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New Zealand Superannuation and Overseas Pensions: Issues and Principles for Reform.

by

M.Claire Dale,² Susan St John,³ and Michael Littlewood.⁴

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Retirement Policy and Research Centre
Economics Department
Business School
The University of Auckland
Private Bag 92019
Auckland, New Zealand
www.rprc.auckland.ac.nz

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² Dr M.Claire Dale is Research Associate at the RPRC.

³ Associate Professor Susan St John is Co-director of the RPRC.

⁴ Michael Littlewood is Co-director of the RPRC.

The Retirement Policy and Research Centre

The Retirement Policy and Research Centre is pleased to publish this Working Paper on New Zealand Superannuation and overseas pensions.

This paper is informed by previous Working Papers. A. Lazonby's *Passing the Buck*, 2007, took a preliminary look at the implications of New Zealand's policy in the case of individual pensioners. It found that policy varies considerably depending on personal circumstance and the complexities of the other (sometimes several) countries' pension systems.

The *Literature Review*, 2009, by M.C. Dale, A. Lazonby, S. St John and M. Littlewood, surveyed recent academic and government publications in New Zealand and overseas relating directly and indirectly to pension portability and migration.

The first part of this Working Paper analyses existing complaints, policy, legislation and recommendations regarding the treatment of overseas pensions and of New Zealand Superannuation overseas. It uses these foundations to discuss suitable principles to guide future decision making and policy formation in this area. The final section of the first part of the Paper provides two possible options for addressing the problems identified around pension portability.

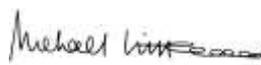
The second part of the Working Paper provides extracts from the relevant legislation and court cases, and other supporting material. It also provides a comparative discussion of the relevant aspects of New Zealand's reciprocal Social Security Agreements.

The Retirement Policy and Research Centre acknowledges the support of the Human Rights Commission which has enabled the research to be conducted. The views expressed here however are those of the authors.

Comments welcome to Dr M.Claire Dale: m.dale@auckland.ac.nz



Dr Susan St John



Michael Littlewood

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PART 1.

1. Introduction

The purpose of this Working Paper is to provide a basis for discussion of a principles-based approach to “pension portability” policy reform in New Zealand as a fairer and more transparent alternative to the existing rules-based approach.

The concern articulated by opponents to a rules-based system is that it encourages ... decision makers to equate ethics with the law. Rules can erroneously suggest that if people feel they are following the law, they are not doing anything wrong. Critics of rules-based systems would argue that legalistic thinking seeks loopholes, while principles-based thinking seeks assent. (Sama & Shoaf, 2005, p. 184)

The global trends of population ageing⁵ and increasing labour mobility require suitable and equitable policies for public pension portability. An increasing number of New Zealanders spend some years working overseas; and an increasing number of overseas-born citizens immigrate to and retire in New Zealand. Both these groups may have contributed through taxation and/or through compulsory or voluntary payments, into superannuation or pension schemes, perhaps in more than one country. Both are affected by the pension policies of the countries where they have contributed, and to which they wish to retire.

⁵ The proportion of older persons in the world population is expected to rise from the 8% of 1950 to 21% by 2050, thus the potential support ratio (12 in 1950) is projected to fall to 4 by mid century, with implications for social security systems like New Zealand’s where current workers pay for the benefits of current retirees. Cost pressures are also expected in the health sector, including greater demand for long-term care. “*The steady increase of older age groups in national populations, both in absolute numbers and in relation to the working-age population, has a direct bearing on the inter-generational and intra-generational equity and solidarity that are the foundations of society.*” (Department of Economic and Social Affairs, 2008, p. xxix).

While there is a need for equitable treatment of those who come from overseas with overseas pension rights, as well as of those who leave New Zealand and retire abroad, New Zealanders who have lived all their lives in New Zealand also need to perceive that the amount of New Zealand Superannuation (NZS)⁶ accessed by others is equitable.

NZS, the foundation of New Zealand's pension system, is a flat rate, taxable, universal pension paid out of current taxation. Residents over the age of 65 are entitled to receive NZS as long as they have lived in New Zealand for at least 10 years after age 20 with at least five of those years being over age 50 (the 10(5) requirement). Residence in countries with which New Zealand has a reciprocal Social Security Agreement⁷ counts as residence in New Zealand. If the minimum residence criterion is met, the amount of NZS payable is not dependent on the number of years a resident has lived in New Zealand. The limited years-based qualifications establish an "all or nothing" threshold. Those who do not qualify for NZS may however be entitled to an Emergency Benefit.

The modest qualification requirements make NZS an easy pension to understand and administer, however, there are some significant difficulties when coordinating it with entitlements arising from overseas pension arrangements. There is also the potential problem of a fiscal "black hole" as a consequence of adverse selection: the modest qualification requirements for a basic universal NZS may attract retirees from overseas, creating a potentially large fiscal cost both in pensions and healthcare.

1.1 The direct deduction policy

Current application of New Zealand's domestic and foreign pension policy, regulation, and legislation results in the MSD, the Treasury, the Minister of Finance, the Human Rights Commission (HRC), and the Retirement Policy and Research Centre (RPRC) receiving numerous complaints each year regarding unfairness, inequity, or discrimination in the treatment of overseas pensions.⁸

If a resident receives a pension from another country, the Chief Executive of the Ministry of Social Development (MSD) may apply Section 70(a)⁹ of the Social Security Act 1964 (SSA), the direct deduction policy (DDP), and deduct that pension from the resident's NZS entitlement, provided:

The benefit, pension or periodical allowance, or any part of it, is in the nature of a payment which, in the opinion of the chief executive, forms part of a programme providing benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions or allowances may be paid under the New Zealand Superannuation and Retirement Income Act 2001 ... which is administered by or on behalf of the Government of the country from which the benefit, pension or periodical allowance is received ... ("The Social Security Act," 1964, section 70(a))

An overseas pension of the kind that the Chief Executive decides should be taken into account in the calculation of NZS need not be from a country with which New Zealand has a reciprocal Social Security Agreement. It is sufficient, as stated in section 70(a) of the

⁶ Defined expressions and abbreviations are listed in the Glossary.

⁷ New Zealand has Social Security Agreements with Australia, Canada, Denmark, Greece, Ireland, Jersey and Guernsey, the Netherlands, and the UK.

⁸ Some complaints concern the way that foreign governments operate their pension policy, regulation and legislation, but such complaints are outside the scope of this inquiry.

⁹ See Appendix 1 for the relevant parts of sections 69 and 70 of the 1964 Act.

SSA, that the pension is “administered by or on behalf of the Government of the country from which the benefit, pension or periodical allowance is received”.

However, as Smith (2009a, p. 16) notes, under the DDP, “the total amount of a pension paid to a claimant will be determined by New Zealand only”. It is possible, and it does happen, that an individual retiring to New Zealand with a large public pension from another country can receive no NZS, despite them having spent part of their working life in New Zealand. This policy has direct fiscal benefits for the New Zealand government, at the same time as it tarnishes its international reputation for fairness.

Apart from the SSA, and in particular the DDP set out in section 70 of that Act, New Zealand’s relevant pension legislation comprises the War Pensions Act 1954, the Social Welfare (Transitional Provisions) Act 1990, the Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Act 2002,¹⁰ and the New Zealand Superannuation and Retirement Income Act 2001.¹¹ Also, the Human Rights Act 1993 (HRA)¹² and the Bill of Rights Act 1990 make certain kinds of discrimination unlawful, and have special provisions that apply to other laws.

The intention of these Acts is to ensure that everybody is treated fairly in key areas. If people feel they have not been treated fairly, they can make a complaint. The treatment of complaints is determined in part by where the complaint is made. Complaints taken to the HRC are investigated by the HRC. Complaints received by the Treasury and the Minister of Finance, however, are referred to the Chief Executive of the MSD, who can order a hearing by the Social Security Appeal Authority (SSAA). If not satisfied with the outcome, the complainant may then take their complaint to the HRC. If the HRC agrees there may be valid grounds for a complaint, an opinion may be sought from Crown Law, and a case may be advanced to the High Court. Since 2002 the Government itself can be challenged under Part 1a of the HRA when people feel they have been discriminated against in public policy.

The Social Assistance (Payment of New Zealand Superannuation and Veteran’s Pension Overseas) Amendment Bill,¹³ given its first reading in Parliament on 31 March 2009 and Select Committee hearings in July 2009, has wide implications for the regulatory and social pension environment. The Bill acknowledges that the current policies on treatment of overseas social security pensions and the payment of NZS overseas are contentious. It proposes increases in the rate of NZS received by certain superannuitants receiving NZS overseas; and allows people resident in certain Pacific countries to apply for NZS, rather than the current situation where application can only be made by those normally resident in New Zealand. However, the issues concerning New Zealand residents with overseas pensions that are discussed in the Bill’s Explanatory notes are ignored in the Bill itself.

When the DDP was introduced in 1938, the intention was that a person with an overseas pension would not be advantaged over someone who had remained in New Zealand for

¹⁰ 2002 legislation meant provision for mutual assistance in reciprocity agreements, and terms and conditions for recovery of social security debts and for exchange of information for social security purposes were included (“Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Act,” 2002).

¹¹ See Appendix 2 for the relevant sections of the 2001 Act.

¹² See <http://www.hrc.co.nz/home/hrc/resources/resources.php#case> for HRC Complaints Information, and Fact Sheets covering discriminatory laws; discrimination by the public sector and the private sector; and discrimination in employment.

¹³ See Appendix 3 for extracts from the 2009 Social Assistance (Payment of New Zealand Superannuation and Veteran’s Pension Overseas) Amendment Bill.

their entire working lives. The environment now is very different to that of 1938, and in 20 years time, it is likely that the recently introduced tax-subsidised KiwiSaver will be an important component of retirement income for many citizens. Our closest neighbour Australia has a maturing compulsory private savings scheme, and around the world people are expected to supplement their state pensions with additional private saving. Government involvement in pension provision can, and does, take a wide range of forms, making the relatively simple rules of the past less workable.

1.2 Outline

This working paper draws on RPRC's Working Paper, *Passing the Buck* (Lazonby, 2007), the RPRC *Literature Review* (2009), and the RPRC *Submission on the Social Assistance (...) Bill* (2009), all of which are available on the website: www.rprc.auckland.ac.nz. In Part 1, a short pension primer is provided on the various types of public and private pensions in section 2, followed by a brief history of New Zealand's early pension policy and provision and the recently introduced KiwiSaver in section 3. Section 4 summarises current policy on overseas pensions, including New Zealand's reciprocal social security arrangements with 8 nations, and special arrangements with 22 Pacific nations. More detail of these arrangements is provided in Part 2.

Section 5 covers the Human Rights Commission and the effect of the human rights legislation on pension entitlement and portability; while section 6 surveys problems with pensions and entitlements through complaints received over recent years by the MSD, the HRC, the Treasury, the Ministers of Finance and Revenue, and the RPRC. Section 7 outlines a principles-based framework for pension policy reform, leading to some recommendations and possible solutions in section 8.

Part 2 contains extracts from the relevant legislation, and short summaries of the cases brought before the courts. It also contains a comparative description of the pension regimes in the nine countries with which New Zealand has reciprocal Social Security Agreements, as well as short descriptions of those agreements.

2. A short pension primer

Cash incomes for retired people in developed countries are grouped by "source" into three major categories: public pensions; private and occupational pensions (in New Zealand and Australia: "superannuation"); and income from other private investment and savings.

Figure 1. Spectrum of state involvement in old age pensions

<p>Pure private</p> <ol style="list-style-type: none">1. Pure voluntary saving2. Tax-subsidised private saving3. Mandatory private saving4. Mandatory public saving5. Social insurance6. Earmarked taxes7. Tax-funded flat-rate universal pensions8. Tax-funded flat-rate means-tested pensions9. Social assistance <p>Pure public</p>
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Source: St John & Ashton (1993, p. 106).

The state's level of involvement is philosophically determined, and can be complex as is shown in Figure 1 (above). At level one, there is private unsubsidised saving. At the level nine end of the spectrum, a subsistence poverty alleviation approach is provided by a means-tested welfare benefit, unrelated to either former contributions or residence requirements. No developed country relies on these extremes exclusively.

Moving from the top end of the spectrum, a government may subsidise or compel private saving, as indicated by levels 2, 3, and 4. In these arrangements there is a close relationship between contributions made and final benefits received, although the state may subsidise contributions even when the scheme is compulsory. Such arrangements require that a fund is built up; and final payouts depend on how successfully the fund is invested. The Australian and Chilean schemes are examples of mandatory private saving (level 3). The Singapore Central Provident Fund is an example of mandatory public saving (level 4).¹⁴

The next step towards the public end, following the Bismarkian tradition (earnings-related pensions), is social insurance (level 5), which is the main type of pension scheme adopted by developed countries. These schemes generally require employers and employees to make compulsory contributions and while there may be a reserve fund, benefit payments are made on a PAYG basis according to a formula that reflects the earnings of the employee. Pensions are paid as of right and are therefore not means-tested.¹⁵

Social assistance systems (level 9) usually run alongside social insurance schemes to ensure that people who have not earned or saved enough in their working life will not be destitute when they are elderly. "Assistance is income or asset-tested, and often has other conditions attached to it. It is funded from taxation or other general government revenue and is the lowest cost way of providing public pensions of any given level from taxpayer funds." (Preston, 2008, p. 7)

Variants of social insurance may include use of an earmarked tax (level 6) rather than keeping a contributions record with no attempt to relate the benefits closely to contributions. In the extreme, a flat-rate pension may be paid on a PAYG basis from general taxation in the Beveridgian tradition (flat-rate pensions) (level 7). If the flat rate pension is means-tested (level 8) as is the case for the old age pension in Australia, the transition has begun towards a welfare benefit. In the extreme, social assistance (level 9) is a poverty alleviation tool without a connection to contributions.

Different countries adopt a different mix of policies from levels 1 to 9. For example, the US has levels 1, 2, 5, and 9. Since the adoption of KiwiSaver, New Zealand has levels 1, 2, and 7. Among developed countries, universal pensions are the least common form of public pension.¹⁶ The link between contribution and pension is broken, for example, for New Zealand Superannuation (NZS), where no tagged contributions are required nor is retirement required at the age the pension becomes payable.

The state pension age for the majority of OECD member countries is 65 years. The exceptions are France and Turkey with a pension age of 60. On the other hand, Iceland,

¹⁴ "Public" saving in that the individual accounts are managed by a public entity. In Chile and Australia, by contrast, members' accounts are managed by heavily regulated private entities.

¹⁵ For more discussion on social insurance refer Preston, (2008) and Smith (2009).

¹⁶ Norway, Sweden, Denmark and Iceland operate modest "part universal" schemes in conjunction with an earnings-related contributory pension. The Netherlands contributory system is also nearly universal.

Norway and the US are phasing in an age of 67 (OECD, 2005); and in 2009, Australia¹⁷ and the UK¹⁸ announced their intentions to increase the age of state pension entitlement above age 65.

Most government-administered pension arrangements require citizenship or permanent residency. Although Australia has adopted retirement income policies (levels 1, 2, 3, and 8) that are substantially different to New Zealand's, the two countries share a similar set of entitlement requirements: a superannuitant must be a citizen or hold a permanent resident's visa in order to claim the Australian Age Pension.¹⁹

Thus the reason the treatment of overseas pensions is so complex is that different countries adopt different mixes of the 1-9 types of provision in Figure 1, and the boundaries between social insurance and private, occupational pensions are often blurred. At the top of the spectrum (levels 1 and 2) is private provision which can be either unsubsidised (level 1) or subsidised (level 2). These schemes are a part of all countries' policy mix and they vary greatly in the degree of state subsidy.

Whether membership is compulsory or voluntary, both public and private retirement saving plans may be further classed as either "Defined Benefit" or "Defined Contribution". A Defined Benefit (DB) private or public retirement plan usually promises a benefit, either a pension or a lump sum, defined on the basis of salary/wages and/or membership prior to retirement. The earnings could be in the years just prior to retirement or even over a working life. A Defined Contribution (DC) retirement benefit plan provides benefits based on individual contributions plus the investment return, and is usually paid as a lump sum.

Many occupational pension schemes provide for contributions from both employees and employers, and are administered for employers by separate insurance or investment funds. Occupational pensions generally appear to be shifting from a DB basis to DC, a process that will probably be hastened by the dramatic losses suffered by pension funds in the 2008/9 global financial crisis. DC systems work like investment funds: the value of entitlement at retirement depends on the level and timing of contributions and the fund's earnings rate; and pension or lump sum entitlements depend on the amount accumulated in the individual person's account.²⁰

Some "provident funds", so-called because they are nationally organised or centralised, offer a DC model of retirement provision (Figure 1, level 4) usually linked to employment and possibly supplemented by employer contributions. Members make contributions from their wage or salary at a specified percentage rate. The total contribution is invested by the fund into income-earning assets. An apportionment of those earnings is made to each member's individual account. At retirement or vesting age, the member receives the accumulated value of their own and their employer contributions plus the investment earnings from the central fund (Preston, 2008, pp. 10 - 11).

¹⁷ The Australian Government states, beginning in 2017, the pension age will increase at 6 monthly intervals from age 65 until it reaches 67 by 2023. <http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/056.htm&pageID=003&min=wms&Year=&DocType=0>.

¹⁸ Between 2024 and 2046 the State Pension age in the UK will increase to 68 for men and women. http://www.direct.gov.uk/en/MoneyTaxAndBenefits/PensionsAndRetirement/StatePension/DG_4017919.

¹⁹ Centrelink (2007). "What residence requirements does age pension have." Retrieved 05/02/2007 from http://www.centrelink.gov.au/internet/internet.nsf/payments/qual_res_agepens.htm.

²⁰ New Zealand's largest DB scheme is the former Government Superannuation Fund for public servants, which has been closed to new members for some years (Preston, 2008, p. 9).

Well-established provident funds operate in Singapore, Fiji, Samoa, and several other countries. Some offer a pension option as well as a cash lump sum option to retirees. New Zealand's long-established National Provident Fund, an umbrella vehicle for 14 separate employer superannuation schemes (some of which are DB), provides employment-linked retirement savings options. These schemes, carrying a government guaranteed rate of return, have been traditionally important for local authority employees (Preston, 2008, pp. 10 - 11), but are now closed to new members.

2.1 *The three tier approach*

An alternative categorisation of retirement income systems follows a World Bank (1994) report that refers to "three pillars". In this paper, the term "Tier" is a preferred metaphor to "pillar". "Tier 1" is almost always a state-run DB, PAYG pension system, which offers basic coverage and is primarily focused on reducing poverty. "Tier 2" is a work-related pension with mandatory contributions by employees, employers or both. Tier 2 can be public or private; DB or DC; pre-funded or PAYG; and can deliver at retirement a benefit that can be a pension, or a lump sum, or both.

All other voluntary retirement savings are referred to as "Tier 3", whether the saving is through the workplace or directly; or through formal saving plans or by direct investment, such as shares. Although Tier 3 is private and voluntary, most governments in developed countries participate indirectly, through incentives such as generous tax concessions that encourage particular types of retirement saving, and through prescribing the ways in which those savings can be accessed at retirement.²¹

The New Zealand situation is unusual. Unlike most other countries, New Zealand does not have a Tier 2, although KiwiSaver is quasi Tier 2, because employer contributions are mandatory for employees who choose to become members. However, because membership is not compulsory, KiwiSaver is best described as Tier 3, as are employer-arranged workplace saving schemes, direct investments, and anything else that might be converted to money to help pay for retirement.

Much of the confusion and distress experienced by migrant retirees results from the difficulties in comparison of pension schemes between countries. Lining up the Tier 1 schemes of all countries in order to decide how they might be treated under section 70 of New Zealand's SSA is an inadequate approach because the design of a country's Tier 1 scheme may be directly or indirectly affected by the presence of a Tier 2 scheme, and by the size and shape of Tier 3. In some cases, the three Tiers are directly interconnected. In other cases, that interconnection is implicit. The detail in Appendix 4 in Part 2 on the pension regimes of New Zealand's nine reciprocal agreement countries provides a useful indication of the complexity of constructing equitable pension portability policies.

In summary a country's retirement income framework will usually be a complex mix of tax, contributions, benefit styles, funding arrangements; accrual rules, management and regulatory oversight. Inter-country comparisons are difficult; and multi-country analyses are complex and often not useful. The risk New Zealand runs in the application of the DDP under section 70 is that elements of a country's retirement income framework that are not analogous to NZS can be extracted out of context and applied in New Zealand's unique

²¹ Government participation in voluntary savings through incentives is becoming an equity issue, as the benefits go predominantly to the higher earners who can afford to save. See Ingles (2009).

environment. As reported in later sections of this paper, a growing group of New Zealanders with overseas pensions believe this to be the case.

3. New Zealand's age pension

New Zealand's early history reflects the values of the early inhabitants. For Maori, the very young and very old members of the tribe were valued as taonga or treasures (Firth, 1929 [1959, 1972], pp. 186 - 189). The Pakeha immigrants were, in the main, escaping from the strictures of classed societies, and were desirous of establishing egalitarian values. Thus New Zealand's social and political history prior to and post the 19th century is reflected in the public pension system which is "unusual in its complete reliance on taxation funding and its focus on universal benefits" (Preston, 2008, p. 12). McClure (1999) also concludes that the concepts of community and interdependence within society are central to New Zealand's history of social security.²²

As noted in the RPRC Literature Review (2009), New Zealand's pension arrangements are unusual, yet a universal, non-means-tested pension has the advantage of administrative simplicity; it directly addresses the poverty issues faced by the old; and it is transparent.²³

3.1 Background: the residency requirement and DDP

The old-age pension was introduced in New Zealand in 1898. At only £18 a year²⁴ from age 65, it was designed to provide some protection for the deserving, aged poor. Strict eligibility conditions included income and asset tests, good moral character and sober habits, and importantly in the context of this paper, 25 years' residency. Pension policy changed over time to encourage or support other national aspirations. For example, to encourage home ownership relative to other types of investment, in 1925 a pensioner's house was exempted from the means test. By 1937, probably to encourage immigration, the residency qualification was reduced to 10 years (Ashton & St John, 1988, p. 21).

With the passing of the Social Security Act 1938, New Zealand adopted a dual pension system for public provision. People of retirement age were able to choose between the Age Benefit, payable from age 60, subject to an income test but not taxed; and the Universal Superannuation, taxable but not income-tested, payable from age 65 with a 20 year residency requirement. Reflecting the egalitarian ethos, the 1938 Act also introduced the DDP, deducting overseas pensions dollar for dollar from their New Zealand equivalent, so that a person with an overseas pension would not be advantaged over someone who had remained in New Zealand for their entire working life. The individual retained any remaining pension once the amount of the New Zealand pension was deducted. If the overseas pension was less than New Zealand's, it would be topped up to the New Zealand pension amount.

A social security contribution on all income of 5%, later increased to 7.5%, was paid into a separate Social Security Fund to pay for the new social security system. As the revenue

²² Egalitarianism is noted despite the racism McClure (1999) describes in early social policy that meant, for example, rates of pensions paid to Maori were lower because their needs were assumed to be less; and Chinese immigrants were excluded from any entitlement to pensions.

²³ Only nine countries, including New Zealand, and one city, pay a universal pension with no test other than citizenship, residence and age: Mauritius, Namibia, Botswana, Bolivia, Nepal, Samoa, Brunei, Kosovo and Mexico City. "These universal non-means-tested pensions automatically protect an entire population, in a way that contributory, earnings-related pensions never can." (Willmore, 2007, p. 24)

²⁴ £18 a year in 1898 is equivalent to \$2,932 a year in 2009 dollars.

was only expected to cover half the costs, including health, the system was never conceived as a “contributory” scheme (Ashton & St John, 1988, p. 21).

In 1974 a contributory savings scheme run by the state (level 4 in terms of Figure 1) was introduced (Ashton & St John, 1988, pp. 22 - 23). This was to be a pre-funded DC scheme with a minimum contribution on gross earnings of 4% from the employer and 4% from the employee.²⁵ However, the compulsory savings scheme was short-lived and it was replaced by National Superannuation in 1977 by the incoming National government.

National Superannuation was a flat-rate taxable benefit financed out of general taxation, with eligibility determined by age and residency. Although it was originally intended to be a universal benefit to those aged 60 and over, when the surcharge was imposed on other income in 1985, it effectively made National Superannuation an income-tested benefit (Figure 1 level 8). Despite the outcry over the surcharge, relatively few superannuitants were affected, and 77% of those who were eligible received the full amount (Ashton & St John, 1988, p. 24).

The main features of National Superannuation²⁶ were:

- universal flat-rate taxable benefit payable from age 60²⁷ at an after-tax rate (from 1979) for a married couple of 80% of the net average wage; and an after-tax rate for a single person of 48% of the net average wage;
- residency requirement of 10 years over the age of 16 years, 7 of which must be between the ages of 50 and 60 years;
- funded on a pay-as-you-go (PAYG) basis from general revenue;
- indexed to net average wages not prices (unlike other benefits);
- paid at a higher rate than other forms of income maintenance;
- from 1985, a surcharge of 20% (later increased to 25%) applied to other income (over a generous minimum). The income test for social security benefits applied to the joint income of a married couple, but “liability for the surcharge is assessed according to the income of the individual” (Ashton & St John, 1988, p. 25).²⁸

Private superannuation schemes, largely the preserve of long-serving, high-income male employees, were tax-subsidised (Ashton & St John, 1988, p. 27). The favourable environment for retirement saving was removed in late 1987 so that New Zealand became the first country to treat private retirement saving in the same way as other forms of financial saving (Littlewood, 2008).

