

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

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to make amendments to the provisions in the New Zealand Superannuation and Retirement Income Act 2001 and the War Pensions Act 1954 to make it easier for superannuitants and veteran's pensioners to travel or retire overseas.

The provisions that provide for the payment of New Zealand superannuation and veteran's pension overseas have been in place since 1 April 1990.

These provisions provide for a flat rate payment of 50% of the domestic rate of benefit where a person leaves New Zealand with the intention to reside in a country with which New Zealand has no agreement relating to reciprocity of social security monetary benefits (not being a specified Pacific country).

The flat rate payment of 50% deters some older New Zealanders from retiring overseas because it provides insufficient income to allow a reasonable standard of living in retirement in most countries. Payment is also currently linked to residence in one particular overseas country which means that superannuitants or veteran's pensioners

cannot travel to or between multiple countries and continue to receive payment.

This Bill will, from 2 November 2009, allow qualifying superannuitants and veteran's pensioners—

- who wish to travel to, or in, or between any overseas countries to retain their entitlement to New Zealand superannuation or veteran's pension, whether they later become resident in any country with which New Zealand has no agreement relating to reciprocity of social security monetary benefits (not being a specified Pacific country) or not;
- who wish to reside in any country with which New Zealand has no agreement relating to reciprocity of social security monetary benefits (not being a specified Pacific country) to retain their entitlement to New Zealand superannuation or veteran's pension, whether they remain resident in that country, become resident in another such country or begin travelling.
- to receive payment of New Zealand superannuation or veteran's pension overseas based on a formula of 1/540th of the full rate for each month of residence in New Zealand between the ages of 20 and 65.

The rate payable will not include payment for periods of time spent in another country and will therefore not be reduced by the amount of any overseas pension that may have been earned during that period of absence from New Zealand.

Clause by clause analysis

This Bill is an omnibus Bill, making amendments to the New Zealand Superannuation and Retirement Income Act 2001 and the War Pensions Act 1954.

It is intended that in the Committee Of the whole House it will be broken up into a New Zealand Superannuation and Retirement Income Amendment Act and a War Pensions Amendment Act.

Clause 1 states the Bill's Title.

Clause 2 provides that the Bill comes into force on 2 November 2009.

Part 1
Amendments to New Zealand
Superannuation and Retirement
Income Act 2001

Clause 3 provides that *Part 1* amends the New Zealand Superannuation and Retirement Income Act 2001.

Clause 4 makes a technical amendment to section 21 of the principal Act. Section 21 is a general statement that people are not entitled to New Zealand superannuation while 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. The amendment amends the reference to sections 22 to 29 so that it becomes a reference to sections 22 to 35.

Clause 5 amends section 22 of the principal Act, which enables superannuitants to be paid New Zealand superannuation while absent from New Zealand for a period of no more than 26 weeks (or, in certain limited circumstances, a period of no more than 30 weeks). The amendment—

- clarifies the relationship between the entitlement under that section and the entitlement under section 26; and (in particular)
- makes clear that a person who is being paid New Zealand superannuation under section 26 will be paid at only the rate provided for in that section (which may in some cases be the full amount, but may not), rather than the full amount contemplated by section 22.

Clause 6 replaces section 26 of the principal Act, which is the general provision relating to the payment overseas of New Zealand superannuation, with 2 new sections.

New section 26 relates to 2 different categories of overseas travel by superannuitants—

- travel by those who intend to live for a period longer than 26 weeks in a country (or 2 or more countries) with which New Zealand has no agreement relating to reciprocity of social security monetary benefits:
- travel by those who intend to travel for a period longer than 26 weeks, but not to live in any particular country.

A superannuitant who has not made and is not entitled to make an election under section 12 of the principal Act,—

- if not married, and not in a civil union or de facto relationship, will be entitled to a proportion of the entitlement (excluding any living alone payment) he or she would have while living in New Zealand, calculated on the basis of the total period during which he or she has lived in New Zealand between the ages of 20 and 65:
- if married, or in a civil union or de facto relationship, will be entitled to a proportion of the entitlement (excluding any living alone payment) he or she would have while they and their spouse or partner were living in New Zealand calculated on the basis of the total period during which he or she has lived in New Zealand between the ages of 20 and 65.

