RESEARCH NOTE

GUARDRAILS FOR A COMPULSORY KIWISAVER

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Contents

1. Introduction and key recommendations

A compulsory KiwiSaver would convert a nudge-based retirement savings system into a mandatory diversion of wage income into regulated investment accounts. National has announced that, if re-elected at the November 2026 election, it would require workers to contribute to KiwiSaver, or to an equivalent retirement savings scheme, from 1 July 2028; contributions would be set at the default rate, with employers and employees each contributing 6 percent by 2032.[1]

The case for compelled savings is contestable, not least because mandated contributions partly displace other saving. The argument here is conditional: if KiwiSaver is to become compulsory, terms should be settled in the enabling legislation, not left to later discretion. The money is the worker's. Standard incidence analysis has the nominal employer share falling largely on wages over time, so the full contribution is, in substance, the employee's own.

If the state requires saving, it should not then use the compelled pool as captive capital for other policy purposes like domestic industrial policy, infrastructure financing, debt management, climate policy, or foreign-policy signalling. The legal architecture should provide protection: compulsory KiwiSaver exists only for members' retirement interests, subject to members' active choices.

This note describes an initial view on appropriate guardrails to protect KiwiSaver funds from later legislative mandates. We welcome recommendations for improvements.

Recommended position

Parliament should not make KiwiSaver compulsory without a companion package of investment-neutrality, fee, default-design and disclosure protections. If the Crown compels saving, it must not commandeer investment choice. If it does, the cost must be compensated or, at minimum, calculated and reported to every affected member.

1.1 Key recommendations

- Sole financial purpose. Compulsory KiwiSaver contributions should be invested solely for members' best financial interests, after fees, tax, risk, liquidity and retirement-income objectives.
- No domestic investment mandates. The law should prohibit minimum allocations to New Zealand assets, NZX listings, Crown debt, local-authority debt, SOEs, infrastructure, housing, venture capital or any asset described as being in the national interest.
- No political exclusions. Default portfolios should exclude assets only where ownership or trading is unlawful, sanctioned under New Zealand law or binding international obligations, or creates direct legal liability for the scheme. Values-based funds should be available by active member choice.
- Protected lifecycle default. Non-choosing younger members should default into a low-fee, globally diversified, index-based, growth or equity-heavy portfolio, with automatic lifecycle derisking as retirement approaches.
- Low-fee default procurement. Default appointments should use a passive benchmark presumption, all-in fee caps, no performance fees, no switching fees, scale pass-through, and reverse-auction-style procurement among qualified providers.
- Member choice, not ministerial choice. High-fee active, domestic-heavy, ESG, anti-ESG, religious, sectoral and thematic funds may be offered, but only by active election.

- No portfolio direction. Ministers, agencies and regulators should be barred from directing or informally pressuring providers on holdings, exclusions, proxy voting, manager selection, or participation in particular projects.
- Investment-freedom charge or disclosure. A non-financial portfolio mandate should suspend compulsion for affected members and allow them to redirect future contributions to an unconstrained retirement vehicle. If Parliament does not allow exit, the mandate should trigger a prospective annual investment-freedom charge into affected members' accounts for as long as it binds, calculated on the affected balance and forced-deviation share. At minimum, the mandate's realised impact should be calculated and reported to each affected member.
- Foreign-tax-entanglement exemption. People for whom compulsory KiwiSaver would create material foreign tax, foreign-trust, PFIC, FBAR, Form 8938/FATCA, or equivalent foreign-reporting exposure should be able to opt out, with the employer-side amount paid as taxable wages or to an approved foreign retirement account where legally possible, and with anti-pressure protections.

2. Why defaults deserve special protection

KiwiSaver was built on a behavioural premise: that auto-enrolment and a default fund would harness inertia to lift participation. One need not accept that nudge rationale to take the next point. A system organised around defaults is incoherent if the defaults are then set badly. The default is an active policy choice that fixes the outcome for everyone who does not opt out. The Financial Markets Authority describes default funds as low-cost balanced options chosen by government for people who do not choose a fund when they start work.[2]

Compulsion sharpens this. A nudge becomes a shove: more people find themselves in the default fund, and anyone who dislikes the default must bear the transaction cost of finding and switching to something better. Getting the default right ensures that the fewest people must incur that switching cost.