In 1989, National Superannuation was renamed the Guaranteed Retirement Income (GRI) with net GRI to be between 65% and 72.5% of net average earnings (NAE). Effectively, National Superannuation was re-named with an ear-marked income tax (level 6 of Figure 1) to make it appear more contributory. Fringe Benefit Tax on employer’s contributions was replaced by a Specified Superannuation Contribution Withholding Tax (SSCWT), now Employer Superannuation Contribution Tax (ESCT).

²⁵ From 1882, attempts to introduce compulsory contributions-based social security schemes in New Zealand failed because of widespread concern for the welfare of non-contributors (Ashton & St John, 1988, p. 23).

²⁶ Ashton & St John (1988, p. 114) noted at that time that with the exception of New Zealand, Australia and Iceland, most OECD countries provided social insurance (employment-based, earnings-related) pension schemes rather than social assistance (basic flat-rate universal benefits funded out of general revenue, but Iceland also had a 2% payroll tax). A flat-rate welfare payment was usually available for those who had not contributed.

²⁷ Most OECD countries have an eligibility age of 65 to 67 for men, and up to 5 years younger for women.

²⁸ This individual liability has important implications for the more recent policy of deducting from the NZS of a spouse when an overseas pension for the other partner exceeds NZS.

The “mother of all budgets” in 1991 attempted to replace the surcharge with the joint income-test claw-back (level 9 in Figure 1). Although the legislation was overturned before implementation, some government savings were achieved by raising the state pension age from age 60 to 65 over the next ten years.

In 1993, the Retirement Income Act included the signed “Accord” of the three main political parties; established the Retirement Commission; and renamed the basic pension as “New Zealand Superannuation” (NZS). After the Compulsory Retirement Saving Scheme referendum was defeated 92% to 8% in 1997, the surcharge rate was reduced and the income threshold was raised. Then in 1998, the surcharge was abolished, and level 7 (Figure 1)²⁹ was again attained. In 1999, the “floor” for NZS was reduced from 65% of NAE for a married couple to 60% by linking it to the consumer price index (CPI) rather than wages.

In 2000 the 65% floor was restored, and the universal character of NZS and simple residency test were retained. The Retirement Commissioner has described NZS as “a remarkably effective, simple and secure foundation for retirement income. It means that New Zealanders - and especially women - are less at risk of hardship in later life than people in many developed countries” (Crossan, 2007, p. 4). The relative generosity of NZS as a Tier 1 scheme, when compared to the basic pensions in other countries,³⁰ is one of the factors that complicates pension portability discussions. In terms of Figure 1, NZS could be seen as a sophisticated, yet simple variant of social insurance; which is neither earnings-related nor contributory but fulfils the role of a basic income.

The “general portability provisions”, introduced in the 1980s after migration patterns globally increased and diversified, allowed superannuitants to take 25% of their gross NZS with them to countries without a reciprocal social security agreement. The 1999 changes increased this to 50% of the gross NZS (Ministry of Social Development, 2003, p. 14).³¹

The New Zealand Superannuation and Retirement Income Act 2001 replaced the Retirement Income Act 1993 and established the New Zealand Superannuation Fund, an investment fund to accumulate and invest Crown contributions, in order to reduce the tax burden on future taxpayers of the future cost of NZS payments. The NZSRI Act also removed many provisions governing NZS from the 1964 Social Security Act, apart from the problematic section 70³². By 2002, the state pension age reached 65 years, and in 2005, the floor for NZS for a married couple was raised to 66% of NAE.

Part 1 of the NZSRI Act stipulates that “every person is entitled to receive New Zealand Superannuation who attains the age of 65 years”.³³ However, that entitlement is subject to requirements in related acts, including the SSA (1964), which sets out the terms and conditions of the DDP in section 70;³⁴ and is also subject to the residence condition of having lived 10 years in New Zealand since the age of 20 with five of these being since the age of 50 (the 10(5) residency requirement).

²⁹ Tax-funded, flat-rate universal pensions.

³⁰ Other welfare benefits in New Zealand are paid at a lower rate than NZS which suggests they may be inadequate for many people rather than that NZS is too generous.

³¹ See: http://executive.govt.nz/96-99/minister/shipleyp/parliament99/super_qa.htm.

³² Section 70 applies to more than just NZS, covering all types of state income support.

³³ See Appendix 2 (New Zealand Superannuation and Retirement Income Act, 2001).

³⁴ Section 70 also applies to other benefits that remain payable under the SSA.

3.2 New Zealand Superannuation (NZS) in 2009

The current level of NZS for a couple is a net 66% of the net average wage (NAW), (40% for a single sharing and 43% for living alone with gross and net amounts as set out in Table 1). In 2008, average annual wage was \$45,800 gross,³⁵ or \$37,372 net.

Table 1. New Zealand Superannuation and Veterans Pension rates at 1 April 2009

Pension type	Net weekly rate (after tax at 'M')	Net weekly rate (after tax at 'S')	Gross weekly rate
NZS or Veterans Pension (standard rates)			
Single, living alone	\$310.95	\$288.06	\$364.50
Single, sharing	\$287.03	\$264.14	\$334.28
Married, civil union, or de facto couple, both qualify (total)	\$478.38	\$432.60	\$547.26
Married, civil union, or de facto couple, both qualify (each)	\$239.19	\$216.30	\$273.63
Married, civil union, or de facto couple, with non-qualified spouse included (total)	\$454.98	\$410.94	\$519.72
Married, civil union, or de facto couple, with non-qualified spouse included (each)	\$227.49	\$205.47	\$259.86
NZS or Veterans Pension (non-standard rates)			
Married couple, with non-qualified spouse included before 1 October 1991 (total)	\$478.38	\$432.60	\$547.26
Married couple, with non-qualified spouse included before 1 October 1991 (each)	\$239.19	\$216.30	\$273.63
Partner in rest home, non-qualified spouse included	\$237.97	\$215.08	\$272.20
Hospital rate	\$34.87	\$31.55	\$39.74

Source: Work and Income website: http://www.workandincome.govt.nz/manuals-and-procedures/deskfile/main_benefits_rates/new_zealand_superannuation_tables.htm.

Although it serves this purpose well, NZS is not a poverty-alleviation device; and nor is entitlement dependent on contributions from earnings. The intention of NZS is to recognise the paid and unpaid contributions to New Zealand of older citizens (TeAra.govt.nz, 2006). While supplementary benefits can also be paid to people receiving NZS and Veterans Pensions, they are income- and asset-tested as for other beneficiaries.

NZS is defined as 'universal' because it is not means (income or asset) tested; and every New Zealander over the age of 65, after meeting the residency requirement, becomes eligible to receive it. However, as this paper will show in the survey of complaints, NZS is not paid to everyone who considers themselves eligible, nor are they necessarily paid the amounts to which they think they are entitled.

The main differences between NZS and most other countries' basic age pensions³⁶ are:

- the residence requirement of 10 years is very modest;
- it is not means tested;
- it is not proportional to the number of years lived in New Zealand; and,
- it is adequate to support participation and belonging.

"Each of these attributes creates difficulties that make integration of New Zealand's system with those of other countries, under a Social Security Agreement, more difficult." (Lazonby 2007, p. 7)

³⁵ <http://www.treasury.govt.nz/budget/2008/tax/individualsfamilies/qa/index.htm>.

³⁶ See general classifications of pensions in terms of Levels and Tiers in section 2.

3.3 Recent changes: KiwiSaver

The first tax break for private saving since 1990 was introduced in 2000 when the top personal marginal tax rate was raised to 39% and the SSCWT rate (applied to employers' contributions for employees) remained at 33%.

With little forewarning, the 2006 Budget announced KiwiSaver: a contributory, tax-favoured, employment-based, retirement-saving scheme, with a \$1,000 government-funded kick-start and \$40 p.a. fee subsidy. On the eve of its introduction, further changes were announced in the May 2007 Budget to take effect from 1 July 2007. With the auto-enrolment, opt-out system, an employee could choose to contribute 4% or 8% of their wage. The tax-exempt compulsory employer's contribution, initially of 1%, was to increase to 4% over four years. A generous employer tax credit and member tax credit were also introduced.

..the biggest change of all for retirement provision has been the 2007 introduction of KiwiSaver. New Zealand now has a second major policy plank in retirement living standard provision. The KiwiSaver contributory cash accumulation schemes assisted by government and employer contributions are a distinct break with the policies of the previous two decades. Further, the changes in the taxation laws applicable to investment funds classified as Portfolio Investment Entities (PIEs) has made these managed funds much more attractive investment options for many investors. (Crossan, 2008, p. 2)

In the original framework for KiwiSaver (KiwiSaver I) set out in the 2005 Budget and the KiwiSaver Act 2006, the distributional concerns were relatively modest. The government incentives were restricted to a one-off \$1,000 kickstart payment and a small annual contribution towards fund management fees. However, just before the KiwiSaver Act 2006 was passed, the further incentive of exemption to ESCT for employer contributions was announced. As noted... employer contributions of up to 4% of gross pay to KiwiSaver and to "complying superannuation funds" that match KiwiSaver's minimum requirements are exempt from Employer Superannuation Contribution Tax. (St John, Littlewood, & Meehan, 2008, p. 5)

In 2008, the newly elected National-led government dropped the state-provided \$40 p.a. fee subsidy; reduced the minimum employee contributions and employer's compulsory contribution to 2%; limited the Employer Superannuation Contribution Tax (ESCT, previously SSCWT) tax-free contribution to 2%; and abolished the employer tax credit.

New Zealand's closest neighbour, Australia, has a maturing compulsory private savings scheme, and people around the world are expected to supplement their state pensions with additional saving. Distortions and anomalies are emerging from the significant government tax subsidies for saving, and the inequitable benefits of such subsidies experienced by middle and upper income earners (Denniss, 2007; Ingles, 2009).

For example, in his analysis of the Australian situation, Ingles (2009) writes:

Superannuation tax concessions will cost the budget \$24.6 billion in 2008-09 ..., rivalling the \$26.7 billion annual cost of the age pension and constituting a fifth of income tax revenue (\$130 billion per annum). Tax expenditures ... of which the super tax concession is by far the largest, are one of the fast-growing areas of total government spending... The paper demonstrates that the tax concessions flow overwhelmingly towards the well-off, with those earning less than \$34,000 per annum

receiving almost no assistance and those earning over \$180,000 per annum receiving the most. (Ingles, 2009, pp. 1 - 2)

Ingles finds the top 5% of income earners account for 37% of concessional contributions; the current tax concessions for superannuation provide almost no benefit to low-income earners, including women working part-time; and overall, the current tax concessions provide substantially greater benefits for men than women.

The system has become so skewed that the annual cost of providing superannuation tax concessions to high-income earners is much greater than the cost of simply paying those same individuals the age pension. (Ingles, 2009, pp. 2 - 3)

The extensive subsidisation and attendant inequities of such subsidisation of private supplementation of state pensions has not yet been addressed in the section 70 debate. The seemingly arbitrary distinction made under section 70 assumes the state contributes only to state-delivered pensions, and ignores tax expenditures, including state contributions to private retirement savings.

In 20 years, KiwiSaver is likely to be an important component of retirement income for many. In March 2009, KiwiSaver members numbered more than 1 million, and under its current design, in direct conflict with the egalitarian principles that underpin NZS, the greatest advantage, and the largest tax benefits, will go to the wealthiest.

4. New Zealand's policies on pension portability

In the twentieth century, people became more mobile, raising issues around the portability of occupational and state pensions and/or retirement lump-sums. To deal with complexity in an equitable way, countries can enter into "reciprocal Social Security Agreements", and "special arrangements". New Zealand's bilateral reciprocal Social Security Agreements and special arrangements are discussed below and in Appendix 4.

It would appear that these agreements were primarily to protect people who may not qualify for a full pension in either country. However it is noteworthy that an objective for entering into bilateral Social Security Agreements was to reduce the costs of providing social security benefits where eligible persons had split their life between New Zealand and another country (Ministry of Social Development, 2002, pp. 5 - 6, Part 2, Ch. 3).

4.1 General portability

Under the general portability provision, provided that they are not living in a country with a Social Security Agreement with New Zealand, and provided application is made while the applicant is resident in New Zealand, people eligible to receive NZS or a Veteran's Pension may receive 50% of their payment³⁷ while they are living outside New Zealand. At the end of June 2008, 226 people were receiving their NZS pension payments under the general portability provision into 53 countries, principally China, India and the United States (Ministry of Social Development, 2009, p. 159).

In 2009, the MSD was aware of approximately 52,000 of New Zealand's half a million superannuitants who were collecting portions of at least two public pensions, one from New Zealand and at least one other from abroad. Those pensioners who had not declared

³⁷ The Social Assistance (Payment of New Zealand Superannuation and Veterans Pension Overseas) Amendment Bill 2009 proposes changing this from 50% to 100%.

their overseas entitlement are not included in this number. As Table 2 shows, an increasing number of overseas-born citizens are emigrating to New Zealand, and bringing with them overseas pensions. Also, an increasing number of New Zealanders are spending some years working overseas. Both these groups have contributed through taxation, and/or through compulsory or voluntary payments into superannuation schemes, perhaps in more than one country, and may be affected by the DDP in section 70 of the SSA. New Zealanders living overseas may be eligible to receive NZS or a Veteran's Pension under the special and general portability provisions of the Payment Overseas programme and under the reciprocal Social Security Agreements.

Table 2. Trends in the number of Work and Income beneficiaries receiving an overseas pension of any type, by country the pension is received from

	Number of Work and Income beneficiaries receiving an overseas pension ¹				
	2004	2005	2006	2007	2008
Australia	914	2,549	3,960	3,928	4,918
Bulgaria	3	4	10	13	23
Canada	306	387	554	647	795
China ²	166	153	131	337	427
Denmark	62	71	80	80	84
Fiji	45	56	40	90	111
Germany	87	108	153	171	200
Greece	19	19	12	15	20
Guernsey	49	51	69	78	79
India	24	20	26	43	54
Ireland	91	131	168	159	170
Isle of Man	24	26	37	37	40
Japan	4	5	14	18	26
Jersey	50	63	80	78	79
Netherlands	2,400	2,709	3,027	3,146	3,324
Philippines	20	22	45	53	62
Western Samoa	0	0	4	5	42
South Africa	26	36	14	62	71
Sri Lanka	57	53	22	34	51
Sweden	3	2	7	9	20
Switzerland	82	110	138	150	173
Former USSR	13	22	29	31	44
United Kingdom	37,754	40,193	42,521	40,417	41,359
USA	98	150	223	274	376
Total	42,336	46,996	51,464	50,019	52,756

Notes

1. Countries paying fewer than 20 pensions into New Zealand in 2008 are not shown. Source: Ministry of Social Development (2009, p. 161)³⁸
2. Chinese pensions, not deductible under S.70 of the SSA, are included in overall totals shown in Table 2.

Table 2 includes all types of pensions, not just age pensions. It shows that in 2008, of Work and Income's beneficiaries receiving an overseas pension, 78.4% received a UK pension, 9.3% received an Australian pension, and 6.3% received a Netherlands pension. Of all the beneficiaries in Table 2, 96.3% receive pensions from countries covered by Social Security Agreements.

4.2 Reciprocal Social Security Agreements

A Social Security Agreement aims to coordinate the social security systems of two countries. It serves to eliminate residence and citizenship barriers of social security and

³⁸ See: <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/statistical-report/statistical-report-2008/multiple-sections/overseas-payments.html#foreign>.

ensure that individuals who have divided their working lives between two countries receive appropriate coverage when they retire in their country of choice. This is often achieved through the principle of "totalisation": treating periods a worker has spent employed in another country as equivalent to periods spent working in the country of retirement. As well as ensuring the individual isn't penalised, the agreement is designed to ensure the individual is prevented from "double-dipping", and collecting full pensions from all the countries in which they have worked.

4.2.1 New Zealand's eight bilateral agreements

New Zealand has eight reciprocal Social Security Agreements with nine countries to enable people to move more easily to and from those countries and New Zealand. The dates of the Agreements, and those countries are: Australia (1994);³⁹ the United Kingdom (1990); the Netherlands (2003); Canada (1996); Greece (1993); Ireland (1994); Denmark (1997); and Jersey and Guernsey (1995). New Zealand has also attempted, so far unsuccessfully, to establish agreements with the US, Germany, Switzerland, Austria, and Korea. An agreement signed with Italy in 1998 is not yet ratified. In most cases, the failure to reach agreement is a consequence of the incompatibility of the two countries' pension systems, rather than refusal (Ministry of Social Development, 2004b). Under the terms of the reciprocal agreements, totalisation may apply.

At the end of June 2008, 16,716 New Zealanders living overseas were receiving payments of pensions or main benefits from New Zealand. Of these people, 13,825 were receiving New Zealand Superannuation, while 38 were receiving Veteran's Pensions (Ministry of Social Development, 2009).⁴⁰

Since 2003, the number of superannuitants who moved from New Zealand to Australia account for most of the increase in the number of NZS payments overseas (Ministry of Social Development, 2009, p. 160). Benefit reimbursement from New Zealand to Australia for the financial year ending 1 July 2008 was NZ\$60.9 million. While there were only 4,918 people receiving Australian benefits and pensions in New Zealand, there were 13,922 people entitled to New Zealand benefits and pensions in Australia on the basis of the reciprocal agreement. Of these, 11,055 people were entitled to NZS, while 36 were entitled to Veteran's Pension and 2,831 were entitled to an Invalid's Benefit.

United Kingdom (UK) pensions are paid to New Zealand residents under UK domestic law, and totalisation applies in both New Zealand and the UK. At the end of June 2008, there were 41,359 people whose entitlement to NZS, Veteran's Pension or a main benefit was affected by a UK pension being paid into New Zealand (Ministry of Social Development, 2009, p. 157).

As Table 2 also shows, in June 2008, there were 3,324 people receiving Netherlands pensions in New Zealand. At the same date, there were 1,055 people receiving New Zealand benefits and pensions in the Netherlands. Of these, 1,049 people were receiving NZS. While 170 people received Irish pensions in New Zealand there were 111 people receiving NZS in the Republic of Ireland. Greek pensions were paid to 20 people in New Zealand, and 270 people were receiving New Zealand benefits or pensions in Greece, including 266 people receiving NZS. Canadian pensions were paid to 795 people in New

³⁹ The agreement with Australia has been revised in 1998, 2002 and again in 2009.

⁴⁰ See: <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/statistical-report/statistical-report-2008/multiple-sections/overseas-payments.html#payments>.

Zealand, and 463 of the 473 people receiving New Zealand benefits or pensions in Canada were receiving NZS (Ministry of Social Development, 2009, pp. 157 - 158).

Similar criteria apply in the agreement with Denmark; however, to qualify for a Danish pension under the agreement, people must meet either the New Zealand or Danish residency requirement, or must have contributed to the Danish scheme; and must be either a Danish or New Zealand citizen. At the end of June 2008, there were 84 people receiving Danish pensions in New Zealand, and 58 people were receiving New Zealand benefits or pensions in Denmark, 56 of whom were receiving NZS.

Similarly, people who have made contributions to the Jersey or Guernsey social insurance schemes can use those periods to qualify for New Zealand benefits and pensions within the scope of the agreement (which is unusual in including the Sickness Benefit). People who have made limited contributions to the Jersey or Guernsey insurance schemes will be assisted to qualify for pensions available under those schemes by periods of residence in New Zealand. At the end of June 2008, there were 158 people receiving Jersey and Guernsey pensions in New Zealand, and 62 people receiving NZS into Jersey and Guernsey (Ministry of Social Development, 2009, pp. 158 - 160).⁴¹

4.2.2 Social Security (...) Regulations 1996

Although the reciprocal Social Security Agreements are supported by the Social Security (Alternative Arrangement for Overseas Pensions) Regulations 1996, the success of the arrangement relies in some cases on the immigrant declaring their overseas pension entitlement to the appropriate authority, so that either it can be deducted from NZS, or the full NZS can be paid directly to the recipient, and the overseas pension can be paid directly to the Director-General (i.e. the New Zealand government).⁴²

These regulations... set out the implementation details of a method of off-setting overseas pensions against New Zealand social security benefits that is an alternative to the method in section 70(1) of the Social Security Act 1964. Section 70(1) provides for the Director-General to deduct an overseas pension from a New Zealand benefit. Section 70(3), the alternative method, provides for the Director-General to pay to the overseas pensioner his or her New Zealand benefit and receive from the pensioner his or her overseas pension. The details set out in these regulations relate to the opening of a special bank account in the name of the overseas pensioner into which the overseas pension is paid and from which it is transferred to the Director-General. These regulations apply only to persons receiving pensions from the Government of the United Kingdom and Northern Ireland. (Executive Council, 1996)

Although specific reference is made in the Agreement regarding sharing information, there is little publicly available information on the extent to which the data-sharing arrangements are used to identify residents who have not declared their entitlement.

Not surprisingly, the DDP and the 1966 Regulations often cause anger and resentment, particularly if the person had not understood the deduction was likely to occur, or thought their pension was an exempt private (Tier 2 or 3) retirement savings scheme.

⁴¹ A recent MSD report (2009, pp. 157 - 160) states that under the reciprocal agreements, the rate of payment for NZS is based on whole months of residence in New Zealand since age 20, rather than the 10 (5) rule.

⁴² See Appendix 4 for detail on information-sharing provisions of the Reciprocal Agreements.

Problems with pension portability and entitlement do not only relate to variations between the different “Tiers” of pensions. For example, both New Zealand and Australia have a reasonably comprehensive basic Tier 1 pension, but because NZS is not means-tested, an Australian who meets the New Zealand residency requirement, or a New Zealander retiring in New Zealand, may enjoy that pension income in addition to income from other assets or pensions. However, because of the Australian means-test, if they retire there they may not be entitled to that basic pension and may be reliant on the income from other assets.

Details of some individual complaints are set out in the section 6, and details of the Social Security Agreements are discussed in Appendix 4. In summary, the scope of each agreement relates to domestic legislation and residency; and each of the agreements contains interpretive and allocation provisions. Five of the agreements contain special articles applying to posted or seconded workers from one contracting state to the other; seven contain anti-discrimination clauses; and all of the eight agreements contain dispute settlement and debt recovery clauses (Also see Smith (2009a, pp. 21 - 30)).

Perhaps a further indication of the problematic nature of New Zealand’s pension portability policies and legislation is that, despite heavy reliance on immigration to maintain population growth, it has only 8 reciprocal Social Security Agreements, in comparison to Australia’s 22, the US’s 23, and Canada’s 51. However, as Smith (2009 p.18) notes, it must be remembered that it was only in 1990 that changes to domestic law provided for general portability of NZS, and made it possible for New Zealand to enter into such Social Security Agreements.

4.3 Special Arrangements with Pacific nations

In 1993, the then Department of Social Welfare (DSW) negotiated Special Portability Arrangements with three Pacific nations: Niue, the Cook Islands, and Tokelau, to reflect the contributions they had made to New Zealand’s labour force.

In one way, the formula applied in these arrangements was more generous than the general portability provisions for non-agreement nations: a person retiring to these countries could receive full NZS after 40 years’ residence in New Zealand. However, the formula also meant that people with less than 20 years’ residence in New Zealand were receiving less than the 50% rate that applied under the general portability provisions.

Without public consultation, the formula was amended in 1999 so a person could receive full NZS after 20 years’ New Zealand residence (Ministry of Social Development, 2003a, p. 14), a privileged arrangement. “This was, and remains, double what a person can receive under the general portability provisions, as they can only ever receive 50%, regardless of their New Zealand residence.” (Ministry of Social Development, 2004a, p. 11)

The 1999 amendment also meant that the original intention of recognition of the special contribution made by Niue, the Cook Islands, and Tokelau to New Zealand was lost. Retirees to any of 22 nations of the Pacific could take potentially 100% of NZS with them. These nations were: American Samoa, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Island, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, and Wallis and Futuna.

Although there was no reciprocal Social Security Agreement and no special historical or present relationship with the US or France, US and French overseas territories New Zealand were now covered. A US citizen living in American Samoa, a US dependency, may now have an entitlement to NZS that they would not have in the US. At the end of June 2008, under the special portability arrangements, New Zealand was paying NZS to 539 people in 10 Pacific countries (Ministry of Social Development, 2009, p. 160).⁴³

The significantly larger uptake of special portability as opposed to general portability reflects the more generous payment provisions of the former, the proximity of Pacific countries, and the close family links that are often maintained even after a person's immigration to New Zealand from a Pacific country. (Ministry of Social Development, 2009, p. 159)

Criticism of the special provisions for Pacific Island portability has come from academics, as well as from pensioners subjected to less favourable provisions:

While the introduction of the special provisions for Pacific Island portability have attracted virtually no adverse comment since they were introduced in 1993 and extended in 1999, the provisions are discriminatory. The grounds given for this special treatment are questionable given that wealthier French and US territories are also included. It is even more questionable on equity grounds when New Zealanders retiring to Australia may forgo any pension at all [because of the Australian income and asset test]... Another even more questionable issue is that Pacific Island superannuitants could receive a larger net pension than if they had remained in New Zealand, because NZS is payable to them exempt of tax. (Smith, 2009b, pp. 13 - 14)

The migration trends of the last decade (indicated in part by Table 2) suggest that the following East Asian countries are likely to become significant to New Zealand: Singapore, Malaysia, Japan, China, Taiwan, Korea, and India. There is some urgency, therefore, in ensuring there is consistency in New Zealand's policy toward our Pacific neighbours, or we may find there is pressure to extend the favourable Pacific portability provisions, with significant fiscal consequences.