A superannuitant who has made or is entitled to make an election under section 12 of the principal Act will be entitled to a proportion of the gross rate of New Zealand superannuation payable under clause 1(c) of Schedule 1 of the principal Act.

The proportion for any superannuitant is to be calculated by—

- treating each period during which he or she has lived in New Zealand while between the ages of 20 and 65 as whole calendar months and additional days:
- adding the number of additional days, dividing the total by 30, and disregarding any remainder:
- adding the number of calendar months and 30-day periods:
- dividing the total by 540.

New section 26A provides that no superannuitant is entitled to be paid New Zealand superannuation under *new section 26* unless he or she—

- makes an application for payment stating either—
 - the country or countries in which he or she intends to live and the period for which he or she intends to live there; or
 - the country or countries to and in which he or she intends to travel; and
- is ordinarily resident and present in New Zealand on the day he or she makes the application, and—

- is entitled to receive New Zealand superannuation on that day; or
- will become entitled to receive New Zealand superannuation before he or she leaves New Zealand.

Clause 7 makes technical and consequential amendments to section 29 of the principal Act, which governs the relationship between provisions relating to New Zealand superannuation and other benefit provisions.

Clause 8 makes a consequential amendment to a cross-reference in section 35(1) of the principal Act.

Clause 9 makes to section 70 of the Social Security Act 1964, which relates to rates of benefits payable if an overseas pension is payable, an amendment that is consequential on *new section 26A(3)* of the principal Act (as proposed to be enacted by *clause 6*).

Clause 10 is a savings provision relating to superannuitants who, when the Bill comes into force, are receiving New Zealand superannuation while overseas. Until they return to New Zealand and begin receiving New Zealand superannuation under the usual domestic arrangements, they will be entitled to be paid at the higher of the old 50% rate and the new proportional rate.

Part 2

Amendments to War Pensions Act 1954

Clause 11 provides that *Part 2* amends the War Pensions Act 1954.

Clause 12 makes to section 74E of the principal Act an amendment to the same effect as that made to section 21 of the New Zealand Superannuation and Retirement Income Act 2001 by *clause 4*.

Clause 13 makes to section 74F of the principal Act an amendment to the same effect as that made to section 22 of the New Zealand Superannuation and Retirement Income Act 2001 by *clause 5*.

Clause 14 replaces section 74J of the principal Act, which is the general provision relating to the payment overseas of the veteran's pension, with 2 new sections. The sections are to exactly the same effect as the *new sections 26 and 26A* proposed to be inserted in the New Zealand Superannuation and Retirement Income Act 2001 by *clause 6*.

Clause 15 makes to section 74M of the principal Act amendments to the same effect as those made to section 29 of the New Zealand Superannuation and Retirement Income Act 2001 by *clause 7*.

Clause 16 makes to section 70 of the Social Security Act 1964, which relates to rates of benefits payable if an overseas pension is payable, an amendments that is consequential on *new section 74JA(3)* of the principal Act (as proposed to be enacted by *clause 13*).

Clause 17 is a savings provision to the same effect as *clause 10*.

Regulatory impact statement

Executive summary

The policies on treatment of overseas social security pensions and payment of New Zealand Superannuation (NZZ) overseas are contentious. This is because affected superannuitants do not generally receive either the full rate or any NZS amount, and some other governments consider that New Zealand is using their pensions simply to reduce its own pension liabilities. The preferred option is a package of ten proposals that would amend the current policies concerning the treatment of overseas pensions, payment of NZS overseas and payment of NZS in certain Pacific countries and would initiate a potential Social Security Agreement with the United States of America. The changes would clarify the legislation covering the treatment of overseas pensions, increase the rate of NZS received by certain superannuitants with overseas pensions and superannuitants receiving NZS overseas, allow people resident in certain Pacific countries to apply for NZS, and potentially remove the current barriers that preclude a Social Security Agreement with the United States.

