funds will be a section of a stand-alone superannuation scheme or a stand alone employer scheme. In most cases the complying superannuation fund will be for the employees of that employer. For this type of scheme it is more usual for all fees to be charged to the scheme. The legislation requires any person who increases a fee to notify the Government Actuary. The same conditions apply as for the employer based KiwiSaver scheme identified above.

I would similarly expect the most appropriate approach for this type of scheme would be to provide a statement at the time of the annual reporting, which would identify all significant changes which had happened to the fees in place, as well as any planned changes.

This statement should separately provide details of the five types of fee charges identified in section 2(1) of Schedule 1 of the Act. Of note, the fees charged directly to the fund may need more identification if they have been individually changed.

As with KiwiSaver, my office is happy to advise on proposed increases. Section 40 does however give the High Court the ability to review any fee charged by a Complying Superannuation Fund on application of a member or the Government Actuary.

Note that under section 39 of the Superannuation Schemes Act 1989, my office is concerned about fees for Complying Superannuation Funds and not for Registered Superannuation Schemes in total.

- **KiwiSaver Schemes and Complying Superannuation Funds**  
The sections above should work for all schemes. If compliance with the above is not appropriate for whatever reason, I will require every fee increase to be advised for that scheme or fund as required by the Act.



David Benison  
Government Actuary

## **GUIDELINE No KSGN2 : Performance Fees and Ethical Fund Fees (Issued pursuant to section 127 of the KiwiSaver Act 2006)**

### **Performance Fees**

Performance fees, by their very nature, should reflect out performance for a specific fund. Usually the assets underlying such a fund are in equities. Where such performance fees are defined, it is usual to have a lower base fee.

Performance fees in general should have three specific characteristics beyond the base underlying fund management fee, namely

- There is a numeric level for the performance fee.
- There is a hurdle rate of return, above which the fee will apply.
- There is a high water mark, to ensure that out performance is not paid for more than once.

I would expect to regard a performance fee as unreasonable if it did not have the three specifics. As well, the full combination of the three variables will be reviewed for unreasonableness.

### **Ethical Funds**

In general terms, the costs associated with an ethical fund are similar to the costs associated with a normal equity fund when bottom-up analysis is undertaken. Hence, for funds with similar asset profiles, I would expect the fee levels of ethical funds to be similar to the fee levels of non-ethical funds. However if a global overlay is used, I would expect the additional cost necessary for the additional services to be quantified.



**David Benison**  
Government Actuary  
Ministry of Economic Development

### **Disclaimer**

*The purpose of this guidance note is to provide general guidance on how the Government Actuary will view fees to be charged directly to a KiwiSaver Scheme. This guidance note has no legal status or legal effect whatsoever and users of this guidance note are encouraged to obtain their own professional advice on the KiwiSaver Act 2006 and the KiwiSaver Regulations 2006. The Government Actuary disclaims any and all liability or responsibility for any loss or damages arising out of any use of, or reliance on, this guidance note.*