

2 August 2024

Dear Firefighters and other Members of the New Zealand Professional Firefighters Union

1. I am a lawyer. The NZPFU has asked me to provide them, and you, some initial legal advice about the recent communications from Fire and Emergency New Zealand (FENZ) about KiwiSaver and your retirement savings. I do not work for FENZ. I am assisting your Union to help make sure they get, and you get, good legal advice to help you make your decision around the issues that FENZ has discovered.

The FENZ KiwiSaver Issue

2. You will have received various communications from FENZ about an issue relating to payments made (or not made) to KiwiSaver.
3. FENZ advises that the issue they have raised affect approximately one-quarter of NZPFU members, a little over 500 of you.
4. There are a number of issues that NZPFU and FENZ will be working through, including issues around past payments that should have been made over a number of years. This may affect some of you in different ways than others and will likely take some time to resolve.
5. More pressing for you is that you will now need to make a decision about what you want to happen with your Superannuation contributions starting now.
6. Basically, FENZ has realised that it hasn't been complying strictly with the combination of your Collective Agreement, and the rules that govern how KiwiSaver works. They have realised that there was an issue, and now say they are going to comply with what you've agreed in your collective agreement (and what the KiwiSaver rules require), which means some of you will need to make a decision about how you want to divide your agreed superannuation subsidy between The New Zealand Fire Service Superannuation Scheme's (Fire Super's) different schemes and whether you want to contribute to a Kiwisaver fund in addition or instead.
7. This letter will hopefully help describe some of the legal issues that may affect your decision.

Financial Advice

8. Importantly, I am a lawyer, not a financial advisor, so I should point out that this is legal advice. It is not financial advice. Legal advice is going to be basically the same for all of you. Financial advice is going to be different, and will depend on a lot of factors:
 - 8.1. Whether you own a home, with or without a mortgage;
 - 8.2. If you are saving for a deposit for a home;
 - 8.3. If you are still paying off student loans, or have other debts like car payments, credit cards or hire purchases or have other expenses like child support;
 - 8.4. Your family status, your age and plans for your retirement, including whether a KiwiSaver compliant scheme or a non-KiwiSaver scheme (or both) is best for you and your families.
9. For many of you, it will be a good idea to get financial advice before making a decision. This may be able through the FENZ Employee Assistance Programme, and there is some information available from The Commission for Financial Literacy and Retirement Income's website at www.sorted.org.nz.

KiwiSaver Complying Funds and Non-Complying Funds

10. As part of the collective agreement that Firefighters have with FENZ, FENZ has agreed to provide a top-up to your retirement savings. You have some choice about what scheme this goes towards, for example, the Fire Super scheme has a choice between what is known as a KiwiSaver Complying Scheme, and also a non-complying or non-KiwiSaver scheme.
11. A KiwiSaver Complying Scheme (also known as a locked scheme) is a retirement savings scheme that complies with the rules that govern all KiwiSaver accounts. The major requirement is that access to the fund for retirement purposes must be locked until the retiree reaches 65, which is a standard KiwiSaver rule. There are some other differences, including that KiwiSaver Complying schemes qualify for the government subsidy of up to \$521 per year, and depending on the rules of the scheme you are in, your scheme may be able to be used for a home deposit, etc.
12. For some Firefighters, FENZ advises that it has been paying the agreed subsidy only into the non-KiwiSaver scheme operated by Fire Super. This is the scheme you would be able to access before you turn 65, if you wish to retire before you qualify for the government pension.
13. But because of the way KiwiSaver works, where people are signed up to KiwiSaver unless they opt out early in their employment, FENZ accepts that it should have been paying

some of the money (3%) it provides (and also some of the money you provide) into a KiwiSaver account for you instead of into the Fire Super non-KiwiSaver scheme. What they say they have done is pay all of their subsidy into the Fire Super non-KiwiSaver Scheme, and haven't been taking out of your pay the money which you would have been paying into KiwiSaver.

14. The KiwiSaver rules require that (unless you apply for a temporary KiwiSaver savings suspension) that some of the money go into a KiwiSaver account. This could be additional to the money *you* are currently paying into Fire Super, or it could be paid for by some of the money you (and FENZ) are currently paying into the Fire Super non-KiwiSaver scheme, which would reduce the amount you are paying into that Fire Super scheme.

Your Collective Agreement

15. The *Collective Agreement for Uniformed and Communications Centre Employees* records the agreement between professional firefighters and FENZ about the terms of your work. It covers many things, including the subsidy that FENZ pays towards your retirement savings.
16. Firefighters and FENZ have agreed how much that subsidy is, but you get to make the decision about exactly where it goes, which could be Fire Super's non-KiwiSaver fund, Fire Super's locked-until-65 KiwiSaver fund, another KiwiSaver fund entirely or a combination.
17. Because of the way KiwiSaver operates, where all workers are signed up automatically unless they advise their employer early after they start working that they don't want to be in KiwiSaver, this choice will involve some element of KiwiSaver, although you may be able to apply to pause your KiwiSaver contributions (and FENZ's *KiwiSaver* contributions), for up to a year at a time.
18. That is the decision FENZ are asking you to make now. This is a decision they should have asked most of you to make some time ago, but they have realised that they were not applying the Collective Agreement correctly when considering the KiwiSaver rules.

Your Decision

19. FENZ has extended the initial period in which you can make a decision. If you don't make a decision, they advise that they will keep your current level of contribution to the Fire Super non-KiwiSaver fund, and take an additional 3% of your income out to put into a KiwiSaver account, which is the minimum contribution to KiwiSaver.



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