Adequacy statement

This statement has been reviewed by the Ministry of Social Development and is adequate according to the adequacy criteria.

Status quo and problem

To qualify for New Zealand Superannuation a person must have 10 years' residence in New Zealand since the age of 20, five of which must have been since the age of 50, and be 65 years of age or over. New Zealand's "residence-based" pension system contrasts with the contributory nature of most overseas pensions schemes

and does not easily lend itself to situations where people move in and out of New Zealand. Two key issues have arisen as a result of increasing international movement of people:

- the method for dealing with overseas pensions paid into New Zealand, which effectively tops up the amount of a overseas pension to the appropriate full rate of NZS, can be a contentious issue for affected superannuitants and other governments, is difficult to administer, and has remained essentially unchanged for almost 70 years;
- rules for payment of NZS overseas are overly restrictive and prevent many New Zealanders from receiving payment while living in the country of their choice or from receiving payment when travelling overseas without the intent to live in one particular country.

Objectives

The overarching objectives of the Review are to:

- modernise the current treatment of overseas pension policy;
- address issues associated with the payment of NZS overseas.

The secondary objectives are to:

- provide an interface between New Zealand and overseas social security systems that provides a fair sharing of social security costs between countries;
- ensure that the treatment of overseas pensions paid to New Zealanders is equitable for New Zealanders who have lived and worked in New Zealand all their lives;
- allow New Zealanders to retire comfortably in the country of their choice.

Alternative options

During the Review period, a number of alternative packages were developed:

Alternative option 1

The range of proposals in the preferred option, but in addition a dual system of proportionalisation of NZS entitlement and direct deduc-

tion that would only apply to overseas pensioners. An overseas pensioner could choose the system that would be most beneficial to them.

Under this option, 1/45 of NZS would be paid for each year of residence in New Zealand between the ages of 20 and 65. The amount of any overseas pension would not affect the amount of NZS. This system would suit those superannuitants who have lived in New Zealand for a long period and have a relatively high overseas pension. Alternatively the overseas pensioner could choose to continue in the direct deduction system if this would be more beneficial. This system would suit those superannuitants with a smaller period of New Zealand residence and a relatively low overseas pension. It is estimated that 37 000 overseas pensioners would choose to receive a proportionalised rate of NZS.

This is not the preferred option because:

- there are equity issues (overseas pensioners with access to both NZS and an overseas public pension may be financially advantaged in comparison to lifelong New Zealand residents who have access only to NZS);
- most of the difficulties around policy and administration would remain for people who choose the direct deduction option, and additional administrative complexity would be created.

Alternative option 2

Changing the entitlement criteria for all NZS applicants to a proportionalised rate that would depend on the number of years a person has spent in New Zealand between the ages of 20-65. This amount would be payable overseas, and applications could be made by overseas residents if they left New Zealand after the legislative change was made.

This option would affect 2 groups of retirees:

- (a) New Zealand residents who wish to retire to a non-Agreement country;
- (b) those who have lived overseas, but are now resident in New Zealand.

People in group (a) would receive 1/40th of the full rate of NZS for every year of New Zealand residence between the ages of 20 and 65. A person would need at least 10 years' New Zealand residence to receive an NZS payment (which, after 10 years would be 10/40th). The

current treatment of overseas pensions policy would be abolished for people in group (b) who would instead be able to keep their overseas pensions, but their NZS would be based on their working-life years in New Zealand (rather than on current residency requirements).

This option was rejected because it represents a significant change to core NZS policy which is outside the mandate of the Review. This option would have required a complex safety net mechanism to ensure that people with limited New Zealand residence and a small overseas pension were not left with insufficient retirement income. In addition, 2 000 people in group (b) who had lived overseas until they were aged 65 years or over but who then came to retire in New Zealand would not be eligible for NZS (whereas under the status quo they would be qualified once they had lived in New Zealand for 10 years).

