

KiwiSaver (Foster Parents Opting in for Children in their Care) Amendment Bill

Member's Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the KiwiSaver (Foster Parents Opting in for Children in their Care) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The KiwiSaver (Foster Parents Opting in for Children in their Care) Amendment Bill is a member's bill in the name of Hamish Walker MP.

The bill seeks to enable any foster parent or kin carer to open an account with a KiwiSaver provider for a foster child in their care. The bill would amend section 35 of the KiwiSaver Act 2006 to allow the enrolment in KiwiSaver of:

- a 16- or 17-year-old who is in foster care if they and 1 of their foster parents or kin carers jointly contract directly with a provider
- a person who is under the age of 16 and in foster care if one of their foster parents or kin carers contracts directly with a provider.

What the current legislation allows

At present, section 35 of the KiwiSaver Act states:

- Children under the age of 16 can only be enrolled in KiwiSaver if all of their guardians consent.
- Children under the age of 16 with a CYPFA guardian¹ can be enrolled in KiwiSaver by the CYPFA guardian (without the CYPFA guardian needing to seek the consent of any other guardians the child may have).

- Children aged 16 or 17 can be enrolled in KiwiSaver if one of their guardians or CYPFA guardians co-signs the application.

The Act defines CYPFA guardians as the following people or organisations under the circumstances set out in sections 110 (a) to (d) and 119 of the Oranga Tamariki Act 1989:

- the chief executive of Oranga Tamariki
- an iwi social service
- a cultural social service
- the director of a child and family support service.

Therefore, any other person who is a natural guardian or is appointed as a child's legal guardian under the Oranga Tamariki Act can only enrol a child in KiwiSaver when they have the consent of all the child's other legal guardians. Foster parents who are not legal guardians are unable to enrol a child in their care in KiwiSaver.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Amending who can enrol a child in KiwiSaver

The bill as introduced would allow any foster parent to enrol a child in their care in KiwiSaver. This would include those with care arrangements that are only temporary. Several submitters expressed concern that this provision is too broad. There were concerns that a short-term foster parent may not be best placed to consider what is in the long-term financial interest of the child.

We also heard concerns about situations where foster care arrangements are short-term and may change over time. One submitter noted that a child's subsequent caregivers may have different views about finances, including KiwiSaver. Additionally, it may be difficult for KiwiSaver scheme providers to accurately identify who is authorised to enrol a child in KiwiSaver.

We recommend amending the bill to enable only those foster parents who have committed to a long-term care arrangement to enrol a child in KiwiSaver without the consent of a child's other legal guardians.

Accordingly, we recommend inserting clause 3A, to amend section 4 (Interpretation). Our proposed new clause 3A(1) and (2) would repeal the definition of "CYPFA guardian" and replace it with a new definition of "Oranga Tamariki guardian".

Our proposed new definition of an "Oranga Tamariki guardian" under clause 3A(3) would include:

¹ The name "CYPFA guardian" comes from the Children, Young Persons, and Their Families Act 1989, which was the previous name of the Oranga Tamariki Act 1989.

- Any person appointed under section 110 of the Oranga Tamariki Act as the sole guardian or additional guardian of a child. This would now include “any other person” that a court has appointed as a guardian of a child under that Act.
- Any person appointed as a special guardian under section 113A of the Oranga Tamariki Act. Their guardianship will continue until the child turns 18 (unless, before then, the person enters a civil union type arrangement).
- Any person whose sole guardianship of a person is as the result of section 119 the Oranga Tamariki Act (about the death of a guardian appointed under section 110(1)(e) of that Act). This provision mirrors paragraph (b) of the current definition of a CYPFA guardian.

We consider that this would be consistent with our recommendation that foster parents who have committed to a long-term care arrangement should be able to enrol a child in KiwiSaver.

Defining the care arrangements captured by the bill

Clause 4 of the bill as introduced would insert section 35(4A) to allow a person who is 16 or 17 years old and in foster care to be enrolled in KiwiSaver if they and 1 of their foster parents or kin carers jointly contract directly with a KiwiSaver provider.

