

New Zealand's treatment of pensioners whose spouses have overseas state pensions

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New Zealand treats some pensioners with overseas pensions with varying degrees of anomalies and injustice. This *PensionBriefing* provides an example of a particularly unjust treatment that would cost little to fix and should be dealt with without further delay.

1. Introduction

With average longevity and mobility among retirees continuing to increase, issues around pensions and pension portability become ever more critical as more people are affected for longer periods. As at 30 June 2012, almost 29,000 people living overseas received New Zealand Superannuation (NZS). The number of people living in New Zealand eligible for overseas pensions increased by 28% to almost 53,000 between 2008 and 2012. Of these, 73% were eligible for pensions from the UK, 14% for the Australian Age Pension, and around 6% for the Netherlands age pension. Compared with 2008, retirees were also eligible for more overseas pensions from Canada, the People's Republic of China, Germany, the US and 51 other countries (Ministry of Social Development 2013, p. 192).

The nature of retirement income sources from overseas varies from country to country:

Cash incomes for retired people in developed countries can be grouped into three major categories: public pensions, private and occupational pensions or superannuation, and income from private investment and savings. There are three different types of public pensions: social insurance based on individual contributions which pays earnings-related pensions; social assistance which is means-tested and is for poverty alleviation; and universal pensions which are paid at the same basic rate to all regardless of wealth or contributions... While public pension schemes are essentially pay-as-you-go schemes whereby current contributions meet current outgoings, they may also be partly "funded" as in the US where contributions are paid into a trust fund. There may be other public involvement in privately managed schemes, either through compulsion or subsidisation. (Dale, Lazonby, St John and Littlewood 2009, p. 4)¹

There are no internationally agreed definitions of 'pension' terms, and problems emerge from perceptions of "eligibility" and "entitlement" to "unfunded" and "contributory" pensions. A private saving scheme, perhaps referred to as "funded", may or may not be mandatory, and may or may not deliver benefits that relate to an individual's contributions. "Pay as you go" (PAYG) state schemes may be paid out of general tax receipts, as NZS is, or may have a contributory basis with individual specified contributions. NZS is a universal age pension, with eligibility unrelated

¹ Available at: <http://docs.business.auckland.ac.nz/Doc/Working-Paper-1-09-Literature-review-New-Zealand-superannuation-and-overseas-pensions.pdf>.

to previous earnings or contributions, with small variations in the rate of payment determined by marital status and living arrangements.²

Around 10% of the 660,000 people eligible for NZS in 2014 are also eligible for at least one other state pension from abroad. There is a lack of clarity however around which overseas pensions are to be taken as ‘equivalent’ to NZS and thus offset against the pensioner’s NZS entitlement, and which overseas state-organised pensions are more similar to KiwiSaver. For people who retire in New Zealand after working overseas for some years and contributing to a state-run superannuation scheme in that country, the lack of clarity can result in injustice and in some cases unanticipated hardship.

Under the 1964 Social Security Act’s section 70 direct deduction policy, overseas pensions deemed by the Chief Executive of the Ministry of Social Development (MSD) to be equivalent to NZS, can be deducted from the person’s NZS. Rather than address the whole suite of injustices that can arise, this *Pension Briefing* highlights an indefensible feature of the policy. This occurs for a small group whose partners have overseas state pensions larger than NZS. The overseas pension cancels out any entitlement to NZS, and that is fair and reasonable. The unfairness emerges when any excess over the married rate of NZS is then deducted from the spouse’s NZS.

The Retirement Policy and Research Centre (RPRC) says that this spousal deduction offends the fundamental design of NZS which is that each person over age 65 is entitled to their own NZS, regardless of their other income or their assets, or the income/assets of their partner. While the deduction can be appropriate for the ‘owner’ of the overseas pension in many cases there are inconsistencies in the way section 70 is applied.

The RPRC began working with the Human Rights Commission in 2009 to add clarity to some of these issues. Since 2009, the RPRC has heard from increasing numbers of unhappy, married superannuitants who find to their dismay that they are affected by the interpretation of [section 70](#) that overrides their individual right to NZS. A spousal deduction may be justified if an overseas age pension has a married couple’s supplement that is paid just to one spouse. The spousal deduction is not justified simply because the overseas age pension rate is greater than the individual rate of NZS.

The Chief Executive is not required to consider individual rights to NZS, New Zealand’s universal age pension, nor to publish the rationale for any decision regarding application of the direct deduction policy.

2. A case study of injustice and discrimination

The most recent example of overseas pension injustice that has come to the attention of the RPRC³ involves a married couple, Jan and Tom (not their real names). Jan has a Scandinavian age pension,

² The three basic NZS rates are “married”, “single sharing”, and “single living alone”.

³ This case study was published in the [New Zealand Herald](#), 18 July 2014. Further case studies of marital discrimination, and other inequities in New Zealand’s overseas pensions policy, are discussed in Dale, St John and Littlewood (2009), available at <http://www.business.auckland.ac.nz/Portals/4/Research/ResearchCentresGroups/RPRC%20commentary/WorkingPaper2009-2.pdf>; and Dale, St John, Littlewood and Smith (2011), available at <http://docs.business.auckland.ac.nz/Doc/WP-2011-1-Overseas-Pensions-final.pdf>.

and understands that this affects her eligibility for NZS, even though she has lived and worked in New Zealand for 20 years.