Alternative option 3

Full portability of NZS and moderated treatment of overseas pensions

The full rate of NZS would be portable on fulfilment of the minimum residence requirements. In order to minimise fiscal ramifications, the working-age residence requirement would be raised from 10 to 15 years. The amended residence requirement would apply both to those who retire in New Zealand and to those who retire overseas. The current treatment of overseas pensions policy would remain but would be moderated. A “safe zone” would be implemented, so that a pensioner could keep an amount of overseas pension equivalent to 5% of the single sharing rate of NZS and the remaining amount would be directly deducted.

This option was not preferred because it requires a change to fundamental NZS policy, is incompatible with the payment provisions in New Zealand's social security agreements, and would not have adequately addressed problems in the treatment of overseas policy.

Alternative option 4

50% of NZS would be portable after 10 years' residence in New Zealand, rising to 100% after 20 years. Current treatment of overseas pensions rules would apply except for the implementation of a safe zone.

This option was not preferred because the rate formula would be incompatible with social security agreements which require longer periods of New Zealand residence for a comparable rate of payment of NZS, it would not overly improve the incentive for people to claim and declare their overseas pensions, and it would have relatively high fiscal implications for the Government.

Preferred option

The preferred option is a package of 10 components which cover:

Treatment of overseas pensions

1. updating the Social Security (Overseas Pension Deduction) Regulations 1996, which set out the mechanics of the treatment of overseas pension policy;
2. removing the proportion of foreign state pensions built up by voluntary contributions from the scope of section 70 of the Social Security Act 1964;
3. clarifying the wording of section 70 of the Social Security Act so that it is in plain English, and set out the treatment of each country's pension in regulations;
4. discontinuing the policy of deducting a person's overseas pension from their spouse's NZS entitlement, by amending sections 69G, 69H and 70 of the Social Security Act and a consequential amendment to the Special Banking Option (SBO) so that only 1 partner of a couple can join the SBO if they wish;
5. amending the SBO legislation to allow for refunds;

Payment of NZS overseas

6. allowing payment overseas of New Zealand Superannuation and Veteran's Pension to be made to superannuitants travelling to more than 1 country for more than 30 weeks;
7. paying NZS overseas based on a formula of 1/45th of the full rate for each year of residence in New Zealand between the ages of 20 and 65;

Pacific

8. allowing residents of Niue, the Cook Islands, Tokelau Samoa, Tonga and Fiji to apply for NZS from those countries, **OR**
9. allowing residents of Niue, the Cook Islands and Tokelau to apply for NZS from those countries to reflect New Zealand's special constitutional relationships with these three Pacific countries;

Social security agreement with the United States of America

10. making amendments to tax rules to facilitate conclusion of a social security agreement with the United States.

This package of proposals is the preferred option because it has the following benefits:

- it will make the treatment of overseas pensions legislation easier for clients to understand and will make some aspects of the policy easier to administer;
- it removes the anomalous aspects of the treatment of overseas pensions and payment overseas rules;
- it maintains the fundamental NZS policy settings;
- it does not disadvantage people who have lived and worked in New Zealand all their lives;
- it increases New Zealanders' opportunities to retire where they wish.

The costs of this option approximately \$11.5 million a year.

The legislative impact of the changes in the preferred option include amendments to the Social Security Act 1964, the New Zealand Superannuation and Retirement Income Act 2001, the War Pensions Act 1954, the Social Security (Overseas Pension Deduction) Regulations 1996, and legislation relating to taxation.