Clause 4 would also insert section 35(4B), in addition to existing settings, to allow a person under the age of 16 and in foster care to be enrolled in KiwiSaver if 1 of their foster parents or kin carers contracts directly with a KiwiSaver provider. The bill does not define the terms “foster parent”, “kin carer”, or “in foster care”. While the terms were not defined, we understand that the intention of the bill was to authorise foster parents or kin carers to obtain birth certificates and IRD numbers for the purposes of opening a KiwiSaver account under a court-ordered care plan.

We recommend several amendments to make clear the care arrangements that would enable a person to enrol a child in KiwiSaver. We recommend inserting clause 4(1), to replace section 35(3) of the Act. Our amendment would provide that a 16- or 17-year-old could opt in to KiwiSaver if they and their guardian or an Oranga Tamariki guardian jointly contract with a provider.

We recommend inserting clause 4(2) to replace section 35(5). This would replace references to “foster care”, “foster parents or kin carers”, and “CYPFA guardians” with “Oranga Tamariki guardians”. This would enable a person under the age of 16 to be enrolled in KiwiSaver if one of their Oranga Tamariki guardians contracts directly with a provider.

Accordingly, we also recommend inserting clause 4(3), amending section 35(6). This would replace all references to “CYPFA guardian” with “Oranga Tamariki guardian”. This would extend the power to make non-enrolment membership-related decisions on behalf of a child in their care to Oranga Tamariki guardians.

Amending the title of the bill

We recommend amending the title of the bill. This would reflect our recommendation that the scope of the bill be more tightly defined.

The proposed new title for the bill is the “KiwiSaver (Oranga Tamariki Guardians) Amendment Bill”.

Protection from non-compliance for KiwiSaver scheme providers

We consider that some allowance should be made for KiwiSaver scheme providers to transition to this new legislation. We recommend inserting clause 6, new section 241, to allow time for providers to comply with product disclosure requirements and update their internal processes and staff training.

Our amendment would give KiwiSaver scheme providers four months’ transitional relief from non-compliance with product disclosure requirements and two months’ relief from other legislative non-compliance. We note that previous changes to the KiwiSaver Act have contained such provisions.

Future improvements

We were pleased to hear from Oranga Tamariki that it planned to improve internal systems and communications that will make it easier for caregivers to enrol a child in their care if they wish to.

We recommend that Oranga Tamariki should also explore the collation of data in regards to guardians and carers.

New Zealand National Party minority view

National members are concerned that the original intent of the legislation will not be achieved, in that foster parents with children in their care are not able to enrol them in KiwiSaver.

National members accept that there will be 500 more children that will have the opportunity to open a KiwiSaver account, approved in their name. However, we are still concerned that the bill does not achieve the original intent.

Oranga Tamariki states in the second sentence under the heading “Benefit of approach proposed in departmental report” that: “the purpose of the bill is to empower foster parents to enrol a child in Kiwisaver without having to obtain the consent of other guardians”.

The bill was always intended to provide a pathway for foster parents to enrol a child in their care in KiwiSaver whose only existing guardian was the CEO of Oranga Tamariki, and the evidence to date was there was no effective pathway to that CEO. Experience with trying to get a social worker to carry that application to the CEO, which is the current route, has proven fruitless.

The member in charge of the bill, Hamish Walker, stated the example of a specific foster child. This child has been in the foster parents’ care for several years, and they

have been going through the process of becoming legal guardians. The foster parents have also been fighting Oranga Tamariki for over three years to get their foster child enrolled in a KiwiSaver Scheme. That child will not benefit from this bill as amended by this select committee. The bill as amended will not provide the required pathway.

National members were very pleased to see the future improvements to the internal systems that Oranga Tamariki plans to make.

Appendix

Committee process

The KiwiSaver (Foster Parents Opting in for Children in their Care) Amendment Bill was referred to the committee on 5 September 2018. The closing date for submissions was 24 October 2018. We received and considered 19 submissions from interested groups and individuals. We heard oral evidence from seven submitters at hearings in Wellington.

We received advice from Inland Revenue and Oranga Tamariki—Ministry for Children.