4.4 Section 70 of the Social Security Act 1964 (SSA)

Section 70⁴⁴ of the SSA mandates a dollar-for-dollar abatement of NZS entitlements against a superannuitant's, or the spouse's, overseas entitlement. As noted, this treatment dates back to 1938 (Ministry of Social Development 2003a; Ministry of Social Development 2004), and has been increasingly perceived as inequitable by the individuals affected. Application of section 70 has become more problematic as overseas pension systems have become increasingly complex and changeable.

In 1972 a Royal Commission Report on social security made some recommendations for amending the SSA in relation to the deduction of overseas pensions (McCarthy, 1972). At the time, the SSA provided for discretionary deduction of overseas pensions but gave no direction as to how the discretion was to be exercised. The Report recommended that the discretionary authority provided in section 70 should relate solely to determining whether or not an overseas pension or benefit was analogous to a New Zealand benefit.

⁴³ Special (Pacific) portability take-up in 2008 of NZS was 539 while general portability applied to only 226 people in 53 countries, mainly China, India and the US (Ministry of Social Development, 2009, pp. 159 - 160).

⁴⁴ See Appendix 1 for the full text of this section of the SSA.

For a pension to be analogous to a benefit, it need not be identical: the analogy is not destroyed because one is financed by specific contribution and the other by taxation. Section 70 has been amended so that the purpose rather than the benefit is comparable. Over the years the type of overseas pension eligible for deduction under section 70 has been repeatedly tested in the Courts. The case quoted most often, with perhaps the most disputed decision, is *Roe v Social Security Commission* (see Appendix 5).

It is important to note that section 70 applies, potentially, to all social welfare benefits. In summary, section 70 (1) of the SSA provides that:

- if a person qualifies for NZS and receives or is entitled to receive ... or their spouse or dependent children are entitled to receive a benefit, pension or periodical allowance granted elsewhere than in New Zealand; and
- the benefit, pension or periodical allowance forms part of a programme providing benefits, pensions or allowances for any of the contingencies provided in the SSA; and
- the programme is administered by, or on behalf of, the government of the country from which such benefits, pensions and allowances are received; then
- the New Zealand benefit, pension or allowance shall be reduced by the amount of the overseas pension received.

As well as promoting egalitarianism and horizontal equity, section 70 prevents “double-dipping” if another country is paying an allowance or pension for the same purpose that a person is receiving an allowance or pension in New Zealand. It becomes problematic when, for example, the government or its agent administers private pensions, and they are deducted from NZS as if they were analogous. Deductions are made for foreign public pensions, not private pensions, yet the delineation between such pensions is also problematic. There are issues, as in Australia, of substantial tax preferences for private pensions, yet these are not affected by the DDP. Some public pensions, as in the UK’s Second State Pension Scheme (S2P), are built up by earnings-related contributions and administered by a public agency, and are affected by the DDP.⁴⁵ However, the privately administered “contracted out” equivalent benefit is not affected by the DDP, even though it replaces the S2P scheme for savers in the private schemes.

A stated intention of the 2009 Social Assistance (Payment of New Zealand Superannuation and Veterans Pension Overseas) Amendment Bill is addressing these anomalies, and the current discriminatory and inequitable aspects of pension policy and legislation.

4.5 Publicly provided pension portability information

Some of the information available to potential immigrants and emigrants is ambiguous, and yet this is the information on which they will base perhaps the most critical financial and social decisions of their lives. As well as migration decisions, people make savings and retirement decisions based on their knowledge of different pension schemes and their interaction (Munz & Werding, 2005; Wildasin, 1999). Those decisions are made, in some cases, after the migration occurs.

4.5.1 Information for emigrants

The MSD’s *Retired and Going Overseas* brochure states that the rules in the destination country may mean that although a person would be entitled to NZS in New Zealand, they

⁴⁵ See also Smith (2009a, pp. 15 - 16).

may not be entitled to any superannuation pension in Australia because of income and asset testing of the Australian Age Pension (Work and Income, 2008, p. 9). In the *Departures and Arrivals for Australia* brochure, supplied online and in hard copy by the International Services branch of the MSD, it also recommends that New Zealanders check the pension information before leaving, "as what you may be paid in Australia may be less than what you are paid in New Zealand" (International Services, 2008a, p. 3).

While New Zealand's emigrants receive a generic warning in the Australian brochure, in the section called "Receiving a benefit or pension in New Zealand", the *Departures and Arrivals for the Netherlands* brochure states: "The total amount you receive will be similar to the amount you would have been paid if you had spent all your life in New Zealand" (International Services, 2008b, p. 7). Nowhere in that brochure does it state that the Social Security Agreement between New Zealand and the Netherlands ensures those who have lived and worked in New Zealand all their lives are not disadvantaged, so the maximum basic retirement pension an immigrant can receive is equivalent to the NZS; nor does it state that their Netherlands pensions may be offset against NZS.

4.5.2 Information for immigrants

While the rules and conditions for immigrants contained in the reciprocal Agreements are relatively inaccessible and, as to the detailed effect, uninformative, the Ministry of Social Development does provide some information on its website and in its brochures. This information often suggests that a person may have dual entitlement, that is, they may be entitled to an old age pension from their source country, plus NZS. For example, while the *Departures and Arrivals for the United Kingdom* brochure makes it clear that a person living in the UK cannot be paid New Zealand benefits or pensions, it also states:

If you live in New Zealand or intend to, you may qualify for benefits or pensions from both the United Kingdom and New Zealand.... This means you may be paid a benefit or pension from both New Zealand and the UK. (International Services, 2008c, pp. 3 - 4)

This does not make it clear that the UK pension will be abated against NZS to ensure the total amount paid does not exceed NZS.

Although the available information, rules, and the social security arrangements New Zealand has in place regarding pension policy, eligibility, and residency, suggest that residency requirements must be met prior to financial assistance or entitlement, an Emergency Benefit is regularly paid to people with no prior New Zealand residency.⁴⁶ While it is less than NZS, the amounts paid under this benefit are not significantly different to those payable under the other mainstream benefits such as the Sickness and Domestic Purposes Benefits. The Emergency Benefit ensures that no person in New Zealand will be absolutely destitute.

4.6 MSD reviews and recommendations 2003 - 2008

Between 2003 and 2008, on at least four occasions, the MSD reviewed New Zealand's pension system and its relationship to those of other countries, and made almost identical

⁴⁶ http://www.workandincome.govt.nz/manuals-and-procedures/income_support/main_benefits/emergency_benefit/emergency_benefit-06.htm

recommendations on the basis of each review (2003b; Ministry of Social Development, 2004a, 2005, 2008a, 2008b).⁴⁷

The Background Report provided by the MSD for the 2003 Periodic Report Group listed the following problems regarding pension portability and equity:

- *The rate of portability differs depending on the country in which a person retires;*
- *The rate of general portability is now outdated, as the surcharge was abolished in 1998;*
- *The rate of general portability does not reflect cost-sharing between the countries in which a person has spent their working lives (e.g. a person who has spent 35 years between the ages of 20 and 65 in New Zealand takes only 50% of NZS with them); and*
- *The criteria for a person to be ordinarily present and resident in New Zealand upon application for NZS, and for 5 of the 10 years residence required to be after age 50, impede migration flows, and the former is applied inconsistently because it is overridden by agreements. (Ministry of Social Development, 2003a, p. 15)*

The Direct Deduction Policy (DDP) for immigrants generates the following problems:

- *There is no incentive for people to claim (or declare) their overseas pension, as they derive no real benefit from it;*
- *This generates a high degree of evasion of the policy, at an estimated cost of \$150 million per annum to the Government;⁴⁸*
- *Genuine cost-sharing is not achieved between the countries in which a person has spent their working lives, as the New Zealand Government essentially deducts a person's entire overseas pension from their New Zealand benefit entitlement, leaving New Zealand's contribution to be very minimal (if anything) or very large if the person has spent a short amount of time here and has a very small or no overseas pension;*
- *A number of countries balk at the direct deductions policy, and refuse to negotiate a Social Security Agreement ... at a significant cost to the government. (Ministry of Social Development, 2003a, p. 15)*

There are also problems with the DDP and employer- and employee-funded pensions. Such pensions are often perceived as part of employees' overall remuneration, thus the argument is made that their character is different from NZS, so the benefit should not be included in the DDP. It is also problematic that the type of institution that manages a Tier 2 pension matters to the DDP. "If it is publicly managed, it counts; if it is privately managed (even if publicly mandated) such as happens in Australia and Chile, the DDP does not apply." (Lazonby, 2007, p. 32)

The MSD's recommendations in 2008 were:

- *Allow superannuitants to travel to more than one country and continue to receive their full rate of NZS, rather than having it abated by 50% or 100%;*
- *Allow for application for, and payment of, NZS in Pacific countries;⁴⁹*
- *Remove foreign state pensions built up by voluntary contributions from the scope of section 70 of the SSA;⁵⁰*
- *Clarify the wording of section 70 of the SSA so that it is in plain English, and set out the treatment of each country's pension regulations;*

⁴⁷ These Reviews are discussed more fully in Dale et al (2009).

⁴⁸ The Report does not indicate the source or basis of this estimated cost.

⁴⁹ The proposed new rules would allow residents of the Pacific countries of Niue, Tokelau and the Cook Islands, who have met the NZS (10/5) residence rule, to apply for NZS from one of those countries after they turn 65.

⁵⁰ Such as is required by the reciprocal Agreement with the Netherlands. See Appendix 4.

- *Discontinue the policy of deducting a person's overseas pension from their partner's NZS entitlement, and make a consequential amendment to the Special Banking Option (SBO) so that only one partner needs to choose this option;*
- *Proportional portability of NZS;*⁵¹
- *Allow superannuitants who are resident overseas and are New Zealand taxpayers to receive full NZS (MSD, 2008b, pp. 13 - 21).*⁵²

5. Human Rights legislation

The Human Rights Act 1993 (HRA)⁵³ and the Bill of Rights Act 1990 make certain kinds of discrimination unlawful, and have special provisions that apply to other laws. The Human Rights Commission (HRC) receives complaints from the public and may investigate these. As noted in the Introduction, since 2002 the government can be challenged under Part 1A of the HRA when people feel they have been discriminated against or treated unfairly, and cannot obtain justice through the political process, the Attorney General, or the Courts.

Discrimination occurs when a person is treated less favourably than another person in the same circumstances, with significant effect. Discrimination may be unlawful under the HRA if it is based on one or more of the following grounds: Sex which includes pregnancy; Disability; Marital status which includes being in a civil union (section 21(b)); Age; Religious belief; Political opinion; Ethical belief; Employment status; Colour; Family status; Race; Sexual orientation; or Ethnic or national origins, which includes nationality or citizenship (section 21(g)). These grounds apply to a person's past, present or assumed circumstances. Even if discrimination is proven, there are further grounds of justification to be met for a complaint to be upheld.

5.1 The effect of the Human Rights Act 1993 (HRA)

The analysis and comments provided by Bell (2006) suggests that pension complaints fall under Part 1A of the HRA as they involve allegations that government legislation relating to retirement and superannuation is discriminatory. However, the complaints must first come within one of the grounds listed in section 21 of the HRA. The ground most often identified as the cause of discrimination in overseas pension cases is national origin (including nationality or citizenship). An argument based on discrimination on this ground is difficult to sustain because complainants are not being treated differently because of their country of origin but because of the source of their income: private income would not be deducted from NZS simply because of the person's national origin.

5.1.1 Country of origin

The kinds of complaints that the HRC receive are illustrated by the case of Dr F⁵⁴ who wrote to the Human Rights Commission in 2004. The Chief Executive of the MSD had deemed the Tier 2 Canada Pension Plan (CPP) to be part of a government-administered benefit programme designed to meet any of the contingencies for which benefits are paid either under New Zealand's SSA, or under the New Zealand Superannuation and

⁵¹ Entitlement "based on a 45-year denominator, so that a person needs 45 years of residence in New Zealand between the ages of 20 and 65 to receive full payment" (Ministry of Social Development, 2008b, p. 18).

⁵² The MSD also noted the desire for a reciprocal agreement with the US (2008b, pp. 13 - 21).

⁵³ See <http://www.hrc.co.nz/home/hrc/resources/resources.php#case> for HRC Complaints information, and Fact Sheets covering discriminatory laws; and discrimination by the public and private sectors; and in employment.

⁵⁴ Initials have been used randomly to protect the identities of the complainants.

Retirement Income Act 2001 (Crown Law, 2004, paragraph 2). Dr F argued this was discrimination against him on grounds of national origin.

The Crown Law Office informed Dr F that the Social Security appeal process was the correct venue for challenge because the question relates to fact rather than discrimination. In respect of the Chief Executive wrongly interpreting or applying section 70(1)(b) of the SSA test, or of that section being inequitable or discriminatory, Crown Law argued that immigrants from Canada are not discriminated against or disadvantaged as against locally born New Zealand citizens; and there is no discrimination based on country of origin.

New Zealand-born citizens who have lived and worked in Canada and have made contributions to, and received retirement benefits under the CPP will also have their NZS abated. Thus New Zealand-born and Canadian-born citizens are treated in exactly the same way and there is no discrimination (Crown Law, 2004, paragraph 9). Crown Law also argued that there is no value in comparing immigrants from Canada with immigrants from another country which has no government-administered pension scheme (Crown Law, 2004, paragraph 10).

Further, the purpose of section 70 is stated as: "No one is entitled to receive more than one benefit administered by or on behalf of the government of any country, whatever their national origin." Thus no-one who has lived and worked in Canada and retired to New Zealand will be advantaged over someone who has lived and worked in New Zealand all their life (Crown Law, 2004, paragraph 9).

5.1.2 Preferential treatment

Some people complain about the preferential treatment given to Pacific nations (described in paragraph 4.3 above). One complainant from Canada, aware of the special agreements New Zealand has with Pacific nations, describes the abatement of his Tier 2 pension against NZS as "ethnic and national origin discrimination".

In 2009, in an open email to Ministers of Parliament as well as to the RPRC, another complainant, Mr G, complained that his choice to retire to the Philippines rather than to a reciprocal or Special Agreement nation means that he is existing on 50% of his NZS entitlement instead of 100%. He writes:

I believe that I am being severely discriminated against and that my human rights as a New Zealander are also being violated. There does not appear to be any logical explanation why there should be any differential in pensions at all. For example, a Filipino working and living in New Zealand can receive the NZS upon retirement as can any person who is permanently unemployed.

The essence of Mr G's complaint is that retiring to non-agreement countries carries a cost of 50% of the NZS. This appears to discriminate against New Zealanders who retire to non-agreement countries. The situation seems unfair when those people who choose to migrate to New Zealand and meet the minimum residency requirement, even if they are unemployed throughout their residency, will receive the full NZS when they reach age 65.

5.1.3 Marital status

Perhaps the most persuasive case of discrimination is that of Mrs R who alleges discrimination on the grounds of marital status. Her husband is in receipt of a US Social Security pension that exceeds the couple rate of NZS. Application of the DDP means that

Mr R's NZS entitlement is entirely abated, and Mrs R's NZS is abated by the amount her husband's US pension exceeds the amount payable to each partner of a couple. The abatement has an adverse economic impact on Mrs R.

Mrs R was one of the first to file a formal complaint with the HRC on the grounds of discrimination, and hers was one of the more complex complaints passed on to the Crown Law Office for a legal opinion. Under the Official Information Act, it has been established that approximately 124 people are affected by the spousal provisions (Hughes, 2009). The Crown Law Office asserted that a couple (both parties 65 or over) can be perceived as a single economic unit. This presumption appears questionable as NZS is not a needs-based system, and is received by some of the nation's wealthiest citizens as individuals in their own right, whether married or not.

This "single economic unit" argument is used by Crown Law to defend section 70 and allow overseas pensions to be deducted from the NZS when a partner has an overseas pension or benefit, as in Mrs R's case. However, the underpinning philosophy of the design of NZS hinges on everyone being entitled to NZS in their own right, provided they meet age and residency requirements. Crown Law's argument seems to unpick that principle.

Preceding Mrs R's case, the Appellant v District Review Committee, Decision 122/95 was a similar case of alleged violation of individual rights. The appellant's NZS was reduced by the excess amount paid to her spouse in the form of a Netherland's Age Pension (AOW). The appeal was dismissed because the rate of AOW received by the appellant's husband was high enough to affect the rate of pension to which the appellant was entitled. The excess, after the deduction of his New Zealand entitlement, could still be regarded under section 70(1)(a) as a pension granted elsewhere than in New Zealand. The fact that the appellant's entitlement to NZS was separate from her husband's did not affect the application of section 70(1)(a) because of the phrase in the section: "or if that person's spouse... is entitled to receive or receives a benefit, pension, or periodical allowance granted elsewhere than in New Zealand....".

With cases that fall within Part IA of the HRA, the government has the defence that the practice is a justified limitation on the right to freedom from discrimination. The government would probably argue that its approach of treating married couples as an economic unit is justified because it ensures greater equity for everyone. At the same time, given that NZS is not means-tested, either on an individual or a household basis, and is flat-rate, inequities will inevitably continue to exist.

While the Director of Human Rights Proceedings (DHRP) has agreed that there is an arguable case of discrimination in Mrs R's case, he suggests other factors militate against the probability of success before the Tribunal.

As well as the issue of discrimination, there is a need to ensure that the rights of all involved are addressed fairly and equitably, and that those most directly affected have the opportunity to influence policy. Bell (2006, p. 9) writes:

It could be possible to reconsider Mrs R's case on the grounds of marital status discrimination... [I]t might be possible to construct a case which would convince the DRHP to look at the complaint again. Given existing case law it would be more likely to succeed as a case of marital status discrimination than by questioning the type of pension which her husband receives although clearly this will be a factor...

Another major hindrance to progress is the lack of clarity on the interpretation and application of "discrimination" in terms of the Human Rights Act 1993, and the test for discrimination. The range of protections apparently offered or provided under that law are reliant on the adjudicator's interpretation of discrimination, as well as existing case law (which is problematic, as discussed below) and on the application of the test, which is a comparison with others in a similar situation. Few pensioners complaining of perceived discrimination would realise that to prove it they would need to refer to a cohort in similar circumstances who did not suffer in the same ways.

6. A survey of problems under the Direct Deduction Policy

Many issues relating to overseas pensions have been brought to the HRC, the Ministry of Social Development, the Treasury, Government Ministers, local Members of Parliament, and the RPRC, heard by the Courts, and/or published on www.pensionabuse.co.nz. The most frequently occurring issues are surveyed in this section.

6.1 Australian advantage

Australians can leave Australia before the qualifying age for an Australian pension and then, on reaching qualifying age, make an application from New Zealand. Any Australian payment they receive would be subject to the DDP. Whether they get one payment or two depends on whether they have joined the 'special banking option', in the Social Security (Alternative Arrangement for Overseas Pensions) Regulations 1996. This allows those with an overseas pension to elect to have their overseas pension paid into a special bank account that only the MSD can access to periodically sweep out the funds. The overseas pensioner simply receives the normal full entitlement of NZS. Superannuitants who do not choose this option will be paid their Australian pension directly by the Australian Government. If their Australian entitlement is less than the NZS, as will usually be the case, they will also receive a payment from New Zealand.

After people leave Australia, the amount of the Age Pension they are entitled to as a result of the Australian income/asset tests is not set based on their income and assets held just at that point. Age pensioners resident in New Zealand must inform the Australian authorities of any changes in their circumstances, including income and assets, which could affect their Age Pension entitlement. The amount of Age Pension may therefore be adjusted for changed circumstances in New Zealand. For example, if a single pensioner married, or received an inheritance while in New Zealand, the Australian authorities would reduce the rate of Age Pension that person received under the means-test.

After qualifying for NZS, cost sharing by the Australian and New Zealand governments occurs regardless of when a person arrives in New Zealand. For example, a person spends 20 years of their working life in Australia between the ages of 25 and 45 and then returns to New Zealand. On turning 65 they will have to apply for an Australian Age Pension, and their Age Pension entitlement will reduce their NZS entitlement. However, the poorest Australian immigrating to New Zealand over age 65 gets the full Australian Age Pension, and this is offset against their NZS, or topped up by the New Zealand government if it is less than NZS. The richest Australian immigrating to New Zealand with no Age Pension entitlement (because of the income/asset tests) gets the full NZS, at the cost of the New Zealand taxpayers.

6.2 Examples of complaints regarding section 70 and the DDP

Some of these complaints are a consequence of misunderstanding of the policies by the complainants, some are a consequence of the complexity of overseas pension regimes, and some are a consequence of the apparent unfairness of the MSD'd decision to apply the DDP to their overseas pension. Of the written complaints available to the RPRC,⁵⁵ 13 complainants were originally from the UK; 2 from Ireland; 3 from Canada; 3 from the Netherlands; 2 from the US; 3 from Germany, and 2 from New Zealand. New Zealand has a Social Security Agreement with four of these countries but not with the US or Germany. Most of the complainants had spent between 20 and 44 years of their working lives (between ages 20 and 65 years) in New Zealand. These complaints indicate that the current policy framework has not diminished the distress among the pensioners affected by the section 70 DDP.⁵⁶

The effect of the DDP is that NZS, a Tier 1 pension, is abated against overseas pensions which are perceived by the recipients as Tier 2, or even, as in the situation of Mrs R, Tier 3.⁵⁷ Typical of the 12 UK complaints is one that reports working some years in the UK while having state pension contributions ("National Insurance") deducted from their UK pay. Now they cannot access that 'entitlement' except at the expense of a deduction against their NZS. Crown Law has argued that section 70 encompasses overseas pensions, and that it would be unfair for people who are migrants or are married to immigrants to be advantaged over other New Zealand residents.

Unlike New Zealand where superannuation is paid out of general taxation, in countries like the UK, Canada (for Tier 2) and Ireland, the employee- or employer-based pension contributions are identifiable. Thus overseas pensions are seen as contributory, built up with their own savings, and abating NZS against such pensions is perceived as inequitable and discriminatory.

Canada's system has three Tiers. Tier 1, Old Age Security, is paid out of general taxation like NZS; and Tier 2, the Canada or Quebec Pension Plan, a government-administered, contributory and compulsory scheme for employers and employees when earnings are over C\$3,500 per annum. Tier 3 includes tax-favoured voluntary superannuation schemes.⁵⁸ Three complaints from Canada relate to the fact that Tier 2 (Canadian Pension Plan) pension payments are being abated against NZS payments.

In 2007, Mr S wrote an open letter warning prospective immigrants to New Zealand:

This is a great country to live and work in, but we all get a shock when we retire because Work and Income will reduce your NZS by the equivalent amount of any foreign government pension, making you angry, confused and frustrated by the injustice. There are 50,000 plus such pensioners to my knowledge who have complained for years to the Government, individual MPs, Retirement and Human Rights Commissioners, the Ombudsman, newspaper editors and Grey Power with little effect... I am prepared to waive the Canadian old age security payments which are

⁵⁵ The quotations from complainants in this section are taken from letters to the RPRC, to the pensionsabuse website, and from trial transcripts.

⁵⁶ Section 72(a) of the SSA ensures a person cannot get more than one statutory benefit from WINZ at any one time. The purpose of this section is to prevent, for example, a sick or divorced widow with dependent children from getting the Sickness Benefit and the Widow's Benefit and the DBP.

⁵⁷ See Appendix 5: [Ruifrok/Van Lindt v Attorney-General 2000](#); [Hogan Case 2002](#); [Roe High Court decision 1987](#); [Tetley-Jones v Department of Work and Income 2004](#); Dunn complaint, and High Court appeal 2008.

⁵⁸ See Appendix 4 for a detailed summary of the Canadian pension arrangements.

taxpayer-funded, but not the \$600-odd a month from the [Tier 2] Quebec Pension Plan, which came from my and my employer's pockets. This (yes) robbery is made more galling by KiwiSaver, which every New Zealander is being urged and (yes) bribed to save for. This confiscation is a well kept or ignored secret. By the time you discover it for yourself it is too late.

The relationship with US pensions is complicated by the fact that New Zealand and the US do not have a reciprocal agreement; and because the main government-provided retirement income support ("Social Security") is delivered at Tier 2 on a contributory basis. One complainant argues that the employer- and employee- funded Social Security pension has more in common with a private funded pension scheme than NZS. However, MSD's response is that it is government-administered and analogous to NZS, thus it is covered by the DDP.

As well as objecting to their US pension being abated, another complainant objected to the letter from WINZ asking if he was in receipt of an overseas pension and informing him of his obligation to let them know.

As with US pensions, the relationship with German pensions is complicated by the lack of a reciprocal agreement, and the lack of agreement regarding which pensions are analogous to NZS. As one of the complainants expressed it:

The German pension is not analogous to NZS; it is more of a private scheme, a 'nest egg' I thought I would have for my retirement. If I had stayed in Germany, I would get a much better deal than I do in New Zealand.⁵⁹

A frequent complaint is that after working more than 20 years in New Zealand, a person receives less NZS (though not less retirement income overall) than someone who has spent only 10 years resident in New Zealand but has no overseas pension entitlement. Such a complaint was received from Mr Y who worked in Germany and contributed to its state pension for 15 years. Entitlements from that scheme are based on points that relate the contributor's earnings to the earnings of all contributors. The value of points earned is adjusted by changes in average wages: no contributions means no pension. Although he worked and paid taxes in New Zealand for 32 years, his German pension is deducted from NZS. He complains about the inequity of receiving the same pension as anyone who has lived in New Zealand for 10 years and is aged over 65.