If saving becomes compulsory, the default should be a statutory reference strategy designed for the general characteristics of non-choosing members. For a young worker, that normally means a high-growth, low-fee, globally diversified equity index exposure, not a high-fee active balanced fund. For older members, the default should derisk along a published lifecycle path.

The burden of proof should sit on anyone proposing to move default members away from that reference portfolio. A provider, regulator or minister who wants active management, domestic concentration, unlisted infrastructure, or an exclusion screen in the default should have to show that the deviation is expected to improve members' net risk-adjusted retirement outcomes.

3. Recommended guardrails

3.1 Guardrail 1: sole financial purpose

Current financial-markets law already requires a registered scheme manager to act in the best interests of scheme participants, and supervisors have similar duties.[3]

That is necessary but not sufficient when political risks sit upstream in legislation, regulations, default-provider procurement, ministerial letters, regulator guidance, and the eligibility rules for default funds. The best-interests duty therefore needs to bind public decision-makers as well as fund managers.

Suggested statutory clause

The sole purpose of compulsory KiwiSaver contributions is to accumulate retirement savings for members, invested for their best financial interests after fees, tax, risk, liquidity and retirement-income objectives, subject only to members' active investment choices.

No person exercising a power under this Act may use compulsory KiwiSaver settings to pursue an objective other than members' best financial interests, whether domestic capital-market development, infrastructure funding, regional development, industrial policy, ethical investment objectives, public-debt management, foreign-policy signalling, or other public policy purpose.

3.2 Guardrail 2: no domestic investment mandates

The OECD's private pension principles are useful here. They say pension-fund investment should be guided by the retirement-income objective, diversification and prudent-person standards; legal provisions should not prescribe minimum investment floors for any investment category except on an exceptional and temporary basis for compelling prudential reasons; and investment abroad should not be prohibited.[4]

A compulsory KiwiSaver should adopt a stricter domestic version of that principle. No statute, regulation, tender term, licence condition, tax preference, ministerial direction or regulator guidance should require, reward, prefer or induce KiwiSaver funds to hold a minimum share of domestic assets.

- Minimum allocations to New Zealand assets, New Zealand dollar assets, NZX listings, Crown debt, local-authority debt, SOE debt or equity, housing bonds, infrastructure funds, venture capital, private equity, or any asset labelled strategic, productive, sovereign, resilient or nationally important.
- Caps on foreign assets, global equities, offshore bonds, currency hedging or overseas managers except for narrow prudential reasons applying generally to all financial institutions.
- Tender scoring that rewards default providers for supporting New Zealand capital markets, using domestic managers, or participating in government infrastructure pipelines.
- Regulatory capital, tax or disclosure rules designed to make domestic assets artificially attractive relative to otherwise comparable offshore assets.

There is a deeper objection to domestic mandates than diversification in the abstract. New Zealand savers are already heavily exposed to domestic risk through housing, their own human capital, and the tax base that backs New Zealand Superannuation. The Crown faces a related problem: the tax base supporting New Zealand Super is weakest in domestic downturns, just when a domestically

concentrated retirement portfolio is also likely to be under stress.[5] Forcing retirement savings further into domestic assets concentrates risk exactly where members and the Crown are already long, and would have funds selling into a falling domestic market to meet domestic needs. For many New Zealanders, compulsory home bias would add exposure to risks they already bear through wages, housing and the tax base, rather than providing a compensated diversification benefit.

The commercial test is straightforward. If a domestic infrastructure, housing or venture asset is attractive on expected risk-adjusted returns, KiwiSaver funds may voluntarily buy it. If it needs compulsion or official preference, the mandate is functioning as a tax on savers: a form of financial repression, in which captive savings are steered to favoured borrowers on terms the market would not offer them.

3.3 Guardrail 3: no politically selected exclusions

The current default system already shows how defaults can be programmed. Currently, default funds must be balanced funds and must not invest in fossil-fuel production or illegal weapons; default providers also maintain responsible-investment policies.[6,7]

Illegal-weapons exclusions may fit a legality or sanctions logic. Fossil-fuel and other similar exclusions are different. They may reflect sincerely held ethical preferences, and some may defend them on financial grounds, but they are also a political and ethical portfolio screen. Once saving is compulsory, that kind of screen should not be imposed on passive members.

Neutrality rule for exclusions

Default portfolios should exclude assets only where ownership or trading is unlawful, sanctioned under New Zealand law or binding international obligations, or creates direct legal liability for the scheme.