Committee membership

Gareth Hughes (Chairperson)

Darroch Ball

Anahila Kanongata'a-Suisuiki

Agnes Loheni

Hon Alfred Ngaro

Greg O'Connor

Maureen Pugh

Priyanca Radhakrishnan

Hon Louise Upston

Hamish Walker took part in the consideration of this item of business.

**KiwiSaver (Foster Parents Opting in for Children in
their Care) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hamish Walker

KiwiSaver (Foster Parents Opting in for Children in their Care) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the KiwiSaver (~~Foster Parents Opting in for Children in their Care~~) (Oranga Tamariki Guardians) Amendment Act **2018**.

2 Commencement

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This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the KiwiSaver Act 2006 (the principal Act).

3A Section 4 amended (Interpretation)

- (1) In section 4(1), repeal the definition of CYPFA guardian.
- (2) In section 4(1), definition of guardian, replace “CYPFA guardian” with “Oranga Tamariki guardian”.
- (3) In section 4(1), insert in its appropriate alphabetical order: 5
- Oranga Tamariki guardian**, of a person (B), means any person—
- (a) appointed by an order under section 110 of the Oranga Tamariki Act 1989 as the sole guardian of B or as a guardian of B in addition to any other guardians of B; or
- (b) appointed by an order under section 113A of that Act as a special guardian of B; or 10
- (c) whose sole guardianship of B arises under section 119 of that Act (about the death of a guardian appointed under section 110(1)(e) of that Act who, on his or her death, was B’s sole guardian)

4 Section 35 amended (Opting in by persons under 18) 15

- (1) After section 35(4), insert: Replace section 35(3) with:
- (4A3) A person who is 16 or 17 years old and in foster care with a guardian or an Oranga Tamariki guardian may opt in if the person and 1 of their foster parents or kin carers guardians or Oranga Tamariki guardians jointly contract directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as— 20
- (a) contracting directly with the provider; and
- (b) 18 years for the purposes of subpart 6 of Part 2 of the Contract and Commercial Law Act 2017; and
- (c) opting in under section 34(1)(a). 25
- (2) Replace section 35(5) with:
- (4B5) A person who is less than 16 years and in foster care with an Oranga Tamariki guardian may opt in if 1 of the person’s foster parents or kin carers Oranga Tamariki guardians (independently from the person, and from any CYPFA guardians, all other, if any, Oranga Tamariki guardians, guardians, or both, of the person) contracts directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as— 30
- (a) contracting directly with the provider; and
- (b) 18 years for the purposes of subpart 6 of Part 2 of the Contract and Commercial Law Act 2017; and 35
- (c) opting in under section 34(1)(a).
- (3) In section 35(6), replace “CYPFA” with “Oranga Tamariki” in each place.

5 Section 59CB amended (Confirmed back-dated validation for those under 18 years at time of enrolment or opt-in)

After section 59CB(9), insert:

(10) References in this section to a guardian include an Oranga Tamariki guardian.

6 New section 241 inserted (Protection from non-compliance: KiwiSaver (Oranga Tamariki Guardians) Amendment Act 2018) 5

After section 240, insert:

241 Protection from non-compliance: KiwiSaver (Oranga Tamariki Guardians) Amendment Act 2018

Non-compliance with financial markets legislation, as defined in section 6(1) of the Financial Markets Conduct Act 2013, or the Fair Trading Act 1986 is ignored if the non-compliance results from the enactment of the KiwiSaver (Oranga Tamariki Guardians) Amendment Act **2018** and— 10

(a) the non-compliance does not continue on or after the expiry of the 2-month period that starts on the date of Royal assent of that Act; or 15

(b) the non-compliance relates to a product disclosure statement under the Financial Markets Conduct Act 2013 and the period of the non-compliance ends before the expiry of the 4-month period that starts on the date of Royal assent of the KiwiSaver (Oranga Tamariki Guardians) Amendment Act **2018**. 20

Legislative history

5 April 2018
5 September 2018

Introduction (Bill 53–1)
First reading and referral to Social Services and Community Committee