

Report from Overseas Pensions Forum 6 June 2013

a) Survey Results:

Option 1: current 10 year residency requirement increased to 25 years by age 65. New Zealand could then ignore other state pension entitlements and section 70 would no longer be needed. *(Associate Professor Susan St John, RPRC)*

Option 2: triggered by entitlement to an overseas pension similar to NZS. Pensioners receive their overseas pension, and NZS is paid at $1/540^{\text{th}}$ of the full benefit for each month of residence in New Zealand ($1/45^{\text{th}}$ for each year for ages 20-65). *(Michael Littlewood, RPRC)*

Option 3: NZS changes for all New Zealanders into $1/540^{\text{th}}$ for each month of residence between ages 20-65 ($1/45^{\text{th}}$ for each year). Only those who live in New Zealand for the full 45 years (with, perhaps, a five year period of grace) receive the full NZS. Any overseas pension remains the pensioner's property. *(Denis O'Rourke, New Zealand First)*

2013 survey of 3 Options: **Simplicity**

Votes:

- Option 1 x **14**
- Option 2 x 2
- Option 3 x 13

2013 survey of 3 Options: **Fairness**

Votes:

- Option 1 x 4
- Option 2 x 5
- Option 3 x **19**

2013 survey of 3 Options: **Feasibility**

Votes:

- Option 1 x 11
- Option 2 x **12**
- Option 3 x **12**

General comments:

- All 3 options increase complexity & administrative cost of pension system (vs simple universal NZS)
- All 3 options address current fiscal risk where older immigrants qualify for full NZS after 10 years.
- All 3 options have transition issues: eg person with small overseas pension and 22 years in NZ?
- Gender element critical eg women child-rearing overseas hence small overseas pension.
- Spousal issues ie large overseas pension also deducted from partner's NZS
- Double tax issues

b) Class Action option

Based on discussions with senior lawyers:

- Relevant law: s 70 of the Social Security Act 1964 generally provides that where a person is entitled to an overseas age pension, their entitlement to NZS is reduced by the amount of the overseas pension.

1. Cannot overturn legislation through the courts in NZ.

2. "Pension", "superannuation" and "social security" schemes in different countries differ from one another, making it hard to challenge the treatment of all schemes in a single class action.

- ***Of 25 challenges to the direct deduction policy in the Courts, none has succeeded.***

A class action

- Learning from the experience of others

The Human Rights Case
CPAG v the Attorney General

Clear cut case of outright discrimination

1996 HR complaint rejected

2002 CPAG lodged complaint under Part 1A

2003 Crown Law objected

**2005 Case taken on CPAG's behalf by Office of
Human Rights Proceedings**

June 2005 – Crown disputes right to take the case

**Sept 2005 Human Rights Tribunal rules in CPAG's
favour**

Oct 2005 Crown Appealed

May 2006 Reserved decision dismisses appeal

August 2006 goes to Judicial Review.

November 2006 CPAG won right to take the case

The Human Rights Review Tribunal, 2008



*We are satisfied that the WFF package as a whole, and the eligibility rules for the IWTC in particular, treats families in receipt of an income-tested benefit less favourably than it does families in work, and that as a result families that were and are dependent on the receipt of an income-tested benefit **were and are disadvantaged in a real and substantive way.** (Human Rights Tribunal 2008: para 192)*

High Court 2011

Court of Appeal
28 -29 May 2013

**Discrimination upheld
But found to be
justified...
Are the courts
equipped to make
these decisions?**



A possible way forward:

- one pensioner, perhaps funded by a class of interested people, could challenge the Chief Executive's decision in their own case.
- Ideally, a number of such representatives concerned with different jurisdictions could simultaneously seek review of their respective Chief Executive decisions.
- These would not strictly speaking be class actions, but could create precedents concerning each jurisdiction to be applied to all future Chief Executive decisions.

Recommended next steps:

- Rather than action through the courts, continued lobbying and raising publicity with the aim of getting the legislation changed is more likely to be an effective (and less expensive) approach.
- Even if legislation is not changed, publicity will help create public awareness and an environment friendlier to court challenges to individual decisions.

Now: a review of the Options

- Option 1: Susan St John
- Option 2: Michael Littlewood
- Option 3: Denis O'Rourke