All other moral, political, religious, environmental, social, defence, industry-sector, country, treaty, sectoral or thematic screens should be available only as member-elected choices.

This approach is not anti-ESG or anti-ethical investment. It is pro-choice. Members who want values-oriented funds should be able to choose them. The state should not impose ethical portfolio views on people whose wages it has compelled into the system.

3.4 Guardrail 4: a protected lifecycle default

A single balanced default fund is too blunt for a compulsory system. Younger defaulted members are likely to have long contribution horizons and continuing labour income. They can normally bear more short-term volatility in exchange for higher expected long-run returns. Older members face sequencing risk and liquidity needs.

The default should therefore be a lifecycle reference portfolio, set by an independent technical body rather than by ministerial preference or industry lobbying. The design should be reviewed periodically, but the statutory characteristics should be stable: low cost, globally diversified, index-based, age-appropriate, and free of uncompensated home bias.

If first-home withdrawals remain part of KiwiSaver, the retirement default should not be weakened for all young members to accommodate a minority with short housing-deposit horizons. Members planning a first-home withdrawal within a short period should instead be prompted to make an active horizon-based election into a lower-volatility first-home pathway. Ideally, the government

would sponsor the creation of property price indices that could anchor listed derivatives on NZX or Unlisted, so first-home investors could choose a product highly correlated with house prices in their preferred major urban area.

- Under roughly age 45: high-growth, globally diversified, low-fee index portfolio with a heavy global-equities allocation, with additional options for those choosing to invest for housing.
- Ages 45 to 55: gradual derisking while retaining growth exposure.
- Ages 55 to 65: stronger protection against sequencing risk and liquidity shocks.
- Post-65: retirement-income default, with liquidity, drawdown and volatility management rather than an accumulation-only benchmark.

Default design principle

The default strategy must be designed for the age, contribution horizon and retirement-income needs of non-choosing members. It must use low-cost diversified index exposure as the reference strategy. Any deviation must be publicly justified by expected improvement in members' net risk-adjusted outcomes.

3.5 Guardrail 5: fee protection and procurement

Compulsion at an increasing compelled contribution rate increases the scale of funds under management. The funds-management industry may prefer default allocations into higher-fee products. Default-provider procurement should be treated like procurement of a fiduciary public utility. A captive default pool has no competition within the market to discipline fees, though high fees could encourage people to shift away from default funds. Discipline should also come from competition for the market: a Demsetz auction in which providers bid for the right to serve default members, and win it only by meeting strict cost, governance and implementation standards.

- Passive benchmark presumption. Default funds should use passive or index-like implementation unless an independent body certifies that active management is expected to improve net-of-fee risk-adjusted outcomes. For the global-equities component, the benchmark should be a broad, market-cap-weighted global index capable of being implemented at institutional index-fund cost — for example, comparable to the exposure provided by very low-cost total-world equity products.
- All-in fee cap. The cap should include management, administration, underlying-manager, custody, platform, performance, related-party and estimated transaction costs.
- No performance fees in default funds. They are difficult for passive members to assess and can reward asymmetric risk-taking.
- No entry, exit, switching or contribution fees. Fixed-dollar member fees should be tightly limited because they are regressive for low balances.
- Scale pass-through. Default fees should automatically fall as assets under management rise.
- Qualified-provider reverse auction. Providers should first pass operational, governance, custody, disclosure and service tests; among those passing, allocations should heavily favour the lowest all-in cost for the required lifecycle exposure.
- No active-management storytelling in tenders. A provider should not gain points for employing more active domestic managers unless the expected member benefit is independently demonstrated.

A binding fee cap would ordinarily invite the standard objections to price control: shortage, quality erosion, exit. Those objections have less force here. Demand is near-captive, the real price is set by the auction rather than by the cap, and the cap serves as a backstop against a gamed auction rather than as the primary instrument. It should be set with that limited role in mind, not as a device to force fees below cost.

Each annual statement should show the member's dollar fees, the projected retirement-balance impact of those fees, and the difference between actual fees and the benchmark default fees.

3.6 Guardrail 6: member choice, not ministerial choice

A compulsory system can still preserve pluralism. The essential distinction is between member-chosen deviation and state-imposed deviation. Members should be free to choose high-fee active funds, domestic-heavy funds, infrastructure funds, ESG funds, anti-ESG funds, religious screens, conservative funds, sector funds or any other lawful option. But non-choosers should be protected by the low-fee lifecycle reference strategy.