Three complaints from the Netherlands relate to the DDP being applied to pensions that are seemingly not analogous to NZS. For example, Mr V served with the Dutch Royal Marines for 12 years, from 1948 to 1960, when he emigrated to New Zealand. In 1992 when he reached the age of 60, he was awarded a military pension, out of which contributions are paid to the Dutch AOW (old age pension). The Dutch system treated the military pension as 'earnings' for social security contributions. On reaching the Dutch pension age, his Tier 1 pension included, in part, benefits derived from the military pension contributions. Since 1992, the payments from his Dutch AOW have been deducted from his NZS payments, despite section 3 of the New Zealand SSA stating that military pensions are exempt from the application of section 70.⁶⁰

⁵⁹ Personal correspondence with the RPRC.

⁶⁰ See Appendix 4 for a detailed summary of the Netherlands' pension arrangements.

6.3 Complaints regarding other apparent inequities

A range of complaints fall outside the major categories of discrimination and section 70.

6.3.1 Age of entitlement

In one example, a stroke victim on a New Zealand Invalids' Benefit, reached age 60 and entitlement to her UK Old Age pension, but this was abated against the Invalid's Benefit. In another example from the US, a complainant felt especially victimised as rule changes meant he missed out on receipt of a US pension at 60 years, and had to wait until age 65.

6.3.2 Lack of information on continuation of overseas pensions

Some people have complained that they were unaware that they could continue to contribute to UK National Insurance while in New Zealand. Also, they did not understand the costly repercussions of this failure: by not continuing payments for the necessary number of years to meet entitlement, the savings or contributions they had previously made were forfeited.⁶¹

Lack of transparency in policy carries a significant cost for the unwary. However, the only roles New Zealand can take are those of information-provision, and urging other governments to inform contributors of the conditions of continued entitlement to pensions.

6.3.3 Unfair burden of pension payment placed on overseas countries

A recurring complaint is that New Zealand is not meeting its fair share of the burden for pension payments, and other countries are paying more than they should. For example, a UK complainant writes:

I object to the DDP which results in DWI paying me 13.6% of NZS when I have worked half my life in NZ. I refuse to sign the Privacy Waiver to allow DWI access to my British Pension records because that would be just another invasion of my privacy.⁶²

Another complainant describes spending 9 years (20%) working in Ireland, and 36 years working in New Zealand, yet 66% of the NZS income received is paid via the Irish pension. This raises two issues: either an unfair cost of pension provision is being placed on the Irish government; or the person is suffering from the New Zealand government making an excessive reduction in the total superannuation paid to the complainant.

A similar situation is described by a person who worked 26 years (65%) in New Zealand and only 14 years in Canada who has a gross NZS of \$4,168.72 per annum (31% of total received) and \$9,127.69 per annum (69% of total received) from Canada. The Canadian government appears to pay an unfairly high proportion of the total. If New Zealand paid what these complainants consider to be a fair share of their pensions, the amount received would increase, however, their complaints are mostly on the basis of a general principle rather than any personal advantage.

In another case from Ireland, 3/15ths of their working life was spent in Ireland, and 12/15ths was spent in New Zealand, but 10/15ths of their pension (abated back to the

⁶¹ See Appendix 5. The Dunn complaint and High Court appeal 2008.

⁶² Given the information-sharing provisions in the UK Social Security Agreement (see Appendix 4, paragraph B) it is difficult to see why the New Zealand authorities were seeking this waiver.

rate of NZS) is paid by the Irish government. This suggests that the current arrangement is treating either the Irish government, or the superannuitant, unfairly.

6.3.4 Favourable rules for civil servants

An objection was expressed regarding the inequity of civil servants having unabated but government-funded New Zealand pensions in addition to NZS.

6.3.5 Historical conditions

A New Zealand-based complainant and another originally from the US have not forgotten the cost and the perceived injustice of the surcharge on other income which resulted in abatement of NZS between 1985 and 1998. One person likened the surcharge to the Chinese head tax levied in the early 20th Century on new immigrants.⁶³

6.3.6 NZS application made in New Zealand

A further apparent inequity was described in a 2008 letter to the RPRC from Mr B in Scotland. He was concerned about his wife's possible entitlement to NZS, but her chronic ill health meant she was unable to pursue her own application. Although she was born in New Zealand in 1940, and worked there from 1961 until 1978 when she moved to Australia where she worked until 1982, she did not meet the criterion of being normally resident in New Zealand in order to apply for NZS.⁶⁴

Hope you are able to help. My wife is a New Zealander and has lived here in since 1982. She is now 68 years old and receives an OAP pension of £55 per week. But she worked in New Zealand for almost 20 years, paying all the tax things that had to be paid. We are wondering whether she is entitled to any NZ pension. Unfortunately she is now chronically ill and I've got to handle things for her... She has two brothers and a sister still living in New Zealand who can vouch for her history. We would be grateful if you could let us know whether she qualifies for a New Zealand pension...

The RPRC's reply noted although the £55 per week she receives in the UK seems minimal, that may be the married person's addition to a spouse's pension. RPRC included the following explanation from the UK Pensions Policy Institute:⁶⁵

*The full rate of BSP, which from April 2008 is £90.70 per week for a single person, is payable to men with at least 44 qualifying years from a maximum of 49. For women born prior to 6 April 1950 the full rate is payable with at least 39 qualifying years from a maximum of 44... A proportionate benefit is payable if the number of qualifying years is less than that needed for the maximum. For example, a women with a 30 year contribution record will receive BSP of £69.77 per week ((30/39) * £90.70). However, if the number of qualifying years is less than 25% of the amount required for a maximum BSP then no BSP benefit is payable.*

It would appear that Mrs B has a legitimate claim to a proportion of NZS, however, her inability to meet the "normally resident in New Zealand" criterion cancels out that claim.⁶⁶

⁶³ The "general portability provisions", introduced in the 1980s after migration patterns globally increased and diversified, allowed a person to take 25% of NZS with them to a non-agreement country. This was increased to 50% in 1999. The rate reflected the surcharge that applied in New Zealand, and the fact that portable private pensions were not taxed in New Zealand (Ministry of Social Development, 2003b, p. 14).

⁶⁴ The relevant section of the legislation is:

<http://www.legislation.govt.nz/act/public/2001/0084/latest/DLM113989.html>. Note that the Social Assistance (...)

Amendment Bill (2009) relaxes this requirement.

⁶⁵ The full Pensions Policy Institute report is at:

http://www.pensionspolicyinstitute.org.uk/uploadeddocuments/Primer/2008/Primer_Updated_June08.pdf.

6.3.7 Chief Executive's powers

Another reason for New Zealand's DDP causing distress and creating a sense of injustice and inequity, or perceived discrimination, is that it is applied at the discretion of the Chief Executive of the MSD, and appears to be applied inconsistently. There are variations in the reciprocal agreements New Zealand has with different countries, and some arrangements, for example those with Pacific nations, are more favourable than others. Because decisions about individual cases are not published, there is no transparency in the process.

6.3.8 Complaints about complexity

As noted above, another cause of pensioner distress is that internationally, pension rules and systems are constantly changing, and the application of New Zealand's policies doesn't necessarily reflect the current situation in other countries. A further cause of the perception of injustice and inequity is that different countries' pension schemes and rules are extremely complex, and vary enormously. Because of this complexity, officials, academics, pensioners and other interested parties do not understand the differences and similarities between countries' pension types.

For example, under the 1990 Reciprocity Order with the UK (the Social Security Agreement with the UK), NZS and the UK basic pension are abated against each other so that a person cannot receive both, although NZS is paid out of general taxation while the UK Basic State Pension is financed from a specific and compulsory deduction from a person's pay even though those amounts paid have no direct link to pensions in general or to the individual entitlements of a pensioner.

6.4 The implications of KiwiSaver

An internal HRC memorandum, investigating the possible implications of KiwiSaver in regard to the unfairness of overseas pension abatement under section 70 of the SSA, acknowledged that KiwiSaver complicates the debate.⁶⁷ However, Van Slyke (2008) suggested a claim of discrimination based on the non-abatement of KiwiSaver from NZS while equivalent overseas superannuation or age benefits can be abated was unlikely to succeed because:

- i) KiwiSaver is not a pension, and thus section 70 does not apply;
- ii) contributions to KiwiSaver are not compulsory, so it probably is not a benefit providing for the same contingency as NZS;
- iii) even in light of KiwiSaver, overseas abatement does not discriminate on the basis of national origin: it differentiates between the types of retirement income received, and this is not "discrimination" as defined under the HRA; and

⁶⁶ Allied complaints relate to a UK law which results in British retirees living overseas not receiving the index-linked increases in the retirement pension as resident in the UK. *R v. Secretary of State for Work and Pensions, ex parte Carson* [2005] UKHL 37 involved a claim by a British woman who immigrated to South Africa but continued to contribute to her British pension scheme. At age 60 she became entitled to and received a UK retirement pension. However, as an overseas resident she did not receive the cost of living increase that pensioners in the UK did, and she claimed she racial discrimination. In dismissing the appeal Lord Hoffman said that her sense of grievance was understandable, but not justified. By moving to South Africa Ms Carson put herself outside the primary scope and purpose of the UK social security system. While she argued she was entitled to the increases, the Lords disagreed noting that National Insurance contributions have no exclusive link to retirement pensions, comparable with contributions to a private pension scheme. Carson is taking the case to the European Court (Bell, 2006, pp. 3 - 4).

⁶⁷ See Appendix 6 for 2005 and 2008 media coverage of the anger of pensioners over the DDP.

- iv) “even if prima facie discrimination could be established it is likely that the Crown would provide a justification pursuant to section 5 of the Bill of Rights Act 1990” (Van Slyke, 2008, Paragraph 4).⁶⁸

Van Slyke (2008) also points out that because KiwiSaver is designed so that members do not receive regular payments, it is not analogous to NZS, and it thus avoids most of the potential complaints from individuals and NZ Pension Abuse.⁶⁹ On the other hand, he notes that the term “pension” is not defined in statute law or case law, and one could argue that the method of payment is only a technicality (Van Slyke, 2008, Paragraphs 19 - 20). This lump-sum option to avoid the DDP is discussed in Lazonby (2007) where a Mr R’s collection of his Fijian pension savings in a lump-sum prior to emigration allowed him, after meeting residency requirements, to retain the whole lump-sum, and also qualify for the full NZS.

A factor that places overseas pensions within the ambit of the DDP is the involvement of the government in the administration of the benefits. Because The Treasury, MED and IRD are all involved in the KiwiSaver scheme, and because the government contributes both the kick-start and the tax credits, and because the savings are locked in until the member reaches 65 (Van Slyke, 2008), it could be argued that KiwiSaver appears analogous to a government/publicly-administered fund.

6.5 Other pension inequities and anomalies

There are a range of other problems with current pension policy that require attention.

6.5.1 NZS paid net, not gross, outside New Zealand

As noted in Dale, St John and Littlewood (2009), currently, and under the provisions of the 2009 Social Assistance (Payment of New Zealand Superannuation and Veteran’s Pension Overseas) Amendment Bill, NZS can be paid to superannuitants outside New Zealand at gross rates. This is not equitable for the New Zealand taxpayer, or for New Zealand-based recipients of NZS.

In fairness to the current New Zealand taxpayers who are funding current pensions, and the current retirees in New Zealand, all pensions paid outside New Zealand should be paid at net rates. Whether or not the country to which the superannuitant is retiring will treat NZS as taxable income is irrelevant.

By not taxing NZS when it is paid offshore, New Zealand may merely be conceding tax revenue to a foreign government with no resulting benefit to the superannuitant. Where a tax is fully creditable under a foreign tax credit mechanism, tax policy experts regard this tax as “free” revenue. New Zealand might as well collect it.
(Smith, 2009b)

⁶⁸ Sections 4 and 5 of the New Zealand Bill of Rights Act, 1990 are: 4. *Other enactments not affected.* No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights), (a) Hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or (b) Decline to apply any provision of the enactment— by reason only that the provision is inconsistent with any provision of this Bill of Rights. 5. *Justified limitations* Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

⁶⁹ NZ PensionAbuse’s mission, stated at: <http://www.nzpensionabuse.org/> is: “NZ Pension Abuse remains committed to publishing the truth about New Zealand’s retirement policies for the world to see. It is our hope that the notion of fair-play dear to all New Zealanders will eventually prevail, and that we will ultimately have the responsible leadership capable of recognizing that abusing the pension rights of elderly citizens is unacceptable.”

Double-tax agreements would normally recognise tax deducted at source by the New Zealand government as allowable in any tax calculation in another tax jurisdiction.

6.5.2 Principles for Pacific Islands portability

As well as being inequitable, there is much in the current special arrangement with the 22 Pacific Island nations that can be described as discriminatory. After only 20 years of residency, instead of the 45 years proposed for everyone else, Pacific Islanders can receive full payment outside New Zealand.

The generous Pacific Islands portability rules favour a small part of New Zealand society at the expense of the rest. The Social Assistance (Payment of New Zealand Superannuation and Veteran's Pension Overseas) Amendment Bill also proposes to allow Pacific Islanders to apply for NZS from outside New Zealand. This is a further inequitable and discriminatory advantage.

More particularly, there seems no rationale for Pacific Islanders from a number of French and US dependent territories to benefit from the special historical relationship New Zealand has with the Cook Islands, Niue, and Tokelau. It therefore seems discriminatory for French and US dependent territories in the Pacific to be eligible for the special New Zealand-funded Pacific Islands portability. This anomaly needs to be addressed.

6.5.4 The residency rule

As noted, eligibility to NZS is based on reaching age 65, and on the "10/5 rule": residing in New Zealand for 10 years after age 20, with 5 of those years after age 50. This is, in the context of the discussion in this paper, problematic. As Appendix 4 shows, the reciprocal agreements New Zealand has with nine countries do not function in an exactly reciprocal way. For example, the Australian resident gets full NZS in Australia on completing 45 years' residence in NZ; for the Australian pension, the local 10(5) rule applies with NZ residence counting as if it had been in Australia. Also, unlike for NZS, income and asset tests apply to the Australian old age pension. In the case of Denmark, while time spent residing in both New Zealand and Denmark is considered, the full Danish pension accrues evenly over 40 years.

6.5.5 Totalisation

The rule of "totalisation" provides that residency or a contributing period in one country is deemed to be residency or contribution in another country for the purposes of entitlement to social security benefits. The rule prevents individuals from being disadvantaged by splitting their working lives between two countries. Totalisation "usually only applies to the principle of eligibility for a benefit under one state's social security laws"; and does not determine whether either or both states will pay benefits to the claimant, nor does it determine the proportions of the benefits to be paid by either state (Smith 2009a, p. 7).⁷⁰

6.5.6 The special case of Australia

The Social Security Agreement with Australia is discriminatory and seemingly unfair to many New Zealanders who retire in Australia and receive either no pension at all, or an abated pension. Also, currently, when they would be ineligible for a pension in Australia

⁷⁰ Smith (2009a, p. 7) also notes that the stated objectives sought by both the US and New Zealand from Social Security Agreements include preventing the loss of benefits for individuals who have divided their careers between two countries; and pension portability, allowing people to retire to the country of their choice.

because of their assets and income, Australians can retire in New Zealand and receive full payment of NZS at the expense of the New Zealand taxpayer without ever having contributed to the New Zealand tax base. Those same Australian retirees can bring with them to New Zealand their highly government-subsidised private retirement saving.

Smith (2009b) notes that full payment of NZS at the expense of the New Zealand taxpayer applies to New Zealanders who have spent most of their working lives in Australia and retire to New Zealand with a large Australian private pension (supported by generous Australian tax incentives) and collect NZS at full rates. "The social security agreement with Australia has considerable fiscal risks to New Zealand and it should be reviewed at the earliest opportunity." (Smith 2009b, p. 4)

Australia's basic age pension is means- and asset-tested. Australia's employer-funded DC superannuation is a lump-sum payment, as is New Zealand's KiwiSaver. The lack of pension income makes it inequitable to have only an income test. The Australian solution⁷¹ has been to impose both an income- and an asset-test on entitlement to the Old Age Pension. New Zealand's NZS is not subject to either an income or assets test, and the taxation system does not provide much equity through progressivity.

An equitable agreement with Australia is needed to ensure that New Zealanders who retire to Australia are not disadvantaged compared to those who retire in New Zealand; and that Australians who retire to New Zealand are not advantaged over those Australians who retire in Australia.

6.6 Summary

This section has taken a broad overview of the range of complaints about the payment of overseas pensions in New Zealand. The key issues for the purposes of this report are:

- The increasingly complex ways in which the state underpins, subsidises, provides or administers pensions and retirement income in general means the DDP can produce arbitrary outcomes for some.
- The treatment of state-administered, contributory pension schemes is the major source of distress for retirees with overseas pensions.
- New Zealand's light residency requirements underpin many of the perceived inequities and inconsistencies.
- The universal, flat-rate, and basic non-contributory NZS complicates the interaction with overseas contribution and/or years of employment-based pensions.
- The apparent marital discrimination.
- The easy access Australian retirees have to advantage under the New Zealand system.

7. A principles-based approach to pension policy

The challenge is to suggest a policy that provides fair treatment in the allocation of NZS to immigrants to New Zealand, in relation to other superannuitants; to emigrants from New Zealand and in relation to the working age population. A principles-based approach to pension policy is proposed here as a contrast to the current rules-based approach,

⁷¹ The preservation age of 60 allows access to the lump sum payment 5 years prior to the Old Age Pension, thus creating a gap where the lump sum can be spent on upgrading the private dwelling which is exempt from the asset-test, or on overseas travel, etc.

including section 70, the 1996 Regulations, the Special Arrangements with Pacific nations, and the reciprocal Social Security Agreements.

The introduction noted the view of Sama and Shoaf (2005) that a principles-based approach has advantages over a rules-based approach. Arjoon (2006, p. 53) claims a major advantage of a principles-based approach is that it discourages violations of both the letter and the spirit of the rules and regulations: "Effective governance means adhering to ethical principles, not merely complying with rules". His list of the drawbacks of a rules-based approach includes increasing the cost of doing business, creating a culture of dependency, and the risk of "legal absolutism" (Arjoon, 2006, p. 77).

Sama and Shoaf (2005, p. 184) suggest that the complexities of globalisation require adherence to generally agreed principles, defined as: "Impartiality, Transparency,

Box 1. Section 6 summarised complaints of discrimination received by the MSD, the HRC, the RPRC, and www.PensionAbuse.org.

Racial and marital discrimination are the types of discrimination most frequently alleged in connection with section 70.

Accountability and Responsibility, Truthfulness, and Respect for Rights." These principles are inherent to the framework of a human rights approach. This section adapts these principles, and builds on the preliminary discussion in Dale et al (2009), with:

- Egalitarianism, incorporating impartiality;
- Equity, incorporating truthfulness, respect for rights, and accountability;
- Income adequacy, incorporating responsibility;
- Efficiency; and
- Simplicity and transparency.

The complexities of globalisation require trust; and adherence to generally agreed, clearly stated principles promotes trust. These principles are discussed in more detail below, then in section 8, they are employed directly in two alternative proposals for reforming policy for the treatment of overseas pensions in New Zealand.

7.1 A human rights framework

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 expression, freedom from discrimination, equality before the law; and economic, social and cultural rights, such as the right to food, work, education, and participation in culture and community.

Dale et al (2009a) draw on McGregor's (2007, p. 25) analysis of the six elements of a human rights framework. This human rights framework emphasises equality before the law as a human right and the corresponding right to be free from discrimination:

- Identification of all relevant human rights involved, and a balancing of rights, where necessary, to maximise respect for all rights and right-holders;
- 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;
- Accountability for actions and decisions, which allows individuals and groups to complain about decisions that affect them adversely;
- Empowerment of individuals and groups by allowing them to use rights as leverage for action and to legitimise their voice in decision-making;

- An emphasis on the participation of individuals and groups in decision-making; and
- Non-discrimination among individuals and groups through equal enjoyment of rights and obligations by all.

7.1.1 Egalitarianism

The value of egalitarianism is important in New Zealand's history, and is implicit in the human rights framework. The principle of egalitarianism has, at its base, the concept of fairness and equality of rights, access and treatment: in short, impartiality. This principle has been a foundation of New Zealand's policy and legislation since the Treaty of Waitangi

Box 2. Egalitarian principles were apparently ignored by the 1999 changes which extended the Special Portability Arrangements for emigrants to and natives of the Cook Islands, Niue and Tokelau to 19 other Pacific nations. See section 4.3.

in 1840; tested and reinforced by the Royal Commissions on Social Policy (1972) and (1987); and by the Bill of Rights Act 1990, and the Human Rights Act 1993.

The DDP expressed in section 70 of the SSA,⁷² by preventing "double dipping" (accessing more than one state-funded Tier 1 pension) could be seen to support egalitarianism.

On the other hand, the very short residency requirement for entitlement to NZS, with only a total of 10 years residency, with a minimum of 5 years after age 50 (the 10(5) requirement), while it is egalitarian, could be regarded as overly generous to immigrants, as it does not consider their lack of contribution to the New Zealand system via taxes paid, or non-financial contributions to society. It does not consider the intergenerational obligation that is the foundation of a PAYG system, nor does it consider the disproportionate burden such immigrants make on New Zealanders whose contribution to New Zealand's well-being is lifelong.

Other changes, such as those in 1999 relating to portability of NZS to 19 Pacific nations that New Zealand does not have a special relationship with, also appear to violate the egalitarian principle (see Box 2).⁷³

7.1.2 Equity

Equitable portability policies for a public pension mean equivalent treatment for those who leave New Zealand and retire abroad, and for those who come to New Zealand with overseas pension rights. The processes of immigration and pension portability are complex, and require truthfulness and honesty as expressions of the principle of respect for the rights of all people. Equity 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 justified.

Inequity and injustice are potential human rights infringements. Equity requires an absence of unlawful discrimination, however, rather than the HRA's narrow test, broader

⁷² While it may support 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 (Tier 2 and Tier 3) as well as Tier 1 pensions that are equivalent to NZS.

⁷³ See http://executive.govt.nz/96-99/minister/shiple/parliament99/super_ga.htm. In 1999, the Special Arrangement was extended from the three Pacific nations New Zealand has a special relationship with: the Cook Islands, Niue and Tokelau; to all of the Pacific Islands. The new arrangement 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 or more residency in New Zealand would now entitle a person to 100% of NZS.

concepts of equity may need to apply on issues associated with overseas pensions. Equity in regard to pension provision and portability could be described as ensuring those in an equivalent situation are treated equivalently. The RPRC *Literature Review* (2009, p. 16) discussed equity in terms of horizontal, vertical, and intergenerational categories.

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 similarly, it may fall well short of achieving horizontal equity in its current application.

A clear case of the breach of the principle of horizontal equity occurs when the spouse of recipient of an overseas pension is treated more harshly than if the spouse had either not married or married somebody else.

Abating the overseas pension of one spouse against not only their own NZS entitlement, but also their spouse's, seems a discriminatory, anti-egalitarian policy that violates the basic entitlement to NZS as an individual, rather than entitlement being on a couple basis.⁷⁴ Such a discriminatory policy may set up a perverse incentive for couples to separate or even divorce. The denial of a spouse's individual right to NZS has been raised

Box 3. As discussed in section 8, achievement of vertical equity may require attention to tax expenditures, and the enforcement of a progressive tax scale.

as an issue of marital discrimination in the case of Mrs R (see section 5.1.3). Her situation also provides examples of breaches of the principles of egalitarianism, individual rights, and horizontal equity.⁷⁵

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 income 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.

Box 4. As reported in Dale et al (2009a, p. 11) inequities arise when the welfare system's design enables migrants who contributed less to end up with equal or greater benefits than the country's other citizens (Andersen, 2003; Cremer & Pestieau, 1996, 2004; Freeman, 1986; Lucas, 2008; Razin & Sadka, 2000; Razin, Sadka, & Swagel, 2002).

The increasing use of savings incentives and tax expenditures by governments to promote saving as self-provision for retirement may undermine vertical equity as the incentives and expenditures are usually percentage-based, and those with higher incomes benefit more (Spies-Butcher & Stebbing, 2009). This hidden government spending tends to benefit the middle-class who may also benefit from other special tax treatment (Retirement Policy and Research Centre, 2009; St John, 2009).⁷⁶

Inter-generational equity requires that horizontal and vertical equity hold across generations. In New Zealand,

caution needs to be taken regarding the burdens imposed on this and the next generation of taxpayers to pay for the current and future generations of native and immigrant retirees.⁷⁷

⁷⁴ This perverse incentive already exists in the different NZS payments to couples and two individuals sharing accommodation.

⁷⁵ See Appendix 5.

⁷⁶ Unlike Australia, New Zealand does not have a Tax Expenditure statement, although the idea is currently being mooted (Fookes, 2009).

