

24 April 2018

Hon David Parker, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: KiwiSaver (Foster Parents Opting in for Children in their Care) Amendment Bill**

### **Purpose**

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1. We have considered whether the KiwiSaver (Foster Parents Opting in for Children in their Care) Amendment Bill ('the Bill'), a member's Bill in the name of Hamish Walker MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. The Bill would amend the KiwiSaver Act 2006 ('the principal Act') to allow any foster parent (or kin carer) to approach a KiwiSaver provider to open a KiwiSaver account for a foster child in their care. In doing so, it replicates an existing distinction in s 35 of the principal Act between persons who are aged 16 and 17 years old and persons who are 18 and older. The effect of this distinction is that 16 and 17 year olds will not be able to access KiwiSaver if their guardian or, in the case of the Bill, their foster parent or kin carer, does not consent. Accordingly, the Bill raises a prima facie issue of consistency with s 19 (freedom from discrimination on the basis of age).
3. This distinction, introduced by the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010, was previously considered to be a justified limitation on freedom from discrimination under s 5 of the Bill of Rights Act. It avoided creating an incentive for those aged 16 and 17 years old to unilaterally leave educational training and enter the workforce to obtain the benefits of the KiwiSaver scheme. The scheme is a long-term financial commitment so it was considered appropriate to have a guardian involved in a young person's decision to opt in. Any disadvantage was minimal and outweighed by the positive aspects of the provision. We retain the views expressed in our previous advice, and do not consider the Bill raises any additional discrimination issues.
4. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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