Ministers and agencies should be prohibited from directing or seeking to influence holdings, asset allocation, issuer selection, sector or country exclusions, proxy voting, engagement policies, manager appointments, use of domestic brokers or custodians, currency hedging, or participation in any particular project. This should cover informal pressure as well as formal directions.

The case against direction is not only that it taxes members. Directed ownership corrupts the governance of the assets it reaches. Steer retirement funds into holdings the state favours, such as partly privatised state enterprises or a national infrastructure pipeline, and the funds become large, politically visible owners whose returns feed retirement incomes. That creates standing pressure to protect near-term dividends over long-term investment and maintenance, distorting the underlying firms as well as the member's portfolio. The harm runs in both directions.

No-direction clause

No Minister, department, Crown entity, regulator, or person acting on behalf of the Crown may direct or seek to influence a KiwiSaver manager, supervisor, default provider, or investment vehicle in relation to any investment holding, asset allocation, issuer, sector, country, proxy vote, engagement position, manager appointment, or participation in a particular project, except through generally applicable law consistent with the sole financial purpose of this Act.

3.6.1 Regulatory takings, compensation and mandate-cost accounting

A compulsory portfolio mandate is economically akin to a regulatory taking, but the loss is not well measured by ex post underperformance. The primary harm occurs when the state restricts the member's feasible portfolio set and moves the member away from the risk-return position that would otherwise have been chosen. That is an ex ante opportunity cost. It may not appear as an immediate reduction in market value: a dollar of bonds and a dollar of equities both have a dollar of market value at the time of purchase. But the mandate can still reduce expected utility, increase concentration risk, lower expected returns, or transfer value to favoured issuers through lower yields.

The primary and most effective remedy would be to void compulsion, and allow exit from KiwiSaver, when the no-direction clause is violated.

If Parliament is not willing to enable exit in that situation, alternative remedies can be considered within the KiwiSaver legislation.

A hard remedy would use a prospective investment-freedom charge rather than a one-way ex post underperformance guarantee. Any non-financial restriction on portfolio choice should require a statutory payment into affected members' accounts, set as a fixed number of basis points per year on the affected balance and forced-deviation share for as long as the restriction remains. The charge should apply when restrictions are imposed or tightened, not when they are removed or relaxed, and should be funded by the Crown or, where practicable, by the beneficiaries of the mandate.

Three features keep the charge honest. Its rate should be set by the independent Default Standards Board or fixed in statute, with a floor, and never by the minister imposing the restriction; otherwise those who wish to restrict set the price of restricting to zero. A single rate is a deliberately rough price, not a measure of any member's true loss, which varies with risk preference and horizon; a rough charge on the right concept has merit. And the charge compensates in cash; it does not restore the foregone portfolio, so it offsets the expected drag without curing the concentration risk.

Like the takings logic that motivates it, the charge does much of its work before any payment is made. A standing, prospective obligation to pay for as long as a restriction binds is a liability the Crown must carry, disclose among the specified fiscal risks in its Budget updates, and have Treasury cost. That visibility raises the political price of imposing a mandate in the first place, which is the point: a government minded to direct savings for a public purpose should weigh a real, accounted-for cost rather than an off-book one.

A charge written only as a statutory formula is as durable as the next Budget. To make it a credible pre-commitment rather than a promise a future government can quietly drop, the charge is best delivered as something the member holds. A non-transferable Crown note recorded against each account, permanently appropriated and payable only when an interference event occurs, is a property interest, not a line a later regulation can amend away. Parliament being sovereign, this cannot make the charge irrevocable; the most any drafting can do is force a future government to impair the note openly, with notice to members and an honest estimate of what it is taking. That is the discipline worth imposing.

Investment interference event

Define an investment interference event as any law, regulation, procurement condition, licence condition, guidance, tax preference, Crown action or ministerial pressure that causes KiwiSaver portfolios to deviate from a protected reference portfolio, or from a member's actively chosen fund, for a non-financial public-policy reason.

For the purposes of triggering the charge, informal ministerial or regulatory pressure should count only where it is evidenced by a public statement, written communication, procurement signal, regulator expectation, or certification by the Default Standards Board that the pressure materially induced the portfolio deviation.

