



Submission to: Secretariat, Social Services Committee  
Parliament Buildings  
Wellington

**On: Social Assistance (Payment of New Zealand Superannuation and Veterans Pension Overseas) Amendment Bill**

From: Retirement Policy and Research Centre  
University of Auckland Business School  
Level 6, Owen G Glenn Building, 12 Grafton Road, Auckland  
<http://www.rprc.auckland.ac.nz>

Contact people: Dr M.Claire Dale, Research Associate RPRC, University of Auckland.  
Telephone (09) 373 7599 x86968  
Associate Professor Susan St John, Co-Director RPRC, University of Auckland. Telephone (09) 923 7432  
Michael Littlewood, Co-Director RPRC, University of Auckland.  
Telephone (09) 923 3884

The Retirement Policy and Research Centre (RPRC) of the University of Auckland specialises in the economic issues of demographic change including public and private provision of retirement income (New Zealand Superannuation, and e.g. KiwiSaver, respectively), and the accumulation and decumulation phases of retirement provision.

We wish to be heard by the Committee in Auckland in person or by video link.

The RPRC acknowledges the support and role of the Human Rights Commission in providing access to information and reports, however the analysis and proposals expressed in this submission are the sole responsibility of the RPRC.

**The Bill, and this submission**

- 1.** The Social Assistance (Payment of New Zealand Superannuation and Veteran's Pension Overseas) Bill (the Bill) provides an opportunity for correcting anomalies, and for increasing the fairness in policy on and treatment of overseas pensions and pension portability. The Explanatory note to the Bill acknowledges that the current policies on treatment of overseas social security pensions for immigrants, and the payment of New Zealand Superannuation overseas for emigrants, are contentious. Yet, for reasons that are not clear, the Bill does not address the problems of native New Zealanders and New Zealand immigrants with overseas pensions, and does not suggest when, or even if, they will be addressed.
- 2.** This submission begins with RPRC's perceptions of the anomalies and inequities generated or perpetuated by this Bill, followed by an outline of principles that might be applied to immigrant and emigrant problems with New Zealand Superannuation.

While the specifics of this submission focus on the Bill itself, the RPRC has published a Working Paper (Lazonby, 2007), and a Literature Review (Dale, Lazonby, St John, & Littlewood, 2009), and is preparing a further Working Paper for the Human Rights Commission on the wider issues surrounding the interaction of international pensions with New Zealand Superannuation (NZS). These documents providing a summary of New Zealand's retirement policy, superannuation, pension, and pension portability history and current environment, are available from the RPRC on request.

3. The RPRC notes that the domestic and global environments for pensions have changed dramatically in the last 10 years. The global trend for increasing labour mobility has created a need for suitable and equitable public pension portability policies. This means equitable and consistent treatment for those who come from overseas with overseas pension rights as well as those who leave New Zealand and retire abroad. It also requires that New Zealanders who have lived all their lives in New Zealand perceive that the amount of NZS accessed by those who have lived and worked in other countries is equitable; and that taxpayers generally feel that the amounts of NZS paid are justified. Increasing complexity has made it less clear cut which pensions from overseas perform the same role as NZS and what should be considered to be supplementary (and therefore, personal) saving.
4. The state plays an obvious role in the provision of a basic (Tier 1) pension in most countries. In some countries, usually if a longish period of residency or work is achieved, part or all of the Tier 1 pension may be portable. In many countries, the state also plays a role in facilitating or subsidising the accumulation of other savings for retirement. Those can be either administered by the state, by private institutions, or by the latter at the direction of the former. Some of these savings may be portable as an ongoing pension, some payable ultimately as a lump sum. For example, a scheme like KiwiSaver enjoys a large state role and state subsidies but is considered to be all the person's own money once it is accessed at the age of retirement. This sophistication of the state's role makes it more difficult to decide what pensions are analogous to NZS and what are not. The complexity of pension provision and portability suggests that it is necessary to take a principles-based approach to the formulation of any reforms.

### **Problems with the Bill**

5. This summary of the problems RPRC perceives with the Bill is followed in the paragraphs (below) with more detail. The Bill:
  - allows New Zealanders retiring to non-agreement countries<sup>1</sup> to receive their gross payment of NZS, whether or not the host country deducts tax (paragraph 6 );
  - exacerbates the confusions and inequities between countries with which New Zealand has and does not have a reciprocal Social Security Agreement, or a Special Arrangement, as with the specified Pacific nations<sup>2</sup> (paragraph 7);
  - does not address the human rights<sup>3</sup> issues of discrimination, injustice and inequity, as well as the significant hardship for increasing numbers of New

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<sup>1</sup> New Zealand has reciprocal Social Security Agreements with eight countries: the UK, Australia, Ireland, Jersey and Guernsey, Greece, Denmark, the Netherlands, and Canada.