The introduction of KiwiSaver has created new problems through the government-funded incentives that can best be accessed by those who are already better-off (St John, Littlewood, & Meehan, 2008). Progressive taxation of all income including NZS may alleviate vertical equity concerns. Although New Zealand has moved away from comprehensive taxation (Retirement Policy and Research Centre, 2009), it may be necessary to return to such a policy to achieve, for New Zealanders who live and work their lives in New Zealand, equity and accountability as between all citizens and the state in ensuring the desired standard of living for retirement is achievable and sustainable.

7.1.3 Income adequacy

Egalitarianism relies on fairness and equity in the treatment of all citizens in similar circumstances. Horizontal equity requires that equals are treated equally, and vertical

Box 5. In 2009 a single person on NZS, living alone, receives \$310.95 net per week. A married couple whose only income is NZS receives \$478 net a week (\$239 each), which is \$161 a week more than a couple on a Sickness Benefit who receive \$317.30 net a week (\$158.65 each). Also, apart from NZS, a tight income test applies to benefits.

equity requires a fair sharing of benefits and taxes as income increases. As part of that, vertical equity requires that each person has sufficient income to reach some minimal acceptable living standard, or income adequacy. The acceptability criteria for retirement income could be poverty prevention, participation and belonging, or continuance of economic status, which implies earnings-related pensions.

A welfare system provides benefits to alleviate poverty or for subsistence living. New Zealand's pension goes further: unlike other welfare benefits, NZS is pegged to the average wage, and when compared internationally, it is larger than most basic (Tier 1) pensions. In comparison to New Zealand's other main benefits such as the Sickness and Unemployment Benefits (see Box 5), NZS is more generous (Retirement Policy and Research Centre, 2009).

NZS aims to achieve a belonging and participation level of income adequacy, but not a full continuance of economic status for higher income people (see Box 6). The comparative adequacy of NZS contributes to the complexity around pension portability. The Emergency Benefit (based on the level of other social welfare benefits) ensures that immigrants of pension age who, for any reason, do not qualify for NZS are provided with a poverty-alleviating income.

Box 6. People with overseas pensions or NZS must be allowed to supplement the pension with their own savings, whether or not such savings are government subsidised.

Continuance of economic status for middle income and higher income people, or maintenance of what they perceive as income adequacy, has been an individual responsibility in New Zealand, but some state involvement in saving for supplementary income is now provided through KiwiSaver. Income adequacy as a principle may be interpreted as encompassing the responsibility or right for people to

supplement their state pension with private savings that may in turn be facilitated (that is, partially funded) in some way by the state.

⁷⁷ An individual's lifetime wealth can be significantly affected by the manner in which public pensions are accumulated. It is estimated that, through differentials in public pension systems among EU countries, some migrant workers could have their lifetime wealth reduced by 10-15%, whereas others, particularly workers who migrate at older ages, could be made 5-15% better off (Wildasin, 1999).

Private pensions in NZ are not integrated with NZS. For example, in addition to NZS, occupational pensions may be provided, such as that from the Government Superannuation Fund for state employees. KiwiSaver will provide people who can afford it with the opportunity to save for supplementary income, and to take responsibility for ensuring their own income adequacy in retirement. In turn, it is important that the right to supplement is not denied to those who have not spent all their time in New Zealand and have overseas pensions that in part or in total fulfil the goal of income supplementation.⁷⁸

7.1.4 Efficiency

An economically efficient policy should not distort decisions; or, given a choice between two or more options, should distort decisions the least. A major consideration is the light residency requirement in New Zealand that allows immigrants comparatively speedy

Box 7. The residency requirements for NZS are very light when compared with other countries' policies, and produce distortions and inefficiencies.

access to a liveable retirement pension. Whether or not the information is ambiguous for those who have retirement savings in the form of Tier 2 or Tier 3 schemes, for those who do not have retirement savings, the information is clear: an immigrant, after arriving in New Zealand at age 55, whether or not they make an economic contribution through paid or voluntary employment, can begin to collect NZS at age 65.

Adding to the inefficiency of the current residency and entitlement policies is that elderly people who migrate to New Zealand can, if they leave after 10 years of residency, receive a partial NZS overseas, although they may have contributed very little in monetary or non-monetary terms to the economy. Such perverse incentives for those from countries with less adequate basic pension schemes to take advantage of the relatively generous, accessible, and now portable NZS, are also highly inefficient.

7.1.5 Simplicity and transparency

Simplicity as a principle supports cost minimisation of government administration, individual compliance and efficiency. NZS is, in world terms, a very simple Tier 1 pension.

Box 8. Current pension portability arrangements are complex and inconsistent, and policies are neither transparent nor well-communicated.

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 the other arrangements they make for retirement income provision.

As New Zealand's approach to superannuation in general and pension portability in particular has become much more complex, changes have not necessarily been consultative, or well-considered. The present situation regarding portability and section 70 illustrates the effects of failing to follow a principles-based approach, and the proposed Social Assistance (Payment of New Zealand Superannuation and Veterans Pension Overseas) Amendment Bill continues that policy.

In relation to application of the DDP, the Chief Executive of MSD makes the decision whether or not section 70 applies to particular pensions. However, as reported by NZ PensionAbuse, when asked to specify in detail how the Crown determined that the US Social Security pension is analogous to NZS, the Chief Executive noted that his authority

⁷⁸ People can often maintain their contribution record to a Tier 1 pension by voluntary contributions, and thus maintain entitlement.

to deduct US pensions had been upheld by the High Court with its decision in the Roe Case, and thus no further authority or explanation was necessary. Decisions made behind closed doors, at the discretion of a single individual, without public scrutiny, are unlikely to be accepted as fair and reasonable and are not transparent.

Lack of transparency is also associated with the international issue of extensive and increasing government contribution to the private pensions of those wealthy enough to save, and the attendant inequities of such contribution, which has not yet been addressed in the section 70 debate. Tax expenditures to support private pensions are, in essence, little different from direct expenditures on state-administered pension schemes.

Finally, simplicity and transparency are associated with a fair allocation of the cost of pension provision among the various countries in which a person has spent their working life. The examples discussed in Section 6 show that a country's contributions to a person's New Zealand pension do not appear to be fairly divided in relation to the time spent making an economic contribution to each country and a financial contribution to a state pension entitlement.

8. Conclusions and recommendations for policy changes

As has been discussed previously and is covered in more detail in Appendix 4, there is no internationally comparable basic (Tier 1) pension to NZS. Figure 2 (Holzmann, Robalino, &

Figure 2. Social pensions in OECD countries, by type

Country	Resource tested	Basic	Minimum
Australia	X		
Austria	X		
Belgium	X		X
Canada	X	X	
Czech Republic		X	X
Denmark	X	X	
Finland			X
France	X		X
Germany	X		
Greece	X		X
Hungary			X
Iceland	X	X	
Ireland	X	X	
Italy	X		
Japan		X	
Korea, Rep. of		X	
Luxembourg		X	X
Mexico		X	X
Netherlands		X	
New Zealand		X	
Norway		X	X
Poland			X
Portugal	X		X
Slovak Republic			X
Spain	X		X
Sweden			X
Switzerland	X		X
Turkey	X		X
United Kingdom	X	X	X
United States	X		

SOURCE: OECD 2007.

Takyama, 2009) provides a snapshot of the complexity of any attempt at an inter-country comparison of social (basic) pensions.

Sections 5, 6 and 7 have shown that New Zealand's current overseas pension and pension portability policies fall short in a variety of ways. The proposed changes in the Social Assistance (Payment of New Zealand Superannuation and Veteran's Pension Overseas) Amendment Bill extend portability to non-agreement countries as a unilateral policy change. Under this Bill, the separate relationship with 22 Pacific nations becomes especially favourable for their citizens, and for New Zealanders retiring there, although New Zealand has a special relationship with only 3 of those countries. These changes raise new anomalies, without addressing the profound problems already identified in numerous reports and independent submissions to the government.

New Zealand's current policy settings and absence of clear principles have resulted in a lack of egalitarianism, equity and transparency; there is apparent discrimination; and there may be insufficient weight given to the right to income adequacy through voluntary supplementation. As populations become more mobile, these weaknesses in New Zealand's framework affect increasing numbers of people. Also, given the changing demographics, with an increasing proportion of the population over age 65, and also given the absence of a progressive tax regime and the favourable treatment of PIEs and such vehicles, the current level of the universal age pension may not be sustainable.

It is therefore timely and appropriate to debate a different approach.

There may be no single, simple solution. In this section, two different options are suggested in broad outline. Option 1 is to extend the current 10 year residency requirement to 25 years. Option 2 would apportion entitlement to NZS based on the 540 month system proposed for emigrants from New Zealand in the Social Assistance (Payment of New Zealand Superannuation and Veterans Pension Overseas) Amendment Bill 2009. This assumes, for emigrants, that NZS accrues evenly over the 45 years between ages 20-65 (540 months).

Either Option 1 or Option 2 could be used as a foundation for a more equitable and principles-based treatment of overseas pensions. Both options address many of the existing complaints regarding pension portability and overseas pensions. Both options recognise the individual, not the couple, as the economic unit;⁷⁹ both ensure that the one basic age pension payable provides adequate income; both options also provide a greater simplicity and transparency than the existing system, and thus encourage compliance; and both improve equity for current taxpayers, and the sustainability of NZS. As a separate issue, both options reinforce the need for a review of the tax system to ensure that all income is taxed appropriately, including overseas pension income.

In this Working Paper, neither of the options is completely formulated. A forthcoming paper from the Retirement Policy and Research Centre will tease out a full explanation of the implications along with a discussion on the transitional and boundary issues for Option 1 and Option 2.⁸⁰ That paper will also discuss in detail the relationships between the "basic" pension, NZS, and equivalent pension arrangements in other countries, and each of the options. Finally, the paper will comment on the cost implications of Option 1 and Option 2, and compare those with the costs of the existing regime.

8.1 Option 1

This option identifies that problems arise, not so much in section 70, as in the low residency requirement for NZS. As Ashton and St John (1998, p. 21) note, from the time it was introduced in 1898, until 1937 when it was reduced, "probably to encourage immigration", entitlement to the age pension in New Zealand included a residency requirement of 25 years. The current 10(5) residency requirement for entitlement to NZS sets up potentially perverse incentives for immigrants, and creates an unfair and potentially costly burden for New Zealand taxpayers.

⁷⁹ See Appendix 5. In *Bredmeyer v DWI*, the Crown Law Office defended DWI's decision not to pay NZS to someone living in an agreement country (Australia) because they would be advantaged.

⁸⁰ For example, abrupt transitions like the "all or nothing" nature of the 25 years' residence by age 65 are undesirable in benefit arrangements, and may need to be ameliorated.

Option 1 proposes raising the residency requirement for entitlement to NZS to 25 years for everyone, to be achieved between the ages of 20 and 65 years. It would not be possible to meet the requirement by using residency after age 65. Where a reciprocal Social Security Agreement exists, totalisation would apply in the residency test for NZS so that years of residence in the overseas country could be used.⁸¹

Using totalisation would mean that only one basic pension is payable. For example, any entitlement to the UK's Basic State Pension may be foregone if those years of residence in the UK were used to qualify for NZS. Where the 25 years of residence is satisfied without totalisation, any other basic pension entitlements would be ignored, other than for tax purposes.

Where there is no Social Security Agreement, any overseas pension to which the New Zealand resident is entitled from that other country will not be taken into account in the calculation of NZS. If New Zealand Superannuation required at least 25 years between the ages of 20 and 65,⁸² it may then be far less important to identify the kind of overseas pensions that are brought into New Zealand.

Where the 25 year residency test is not met at age 65, NZS would not be payable but access to an income-tested benefit, at a level that could be set between a standard social welfare benefit and NZS, may apply. In this case, any overseas pension would be taken into account in the benefit's household income-test. That would reduce the income-tested benefit but not by as much as the existing section 70 direct deduction arrangement (which is dollar for dollar).

For ordinary New Zealanders applying for NZS, establishing a 25 year residency record should not be much more complex than the present requirement.

8.1.1 Assessment using the Principles

Option 1 promotes the principles of egalitarianism, equity, income adequacy, efficiency, and simplicity and transparency, as discussed in section 7.

The human right to a basic standard of living is protected because all have access to at least a minimum welfare provision. The existing couple rate and single rate for NZS would be retained, but every person's entitlement would be individual: a spouse would not have their pension benefit reduced if a partner's overseas pension exceeded the NZS couple rate. Those qualifying under the tighter residency requirement can supplement their NZS with additional retirement income derived from state and private sources from overseas.⁸³

Because there is an increasingly wide range of ways that different states assist people to have extra income, including through work and savings incentives, tax expenditures and mandatory subsidised private saving schemes, the current rules do not reflect the spectrum of ways the state may subsidise accumulation, with a consequence of unduly penalising certain forms of subsidisation. Option 1 improves equity and transparency and acknowledges the complexity of state involvement (Figure 2).

⁸¹ As noted, 96.3% of the current recipients of an overseas pension are covered by Social Security Agreements.

⁸² Perhaps the requirement would include 10 years from the age of 50 years, meaning New Zealand would be likely to benefit from some mature and skilled contribution from immigrants.

⁸³ As has been frequently stated, NZS provides more than a "basic" pension.

However, vertical equity requires reform of the taxation of other income and NZS, so that local and overseas retirees with higher incomes, including incomes from lump sum super benefits, pay appropriate taxation.

8.1.2 Implications for the main countries that are the source of complaints

To receive NZS, people from the UK would need to spend a total of 25 years between the ages of 20 and 65 years in the UK and New Zealand. They would retain any other Tier 2 or Tier 3 pensions to which they were entitled, with their total income appropriately taxed. If they qualify for NZS without totalisation, they would retain any UK basic pension benefits.

Canadian immigrants to New Zealand with a total of 25 years or more in New Zealand and in Canada between the ages of 20 and 65 years would get NZS in full and would retain any pension from the Tier 2 Quebec Pension Plan or the Canada Pension Plan. The Old Age Benefit is only payable abroad if the beneficiary resided in Canada for at least 20 years after age 18. For most, if not all, any entitlement to the Old Age benefit would be used to offset the cost of their NZS.

Where New Zealand does not have a reciprocal agreement, such as with the US, Germany, and France, immigrants would need to live in New Zealand for a minimum of 25 years to be entitled to NZS. Immigrants from the US with Social Security pensions do not have an identifiable Tier 1 component, while those from countries such as France may have a minimum guarantee built in. Under Option 1, they may qualify for NZS and also be able to keep their overseas pension. Although the overseas pension will usually be relatively small, should larger incomes accrue, the revised New Zealand tax system would be used to promote vertical equity.

As noted, the Social Security Agreement with Australia is unfair to New Zealanders who retire in Australia and receive either no pension at all, or an abated pension. An equitable agreement with Australia would ensure New Zealanders who retire to Australia are not disadvantaged compared to those who retire in New Zealand; and that Australians who retire to New Zealand are not advantaged over those Australians who retire in Australia.

The follow-up paper already referred to will discuss the implications of the interaction between Option 1 and overseas pensions in more detail.

8.2 Option 2

In New Zealand and Australia the basic old age pension (Tier 1) is not calculated by reference to contributions, periods of employment or years of residence. In that regard, these two countries stand apart from nearly all others. In New Zealand the current 10(5) test is 'all or nothing'; having satisfied it, NZS is payable in full. Australia has a similar provision.

Most other countries have entitlements that accumulate by reference to contributions, years of contributions, years of employment or years of residence. A full entitlement accrues only where there is a complete record. For example, in the UK, the full Basic State Pension is payable only the applicant has contributed to National Insurance for 45 of the

potential 49 years between ages 16 and 65 (males) and for 44 years in the case of females⁸⁴. A shorter contribution period means a proportionately reduced pension.⁸⁵

The 'fair share' issue would be automatically taken into account if each country paid the pension that accrued during the period the pensioner lived/worked in that country. Adding together all those entitlements would give a final "blended" pension without any country 'subsidising' another. Option 2 would take this pro-rata approach for any New Zealand resident applying for NZS and who is entitled to receive an overseas basic pension.

8.2.1 Application to NZS entitlements

Under Option 2, section 70 and the DDP would also be abolished. The proposed simple test would ignore the intricacies of other countries' arrangements and exchange rates, and would not be affected by changes to those. A prospective pensioner applying for NZS would answer a simple question: "Do you have an entitlement to a Basic Pension from another country?" If the answer is 'yes', they would receive a reduced amount of NZS. The reduction will be:

$$\frac{\text{NZS} \times \text{months outside New Zealand between ages 20-65}}{540}$$

If the overseas country's State Pension Age is later than that of New Zealand, the test would apply from that country's State Pension Age. Each of a couple would be separately treated under the test. The proportion of NZS thus established at age 65 would apply for the whole of the pensioner's retirement. If a pensioner's overseas basic pension ceased for any reason, they could seek a re-assessment.

Where the overseas pension carries with it a survivor's entitlement, on the death of the 'primary' pensioner, Option 2 would then apply to the survivor's NZS entitlement.

Under Option 2, the existing 10(5) residency rule need not apply. However, a reduced version of it could remain as an initial filter while New Zealand gathers the relevant information about the immigrant.

Option 2 does not depend on having reciprocal Social Security Agreements with other countries because, in the presence of a foreign basic pension, New Zealand will disregard residence that was not in New Zealand. Totalisation is no longer relevant and the foreign pension has no bearing on any pension New Zealand might pay.

However, from New Zealand's perspective, the data sharing aspect of a Social Security Agreement would ensure the New Zealand government is informed about immigrants with basic pensions. In such cases, New Zealand would have sufficient information to initiate the Option 2 process and would not need to wait for the individual to apply.

Also, where there is a Social Security Agreement, individuals could be given the choice between one or two pensions. If they chose one pension, the New Zealand government would collect the foreign basic pension and would pass that on to the pensioner along with the proportion of NZS to which the pensioner was entitled. This would not affect the total amount payable but would make administrative and tax arrangements simpler for the

⁸⁴ This is gradually changing for women as the State Pension Age is increasing to age 65, the same as men.

⁸⁵ The UK government proposes shortening the maximum period to 30 years.

pensioner. If the retiree chose two pensions, they would have the responsibility of collecting the foreign pension.

The philosophy of Option 2 is based on each of two countries setting their own benefit policy and approach without one effectively undermining the other. The immigrant receives the appropriate share of the pension in the other country based on the period there and New Zealand pays a proportionate amount based on the period here.

The follow-up paper already referred to will discuss the implications of the interaction between Option 2 and overseas pensions in more detail.

9. Conclusion

The current section 70 DDP policy needs to change. It is perceived to be unjust; it is increasingly out of touch with the modern immigration trends; and it produces uneven results. The fact that New Zealand has been unable to conclude Social Security Agreements with more than a handful of countries indicates a level of discomfort by our trading partners that needs attention.

It is also vital to recognise that countries are regularly changing their pension systems, and will continue to do so in the face of ageing populations. It is therefore necessary to ensure that the MSD and other relevant agencies remain current with the information they provide to prospective migrants; and that New Zealand's reciprocal agreements reflect this potential for change. As part of this initiative, the Chief Executive of the MSD needs to maintain a current register of all relevant overseas basic age pensions, and their relationship to NZS; and to publish decisions made regarding overseas pension abatements and entitlements.

In both Option 1 and Option 2, the existing Social Security Agreements would need to be revisited to ensure they comply with the principles of the new policy. With either Option 1 or 2 that this report proposes as a replacement for the current section 70 DDP, it is to be expected that the principles of egalitarianism, equity, efficiency, income adequacy, and simplicity and transparency that are the basis of the revised pension policy might encourage other nations to enter into reciprocal arrangements with New Zealand.

Both options would also maintain the egalitarian tradition and provide better outcomes for New Zealanders, by ensuring equity for those who sustain NZS through their tax contributions; by treating each person as an individual and not discriminating on the basis of marriage; and by providing for those wanting to work overseas, and retire in New Zealand and receive the NZS or its equivalent.

Glossary

The following acronyms are used in the text: AOW – Old Age Pension (Netherlands)

CPI - consumer price index

CPP – Canada Pension Plan

DDP – direct deduction policy

DSW – Department of Social Welfare (New Zealand)?

DWI – Department of Work and Income (New Zealand)

ESCT (was SSCWT) - Employer Superannuation Contribution Tax (New Zealand)

FBT – Fringe Benefit Tax

GIS – Guaranteed Income Supplement (Australia)

GRI - Guaranteed Retirement Income (New Zealand)

HRA - Human Rights Act 1993 (New Zealand)

HRC - Human Rights Commission (New Zealand)

MED – Ministry of Economic Development (New Zealand)

MSD – Ministry of Social Development (New Zealand)

NAE - net average earnings

NAW - net average wage

NZS – New Zealand Superannuation

OAS – Old Age Security (Canada)

OECD – Organisation for Economic Cooperation and Development

PAYG – Pay As You Go (meaning current benefits are paid out of current (general) taxation)

PIEs - Portfolio Investment Entities (tax-favoured)

RPRC - Retirement Policy and Research Centre (The University of Auckland, New Zealand)

S2P – State Second Pension (UK)

SERPS – State Earnings Related Pension Scheme (UK), now replaced by the S2P

SG – Superannuation Guarantee (Australia)

SSA – Social Security Act 1964 (New Zealand)

SSAA - Social Security Appeal Authority (New Zealand)

SSCWT - Specified Superannuation Contribution Withholding Tax the former name for ESCT

SSI – Supplemental Security Income (US)

WINZ – Department of Work and Income New Zealand.

The paper also uses the following expressions:

10(5) Residency Requirement – the residency condition for collecting NZS requires residence in New Zealand for at least 10 years after age 20, with at least five of those being after the age of 50.

Defined Benefit (DB) - a retirement benefit plan (usually a pension) that promises benefits defined on the basis of earnings and/or membership prior to retirement. The earnings could be in the years just prior to retirement or even over a working life.

Defined Contribution (DC) - a retirement benefit plan that provides benefits based on individual contributions plus the investment return.

Direct Deduction Policy – where the pension from another country is deducted in full from New Zealand Superannuation.

General Portability Arrangement – enables New Zealanders who meet the 10(5) Residency Requirement who are retiring to countries where there is no reciprocal or special agreement (discussed below), to receive 50% of their NZS entitlement in that country.

Pay-As-You-Go (PAYG) - method of financing in which current benefits are paid out of current revenues either from earmarked taxes (sometimes called “contributions”) or from payroll taxes.

Pre-funded Pension - accumulation of enough reserves of financial instruments to pay all promised benefits (sometimes referred to as a “funded” pension).

Preservation age – applies in Australia. A 5 year gap exists between the ages at which the private pension can be drawn down, and the qualifying age for the state pension. The asset- and means-test of the state pension encourage retirees to spend their lump-sum private pension in the 5 year gap.

Social Assistance - ensures that people who have not earned or saved enough in their working life will not be destitute when they are elderly. Assistance is income or asset-tested and is funded from

general government revenue New Zealand's examples of social assistance include the Disability Allowance and the Accommodation Supplement.

Social Insurance - employers and employees make compulsory contributions from their earnings to funds which are invested in income-earning assets. Pensions are not means-tested, but because pensions are based on member's earnings and contributions, individual pension levels vary.

Social Security Agreement - a bilateral agreement (between two countries) that aims to coordinate the social security system of one country with that of another country.

Special Portability Arrangement - enables New Zealanders retiring to one of 22 Pacific nations, and who have lived in New Zealand for at least 20 years since age 20 with at least five of those years after the age of 50, to receive 100% of their NZS entitlement in that country.

State Pension Age - the age from which a state pension is normally payable.

Tier 1 Pension - the state pension to which all the citizens and permanent residents of a country may be entitled. It is usually contributory but often counts periods out of the workforce if those are deemed to be socially contributive (such as caring for children). Tier 1 is almost always a DB, PAYG pension.

Tier 2 Pension - a mandatory, work-related pension, normally contributory and may be either pre-funded or PAYG; DB or DC; and privately or publicly delivered as a pension, a lump sum, or both.

Tier 3 Pension - covers all other voluntary retirement savings, whether through the workplace or directly; or through formal saving plans or by direct investment. Although Tier 3 is essentially private, in most cases, the government participates indirectly through incentives, usually generous tax concessions that encourage particular types of retirement saving and prescribe the ways in which those savings can be accessed at retirement.

Totalisation - the process under a reciprocal Social Security Agreement that deems periods spent in one country as counting towards the state pension entitlements of a second country.

Universal pension - like NZS, is a flat rate pension without income or asset tests, or requirement to make individual contributions to a pension fund, or even a requirement to be retired from work. They are funded out of general taxation and paid out to all residentially qualified people once they reach a designated age. Universal pensions are internationally the least common form of public pension, and are the most fiscally expensive way of providing a minimum income for retired people.

PART 2.