Where an investment interference event is imposed or tightened, the Crown should credit affected members' accounts with a prospective investment-freedom charge: a fixed number of basis points per year on the affected balance for as long as the restriction binds, set by the independent Board or fixed in statute, funded by the Crown or, where practicable, the beneficiaries of the mandate, and delivered through the member's Mandate Protection Note (below).

Mandate Protection Note

Each KiwiSaver member account should hold a non-transferable $1 Crown Mandate Protection Note, redeemable when the KiwiSaver account is finally closed, with no ordinary coupon and a contingent Investment Freedom Coupon payable if an investment interference event occurs.

The Note does not compensate ex post underperformance. It is a prospective interference price, applying whenever the Crown restricts a member's feasible portfolio set for a non-financial public-policy purpose, regardless of whether the mandated portfolio later outperforms or underperforms.

Payments are Crown obligations, permanently appropriated, exempt or grossed up for tax, and not counted as investment assets for default allocation. The Note cannot be varied by regulation, tender or licence condition, ministerial direction or provider contract; impairing it should require express override language, public notice to affected members, and an independent estimate of the unpaid amount.

3.6.1.1 The disclosure-only fallback

Even where compensation is not provided, the difference should still be calculated. Political mandates work partly because their costs are hidden: a member sees the actual balance but not the counterfactual balance under the unconstrained benchmark. A compulsory system should make any mandate-cost visible.

Investment interference events should then trigger three obligations: an ex ante mandate-impact statement setting out the expected effect before the restriction takes effect; an implementation and market-impact ledger recording the transaction and price effects of giving effect to it; and annual realised mandate-impact reporting for each affected member. The realised reporting in this case is for transparency; it is not the basis of any payment.

For each affected member, annual statements, and quarterly online reporting where practicable, should include a mandate-cost line item:

- actual closing balance and actual return net of fees and tax;
- counterfactual balance and return under the protected lifecycle benchmark or, for active members, the nearest lawful unconstrained version of the member's chosen fund;
- dollar difference for the period;
- cumulative dollar difference since the mandate began, including lost compounding;
- the statutory or regulatory authority for the mandate;
- the public-policy objective asserted for the mandate; and
- whether the difference is being compensated, disclosed only, or subject to review.

The FMA, or an independent KiwiSaver Default Standards Board, should also publish an annual aggregate mandate-cost account. It should report the total dollar shortfall or outperformance from each mandate across all affected members, the distributional effects by age and balance, and the fee effects. Outperformance should not be used to justify hiding the calculation. Any compulsory public-policy overlay should be visible to the people whose savings bear it.

Example statement wording

During the year, your KiwiSaver portfolio was subject to a government investment mandate. Your actual closing balance was $X. Under the protected reference portfolio, your estimated balance would have been $Y. The mandate changed your balance by $Z this year and by $C since it began. This amount is disclosed for transparency and is not compensated unless Parliament has authorised compensation.

3.7 Guardrail 7: a foreign-tax-entanglement exemption

Compulsion should not force workers into disproportionate foreign tax-compliance costs. Some workers are subject to another country's tax on worldwide income, together with foreign-account and foreign-asset reporting, regardless of where they live. The United States is by far the most important practical case for New Zealand: US citizens and green-card holders can remain subject to US tax on worldwide income while resident abroad, and the US-New Zealand treaty's saving clause preserves the United States' right to tax its citizens and residents.

For those workers, KiwiSaver membership can be actively harmful. Many underlying KiwiSaver pooled funds could create PFIC reporting and tax issues. KiwiSaver may also be treated as a foreign trust requiring Forms 3520 and 3520-A; while IRS relief exists for some foreign retirement trusts, its application to KiwiSaver is uncertain and contested, and many specialist advisers still treat KiwiSaver as reportable.[8] Balances may need to be reported on an FBAR and on Form 8938 if relevant thresholds are met. Professional filing costs can run to thousands of dollars a year, with heavy penalties for error. For a worker whose expected New Zealand residence is short, or whose KiwiSaver balances will be small relative to filing costs, the after-tax, after-compliance return can be negative. Compelling that saving advances no retirement-policy purpose; it is pure deadweight.