<sup>2</sup> Since 1999, New Zealand has had Special Arrangements (more favourable than the Social Security Agreements) with 22 Pacific nations, many of which, such as New Caledonia and American Samoa, do not have a special relationship with New Zealand.

<sup>3</sup> Human rights are the basic rights and freedoms to which, under the Universal Declaration of Human Rights, all humans are entitled. These include civil and political rights such as the right to life and liberty, freedom of

Zealand citizens arising from section 70 of the Social Security Act 1964 (SSA), and the direct deductions policy (DDP) concerns of those retiring to New Zealand who have contributed to an overseas pension (paragraph 8); and

- introduces a form of pro-rata payment of NZS which allows qualifying superannuitants to receive payment of NZS or Veteran's pension overseas based on a formula of 1/540<sup>th</sup> of the full rate for each month of residence in New Zealand between the ages of 20 and 65, without considering the implications for entitlement for those who immigrate to New Zealand (paragraph 9);
- has avoided consultation with the public prior to the call for submissions; and is presented in a misleading manner (paragraph 10); and
- addresses one pension portability issue when what is required is a fundamental and integrated review of superannuation policy and legislation (paragraph 11).

**6. Gross payments of NZS in non-agreement countries.** Currently, all NZS and Veteran's Pension payments made under the general portability provisions, the special portability arrangement, or social security agreements, are paid at the gross rate. Section CW28 of the Income Tax Act 2007 states that portable NZS payments, whether paid into an agreement or non-agreement country, are considered as income that is exempt from tax.

General portability allows for a maximum of 50% of NZS to be paid to qualifying superannuitants in non-agreement countries. Whereas under the present legislation those retiring to non-agreement countries would lose 50% of their entitlement to NZS, Part 1, clause 6 (4) (a) i and ii, and clause 6 (4) (b) of the Bill propose that a person intending to reside in a non-agreement country or to travel outside New Zealand for more than 26 weeks will receive up to 100% of the gross payment of NZS, whether or not the host country deducts tax. It is not clear when obligations to pay tax in New Zealand would cease.

What has not changed, yet appears inequitable, is that NZS is paid at the gross rate to those travelling outside New Zealand, or residing in non-agreement countries. Whether or not all non-agreement countries deduct tax from NZS, the New Zealand taxpayer is paying more for those who emigrate than those who stay, and proportionally more for those on higher incomes (whose tax on NZS would be greater than the standard rate). This amendment appears to discriminate in favour of those who retire to non-agreement countries. Also, along with other aspects of current policy, it raises 'fiscal black hole' issues that should be of concern to the Government.

The RPRC recommends instituting a withholding tax that is equivalent to the income tax the recipient would have paid as a tax resident of New Zealand. Double tax agreements may allow the recipient to claim the withholding tax as a deduction from tax liability in the country of tax residence

**7. Inequities created between reciprocal agreement and non-agreement countries.** As well as creating inequity between those who go to non-agreement countries and those who remain in New Zealand, the Bill creates inequities and anomalies between those who go to non-agreement or agreement countries.

The reciprocal Social Security Agreements New Zealand has with eight countries: Australia, Canada, the UK, Greece, the Netherlands, Jersey and Guernsey, Denmark, and Ireland, appear to be potentially less favourable than the proposed arrangement with non-agreement countries.

**8. Section 70 of the SSA and the DDP.** The DDP emerged from the concern that differing pension systems could advantage those who distribute their working lives around different countries relative to those who stay in one country (Ministry of Social Development, 2003, 2004, 2005). Although the Explanatory note to the Bill states in the MSD's *Preferred option*, 4: "discontinuing the policy of deducting a person's overseas pension from their spouse's NZS entitlement, by amending sections 69G, 69H, and 70 of the Social Security Act", it is clear that the Bill does not address these concerns for resident New Zealanders.<sup>4</sup>

The Human Rights Commission (HRC), the Ministry of Social Development (MSD), the Ministers of Revenue and Finance, the Treasury, and the RPRC, regularly receive correspondence from retirees, both native and immigrant New Zealand citizens, who have worked overseas and contributed to voluntary and compulsory employer- and employee-funded superannuation schemes, and who are having their pension savings abated against NZS. In the main, these people are not wealthy; their savings have involved sacrifice; and the information available to them reinforces the expectation that they will be entitled to at least their overseas employment-based contributory pension in addition to NZ's basic provision of NZS when they reach retirement age in New Zealand.<sup>5</sup>

Article 1 of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."<sup>6</sup> When section 70 is applied, immigrant superannuitants perceive inequity, injustice, unfairness and/or discrimination on the part of the government, in short, an infringement of their human rights and a feeling of being duped.<sup>7</sup> The hope of a comfortable standard of living in retirement may be dashed.<sup>8</sup> In many cases, small amounts of money are involved, and the total fiscal impact of non-abatement would be minor, but the amounts are enough to make a significant difference to the affected retirees.