Appendix 1. Social Security Act 1964, sections 69, 70, 72

Public Act 1964 No 136

http://www.legislation.govt.nz/act/public/1964/0136/latest/DLM359107.html?search=ts_act_social+security+Act_resel&sr=1

Overseas pensions

[69G Reasonable steps to be taken to obtain overseas pension](#)

[69H Information on rate of overseas pension to be provided](#)

[69I Duty of chief executive to assist](#)

[70 Rate of benefits if overseas pension payable](#)

Rate of benefits if overseas pension payable

(1) For the purposes of this Act, if—

(a) Any person qualified to receive a benefit under this Part of this Act or under the [Social Welfare \(Transitional Provisions\) Act 1990](#) or Part 6 of the [War Pensions Act 1954](#) or under the [New Zealand Superannuation and Retirement Income Act 2001](#) is entitled to receive or receives, in respect of that person or of that person's spouse or partner or of that person's dependants, or if that person's spouse or partner or any of that person's dependants is entitled to receive or receives, a benefit, pension, or periodical allowance granted elsewhere than in New Zealand; and

(b) The benefit, pension, or periodical allowance, or any part of it, is in the nature of a payment which, in the opinion of the chief executive, forms part of a programme providing benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions, or allowances may be paid under this Act or under the [Social Welfare \(Transitional Provisions\) Act 1990](#) or under the [New Zealand Superannuation and Retirement Income Act 2001](#) or under the [War Pensions Act 1954](#) which is administered by or on behalf of the Government of the country from which the benefit, pension, or periodical allowance is received—

the rate of the benefit or benefits that would otherwise be payable under this Act or under the [Social Welfare \(Transitional Provisions\) Act 1990](#) or Part 6 of the [War Pensions Act 1954](#) or under the [New Zealand Superannuation and Retirement Income Act 2001](#) shall, subject to subsection (3) of this section, be reduced by the amount of such overseas benefit, pension, or periodical allowance, or part thereof, as the case may be, being an amount determined by the chief executive in accordance with regulations made under this Act:

Provided that if the chief executive determines that the overseas benefit, pension, or periodical allowance, or any part of it, is in the nature of, and is paid for similar purposes as,—

(a) Compensation for injury or death for which payment could be made under the [Injury Prevention, Rehabilitation, and Compensation Act 2001](#) if the injury or death had occurred in New Zealand after the commencement of that Act; or

(b) A war pension or allowance granted under the [War Pensions Act 1954](#) of a type which would not affect any recipients entitlement to a benefit in accordance with section 72 of this Act unless the pension or allowance is a pension or payment granted under Part 6 of the [War Pensions Act 1954](#); or

(c) A disability allowance granted under this Act—

such overseas benefit, pension, or periodical allowance, or part of it, as the case may be, shall be treated as if it were in fact such compensation, war pension or allowance, or disability allowance.

(2) Nothing in subsection (1) of this section shall preclude the chief executive from deciding the date on which its determination under paragraph (b) of, or the proviso to, the said subsection (1) shall take effect, which date may be a date before, on, or after the date of such determination.

(3) In any case where paragraph (a) and paragraph (b) of subsection (1) of this section apply and the proviso to subsection (1) of this section does not apply, the chief executive may—(a) Make an arrangement with an overseas pensioner, in accordance with any regulations made under section 132C of this Act, to pay to the overseas pensioner the rate of the benefit or benefits that is payable under this Act or the [Social Welfare \(Transitional Provisions\) Act 1990](#) or Part 6 of the [War Pensions Act 1954](#) or under the [New Zealand Superannuation and Retirement Income Act 2001](#) and to receive from the overseas pensioner an amount equivalent to the amount of the overseas pension that the overseas pensioner receives, if—

(i) The overseas pensioner agrees to make such an arrangement; and

(ii) The overseas pensioner has not previously made such an arrangement and voluntarily terminated it; and

(iii) The chief executive has not previously ceased to make payments under paragraph (b) of this subsection because of the overseas pensioner's failure to comply with such an arrangement; and

(b) Pay to the overseas pensioner, in accordance with an arrangement made under paragraph (a) of this subsection, the rate of the benefit or benefits that is payable under this Act or the [Social Welfare \(Transitional Provisions\) Act 1990](#) or Part 6 of the [War Pensions Act 1954](#) or the [NZ Superannuation and Retirement Income Act 2001](#), if the chief executive receives from the overseas pensioner, in accordance with the arrangement, an amount equivalent to the amount of the overseas pension that the overseas pensioner receives.

(3A) The chief executive may from time to time, on behalf of the Crown, enter into contracts with 1 or more registered banks for the purpose of implementing arrangements under subsection (3)(a).

(3B) No money in a bank account maintained, in accordance with regulations made under section 132C, to implement an arrangement under subsection (3)(a) can—

(a) Be attached or taken in execution under any order or process of any court:

(b) Be made the subject of any set-off, charge, or assignment:

(c) Be claimed or deducted under any notice or other instrument issued under any enactment (other than under regulations made under section [132C](#)).

(3C) If the benefit referred to in an arrangement made under subsection [\(3\)\(a\)](#) is New Zealand superannuation, the chief executive must pay any amount received from the overseas pensioner under the arrangement into the New Zealand Superannuation Fund established under the [New Zealand Superannuation and Retirement Income Act 2001](#), in accordance with arrangements made from time to time by the chief executive with the Guardians of New Zealand Superannuation.

(4) For the purposes of this Act and section CW 28 of the Income Tax Act 2007, a payment under subsection [\(3\)\(b\)](#) of this section shall, in respect of the period to which payment relates, be deemed to be payment of—

(a) The benefit or benefits that are payable to that overseas pensioner in that period under this Act or the [Social Welfare \(Transitional Provisions\) Act 1990](#) or Part [6](#) of the [War Pensions Act 1954](#) or under the [New Zealand Superannuation and Retirement Income Act 2001](#), at the rate at which that benefit or those benefits are so payable but reduced in accordance with subsection [\(1\)](#) of this section; and (b) The amount of the overseas pension that that overseas pensioner is entitled to receive or has received in that period.

(5) Subsections [\(3\)](#) and [\(4\)](#) of this section shall come into force on a date to be appointed by the Governor-General by Order in Council.

[70A Rates of benefits for sole parents may be reduced](#)

[70B Entitlement to benefits in cases of shared custody](#)

[71 Special provisions where compensation or damages recoverable by applicant](#)

[71A Deduction of weekly compensation from income-tested benefits](#)

[72 Limitation where applicant receiving another benefit or war pension](#)

Notwithstanding anything to the contrary in this Act,—

(a) No person is entitled to receive more than 1 benefit in his or her own right, except as provided in sections [39D](#), [61EA](#), [61G](#), and [69C](#):

(b) No person who is granted a pension or allowance under the [War Pensions Act 1954](#) or in respect of whom such a pension or allowance is payable, other than—

(i) A pension or allowance granted to that person by reason of his own disablement; or

(ia) a pension or payment granted under Part [6](#) of that Act; or

(ii) A pension or a mother's allowance granted to that person as the widow of a deceased member of the NZ or any other Commonwealth forces or of the Emergency Reserve Corps or of the NZ mercantile marine; or

(iii) An allowance in respect of services rendered as an attendant on a disabled member of the New Zealand or any other Commonwealth forces or of the Emergency Reserve Corps or of the NZ mercantile marine,— shall be granted any benefit:

Provided also that, if a mother's allowance is payable to a widow under the [War Pensions Act 1954](#), the rate of benefit shall not exceed the benefit that could be paid to that widow if she had no dependent child/ren:

Provided further that any person may receive an invalid's benefit or a sickness benefit, or an independent youth benefit on the ground specified in section [60F\(1\)\(c\)\(i\)](#), or a child disability allowance, in addition to a child's pension under section [36](#), section [62](#), or section [65](#) of the [War Pensions Act 1954](#):

(c) Where any part of a benefit is payable in respect of the spouse or partner of an applicant, that part shall not be paid for any period when a personal benefit is payable in respect of the spouse or partner.

[73 Limitation where applicant entitled to claim under Family Protection Act 1955 or Maori Affairs Act 1953](#)

[74 Limitation in certain other cases](#)

[74AA Residential requirements for certain benefits](#)

[74A Persons unlawfully resident or present in New Zealand](#)

[75 Beneficiaries in hospital](#)

[75A Beneficiaries in institutions under Alcoholism and Drug Addiction Act 1966](#)

[76 Forfeiture of benefit during detention in a prison](#)

[77 Effect of absence of beneficiary from New Zealand](#)

[78 Effect of absence of beneficiary from New Zealand on residential qualification](#)

[79 Persons liable for income tax on earnings while employed overseas deemed to be resident in New Zealand](#)

Appendix 2. New Zealand Superannuation and Retirement Income Act 2001 (extracts)

Part 1

(1) Every person is entitled to receive New Zealand superannuation who attains the age of 65 years.

(2) However, a person is not entitled to receive New Zealand superannuation in respect of any period for which he or she has made an election under any of clause 52 or clause 68 or clause 72 of Schedule 1 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 to be entitled to weekly compensation under that Act rather than to New Zealand superannuation.

8 Residential qualification for New Zealand superannuation

No person is entitled to New Zealand superannuation unless the person—

(a) is ordinarily resident in New Zealand on the date of application for New Zealand superannuation; and

(b) has been both resident and present in New Zealand for a period or periods aggregating not less than 10 years since attaining the age of 20 years; and

(c) has also been both resident and present in New Zealand for a period or periods aggregating not less than 5 years since attaining the age of 50 years.

12 Standard rates of New Zealand superannuation

(1) The rate of New Zealand superannuation payable to any person is the appropriate rate stated in clause 1 or clause 2 of Schedule 1.

(2) A person who is married or in a civil union or in a de facto relationship and whose spouse or partner is not entitled to receive New Zealand superannuation may elect to receive the appropriate rate stated in either clause 1 or clause 2 of that schedule.

(3) However, an election to receive New Zealand superannuation under clause 2 of Schedule 1 does not take effect until the employment has ceased in a case where—

(a) that person's spouse or partner is or was in employment under a contract of service; and

(b) the combined income of the person and his or her spouse or partner, during that employment, is or was enough to prevent receipt of New Zealand superannuation under clause 2 of that schedule.

(4) A person who has made an election under subsection (2) may at any time change that election.

21 Effect of absence from New Zealand on New Zealand superannuation

A person is not entitled to New Zealand superannuation while that person is absent from New Zealand except as provided in sections 22 to 29 or in any agreement or convention adopted under section 19 of the Social Welfare (Transitional Provisions) Act 1990.

22 First 26 weeks of certain temporary absences

New Zealand superannuation that would otherwise be payable to a person is payable in respect of the first 26 weeks of any absence from New Zealand if—

(a) the person's absence does not exceed 30 weeks; or

(b) the person's absence exceeds 30 weeks and the chief executive is satisfied that the absence beyond 30 weeks is due to circumstances beyond that person's control that he or she could not reasonably have foreseen before departure.

23 Absences up to 2 years for medical treatment

The chief executive may pay New Zealand superannuation to any person who would otherwise be entitled to receive it, but who is absent from New Zealand for any period or periods not exceeding 2 years in total because that person or his or her spouse or partner, dependent child, or sibling is receiving medical treatment overseas for which the Ministry of Health is granting assistance.

24 Absences up to 156 weeks with aid agencies

(1) The chief executive may pay New Zealand superannuation to any person who—

(a) is otherwise entitled to receive it; and

(b) is absent from New Zealand for a period not exceeding 156 weeks; and

(c) is engaged, while absent from New Zealand, in fulltime voluntary and unpaid humanitarian work for a recognised aid agency that—

(i) has, as its principal function, the giving of aid and assistance to less advantaged communities in 1 or more other countries; and

(ii) has not deprived another person of paid employment to engage the person to do that work on an unpaid basis.

(2) The chief executive of the Ministry of Foreign Affairs and Trade must determine any question that arises as to whether an aid agency fulfils the qualifications set out in subsection (1).

26 Payment overseas of New Zealand superannuation

(1) A person who is entitled to receive New Zealand superannuation and who leaves New Zealand to reside in a country with which New Zealand has no agreement relating to reciprocity of social security monetary benefits is entitled, while residing in that country, to be paid 50% of the gross rate of New Zealand superannuation (excluding any living alone payment), as the case may be, that he or she would be entitled to receive if he or she resided in New Zealand.

(2) However, if a person who is married or in a civil union or in a de facto relationship and whose spouse or partner is not entitled to receive New Zealand superannuation has made or is entitled to make an election under section 12, that person who is married or in a civil union or in a de facto relationship is only entitled to be paid under this section 50% of the gross rate payable under clause 1(c) of Schedule 1.

(3) A person is not entitled to receive payment overseas under this section unless,—

(a) on the date of application for the payment, he or she is ordinarily resident and present in New Zealand and is on that date entitled to receive New Zealand superannuation or will be so entitled before leaving New Zealand; and

(b) the applicant intends to reside for more than 26 weeks in the overseas country to which the application relates, being a country with which New Zealand has no agreement relating to reciprocity of social security monetary benefits.

27 Applications after leaving New Zealand

(1) This section applies if a person did not make an application for payment under section 26 while ordinarily resident and present in New Zealand because he or she left New Zealand intending to be absent for 26 weeks or less.

(2) The chief executive may accept an application for payment in accordance with section 26 if satisfied that the absence for more than 26 weeks is or was due to circumstances beyond the applicant's control that could not reasonably have been foreseen before leaving New Zealand.

(3) If the chief executive has accepted an application under subsection (2) and, after the applicant left New Zealand, the applicant has been paid any instalment of New Zealand superannuation in accordance with sections 21 to 25, no liability to repay any of those instalments arises merely because the applicant fails to return to New Zealand within the period allowed for by those sections.

29 Relationship with other benefit provisions

(1) If New Zealand superannuation payable overseas in accordance with section 26 is directly reduced under section 70 of the Social Security Act 1964, the amount payable is 50% of the reduced gross rate that would be payable in New Zealand.

(2) A person who is receiving New Zealand superannuation overseas under section 26 is not entitled to receive any supplementary or special benefit, temporary additional support, lump sum payment, or any other assistance under the Social Security Act 1964 or under any welfare programme approved under section 124(1)(d) of that Act.

(3) Despite the provisions of section 80 of the Social Security Act 1964, on the death of a person who receives New Zealand superannuation overseas under section 26, the benefit terminates on a date to be determined by the chief executive, being a date not more than 4 weeks after the date of death.

(4) Except as otherwise provided in this section, the provisions of the Social Security Act 1964 (other than sections 75, 75A, and 76) apply to New Zealand superannuation being paid overseas under section 26.

(5) This section and sections 26 to 28 apply despite sections 74(a) and 77 of the Social Security Act 1964, but subject to the provisions of this section and of sections 26 to 28 and 30 to 35.

30 Specified Pacific country

(1) In sections 31 to 35, **specified Pacific country** means a country or territory—

(a) that is listed in Schedule 2; and

(b) that is not a country with which New Zealand has a reciprocal agreement in force under section 19 of the Social Welfare (Transitional Provisions) Act 1990, which relates to the portability of New Zealand superannuation.

(2) The Governor General may from time to time, by Order in Council, amend Schedule 2 by—

(a) adding the name of any Pacific country or territory; or

(b) omitting the former name of a country or territory and substituting its new name.

(3) The Order in Council must state the date on which it takes effect, which may be a date before the date on which it is made.

(4) The Order in Council applies to payments of New Zealand superannuation under section 31 payable on or after the date on which the order takes effect.

(5) Section 61H(3) to (6) of the Social Security Act 1964 applies to every Order in Council made under subsection (2)(a) as if it had been made under that section.

31 Entitlement to be paid New Zealand superannuation in specified Pacific country

(1) A person entitled to receive New Zealand superannuation is entitled to be paid the benefit in a specified Pacific country at a rate calculated under section 32 if subsection (2) or subsection (3) applies to the person.

(2) This subsection applies to a person—

(a) who intends to leave New Zealand to reside for more than 52 weeks in a specified Pacific country; and

(b) who is resident and present in New Zealand on the date of his or her application to be paid New Zealand superannuation in a specified Pacific country; and (c) who—

(i) is entitled to receive New Zealand superannuation on the date of the application; or

(ii) will be entitled to receive New Zealand superannuation before leaving New Zealand; and

(d) who is resident in a specified Pacific country when each payment of New Zealand superannuation is due to be made to him or her.

(3) This subsection applies to a person— (a) who—

(i) was being paid New Zealand superannuation while resident in a specified Pacific country immediately before 1 October 1999 under section 17 of the Social Welfare (Transitional Provisions) Act 1990; or

(ii) was being paid New Zealand superannuation while resident in the Cook Islands, Niue, or Tokelau immediately before 1 October 1999 under section 17B of the Social Welfare (Transitional Provisions) Act 1990 as it was immediately before that date; and

(b) who is resident in a specified Pacific country when each payment of New Zealand superannuation is due to be made to him/her.

32 Rates of payment of New Zealand superannuation payable to people resident in specified Pacific countries

(1) The rate of New Zealand superannuation payable under section 31 is,—

(a) in the case of a person who has resided in New Zealand for 20 or more years since turning 20 years, the base rate;

(b) in the case of a person who has resided in New Zealand for 10 or more years but fewer than 20 years since turning 20 years, an amount calculated using the following formula: where—

a is the base rate

b is the whole number of years the person has resided in New Zealand since turning 20 years:

(c) in the case of a person who is resident in a specified Pacific country and was being paid New Zealand superannuation immediately before 1 October 1999 under section 17 or section 17B of the Social Welfare (Transitional Provisions) Act 1990 as it was immediately prior that date, the higher of—

(i) the amount he or she was being paid immediately before that date; and

(ii) the appropriate amount payable under paragraph (a) or paragraph (b).

(2) For the purposes of this section, the base rate is,—

(a) in the case of a single person, the amount stated in clause (1)(b) of Schedule 1; and

(b) in the case of a person who is married or in a civil union or in a de facto relationship, the amount stated in clause (1)(c) of that schedule.

(3) However, if section 70 of the Social Security Act 1964 applies, that amount must be reduced by the amount deducted in accordance with that section.

34 Effect on other benefits

A person being paid a benefit under section 31 is not entitled to receive—

(a) any supplementary or special benefit, temporary additional support, lump sum payment, payment under a welfare programme approved under section 124(1)(d) of the Social Security Act 1964, or any other assistance under that Act; or

(b) a living alone payment under section 13.

35 Application of this Act and Social Security Act 1964

(1) Sections 21 to 29 do not apply in respect of New Zealand superannuation being paid in a specified Pacific country under s.31.

(2) The Social Security Act 1964 (except sections 74(a), 75, 75A, 76, 77, and 80) applies to New Zealand superannuation being paid in a specified Pacific country under section 31.

73 Amendments to Act

(1) The Minister must, on the introduction into the House of Representatives of a Government Bill that proposes an amendment to this Act, bring to the attention of the House the consultation process that was followed in the formulation of the proposed amendment.

(2) That statement must include (without limitation)—

(a) whether consultation has taken place with the parties that are in agreement with the Part proposed to be amended (as listed in Schedule 4):

(b) whether consultation has taken place with the Guardians (to the extent that the amendment relates to Part 2):

(c) the results of the consultation.

(3) If the House of Representatives resolves that the balance in the Fund should be allocated to individual retirement accounts for all eligible contributors, the Guardians must report to the Minister and the Minister of Social Services and Employment, within 12 months of the date of the resolution, on the best means of allocating that balance to residents aged 18 or more having regard to the income tax paid by those individuals since 1 July 2001.

Appendix 3. Social Assistance (...) Amendment Bill (2009)

Social Assistance (Payment of New Zealand Superannuation and Veteran's Pension Overseas) Amendment Bill

Hon Ruth Dyson

Government Bill 301—1

The Parliament of New Zealand enacts as follows:

1) Title

This Act is the Social Assistance (Payment of New Zealand Superannuation and Veteran's Pension Overseas) Amendment Act 2008.

2) Commencement

This Act comes into force on 2 November 2009.

Part 1

Amendments to New Zealand Superannuation and Retirement Income Act 2001

3) Principal Act amended

This Part amends the New Zealand Superannuation and Retirement Income Act 2001.

4) Effect of absence from New Zealand on New Zealand superannuation

Section 21 is amended by omitting "29" and substituting "35".

5) First 26 weeks of certain temporary absences

Section 22 is amended by inserting "(other than a person who is receiving New Zealand superannuation overseas under section 26)".

6) New sections 26 and 26A substituted

Section 26 is repealed and the following sections are substituted:

"26 Payment overseas of New Zealand superannuation

"(1) This subsection—

"(a) applies to a country if New Zealand has no agreement with it relating to reciprocity of social security monetary benefits; and

"(b) applies to a person if he or she has left New Zealand—

"(i) intending to reside for a period longer than 26 weeks in a country (or any 2 or more countries) to which this subsection applies; or

"(ii) intending to travel for a period longer than 26 weeks, but not intending to reside in any particular country.

"(2) A person to whom **subsection (1)** applies is entitled to be paid New Zealand superannuation at the appropriate rate stated in **subsection (4)**—

"(a) in the case of a person who has left New Zealand intending to reside for a period longer than 26 weeks in a country (or any 2 or more countries) to which **subsection (1)** applies, until he or she—

"(i) begins to reside in a country that is not a country to which **subsection (1)** applies; or

"(ii) begins to reside in New Zealand again; or

"(iii) begins to receive New Zealand superannuation otherwise than under this section; and

"(b) in the case of a person who has left New Zealand intending to travel for a period longer than 26 weeks, but not intending to reside in any particular country, until he or she—

"(i) begins to reside in a country that is not a country to which **subsection (1)** applies; or

"(ii) returns to New Zealand.

"(3) For the purposes only of **subsection (2)(b)(ii)**, a person does not return to New Zealand if—

"(a) he or she—

"(i) interrupts his or her overseas travel, and travels to and stays briefly in New Zealand, in order to attend an event (for example, a wedding or funeral) or to visit a person (for example, a sick or injured family member); and then

"(ii) resumes his or her overseas travel; and

"(b) he or she does not while in New Zealand begin to receive New Zealand superannuation otherwise than under this section.

"(4) The rates referred to in **subsection (2)** are,—

"(a) if he or she has not made and is not entitled to make an election under section 12,—

"(i) in the case of a person who is not married or in a civil union or in a de facto relationship, a rate that is a proportion (calculated under **subsection (5)**) of the gross rate of New Zealand superannuation (excluding any living alone payment) that he or she would be entitled to receive if he or she resided in New Zealand;

"(ii) in the case of a person who is married or in a civil union or in a de facto relationship, a rate that is a proportion (calculated under **subsection (5)**) of the gross rate of New Zealand superannuation (excluding any living alone payment) that he or she would be entitled to receive if he or she and his or her spouse or partner resided in New Zealand.

"(b) if he or she has made or is entitled to make an election under section 12, a rate that is a proportion (calculated under **subsection (5)**) of the gross rate of New Zealand superannuation payable under clause 1(c) of Schedule 1.

"(5) The proportion referred to in **subsection (4)** is to be calculated by—

"(a) treating each period during which the person concerned has resided in New Zealand while aged 20 or more and less than 65 as whole calendar months and (where applicable) additional days; and

"(b) adding the number of additional days (if any), dividing the total by 30, and disregarding any remainder; and

"(c) adding the number of calendar months and the quotient calculated under **paragraph (b)**; and

"(d) dividing by 540 the total calculated under **paragraph (c)**.

"(6) This section is subject to **section 26A**.

"26A Entitlement

A person is not entitled to be paid New Zealand superannuation under section 26 unless he or she—

"(a) has made an application for the payment of New Zealand superannuation under that section stating either (as the case may be)—

"(i) the country or countries in which he or she intends to reside and the period for which he or she intends to reside there; or

"(ii) the country or countries to and in which he or she intends to travel; and

"(b) is ordinarily resident and present in New Zealand on the day he or she makes the application, and—

"(i) is entitled to receive New Zealand superannuation on that day; or

"(ii) will become entitled to receive New Zealand superannuation before he or she leaves New Zealand."

7) Relationship with other benefit provisions

(1) Section 29(1) is repealed.

(2) Section 29(2) is amended by inserting "living alone payment," after "receive any".

(3) Section 29(4) and (5) are repealed and the following subsection is substituted:

"(4A) Except as provided in this section, the Social Security Act 1964 (other than sections 69G to 69I, 70, 74(1)(a), 75, 75A, and 76) applies to New Zealand superannuation being paid under section 26."

8) Application of this Act and Social Security Act 1964

Section 35(1) is amended by omitting "21" and substituting "22".

9) Social Security Act 1964 consequentially amended

Section 70 of the Social Security Act 1964 is consequentially amended by inserting the following subsection after subsection (1):

"(1A) Subsection (1) does not apply to New Zealand superannuation payable overseas under section 26 of the New Zealand Superannuation and Retirement Income Act 2001."

10) Saving

(1) This subsection applies to a person who, immediately before the commencement of **section 6**, was entitled to be paid New Zealand superannuation under section 26 of the principal Act, between—

(a) that commencement; and

(b) the time he or she ceases to be entitled to be paid New Zealand superannuation under that section.

(2) While **subsection (1)** applies to a person, he or she is entitled to be paid New Zealand superannuation at the higher of the following rates:

(a) the rate at which he or she was entitled to be paid immediately before the commencement of **section 6**;

(b) the rate at which he or she became entitled to be paid on that commencement.

Appendix 4. Age pensions & reciprocal Social Security Agreements

Although migrants from many countries receive overseas pensions, New Zealand has bilateral reciprocal Social Security Agreements with only nine countries: the United Kingdom; Greece; Ireland; Australia; Jersey and Guernsey; Canada; Denmark; and the Netherlands. Some agreements have been revisited and re-written, for example, the original agreement with the Netherlands allowed for migrants to New Zealand to access a Tier 2 equivalent pension. The later agreement brought that pension under the section 70 DDP.

This Appendix describes each country's arrangements, described in terms of the Levels 1-9 discussed in section 2, and categorised as Tier 1, Tier 2 and Tier 3, where the 3 Tiers apply. In Part A, the provisions of each Social Security Agreement that relate to retirement incomes are also briefly summarised.