The law should therefore create a foreign-tax-entanglement exemption, defined by effect rather than by a closed list of citizenships or residence categories. A worker whose membership would create material foreign tax, foreign-trust, PFIC, FBAR, FATCA or equivalent foreign-reporting exposure — in practice, a worker subject to taxation on worldwide income by a jurisdiction that does not recognise KiwiSaver as a tax-deferred retirement scheme — should be able to elect out of compulsory membership. Eligibility should use the tax-residency self-certification that providers already collect for FATCA and CRS as the screening input, but the exemption should be granted by IRD through a confidential payroll code, supported by declaration, audit and penalties for false claims, rather than through a separate hardship test.

This research note is not tax advice. If compulsory KiwiSaver membership would result in the scenario described, an exemption should be available.

A worker who prefers to keep saving in a form their home country recognises should be free to do so, but the law should not pretend this is generally available. US employer plans, including 401(k), 403(b), 457(b) and the Thrift Savings Plan, generally cannot receive New Zealand wage contributions unless the worker remains eligible under the plan and its terms and administration allow it. SEP and SIMPLE IRAs are not general receptacles for a New Zealand employer's compulsory KiwiSaver contribution. A traditional or Roth IRA can sometimes take an individual contribution, but only within US contribution limits, Roth income limits, taxable-compensation rules, and practical access constraints. Substitution should therefore be permitted at the worker's election, not required. For most affected workers, the operative relief is the opt-out.

Around the exemption:

- Total-remuneration neutrality. An exempt worker should be no worse off in total remuneration than an equivalent member. Any employer-side contribution that cannot lawfully be paid into a recognised foreign account should be paid as ordinary taxable wages, never retained by the employer. This condition matters if total remuneration contracts are to be prohibited.
- No employer pressure. Employers should receive only an exemption code, not the worker's tax status, and should be barred from inducing or pressuring workers to claim the exemption.

- Informed choice. The election should follow a plain warning of the foreign tax, foreign-trust, PFIC, FBAR, FATCA and filing-cost consequences of membership, and should note that exemption means forgoing any government contributions.
- A de minimis floor. The machinery should not engage where KiwiSaver creates no material incremental foreign tax, filing or penalty exposure. The test should be incremental burden, not merely account balance: a balance below FBAR or Form 8938 thresholds may still be material if it creates PFIC or foreign-trust reporting costs.
- Minors. A child should not be default-enrolled where a parent or guardian certifies foreign-tax entanglement; enrolment should require active guardian consent after the same warning.

Finally, the Crown should be required to seek treaty, competent-authority, ruling or other formal relief that would let affected members participate without penalty. But that relief depends on a foreign government, so it cannot be the load-bearing fix. Until it is clear and reliable, compulsory KiwiSaver should not apply to foreign-tax-entangled workers except by their active election.

If the government nonetheless insists on compelling foreign-tax-entangled workers into KiwiSaver without an opt-out, it should compensate for the cost it imposes. Accountancy and filing fees are the most visible part and should be reimbursed against a reasonable schedule rather than open-ended invoices, so that the Crown does not write a blank cheque to preparers.

Foreign-tax-entanglement protection

A worker whose compulsory KiwiSaver membership would create material foreign tax, foreign-trust, PFIC, FBAR, FATCA Form 8938 or equivalent foreign-reporting exposure may elect out of compulsion. The worker may instead direct contributions to a recognised foreign retirement account that can lawfully receive them; where none can, or where contribution limits bind, the opt-out applies. The employer-side amount follows the worker as taxable wages or an approved contribution, never retained by the employer. Employers see only an exemption code and may not pressure workers to claim it.

4. Institutional design and recommended legislative package

The guardrails should not depend on the goodwill of the minister of the day. They require institutions and procedures that make interference hard, visible and contestable.

- Establish an independent KiwiSaver Default Standards Board with a narrow member-benefit mandate to set the lifecycle reference portfolio, fee caps, benchmark indices, and mandate-cost calculation methods.
- Exclude current officers, employees and affiliates of KiwiSaver providers and material service providers from voting board roles. Former provider staff, consultants and technical experts may serve only after a cooling-off period, full disclosure of interests, and recusal from conflicted decisions.
- Make default-provider selection mechanical after qualification: governance, operations, custody, service and disclosure tests first; then strong weighting to all-in cost for the required benchmark exposure.
- Prohibit secondary legislation, tender terms, FMA guidance or ministerial letters from overriding the investment-neutrality provisions.
- Require an explicit clear-statement override in primary legislation for any future breach: Parliament should have to say that it is overriding KiwiSaver investment neutrality and whether compensation applies.
- Require every override bill or regulation to include an independent member-impact statement covering expected returns, risk, fees, tax, liquidity, diversification, mandate-cost calculation and distributional effects.