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<sup>4</sup> It appears that, rather than the abatement that occurs within New Zealand to the NZS of both the individual and their spouse when their overseas pension exceeds NZS, the individual's full overseas pension can be paid outside of New Zealand and the spouse's entitlement to NZS is not impacted ie s 70 is not applied.

<sup>5</sup> For example, *A guide to receiving New Zealand Superannuation or the Veteran's Pension overseas, 2008*, states: "When you're in Australia, you may be able to get 2 separate payments – one from Australia (Age Pension) and one from New Zealand (New Zealand Superannuation or the Veteran's Pension)." (Work and Income, 2008, p. 7). The information implies a person may receive both pensions, rather than portions of each combining to make the equivalent of one or other pension, which is a very different message.

<sup>6</sup> See: <http://www.un.org/en/documents/udhr/>.

<sup>7</sup> Dale et al (2009) quote the six elements of a human rights framework as set out in McGregor (2007, p. 25): 1. Identification of all relevant human rights involved, and a balancing of rights, where necessary, to maximise respect for all rights and right-holders; 2. The linking of decision-making at every level to human rights norms at the international level as set out in the various human rights covenants and treaties; 3. Accountability for actions and decisions, which allows individuals and groups to complain about decisions that affect them adversely; 4. Empowerment of individuals and groups by allowing them to use rights as leverage for action and to legitimise their voice in decision-making; 5. An emphasis on the participation of individuals and groups in decision-making; and 6. Non-discrimination among individuals and groups through equal enjoyment of rights and obligations by all.

<sup>8</sup> There may be limited opportunity and or ability for superannuitants to earn extra income.

**9. Extension of a pro-rata payment of NZS.** The Bill amends section 12 of the New Zealand Superannuation and Retirement Income Act 2001, by allowing qualifying superannuitants to receive payment of NZS or Veteran's pension overseas based on a formula of 1/540<sup>th</sup> of the full rate for each month of residence in New Zealand between the ages of 20 and 65. The administrative implications of this change are not minor. It is likely to be difficult for people to provide proof of their movements on a month-by-month basis over a 45 year period.

Although this amendment can be taken to imply that the pro-rata approach could be extended to entitlement to overseas pensions under a similar residency-based formula; and although this is the basis of the majority of the complaints to the HRC and the MSD, the Bill avoids recognition of these wider issues. It also seems unusual for New Zealand to unilaterally extend entitlements to NZS in this way in the absence of new social security agreements.

**10. Lack of public consultation and lack of transparency.** Prior to the call for submissions, and despite the far-reaching consequences of any changes to superannuation access or entitlements, the MSD has avoided consultation with the public or with interested experts. The Explanatory notes state: "The Ministry of Social Development receives a large amount of correspondence from the public on the issues and therefore it was considered that public feelings on the issues are already well known." ("Social Assistance (Payment of New Zealand Superannuation and Veterans Pension Overseas) Amendment Bill," 2009, pp. 13 - 14).

A further problem is that the presentation of the document is misleading, with the Alternative options occupying almost half of the 15 pages of Explanatory notes, yet bearing no relation to the proposed Amendment Bill. Such incoherence dissuades the public from participation in consultation.<sup>9</sup>

In addition, the "Preferred option" in the Explanatory notes comprises ten separate components. However, the Bill touches only three of those ten components, none of which have been subject to public discussion. The implications of the Bill are wide and RPRC suggests that the MSD's ten-point "Preferred option" deserves wider debate in the context of all the relevant issues.

**11. Fundamental review of retirement pension policy and legislation.** Fair and transparent process requires full consultation. The RPRC suggests that a fundamental review of all superannuation and retirement policy, regulation, legislation, and publically available information is necessary and timely. The domestic and global environments have changed dramatically in the last 10 years. Increasing labour mobility has created a global need for suitable and equitable public pension portability policies.