Part B then briefly describes the information-sharing agreements between the New Zealand government and each of the nine countries.

Part C summarises a 2003 report of the Privacy Commissioner on the implications of information sharing between the governments of the Netherlands and New Zealand.⁸⁶

Part A.

Figure 1 categorised nine Levels of private and public provision for retirement. The nine levels are:

1. Pure voluntary saving
2. Tax-subsidised private saving
3. Mandatory private saving
4. Mandatory public saving
5. Social insurance
6. Earmarked taxes
7. Tax-funded flat-rate universal pensions
8. Tax-funded flat-rate means-tested pensions
9. Social assistance

The 3 Tiers discussed in section 2 are categorised in the Glossary as:

Tier 1: the state pension to which all the citizens and permanent residents of a country may be entitled. It is usually contributory but often counts periods out of the workforce if those are deemed to be socially contributive (such as caring for children). Tier 1 is almost always a DB, PAYG pension.

Tier 2: a mandatory, work-related pension, normally contributory and may be either pre-funded or PAYG; DB or DC; and privately or publicly delivered as a pension, a lump sum, or both.

Tier 3: covers all other voluntary retirement savings, whether through the workplace or directly; or through formal saving plans or by direct investment. Although Tier 3 is essentially private, in most cases, the government participates indirectly through incentives, usually generous tax concessions that encourage particular types of retirement saving and prescribe the ways in which those savings can be accessed at retirement.

Australia: Retirement income arrangements

In terms of the levels described in Figure 1, Australia's arrangements can be categorised as Level 1, pure voluntary saving; Level 2, tax-subsidised private saving; Level 3, mandatory private saving; and Level 8, tax-funded, flat-rate, means-tested pensions.

Alternatively, in "Tier" terms, Australia's **Tier 1** is an asset and income-tested Age Pension, payable from age 65 (men) or 63 (women).⁸⁷ The applicant must reside in Australia at the time of the claim, and must have 10 years of continuous residence (5 continuous years if the total residence period exceeds 10 years) at the time of application.

The Age Pension can be increased by deferring receipt for up to five years. It is payable abroad indefinitely if the pension begins before the pensioner leaves the country, but otherwise may be reduced after 26 weeks' absence.

⁸⁶ Available at: <http://www.privacy.org.nz/exchange-of-social-security-information-with-the-netherlands>.

⁸⁷ The State Pension for women will be 65 by 2013 and a government report has suggested an increase in the then common age of 65 to age 67 between 2016 and 2023.

A range of ancillary benefits are possible, some means tested (such as the Senior's Health Card, the carer payment, rent assistance and pharmaceutical allowances) and others are universal such as the discounts available through the Pensioner's Concession Card, and the Utility and Remote Area Allowances.

Most benefits are adjusted in line with prices but the single-person rate of the Age Pension is maintained as a percentage of average weekly earnings.

Australia's **Tier 2** is DC, with a choice of privately managed arrangements that are compulsory for employees (9% of pay contributed by employers) and voluntary for everyone else. Contributions are tax subsidised, and enhanced through additional government contributions for low earners. Benefits are payable as lump sums from the preservation age.⁸⁸

The **Tier 3** schemes are voluntary and tax-subsidised, and may be work-related or personal.

Social security agreement

The Social Security Agreement of 1994 was last amended on 2 July 1998. The Agreement covers age, disability support pensions and also carer payments (in Australia) and veteran's pensions (in New Zealand). For old age pensions, where residence matters in assessing an applicant's entitlement to NZS (in New Zealand) or the Age Pension (in Australia), totalisation applies.

The rules of the country in which the application is made apply. A New Zealand resident applicant must satisfy the 10(5) requirement but can include years spent in Australia. An Australian resident applicant can include the years spent in New Zealand and NZS is nominally payable based on the number of months between ages 20 and 64 at 1/540th for each month (100% after 45 years).

While NZS is potentially payable in Australia, "the amount the person is entitled to receive shall not exceed the amount of Australian age pension that would have been payable to that person if he or she was entitled to receive an Australian age pension but was not entitled to receive New Zealand superannuation" (Australian Government, 1994).

This means, effectively, that the pension payable in Australia is the Australian benefit with the full application of the asset and income tests (but not counting NZS as "income").

Canada: Retirement income arrangements

In terms of Figure 1, Canada's arrangements can be categorised as Levels 1, 2, 3, 5, 7 and 8. Level 1 is pure voluntary saving; Level 2, tax-subsidised private saving; Level 3, mandatory private saving; Level 5 is social insurance; Level 7 is a tax-funded flat-rate universal pension; and Level 8 is a tax-funded flat-rate means-tested pension.

Canada's **Tier 1** is a two-layered benefit structure. The **Old Age Security** benefit (OAS) is payable to all who have completed at least 10 years' residence after age 18, or 20 years where the OAS is payable overseas. It is income-tested at 15% of 'other net income' over a relatively high threshold. The amount payable is 1/40th of the maximum benefit for each year of residence, with a maximum 40 years to count.

The second part of Tier 1 is the **Guaranteed Income Supplement** (GIS), a PAYG, DB pension payable to all from age 65 after 10 years' residence, calculated as 1/40th of the maximum annual amount for each year of residence after age 18. The GIS is steeply income-tested from a relatively low level of other income. The income test for the GIS is more severe than for the OAS; and it is not payable abroad.

Canada's **Tier 2** is the compulsory Canada Pension Plan (CPP). A similar Quebec Pension Plan operates in that province. The CPP is a Defined Benefit Pension that requires contributions from employees and employers at 4.95% of covered earnings (9.9% for the self-employed). The maximum pension is 25% of average, covered, revalued earnings with 15% of the years with the lowest earnings disregarded.

Tier 3 delivers significant tax incentives to Registered Retirement Saving Plans and Tax-Free Saving Accounts.

⁸⁸ A recent government report has recommended that the current preservation age of 60 years be increased to the State Pension Age of 65.

Social Security Agreement

The Agreement on Social Security between the Government of Canada and the Government of New Zealand of 1996 covers Canadian pensions and a wider range of New Zealand-based benefits - age, disability, widows and widowers and also veteran's pensions.

Where "residence" matters in assessing an applicant's entitlement to NZS (in New Zealand) or the Old Age/Canada Pension Plan pension (in Canada), totalisation applies. Periods of residence in Canada can help an applicant for NZS satisfy the 10(5) requirement. A Canadian resident who has lived in New Zealand may be entitled to a proportion of NZS (1/540th for each month after age 20) and no account is taken of entitlements to the Canadian OAS or under the CPP. That is because both of those are already residence-based or pay-based calculations.

Denmark: Retirement income arrangements

In terms of the levels described in Figure 1, Denmark's arrangements include Level 1, pure voluntary saving; Level 2, tax-subsidised private saving; Level 3, mandatory private saving; Level 4, mandatory public saving; and Level 7, a tax-funded flat-rate universal pension.

Denmark's **Tier 1 Universal pension** is payable from age 65 to citizens residing in Denmark, who have at least three years' residence between ages 15-65; and to non-citizens meeting the minimum residency requirements of 10 years with at least five years before the pension age, or who are covered by reciprocal agreements. The cost is paid by the government from general tax revenues and the full pension accrues evenly over 40 years' residence. There is also an income-tested supplement; and benefits are payable abroad.

The two parts of **Tier 2** are both centrally administered and fully pre-funded. The **Labour-market supplementary pension (ATP)** applies for employees aged 16 to 65, including recipients of state benefits, and non-employees can also participate. The employee and employer both contribute in a 1:3 ratio. The DB pension is payable in full only with a complete contribution record (must have participated since age 16 or 1964, if later). The pension can be deferred to age 70 and benefits are payable abroad.

The second part of Tier 2 is the **Special pension savings scheme (SP)** for employees aged 16 to 65, including those on parental leave; recipients of cash sickness or unemployment benefits; and the self-employed. Members contribute 1% of gross pay and the accumulated amount is paid out in instalments over ten years.

Tier 3 covers **Occupational schemes**. DC "labour market" schemes are almost universal and typically receive contributions from both employers and employees. Benefits are usually withdrawn as annuities. There are also "individual schemes" that may be arranged privately or through employers.

All Danish retirement saving arrangements are taxed under the ETT (income tax neutral) regime though the treatment of investment income is favourable.

Social Security Agreement

The Social Security (Reciprocity with Denmark) Order 1997 came into force on 1 October 1997 and covers Danish pensions, disability provisions, and a wider range of New Zealand-based benefits - age, disability, widows and widowers and also veteran's pensions. Again, where "residence" matters in assessing an applicant's entitlement to NZS (in New Zealand) or the Universal/ATP pensions (in Denmark), the period spent in either country counts. However, with respect to Danish benefits payable to New Zealand residents, periods before 1 April 1957 are not included as "residence".

Periods of residence in Denmark can help an applicant for NZS satisfy the 10(5) requirement. A Danish resident who has lived in New Zealand may be entitled to a proportion of NZS (1/540th for each month after age 20) and no account is taken of entitlements to the Danish Universal or ATP pensions. That is because both of those are already residence-based or pay-based calculations.

Article 18 of the Order (actually numbered Article 13) acknowledges the DDP⁸⁹ and agrees the deduction from NZS of “the amount of Danish pension or benefit”.

Greece: Retirement income arrangements

In terms of the levels described in Figure 1, Greece’s arrangements can be categorised as Level 1, Pure voluntary saving; Level 2, Tax-subsidised private saving; Level 3, Mandatory private saving; and Level 9, Social assistance.

While there is no Tier 2 pension, there are three parts to **Tier 1**. First, there is a generous, contributory PAYG DB pension (minimum 15 years’ contributions required) run by 130 occupation-related funds that can have different rules. The ‘primary’ pension is calculated as 2% of a pensioner’s five year average pay (revalued over the career in line with average pay movements) for each year of membership.

The second part of Tier 1 is an earnings-related supplementary pension that can add 20% of qualifying earnings after 35 years’ contributions

The third part of Tier 1 is an underpinning “**social solidarity benefit**” (**EKAS**), a non-contributory, income-tested PAYG pension payable from age 65 to low-income pensioners.

At **Tier 3** are the **Occupational schemes**. Given the generous nature of Tier 1, Tier 3 schemes have tended to be crowded out. Governing legislation allowing their establishment was passed only in 2002.

Social Security Agreement

The *Social Welfare (Reciprocity with the Hellenic Republic) Order 1993* was signed on 24 June 1993 and covers Greek old age, survivors and invalidity benefits (“...including any increase or supplement payable under the Greek legislation.” (Article 1 (a)). From the New Zealand perspective, it covers all SSA benefits, including “national superannuation” as it was then known (Article 2(a)).

Where “residence” matters in assessing an applicant’s entitlement to NZS (in New Zealand) or the age pensions (in Greece), the period spent in either country counts.

Periods of residence in Greece can help an applicant for NZS satisfy the 10(5) requirement. A Greek resident who has lived in New Zealand may be entitled to a proportion of NZS (1/40th for each complete year after age 20 to a maximum of 100%) and no account is taken of entitlements to Greek old age pensions. That is because both of those are already residence-based or pay-based calculations.

Guernsey: Retirement income arrangements

In terms of the levels described in Figure 1, Guernsey’s arrangements can be categorised as Level 1, Pure voluntary saving; Level 2, Tax-subsidised private saving; Level 5, Social insurance; and Level 9, Social assistance.

While Guernsey does not have the equivalent of a Tier 2, **Tier 1** is a two-layered benefit structure. The **Old Age Pension** (OAP) is payable from age 65 to all those who have contributed an average of at least 10 weeks’ contributions (and up to 50 weeks) between ages 20 and 65. The OAP is proportionately reduced if the average is less than 50 weeks a year. Periods of caring for a child under age 16, or a dependent adult, can be deemed ‘contributory’. The OAP is payable abroad.

The second part of Tier 1 is the **Supplementary Benefit**, which is income-tested and varies according to the family’s situation and the number and age of dependants.

Tier 3 delivers significant tax incentives to retirement saving plans approved under the Income Tax (Guernsey) Law 1975.

Social Security Agreement

The *Social Welfare (Reciprocity with Jersey and Guernsey) Order 1995* came into force on 1 April 1995. It covers the Jersey and Guernsey old age pensions (amongst other benefits) and New Zealand Superannuation, among other New Zealand-based benefits. Where “residence” matters in assessing an

⁸⁹ The only Agreement that does this.

applicant's entitlement to NZS (in New Zealand) or the Old Age Pension (in Jersey or Guernsey), the period spent in either country counts.

Periods of residence in Jersey or Guernsey can help an applicant for NZS satisfy the 10(5) requirement. A Jersey or Guernsey resident who has lived in New Zealand may be entitled to a proportion of NZS (1/40th for each complete year after age 20 to a maximum of 100%) and no account is taken of entitlements to Greek old age pensions, because both are residence-based or pay-based calculations.

Ireland: Retirement income arrangements

In terms of the levels described in Figure 1, Ireland's arrangements, like Guernsey's, can be categorised as Level 1, Pure voluntary saving; Level 2, Tax-subsidised private saving; Level 5, Social insurance; and Level 9, Social assistance.

Ireland, like Guernsey, does not have the equivalent of a Tier 2. **Tier 1** is a two-layered benefit structure. The **State Pension (contributory)** is payable from age 66 to those who have contributed at least 260 weeks (5 years) with an annual average of at least 48 weeks from the start of employment until age 66. If the average is less than 48 weeks a year, the pension is proportionately reduced. Periods of caring for a child under age 12 or in receipt of a state benefit can be 'contributory'. The pension is payable abroad.

The second part of Tier 1 is the **Qualified Adult Supplement**, which is income-tested and varies according to the family's situation and the number and age of dependants.

Tier 3 schemes deliver significant tax incentives to approved employment-related "qualified pension funds". Employers without such a plan must offer a Personal Retirement Saving Account, a tax-subsidised saving vehicle.

Social Security Agreement

The *Social Welfare (Reciprocity with Ireland) Order 1993* was signed on 20 May 1993. It covers the Irish State Pension (amongst other benefits) and what was then called "National Superannuation" (NZS), among other New Zealand-based benefits. Where "residence" matters in assessing an applicant's entitlement to NZS (New Zealand) or the State Pension (Ireland), the period of residence after age 30 (New Zealand) or 16 (Ireland) counts.

Periods of residence in Ireland can help an applicant for NZS satisfy the 10(5) requirement. An Irish resident who has lived in New Zealand may be entitled to a proportion of NZS (1/540th for each month after age 20 to a maximum of 100%). The fraction 1/540th moved from 1/480th to 1/540th for those turning age 66 between 1998 and 2002. No specific account is taken of entitlements to the Irish State Pension because both of those are already contribution-period-based calculations.

Jersey: Retirement income arrangements

In terms of the levels described in Figure 1, like Ireland and Guernsey, Jersey's arrangements include Level 1, Pure voluntary saving; Level 2, Tax-subsidised private saving; Level 5, Social insurance; and Level 9, Social assistance.

Jersey, like Guernsey, has Tier 1- and Tier 3-type pensions. Its **Tier 1** is a two-layered benefit structure. The **Old Age Pension** (OAP) is payable from age 65 (men) or 60 (women registered with the system before 1975). Recipients must have at least 4.5 years' contributions with at least 6 months in each year. The full pension is payable with 45 years' contributions. Periods of education, incapacity, unemployment or caring for children can count as 'contributory'. The OAP is related to the qualifying contributory years if less than 45 years in total. A supplement is payable for a dependent adult. The OAP is payable abroad.

The second part of Tier 1 is the **Supplementary Benefit** which is income-tested and varies according to the family's situation and the number and age of dependants.

Tier 3 delivers significant tax incentives to approved retirement saving plans.

Social Security Agreement

The *Social Welfare (Reciprocity with Jersey and Guernsey) Order 1995* described in paragraph 5.2 applies also to Jersey.

Netherlands: Retirement income arrangements

In terms of the levels described in Figure 1, the Netherlands' arrangements can be categorised as Levels 1, 2, 3, and 5. Level 1 is Pure voluntary saving; Level 2 is Tax-subsidised private saving; Level 3 is Mandatory private saving; and Level 5 is Social insurance.

In terms of Tiers, **Tier 1** is a PAYG, flat-rate pension from the age of 65. "Contributions" are paid only by employees. A full old-age pension is paid to those who have resided for 50 years in the Netherlands between ages 15 and 65 and have contributed if they earned income. The benefit is proportionately reduced if residence is at less than 50 years but at least six years. No reduction is made for the pre-1957 period. Benefits are adjusted according to changes in the minimum wage and are subject to income tax.

The benefit is not income-tested unless one of a couple is under age 65. The benefit is payable abroad if the recipient is in another European Union country or if so provided under a reciprocal agreement.

The **Tier 2** arrangements are relatively well-developed with 802 providers in 2004 covering 5.9 million members (71% of total workforce)⁹⁰. These include industry-wide (mostly organised by industries) and employer-linked schemes. Participation in a Tier 2 scheme is compulsory for most Dutch employees and is tax-favoured.

People can opt out of Tier 2 and opt in to **Tier 3** employment-based schemes as long as the scheme offers at least comparable benefits. Individual arrangements are also possible.

Social Security Agreement

The *Social Welfare (Reciprocity with the Netherlands) Order 2003* came into force on 1 November 2003. "Residence" in assessing an applicant's entitlement to NZS (in New Zealand) or the age pension (in the Netherlands) includes the period spent in either country after age 20 (New Zealand) or 15 (the Netherlands).

Periods of residence in the Netherlands can help an applicant for NZS satisfy the 10(5) requirement. A Dutch resident who has lived in New Zealand may be entitled to a proportion of NZS (1/540th for each month after age 20 to a maximum of 100%). Between 1997 and 2001, the fraction moved from 1/480th to 1/540th for those turning age 65. No specific account is taken of entitlements to the Dutch old age pension because it is already a residence-based or contribution-based calculation. A New Zealand resident who has completed the qualifications to receive a Dutch pension shall be entitled to receive the pension on the same basis as if resident in the Netherlands.

Benefits payable from the Netherlands that arose from periods of "voluntary insurance under the social security laws of the Netherlands" are not subject to the DDP.

United Kingdom: Retirement income arrangements

The UK's three Tier retirement income system is one of the most complex in the world. In terms of the levels described in Figure 1, the UK's arrangements can be categorised as Levels 1, 2, 4, 5 and 9. Level 1 is pure voluntary saving; Level 2 is tax-subsidised private saving; Level 4 is Mandatory public saving; Level 5, Social insurance; and Level 9 is Social Assistance.

In terms of Tiers, the **Tier 1: "Basic State Pension" (BSP)** is in two parts – first, there is a flat-rate, DB PAYG pension payable from age 65 (men) or age 60 (women, rising gradually to age 65 from 2010 to 2020) as long as "National Insurance contributions" have been paid or credited for 90% of the years in the working life (generally 44 years for men or 39 years for women). The number of qualifying years for the full state pension will reduce to 30 years for people who reach the State Pension Age after 6 April 2010. The years needed for a full pension is reduced if the person is caring for a child or an elderly or disabled relative. Coverage is also credited for periods covered by claims for certain benefits (such as incapacity benefit and jobseeker's allowance). There is also a supplement for those over age 80.

The pension is proportionately reduced with a shorter coverage period. The BSP is not paid if the person is entitled to less than 25% of the full pension.

The second part of Tier 1 comprises the **Pension Credit**. This is an income-tested, Defined Benefit pension payable to men and women aged 60 or older (rising gradually to age 65 from 2010 to 2020) residing in the UK and whose income is below prescribed levels. The Pension Credit can only be paid abroad temporarily.

The BSP is payable overseas but is adjusted only if the person resides in a European Union country or in a country that has a reciprocal agreement.

The **Tier 2: State second pension (S2P)** is an additional DB PAYG pension based on an individual's indexed earnings and payable from age 65 (men) or age 60 (women, rising gradually to age 65 from 2010 to 2020). The pension is payable abroad, but is adjusted only if the person resides in a European Union country or in a country that has a reciprocal agreement.

Tier 3 schemes can "contract out" of the S2P and both the employer and employees receive a reduction in their National Insurance contributions to recognise the reduced state entitlements.

The **Tier 3: Occupational and individual** DB and DC retirement saving schemes are common and typically receive contributions from both employers and employees. Benefits are usually withdrawn as annuities. There are also individual schemes (such as "Stakeholder Pensions") that may be arranged privately or through employers.

From 2012, an essentially voluntary, pre-funded, Defined Contribution system of Personal Accounts, administered by the state will be added. Under this, employees can choose to remain after, initially, being auto-enrolled. The present "State Second Pension" (S2P) will continue though it will be simplified and made more redistributive than now by becoming flat-rate rather than earnings-related.

All employment-based and personal retirement saving arrangements are taxed under the favourable ETT regime.

Social Security Agreement

The Social Security (Reciprocity with the United Kingdom) Order 1990 came into force on 1 April 1990 and covers UK pensions, widow's and orphan's benefits, family allowances disability provisions and all benefits payable under New Zealand's SSA.

A UK resident who was in receipt of NZS on entering the UK is entitled to the full UK BSP and is assumed to have contributed to the UK system for the full period necessary (Article 9(2)). The dependent spouse can also receive the appropriate addition to the BSP. Where the person was not in receipt of NZS and subsequently applies for a UK pension, they are deemed to have contributed to the UK system at the "Class 3" rate for the period of New Zealand residence. More complex rules apply, in this case, to a spouse making a claim in her/his own right. The entitlement ceases when the person ceases to be resident in the UK.

When assessing an applicant's entitlement to NZS (in New Zealand), the period spent in the UK counts as long as the applicant is not actually in receipt of the UK pension (Article 10).

Part B The 'information assistance' provisions of the Social Security Agreements: Government to government assistance – the UK example

Most of the eight Social Security Agreements referred to above have a provision that effectively allows the New Zealand government to obtain information from the other government that is party to the Agreement. Typical of these is Article 22 of the Social Welfare (Reciprocity with The United Kingdom) Order 1990:

UK agreement - Article 22

"The competent authorities, insurance authorities and competent institutions of the two Parties shall assist one another on any matter relating to the application of this Convention as if the matter were one affecting the application of their legislation. This assistance shall be free of charge."

In the case of the UK, the relevant provision is Article 10 that is reproduced in full:

UK Agreement - Article 10 New Zealand National Superannuation by virtue of Residence in the United Kingdom

(1) The provisions of this Article shall apply to persons in New Zealand who have been resident in the United Kingdom.

(2) Subject to the provisions of Article 15 of this Convention, for the purpose of any claim to receive National Superannuation⁹¹ under the legislation of New Zealand, a person who is usually resident in New Zealand shall be treated as if he had been resident there during any period when he was resident in the United Kingdom, provided that—

(a) this Article shall not apply to any man who has not reached the age of sixty five years or to any woman who has not reached the age of sixty years, and

(b) the person in respect of whom the claim for National Superannuation is made under the legislation of New Zealand has claimed any benefit to which he is entitled under the legislation of the United Kingdom, or would be entitled if he made a claim for that benefit.

(3) National Superannuation which has become payable under the legislation of New Zealand by virtue of the provisions of this Convention, or the former Agreements, shall cease to be payable if and when the person to whom, or in respect of whom, the pension is payable ceases to be usually resident in New Zealand.”

The New Zealand government can therefore:

- Ask the UK government to confirm whether an applicant for NZS has ever been resident in the UK;
- Ask the UK government whether the applicant has actually claimed a UK benefit and, if not, what the applicant would have been entitled to in the UK had the applicant for NZS applied to the UK authority.

The wording of Article 10 is not time-limited as long as the words “in respect of whom the claim for National Superannuation is made” apply to each payment of NZS. On that interpretation, the New Zealand government could request that information of those already in receipt of NZS.

Other countries’ equivalent provisions

Similar provisions to the UK Agreement’s Article 22 occur in the Social Security Agreements with other countries as follows:

Australia: Article 18 Exchange of Information is more specific than the UK’s Article 22 as to the applicant-related data and benefit entitlements that must be supplied by the respective governments.

Canada: Article XV “Exchange of Information and Mutual Assistance”. This is framed more in the UK Agreement’s wording than is the case for Australia.

Denmark: Article 21 “Requirement to Supply Information”. This obliges applicants to supply information to New Zealand authorities but there is no equivalent provision in respect of the Danish equivalents. Also, there is no ‘government-to-government’ information-sharing provision but only a general requirement (Article 25) to afford “mutual administrative assistance”. Given the unusual specific reference in the 1997 Order to deductions under section 70 of the SSA (in Article 18), the Danish authorities may be obliged to provide sufficient “mutual administrative assistance” to give effect to that provision.

Greece: Article 22 “Exchange of Information and Mutual Assistance”. Again, the agreement with Greece has the more detailed approach but, again, not as extensive as Australia’s. It requires the “competent authorities” to “furnish assistance to one another with regard to the determination or payment of any benefit or pension under this Agreement or any other entitlement under the respective legislation as if the matter involved the application of their own legislation;”. That would, presumably, include the application of section 70 of the SSA.

Guernsey: Article 22 “Exchange of Information”. This is more detailed than the UK’s Article 22 but not as extensive as Australia’s. It does specifically contemplate application down to an individual level:

⁹¹ National Superannuation now New Zealand Superannuation.

4. Any information about an individual which is sent in accordance with, and for the purposes of, this Agreement to a Party by another Party is confidential and shall be used only for the purpose of implementing this Agreement.

Ireland: Article 21 "Exchange of Information and Mutual Assistance". Again, Article 21 follows the UK-style of provision.