One caution applies to the machinery itself. A standing board is also an institution that can be captured or have its mandate stretched. The protection here should rest first on the hard-wired statutory characteristics, the dollar disclosure, and the clear-statement override. The board administers those rules; it is not meant to be the last line of defence.

4.1 Recommended legislative package

1. **Sole-purpose and best-financial-interests clause.** A clause binding ministers, departments, regulators, default bodies, managers and supervisors to members' best financial interests after fees, tax, risk, liquidity and retirement-income objectives.
2. **Investment-neutrality rule.** A prohibition on domestic investment floors, foreign-investment caps, preferred asset classes, government-project mandates, Crown or local-authority debt mandates, and indirect procurement scoring for domestic allocation..
3. **Default-exclusion neutrality.** A rule that default portfolios may exclude assets only where ownership or trading is unlawful, sanctioned under New Zealand law or binding international obligations, or creates direct legal liability for the scheme, with member-elected values funds permitted outside the default.
4. **Protected lifecycle default.** A statutory lifecycle reference default that is low-fee, global, diversified, index-based, age-appropriate and free of uncompensated home bias, with any deviation requiring published justification against members' expected net risk-adjusted outcomes.

5. **Independent Default Standards Board.** An independent board with a narrow member-benefit mandate to set the lifecycle reference portfolio, fee caps, benchmark indices and mandate-cost calculation methods, subject to strict conflict rules and clear statutory limits.
6. **Low-fee default procurement.** Default-provider fee caps, passive presumption, no performance fees, no entry/exit/switching/contribution fees, scale pass-through, all-in dollar-fee disclosure, and reverse-auction-style procurement among qualified providers.
7. **Member choice and no portfolio direction.** A rule preserving member-elected active, domestic-heavy, ESG, anti-ESG, religious, sectoral and thematic options, while barring ministers, agencies and regulators from directing or pressuring providers on holdings, exclusions, proxy voting, engagement, manager selection or project participation.
8. **Exit on investment interference.** A non-financial portfolio restriction or other investment interference event should suspend compulsion for affected members and allow future contributions to be redirected to an unconstrained retirement vehicle.
9. **Investment-freedom charge if exit is denied.** If Parliament does not allow exit, the mandate should trigger a prospective annual investment-freedom charge into affected members' accounts for as long as it binds, set independently or fixed in statute, calculated on the affected balance and forced-deviation share.
10. **Mandate Protection Note option.** As a stronger commitment device, the charge may be delivered through a non-transferable, permanently appropriated Crown Mandate Protection Note held with each account, paying the charge as a coupon and capable of impairment only by express override, notice to members and an independent estimate of the unpaid amount.
11. **Mandatory mandate-cost accounting.** Even where Parliament declines exit, a charge or compensation, every investment interference event should trigger ex ante mandate-impact assessment, implementation and market-impact accounting, annual member-level realised mandate-impact reporting, and aggregate publication.
12. **Foreign-tax-entanglement exemption.** Affected people, including US persons and others facing material foreign tax, foreign-trust, PFIC, FBAR, Form 8938/FATCA or equivalent foreign-reporting exposure, should be able to opt out or substitute a recognised foreign retirement account where legally possible, with total-remuneration neutrality, employer non-retention of the employer-side amount, confidential IRD administration and anti-pressure protections.
13. **Override discipline.** Secondary legislation, tender terms, FMA guidance, licence conditions and ministerial letters should not be able to override the guardrails. Any primary-legislation override should require clear-statement language, an independent member-impact statement, publication, fiscal disclosure, member notice and sunset review.

5. Conclusion

A compulsory KiwiSaver should not create a captive pool for domestic investment mandates, public infrastructure pipelines, politically selected exclusions or high-fee active management. If the government wants KiwiSaver money for a project, it should offer market-clearing terms. If it wants to impose a portfolio mandate for a public purpose, it should pay for the difference. If it refuses to pay, the difference should still be measured and reported to every affected member.

KiwiSaver members may choose home bias, ethical screens, active management or thematic funds. Ministers should not choose those things for them. Defaults should protect passive members with low-fee global diversification; deviations should be voluntary, compensated, or at least made transparent in dollars.

Endnotes

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