Equitable public pension portability policies means equitable treatment for those who leave New Zealand and retire abroad, and for those who come here with overseas pension rights. It also requires that people who have lived all their lives in New Zealand perceive that the amount of NZS paid to those who have lived and worked in other countries is equitable; and that the amounts of NZS paid are justified.

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<sup>9</sup> The 2008 MSD Review of Pensions included the recommendation that the legislation be rewritten in plain English (2008, pp. 13 - 21).

**12.A principles-based approach.** The RPRC suggests that a principles-based approach to reform is needed to inform amendments to the existing legislation and regulations regarding superannuation, pensions, and retirement. Such principles, as discussed below, might include:

- New Zealand’s overarching principle of egalitarianism (paragraph 13);
- Horizontal, vertical, and intergenerational equity (paragraph 14);
- Income adequacy (paragraph 15); and
- Simplicity and transparency (paragraph 16).

Both immigrants and emigrants form a growing group that is entitled *prima facie* to income support from the state in retirement. The relationship between this particular group and all other superannuitants and between all older people and other New Zealanders is an important part of any solution.

**13. Egalitarianism.** The principle of egalitarianism or fairness and equality of rights, access and treatment has been a foundation New Zealand’s policy and legislation since the Treaty of Waitangi in 1840; that has been tested and reinforced by the Royal Commissions on Social Policy (1972) and (1987); by the Bill of Rights Act 1990; and by the Human Rights Act 1993. Great care needs to be taken to avoid discrimination and to avoid diminishing the egalitarianism that is ingrained in our culture and particularly evident in the universal nature of the NZS.

The DDP expressed in section 70 of the SSA,<sup>10</sup> by preventing access to more than one state-funded pension, could be seen to support egalitarianism. Also, the short 10 year residency requirement for entitlement to NZS, with 5 years after age 50, ensures that virtually all retired people living in New Zealand receive an equal amount of pension, regardless of how much they had contributed to New Zealand via taxes paid, or non-financial contributions to society.

**14. Horizontal, vertical, and intergenerational equity.**<sup>11</sup> Inequity and injustice are human rights infringements. Equity has a human rights dimension and requires an absence of discrimination. While the HRA requires significant or severe disadvantage in comparison with the treatment received by others for discrimination to be unlawful, broader concepts of equity need to apply. In regard to pension provision and portability, “equity” could be summarised as ensuring those in an equivalent situation are treated equivalently.

Horizontal equity requires that those in the same situation receive the same benefits. While section 70 is an attempt to ensure that people in a similar situation are treated equally, it may fall well short of achieving horizontal equity in its current application.

Vertical equity requires that those of lower means receive proportionally greater benefits and that policy does not unduly benefit the rich. Vertical equity could be said to be effected for retirees through the tax system, where those with other incomes in addition to NZS are taxed at a higher rate. This has especially been the case in the past, when higher tax rates and/or surcharges have applied.

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<sup>10</sup> In addition to supporting egalitarianism, the DDP is contentious. It is applied at the discretion of the chief executive of the MSD to overseas pensions, and can capture private savings as well as Tier 1 pensions that are equivalent to NZS.

<sup>11</sup> The RPRC *Literature Review* (2009) prepared for the Human Rights Commission discussed equity in terms of horizontal, vertical, and intergenerational categories (Dale et al., 2009, p. 16).

Inter-generational equity requires that horizontal and vertical equity hold across generations. For inter-generational equity to hold in New Zealand, caution needs to be taken regarding the burdens imposed on this and the next generation of workers to fund the current and future generation of native and immigrant retirees.

**15. Income adequacy.** Horizontal equity requires equals to be treated equally, and vertical equity requires a fair sharing of benefits and taxes as income increases. As part of that, vertical equity requires that the poor have sufficient income to reach some minimal acceptable living standard, or income adequacy. The acceptability criteria for retirement income could be poverty prevention, belonging and participation, or continuance of economic status.

A welfare system provides benefits to alleviate poverty or for subsistence living. New Zealand goes further: NZS is more generous than a welfare benefit, and when compared internationally, is relatively more generous than most basic (Tier 1) pensions in overseas countries. NZS aims to achieve a belonging and participation level of income adequacy, but not continuance of economic status as provided, for example, through earnings-related benefits. The Emergency Benefit ensures that those of pension age, whether native or immigrant, who do not qualify for NZS for any reason, are still provided with a poverty-alleviating income.