Jan's husband Tom has lived all his life in New Zealand citizen, and worked for over 40 years. He expected to receive the married rate of NZS when he reached the qualifying age of 65. However he found that, in addition to Jan losing all her NZS because her Scandinavian pension is so high, the excess above the current rate of NZS is deducted from his individual entitlement.

This particular application of section 70 of the Social Security Act means Tom gets a pension that is \$10,000 a year less than other married men simply because of whom he married. As have others in similar circumstances, he protested to the MSD, to the Social Security Appeal Authority, and to Members of Parliament. He was told "the Government expects married people to share resources and support each other".

Further protests elicited the stock response that "the policy is designed to ensure that a couple with an overseas pension is not in a better position than a couple who have spent all their lives in New Zealand".

3. Choose spouse with care to protect your NZS

Had Tom married a successful professional Australian woman with a large Australian company pension, accumulated tax-subsidised Superannuation Guarantee, and other tax-favoured funds, he would get the full married rate of NZS. His Australian wife may also qualify for NZS.

If Tom's wife had been a new immigrant with no pension and no intention of working in New Zealand, after 10 years' residency she would qualify and both would get full NZS.

Real but unacceptable options for Jan and Tom are to divorce, or to leave New Zealand.

The *New Zealand Superannuation and Retirement Income Amendment Act 2009* established a new formula for "general portability", so because Tom spent his entire working life in New Zealand, he could take his full gross NZS to almost any country in the world. Jan's pension rules offer that same flexibility, no other country will apply the spousal pension deduction as happens in New Zealand. In some countries, the NZS will not even be taxed.

For Tom, leaving New Zealand after a lifetime's residence, and leaving grandchildren and friends behind, may be preferable to a retirement with an apparent dependence on his wife's pension.

4. Inequity and discrimination

For the last five years the RPRC and the Human Rights Commission have explored cases like these of inequity and spousal discrimination, and other kinds of inequities and anomalies that affect a proportion of the more than 50,000 pensioners with overseas pensions in varying ways.

In the Ministry of Social Development's (2008, pp. 13 - 21) *Review of Treatment of Overseas Pensions and Payment of New Zealand Superannuation and Veteran's Pension Overseas: Paper Two proposals*, recommendations included:

Discontinue the policy of deducting a person's overseas pension from their partner's NZS entitlement.

Successive Retirement Commissioners also note the anomalous treatment of overseas pension, especially for spouses, in their most recent three yearly Reviews, and recommend:

That an individual's overseas state pension entitlements should be directly deducted against their own individual entitlement to NZS and that any excess should not then be offset against the individual NZS entitlement of their partner. (Crossan 2010)⁴

That an individual's overseas state pension entitlements should be directly deducted against their own individual entitlement to New Zealand Superannuation and that any excess should not then be offset against the individual entitlement of their partner. (Maxwell 2013)⁵

The general policy is that private pension and any lump-sum superannuation, even when greatly subsidised by the foreign government, should not be captured by section 70's direct deduction policy. Often, 'state pensions', deemed by the Chief Executive of MSD to be analogous to NZS, are paid for by employee and employer contributions and in fact are more analogous to KiwiSaver.

Many of those affected by the spousal deduction are not wealthy people. Many have suffered ill-health from the stress and injustice they have experienced. Many have spent years fighting their cases with officials and appeal authorities, and taking their cases through the courts.

These strategies have been unsuccessful, and have left an increasing feeling of alienation, bitterness and despair. Successive New Zealand Governments have ignored the entreaties of Government officials from Canada, Germany, Ireland and the Netherland against this punitive and unfair treatment of their exported age pensions, and have buried the treatment of immigrants' overseas pensions in the 'too hard' basket.

5. Future pension policy

Nasty surprises await many unsuspecting retirees, especially married ones. The greater mobility of today's and tomorrow's workforce demands that there is a fundamental principles-based reform. Ending this spousal discrimination requires a policy change that could be applied immediately. In the longer term, an evidence-based interpretation and understanding of overseas age pensions that are and are not equivalent to NZS is required.

The Retirement Commissioner's 2013 Review of retirement income policy also recommended:

15. That the Ministry of Social Development improve information and advice for recent and prospective migrants and returning New Zealanders on the implications of the direct deductions policy for their future retirement income.

16. That the Ministry of Social Development improve the public availability of decisions on the classification of overseas pension schemes whose pension payouts are subject to the direct deduction policy.

17. That the Ministry of Social Development explain the rationale behind each international pension scheme classification. (Maxwell 2013)⁶

⁴ At <http://www.cfri.org.nz/sites/default/files/docs/RI-Review-2010-Summary.pdf>, p. 16.

⁵ At <http://www.cfri.org.nz/sites/default/files/docs/RI-Review-Report-to-Govt-Dec-2013.pdf>, p. 91.

⁶ At <http://www.cfri.org.nz/sites/default/files/docs/RI-Review-Report-to-Govt-Dec-2013.pdf>, p. 91.

This is an election year. Political parties could resolve the overseas pensions' issue of spousal discrimination. This issue could be fixed immediately at very little cost. To ignore it is bad for the health of our democracy and our international reputation.

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