Jersey: See the comment on Guernsey above.

Netherlands: Article 20 "Exchange of Information". This is a detailed provision covering exchange of data "necessary for the application of this Agreement", including the recovery of "social security debt". It also allows the "competent authority" to seek information, if required from the tax authorities. The only significant restriction noted is in relation to compliance with New Zealand's privacy laws (see section C. Below in this regard).

Part C Exchange of Social Security Information with the Netherlands:

A "Report by the Privacy Commissioner to the Minister of Justice", 2003 (*Exchange of Social Security Information with the Netherlands*, Privacy Commissioner (2003), available at:

<http://www.privacy.org.nz/exchange-of-social-security-information-with-the-netherlands>)

The Privacy Commissioner reviewed the provisions of the 2000 Social Security Agreement of (since replaced by the 2003 Agreement referred to in paragraph 8.2 above). Article 20 of the 2000 Agreement was carried across to the current provision. The Privacy Commissioner was asked to see how far data matching between the two countries could proceed before impinging on the requirements of the Agreement's Article 20(6): "data matching must be consistent with information matching rules under New Zealand privacy laws".

The report concluded that:

The Privacy Commissioner is satisfied that the agreement complies with the privacy principles and other relevant provisions of the Privacy Act 1993, having particular regard to the information matching guidelines and rules. He is also satisfied that the Netherlands privacy law provides adequate privacy protection for that personal information about New Zealand residents which may be supplied under the agreement.

Appendix 5. Crown Law opinions, Court cases, and Appeals

The Roe High Court decision 1987

The Roe v Social Security Commission High Court decision of 1987 is still used today to justify withholding NZS. Dr William Roe and his wife, originally from the US and living in Nelson, had their NZS payments stopped when the Department of Social Welfare (DSW, now Work and Income, DWI) discovered that they were receiving Social Security pensions from the US. In 1987 Dr Roe appealed the action taken by DSW in the High Court, Wellington. Without legal counsel, Dr Roe arguably framed the issues inadequately and was ill-equipped to confront the combined legal forces of the Social Security Commission and Crown Law. His appeal was dismissed. It became a landmark case and the decision by Chief Justice Davison is still used today to dismiss appeals against the DDP.

In *Roe* the Court was asked to consider a number of matters in relation to the right to deduct the equivalent of overseas pensions from a New Zealand benefit. They included the meaning of "contingencies" in section 70 and whether a pension should not be deducted from NZS because it was similar to a benefit from a private fund. The appellants argued that they had made compulsory contributions to the US Social Security Trust Fund during the course of their employment, and even though it was administered by the government, their pension was funded mainly by those and by contributions made by their employer. In his judgment, the Chief Justice drew a clear distinction between government administered funds which attracted deduction under section 70, and which he considered the US retirement fund was, and privately funded retirement benefits which were not deductible.

The appeal was dismissed on two points of law. The first was the representation of US Social Security as "income maintenance assistance" granted to retired persons by the US Government. There are two forms of US Social Security. One, the Supplemental Security Income (SSI), is a minimal amount of government support, granted to persons in dire need. The general form of US retirement income security, paid under the terms of government-protected Old Age Insurance, comprises monthly payments based on the duration of work history, and earnings. This was the pension the Roes received: a contributory, earnings-related pension, paid only to those who contributed to the program.

PensionAbuse suggests the second point of law was based on a false principle of international social security. The Court stated: "Governments of countries do not consider it their obligation to pay retirement benefits to a person when another government is already doing so." Although there is no such principle, this quotation has often been used since by civil servants and politicians to justify the DDP.⁹²

Appellant v District Review Committee, Decision 122/1995

This was a case of alleged violation of individual rights. The appellant's NZS was reduced by the excess amount paid to her spouse in the form of a Netherlands Age Pension (AOW). An appeal was made through the SSAA against reduction of the appellant's superannuation by the excess amount of her spouse's AOW (Netherlands Age Pension). The issues were: reduction of superannuation because of spouse's Netherlands Age Pension ("AOW"); whether AOW came within s 70(1)(b); whether appellant's entitlement to New Zealand superannuation was separate from her spouse's entitlement; and: the significance of separate entitlement to s 70(1)(a).

The Court held, firstly, that the Dutch AOW formed part of a programme of benefits and pensions administered by the Netherlands government for the same kinds of contingencies as the programme of benefits administered by the New Zealand government. Therefore, it came within s 70(1)(b). Secondly, the rate of AOW received by the appellant's husband was high enough to affect the rate of pension to which the appellant was entitled because the excess (after the deduction of his New Zealand entitlement)

⁹² PensionAbuse also notes that, although it was never argued on behalf of the Roes, International Labor Convention *Number 157* protects the rights of individuals to state-sponsored pensions they have legitimately earned; and European Convention 1408/71 *Article 46* specifically prohibits nations from consuming age-pensions earned in other countries. Also, qualified American opinion on US Social Security was never requested or presented to the High Court in the Roe Case. Dr and Mrs Roe, now both deceased, had neither the financial resources nor the stamina to appeal the decision, and two decades on, given the prohibitive cost for any pensioner to question a High Court decision, the Roe Case decision has never been appealed or challenged.

could still be regarded as a pension granted elsewhere than in New Zealand under s 70(1)(a). Application of s 70(1)(a) was not affected by the fact that the appellant's entitlement was separate from her husband's because of the phrase "or if that person's spouse... is entitled to receive or receives a benefit, pension, or periodical allowance granted elsewhere than in New Zealand..." The Appeal was dismissed.

Ruifrok/Van Lindt v Attorney-General 2000

(Alternate citation: *Van Lindt v Attorney-General*)⁹³ Mr Van Lindt and the Mr and Mrs Ruifrok made an unsuccessful appeal against the determination of the Social Security Appeal Authority (SSAA) which dismissed their appeals against the decisions of New Zealand Income Support Division (now DWI) of the Department of Social Welfare (now MSD). A reduction of their NZS had arisen because of an increase in the pension each of the 2 appellants received from the Government of the Kingdom of the Netherlands. They are Dutch nationals who have been resident in New Zealand for over 10 years and are thus entitled to receive NZS; they are both entitled to benefits under AOW,⁹⁴ the Dutch statutory old age pension; and they are both also entitled to benefits under private schemes.

A full Court held that the AOW pension was designed for the same contingency or purpose as NZS in both cases, and was therefore deductible. Their other pensions, the APB and DNP,⁹⁵ were treated as private schemes and those payments were not affected (Kakes, 2006). The effect of the Agreement between the New Zealand and the Netherlands governments was that the rate of AOW increased, but the private pensions reduced, therefore the appellants total income decreased. The judges found no error of law, and stated that the SSAA was correct to find that the amount of AOW pension received was properly deducted in New Zealand.

In order that a person does not receive a double benefit from public funds in respect of an old age pension or superannuation entitlement, the amount of Government superannuation a person would otherwise be entitled to receive in New Zealand is reduced by the amount of any overseas benefit or pension, provided that the foreign pension is analogous to the pension administered by the New Zealand Government. (*Van Lindt v Attorney-General*)

The whole of the AOW payment is a benefit arising from a contingency for which a state benefit is payable in New Zealand; section 70(1)(b) words "or part thereof" followed by "as the case may be", refers to cases where only part of an overseas pension payment equates to the New Zealand contingency (*Van Lindt v Attorney-General*).

The Hogan case 2002

The High Court's 2002 decision in *Hogan v The Chief Executive of the Department of Work and Income* involved the deduction of the Canadian Old Age Security Pension and payments made from the Canada Pension Plan. The appellant argued that to satisfy the requirements that the "contingencies" were the same, the payments had to arise from the same conditions and circumstances. He argued that the SSA was not intended to lead to deductions when a state-administered scheme was funded by contributions from the beneficiary and or their employer. He sought to distinguish the case from *Roe* (which the government had relied on) by arguing that the purpose of section 70 was to prevent people from collecting twice from government funds, whereas under the Canada Pension Plan the pensioner was simply recouping his or his employer's contribution.

⁹³ Available online at:

<http://www.brookersonline.co.nz.ezproxy.auckland.ac.nz/databases/modus/caselaw/bcase/CASE~NZ~NAT~HC~2000~1781?sid=54f3ajtw6wgrq236a53lejreird1or1&hli=4&sp=bcase&si=57359>.

⁹⁴ The Dutch National Old Age Pension (AOW) is payable from age 65. It is universal in that it may apply to all persons who have been resident in the Netherlands, and it is portable. Its quantum is dependent upon length of residence in the Netherlands together with the domestic situation of the beneficiary. It is not linked to employment. Mr and Mrs Ruifrok became eligible to receive a pension under the AOW.

⁹⁵ Many additional pension schemes in the Netherlands are linked to employment. As a Dutch public servant, Mr Ruifrok had contributed to the Algemeen Burgerlijk Pensioenfonds ("ABP") or Civil Service Pension, called a "private scheme". Mr Van Lindt was also entitled to the AOW pension, and when a member of the Netherlands Armed Forces, he had contributed to the Dienst Militaire Pensioenen ("DNP") or Military Service Pension, and had entitlements under this "private scheme". Thus the appellants became entitled to retirement income from three sources: NZS in respect of their residence in New Zealand; AOW; and Dutch pensions of the ABP for Mr Ruifrok and the DMP for Mr Van Lindt. Both private contributing schemes are to provide for a top-up or supplementary benefit to that payable under AOW.

The Hogan decision was confirmed in Dunn (2008) which determined that no significance can be attached to the fact that the NZS is funded by taxation while the UK's NIF and NIC pensions are derived from compulsory contributions. As quoted in Dunn [31], in *Hogan v The Chief Executive of the Department of Work and Income Act*, Ellen France J said [26]:

I accept the respondent's submission that it is not necessary in terms of section 70 to conduct an inquiry as to how the relevant government collects the funds and particularly whether they are from taxation or from another type of compulsory acquisition from a person's income which the Government chooses not to call taxation. True private savings schemes will not be caught by section 70 as a programme administered by the Government will not pay them.

Tetley-Jones vs Department of Work and Income 2004

In this 2004 appeal relating to a benefit from Ireland, the Judge considered the meaning of "any of the contingencies" in section 70. The appellant argued that the Irish Old Age Contributory Pension, funded by employee contributions, should be distinguished from local benefits because it was a self-funded pension. Council for the appellant argued that a specific comparison between the benefits, pensions or allowances covered by the overseas programmes was required to see if they were payable for the same contingencies, and suggested that the approach taken by the SSAA was flawed by comparing benefits at too high a level of generality.

The appeal was unsuccessful. The Court held that a person cannot receive both NZS and an overseas pension analogous to it; and analogous does not mean similar in every way. The source of funds collected by the overseas government, be it direct taxation or another compulsory contribution, is irrelevant.

Chief Executive of Ministry of Social Development vs Rai 2004

The Sant Raj Rai Case⁹⁶ is complicated and involves consideration of a number of amendments to section 70 under the Social Welfare (Transitional Provisions) Amendment Act 2002 relating to the definition of a government occupational pension. The results suggest that caution should be exercised in relying too generally on some of the statements about what a contributory scheme is.

The 2004 Rai case is significant because for the first time in an appeal involving pensions, the Chief Executive of the MSD was found to be wrong in his determination of overseas pensions subject to direct deduction. DWI had attempted to deduct the government pension of Fijian immigrant Mr Sant Raj Rai. The status of the Fiji National Provident Fund, a compulsory scheme that employers and employees contributed to, was the basis of the case. The scheme is administered by the Fiji National Provident Fund Board, on which the Fiji Government has minority representation, although it pays in no money.

While the SSAA considered that section 70 caught the Fund, the High Court described it as an amalgam of a private contributory scheme and a government employee contributory superannuation scheme; and noted that never before had it been suggested that section 70 applied to either of those schemes.

When the decision went against the Chief Executive, the MSD appealed, despite the trivial amounts involved. In the appeal, the Ministry and the Chief Executive were deeply concerned over the wording that the Fijian government employee pension was "*not government-funded*", and were anxious for the judge to change it because this has been the basis of the DDP.⁹⁷ The High Court dismissed the appeal on the basis that his pension was a civil service pension and not government-funded.

Mrs R's complaint, and Crown Law's response 2006

Mrs R is a New Zealander who qualifies for NZS but is denied it as her American husband's US superannuation amounts to roughly the same as the NZS married couple's rate. She argues that she has a personal right to NZS irrespective of her husband's pension, and that the abatement of her

⁹⁶ Chief Executive of the Ministry of Social Development v Rai, 2004. Available online at: <http://www.brookersonline.co.nz.ezproxy.auckland.ac.nz/databases/modus/caselaw/bcase/CASE~NZ~NAT~HC~2004~39511?sid=dkttjac34xt3bfrp2gjia02qa7co41hk3&hli=3&sp=bcase&si=57359>.

⁹⁷ Information on the application and influence of the Sant Raj Rai Case is available at: <http://www.nzpensionabuse.org/the%20Roe%20Case.html>.

superannuation entitlement amounts to marital status discrimination (Bell 2006). Mrs R worked and paid taxes, and argues that it is discriminatory to be denied the right to NZS on the grounds that she is married to a person receiving a pension from another country. Her right to NZS would not have been affected if she had remained single; or if she had married a New Zealander with any number of annuities, investments and superannuation scheme benefits.

While Crown Law accepts Mrs R's complaint of discrimination, it argues that it is legitimate for the government to expect married couples to financially support each other and therefore it is legitimate to treat them as a single economic unit. They further argue that without such abatement, such a couple would be in receipt of government income in excess of the amount received by married couples who had not lived and worked overseas.

In addition, Crown Law consider that in matters relating to NZS, all married couples are treated as single economic units and therefore Mrs R's husband should be expected to take care of her (Bell 2006). Crown Law stated that the abatement regime in s70 and the treatment of married couples as single economic units are legitimate measures, when dealing with limited public funds, to ensure that the New Zealand benefit system is equitably spread across all of those in need.

The Justice summarized Mrs R's case by referring to the Roe Case (discussed below):

The chief executive of MSD considers that the US retirement pension received by Mrs R's husband is part of a benefits program designed to meet the same contingencies as a New Zealand benefit. This has been confirmed by a decision in the High Court of New Zealand. The factual correctness of that determination is not an issue.

Neither Mrs R's complaint nor any other complaints of pension discrimination have been examined in a Court of Law, but Mrs R did submit her complaint to the Human Rights Review Tribunal, requesting legal aid from the Director of Human Rights Proceedings.

A legal opinion⁹⁸ on Crown Law's response to Mrs R's complaint queries the conclusions on a number of counts. For example, the underlying premise of the SSA is that Mrs R should be assessed separately from her husband and the appropriate comparator is a couple where both partners qualify for NZS in their own right. It further claims that a 1985 amendment to section 70 of the SSA, which introduced the reference to a benefit received by a person's spouse, was inconsistent with the government's long standing policy to assess people individually in relation to eligibility for NZS. The legal opinion also draws a distinction between the two different types of US Social Security: fully government funded; or more akin to a personal annuity. Mrs R's husband receives the latter.

The provision central to Mrs R's case is section 70 of the SSA. The two distinct issues in that case are firstly, whether people are assessed as a couple or as individuals for the purposes of NZS; and secondly, that the pension concerned is arguably a voluntary, contributory Tier 3 pension, not available as of right, and not analogous to NZS.

The Dunn complaint, and High Court appeal 2008

In *Dunn v Chief Executive of the Ministry of Social Development* 2007, Frank Dunn was declined leave to appeal, in the Court of Appeal, the Auckland High Court judgment on his case against the Chief Executive of the MSD.

On 17 January 2005 the Ministry contacted the appellant, Dunn, to explore the possibility of the appellant's eligibility for dual entitlement. The appellant advised that he had not continued to make any contributions to the United Kingdom National Insurance Scheme while resident in New Zealand. The Ministry therefore concluded that the appellant did not meet the conditions of dual entitlement. As a result, the Ministry wrote to the appellant advising that the decision to deduct the amount of his UK pension from his entitlement to New Zealand Superannuation had been upheld on an internal review.

⁹⁸ Available from the RPRC on request.

In paragraphs 4 and 5, the Social Security Appeal Authority referred to the "wide language" of section 70(1) of the Social Security Act 1964, and held that it was not necessary for the UK pension to be identical to one of the benefits paid in New Zealand. In regard to the subject of this Working Paper, it is particularly important to note that the Authority further held that the provisions of section 70 of the Act did not make any distinction between contributory and non-contributory schemes. "No significance could be attached to the fact that while the New Zealand scheme was funded by taxation, the appellant's pension was derived from compulsory contributions." (Cooper 2007)

Dunn appealed the High Court's decision. In the Court of Appeal transcripts of 2 September 2008, the appellant states (para 21) that as well as the compulsory contributions to the National Insurance Fund (NIF) and National Insurance Contributions (NIC), it was possible to make voluntary contributions, and he had done so. In para 15 he also notes that he served in the military for some of the years between 1948 and 1968 that he was resident in the UK and contributing to the National Insurance Fund (Dunn 2008). Cooper agreed (at para 31) with the judgment in the Hogan case regarding the lack of difference between taxation and compulsory acquisition of pension contributions, and went on to say (para 32):

Putting the position in a slightly different way, section 70(1)(b)'s requirement that the overseas fund be one administered "by or on behalf of the Government of the country from which the benefit, pension or periodical allowance is received" means that contributions which are paid to a private scheme will not be caught by the provision. It is clear, however, that that is not the case in respect of Mr Dunn's pension. The same point, it seems to me, lies behind what was said by Lord Hoffman in respect of the United Kingdom arrangements in paragraph [21] of his judgment in R (on the application of Carson) v Secretary of State for Work and Pensions [2005] 4 All ER 545:

National insurance contributions have no exclusive link to retirement pensions, comparable with contributions to a private pension scheme. In fact the link is a rather tenuous one. National insurance contributions form a source of part of the revenue which pays for all Social Security Benefits and the National Health Service (the rest comes from ordinary taxation). (Cooper 2007)

Dunn argues that there is a real difference between compulsory and voluntary social security contributions; there is a real difference between a military (or veteran's) pension, and the ordinary citizen's social security entitlement; and, in paragraph 43, he argues that there are approximately 48,300 National Insurance Fund recipients in New Zealand who are fully qualified NZS pensioners, for whom the UK Pension Service is remitting NZ\$210 million per year, which is "stolen" by the New Zealand government (Dunn 2008).

Dunn suggests that thousands of pensioners would be better off "if only they had received the right information" (Dunn 2008, Paragraph 48). They could have made more regular voluntary contributions to their pension scheme, or transferred their funds to a different scheme before emigrating. He argues that workers in the UK need to be aware that their voluntary contributions, additional to any compulsory contributions to NIF or any Tier 1 or 2 government-administered scheme, will be abated against NZS.

The Bredmeyer Case: A Kiwi complains from Australia

On 17/12/08, the New Zealand Herald ran an NZPA story: *Aussie-based Kiwi loses pension appeal:*

A New Zealand woman, who has lived in Australia for 18 years, has lost her latest legal bid to be paid NZS. A Court of Appeal judgment released today said Audrey Bredmeyer, 71, did not qualify for the Australian age pension because it was means-tested, and her and her husband's assets exceed the allowed level. And because she was not entitled to receive an Australian age pension, the chief executive of the Ministry of Social Development said she was not entitled to receive any NZS.

Mrs Bredmeyer was born in New Zealand but moved overseas in 1968, to Papua New Guinea then to Australia. In 2005 she applied for NZS and met the age and residence criteria for it. But New Zealand's reciprocal agreement with Australia stated the amount she was entitled to receive could not exceed the amount of Australian age pension that would have been payable "if she was entitled to receive an Australian age pension".

The Court of Appeal judgment said the reciprocal agreement may mean that someone like Mrs Bredmeyer was worse off having moved to Australia than she may have been if she moved to a country with which New Zealand did not have a reciprocal arrangement.

Appendix 6. Media Reports on overseas pensions: 2005, 2008

Anger grows over foreign-pension law

New Zealand Herald, September 14, 2005, By Errol Kiong

Related links: [NZ Pension Abuse](#)

See: http://www.nzherald.co.nz/super-fund/news/article.cfm?c_id=468&objectid=10345397

Public support is growing for pensioners affected by legislation that drastically reduces their New Zealand superannuation entitlement because they have worked overseas.

About 52,000 pensioners and their spouses lose \$185 million annually under the legislation, which enables Work and Income to cut their New Zealand super entitlement because they receive an overseas pension. The direct-deduction policy makes no distinction between taxpayer-funded pensions such as New Zealand super and contributory pensions such as those in America, Canada, Britain, Ireland and Holland where people - on top of tax - have a percentage of their income paid into a Government-managed fund. Under the legislation, the total amount received by a superannuitant must not exceed full New Zealand super.

The pensioners' ire has manifested in a series of public meetings throughout the country. A website, nzpensionabuse.org (see link below), is also up-and-running and advertising space has been bought in Grey Power's latest quarterly magazine. Grey Power has also thrown its weight behind the issue, urging the Government to review the legislation. A spokesman for the pensioners, Chris Arnesen, says anger is growing because the Government has done nothing, despite being aware of problems in the system for at least four years.

The Herald has obtained two Ministry of Social Development reports, dated 2001 and 2003, in which officials warned their minister, Steve Maharey - and in the later report Finance Minister Michael Cullen - of problems with New Zealand super portability. The officials acknowledged the ill-will caused by the direct-deduction policy, and warned that a number of countries, including the US, Switzerland, Germany and Austria, were refusing to enter into Social Security Agreements with New Zealand because of this issue.

Officials even recommended options that would allow those who have worked in New Zealand all their lives - cited by Mr Maharey's office as likely to be disadvantaged by any changes - to keep their full super, while those with overseas pensions would get a proportional entitlement based on the number of years worked in New Zealand. Mr Maharey turned down requests for an interview, but said the issue was under review and would be looked at again after the election.

Super problem

* NZ super payments are reduced by the amount received from overseas pensions.

* The law makes no distinction between taxpayer-funded schemes such as ours and contributory pension schemes such as those in America, Canada, Britain, Ireland and Holland.

* Under these schemes people must pay part of their income into a Government-managed fund - on top of tax payments.

* More than 50,000 pensioners have their NZ super payments cut in this way.

* They say this is unfair as the overseas pensions are their money.

Seniors protest against rules on foreign pensions

New Zealand Herald, Thursday July 24, 2008, By Simon Collins
See:

http://www.nzherald.co.nz/retirement/news/article.cfm?c_id=305&objectid=10523191

Septuagenarian protesters greeted Social Development Minister Ruth Dyson at an Auckland Grey Power meeting yesterday with placards demanding their rights to foreign pensions.

Frank Dunn, 75, of Albany, and Willy Bocxe, 79, of Glenfield, held up signs saying "We save, you steal" and "Duped super" as Ms Dyson arrived at the meeting in Ponsonby. Auckland branch president Donald Dunn forbade the pair from taking their placards into the meeting and refused to allow more than one question on any issue. But that did not stop questions from many of the 70 pensioners about the Government's "confiscation" of their foreign pensions.

Last month, Ms Dyson announced that the Government had completed a review of overseas pensions and decided to keep the existing policy, which deducts most overseas pensions from the pensioner's entitlement to New Zealand superannuation. This saves about \$200 million a year by denying full super to about 50,000 people who have overseas pensions - a tenth of all superannuitants. Most are immigrants, but 7 per cent are New Zealand-born and paid into foreign pension schemes while working overseas.

British-born retired machine tool fitter George Childs, 73, told Ms Dyson inside the meeting that when he and his wife came to New Zealand in 1964, the Government promised that they would be entitled to a full New Zealand pension after 20 years. When he retired, 35 years later, he found he could not get NZ super unless he paid his British pension of £20 (\$52.50) a week, earned in his 13 years of working life in Britain, to the NZ Government.

Mr Bocxe, a former Air New Zealand aircraft engineer, said his Dutch pension for his initial years working in the Netherlands paid him more than his reduced entitlement to NZ super, even though he has lived here for 37 years.

New Zealand-born opera singer Barry Mora, 67, said he lost part of his NZ super because he paid into a super scheme when he worked in Germany.

But Ms Dyson said the Government could not let overseas pensioners keep their foreign pensions on top of full NZ super because that would be unfair to people who never worked overseas and paid taxes for their whole lives in New Zealand. "We have a very short period of residency in New Zealand as a qualification for the NZ pension, 10 years," she said. "Most New Zealanders wouldn't feel it's fair for a person who spent only 10 years in New Zealand to get a full pension in addition to a pension from their country of origin."

Documents obtained by the NZ Pensioners Abuse Association show that officials concluded early in the policy review process in 2004 that New Zealand's policy was "unsustainable" in view of growing migration both to and from this country. Already 26 per cent of those living in New Zealand aged 65 and over were born overseas. Many countries, including Germany, Austria and Sweden, had refused to sign reciprocal Social Security Agreements because of New Zealand's policy of confiscating pensions paid to migrants from those countries.

Officials recommended New Zealand should adopt the standard international policy of proportionality, paying one-40th of the NZ super for every year that a person lived in New Zealand between the ages of 20 and 65. A Cabinet paper released last month shows this proposal was refined into a "dual system" which would have given superannuitants the option of either proportionality or the system of full NZ super with overseas pensions deducted. The paper says this was rejected because "people with an overseas pension entitlement would be financially advantaged in comparison with people who lived all their life in New Zealand".

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