Continuance of economic status for middle income and higher income people, or maintenance of what they perceive as income adequacy, has been up to the individual in New Zealand, but there is now some state involvement in the supplementary income provided through KiwiSaver. Income adequacy as a principle may encompass the right for low and middle income people to supplement their state pension with private savings that may in turn be facilitated in some way by the state.

**16. Simplicity.** Administrative simplicity is a very important principle. It is desirable for cost minimisation for government administration and individual compliance. It supports efficiency. NZS is, in world terms, a very simple Tier 1 pension, probably the simplest in the developed world. Simplicity enables transparency of policy and law which is desirable because citizens can understand it and thus both follow and support it. They can also make appropriate allowances in their other arrangements they make for retirement income provision.

Over time, New Zealand's approach to superannuation in general and pension portability in particular has become much more complex, and changes have not necessarily been consultative, or well-considered. Appeals and counter appeals for those affected under section 70 add layers of complexity and cost. The present situation illustrates the effects of failing to follow a principles-based approach, and this Bill continues that policy.

### **Concluding comments**

**17. Current perceptions.** Migrants from and governments of many countries dislike New Zealand's approach to pension portability, thus there are only eight reciprocal Social Security Agreements.<sup>12</sup> No stable international categories distinguish between

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<sup>12</sup> Australia, in contrast, has twenty two reciprocal Social security Agreements. See: <http://www.centrelink.gov.au/internet/internet.nsf/ea3b9a1335df87bcca2569890008040e/0f8cef4e1f1ba1d8ca25757d0013dc3d!OpenDocument>.

state and private pensions, or voluntary and compulsory contributions and as currently applied, the SSA's section 70 DDP can capture private and even voluntary savings.

A potential problem also lies in the comparatively short 10 year residency requirement for NZS and its universal entitlement that could result in adverse selection, and a future excessive burden on taxpayers and infra-structure. The short residency requirement also means greater vigilance is necessary to avoid complications with the accumulation of entitlements to Tier 1 pensions in other countries.

**18. Possible changes to associated policy, regulation and legislation.** The way the present system treats emigrants and immigrants is full of anomalies, inequities and inefficiencies (see box for 2 examples). The RPRC strongly recommends that the Bill be deferred and that a comprehensive solution is sought based on the principles discussed above. This would require a review of the parameters of NZS including the residency test and the way it is applied, and the purpose and effectiveness of existing social security agreements, with a view to the development of coherent policy for both emigrants and immigrants.

### **1. Australia and New Zealand**

The 2006 Social Security Agreement governs how much pension is payable in either country. It is more complex than usual because of the income/asset tests applied in Australia to the Age Pension.

**In Australia**, a New Zealander can apply for NZS as if resident in New Zealand. The New Zealander then can get 1/540<sup>th</sup> of NZS for each month of "working age residence" in New Zealand **but** cannot get more than the Age Pension that Australia would have paid (after the income/asset test has been applied).

**In New Zealand**, an Australian can get NZS but is entitled to an income/asset tested Age Pension without counting NZS as "income". NZS is then deducted from the Age Pension. If New Zealand residence is less than 10 years, the Age Pension is subject to a 540 month apportionment.

In summary, rather than the Agreement, the country of residence determines the amount payable according to local conditions. For New Zealanders in Australia who lose the Age Pension because of the income test, both governments save money. For an Australian living in New Zealand who loses the Age Pension entitlement, only the Australian government saves money.

### **2. Special Arrangement with Pacific Nations**

New Zealand had a Special Arrangement with the Cook Islands, Niue and Tokelau, based on a long history of labour supply for New Zealand, and consequent family connections. There was no consultation and seemingly no rationale in 1999 for extending the favoured treatment enjoyed by emigrants to and natives of those three nations to 19 other Pacific nations. The 1999 changes increased the existing superannuitant entitlement of 25% of gross NZS to 50%, with the 10(5) years residency requirement, plus each additional year in New Zealand added 5% to their NZS entitlement. Thus 20 years residency now entitled a person to 100% of NZS.

The apparent discrimination and rejection of egalitarian principles to favour these other 19 Pacific nations over other nations with which New Zealand has Social Security Agreements is a source of numerous human rights complaints.

See: [http://executive.govt.nz/96-99/minister/shipleyp/parliament99/super\\_qa.htm](http://executive.govt.nz/96-99/minister/shipleyp/parliament99/super_qa.htm).

The RPRC will produce a working paper in June 2009 in which options such as MSD's *Preferred option* ("Social Assistance (Payment of New Zealand Superannuation and Veterans Pension Overseas) Amendment Bill," 2009, pp. 10 - 13), and others are assessed using the principles outlined here.

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