The current regulatory framework would be impacted to the extent that:

- the rule that the full amount of overseas public pensions received are to have an effect reducing the amount of NZS also received will be altered by excluding from this rule those parts of overseas public pensions that are composed of voluntary contributions by the pensioner;

- there will now be an ability to refund money to people using the alternative arrangements for overseas pensions (the Special Banking Option) where the overseas pension received exceeds the amount of NZS that is provided to the pensioner;
- the rule that a person's rate of NZS will be affected by any overseas pension received by their partner will be removed, as will the requirement that non-qualifying partners must apply to receive any overseas pension they may be entitled to when their partner receives NZS;
- a new rule will enable full NZS entitlement to New Zealand taxpayers resident overseas;
- the rule that a person must be resident in a particular country to enable payment of portable NZS at 50% of the gross rate will be altered so that the portable NZS payment rate will be based on number of years' residence in New Zealand, and the person does not have to remain in one particular country in order to receive payment;
- the rule that a person must be present and resident in New Zealand in order to establish eligibility for NZS will be altered to allow residents in Niue, the Cook Islands, Tokelau, Samoa, Tonga and Fiji (once Fiji has made sufficient steps towards a democratic government) to make an application from those countries.

Key risks associated with this option are:

- the Ministry of Social Development will be accepting applications for NZS from residents of Pacific countries for the first time. This presents some administrative risks for the Ministry: although the Ministry does accept applications from overseas residents under the terms of New Zealand's Social Security Agreements, the social security agencies in those Agreement countries assist with the application requirements. Both proposed Pacific options require that a person be ordinarily in one of the three (or six) Pacific countries on the date of application for NZS. It will be difficult for Ministry staff based in New Zealand to determine whether a person is ordinarily resident in 1 of the specified Pacific countries when they apply, or whether that person is merely present in 1 of those 6 countries solely for the purpose of applying for NZS;

- any discrimination involved in the treatment of overseas pensions policy and present in any Bill required to give effect to this option will need to be justified to avoid a report by the Attorney-General to the House of Representatives under section 7 of the New Zealand Bill of Rights Act 1990;
- any discrimination involved in the payment of NZS to certain Pacific communities will similarly require to be justified.

Risks will be mitigated in the following ways:

- assistance will be sought from relevant New Zealand government agencies in Pacific countries covered by the new policy. Where New Zealand government agencies are not available, assistance will be sought from appropriate government agencies of the other country;
- the Ministry of Justice has advised that confining the proposal to those countries which have a special constitutional relationship with New Zealand (Niue, Tokelau, and the Cook Islands) would be justified in terms of section 5 of the New Zealand Bill of Rights Act 1990. Officials from the Ministry of Social Development will continue to work with the Ministry of Justice to see if there is any justification for extending the proposal to include Samoa, Tonga, and Fiji, once Fiji has made sufficient progress towards a democratic government.

Implementation and review

At this stage there are no review or implementation plans.

Consultation

Consultation has been undertaken with the following government agencies: Treasury, Ministry of Foreign Affairs and Trade, Veterans Affairs New Zealand, Office for Senior Citizens, Department of Labour, Women's Affairs, Ministry of Pacific Island Affairs, Inland Revenue Department, Office of the Retirement Commissioner, Department of the Prime Minister and Cabinet. Consultation was in the form of inter-departmental working groups and circulation of draft papers.

No consultation was undertaken with the public. The Ministry of Social Development receives a large amount of correspondence from

the public on the issues and therefore it was considered that public feelings on the issues are already well known.

*Minister of Finance's statement on the
consultation process followed in the
formulation of amendments to the New
Zealand Superannuation and Retirement
Income Act 2001 in the Social Assistance
(Payment of New Zealand Superannuation
and Veteran's Pensions Overseas) Bill*

Introduction

Section 73 of the New Zealand Superannuation and Retirement Income Act 2001 (the **Act**) provides that the Minister must, on the introduction into the House of Representatives of a government Bill that proposes an amendment to the Act, bring to the attention of the House the consultation process that was followed in the formulation of the proposed amendment. The term "Minister", for the purposes of section 73, is defined in section 5 of the Act as the Minister of Finance. 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 of the Act)
- (b) whether consultation has taken place with the Guardians (to the extent that the amendment relates to Part 2 of the Act)
- (c) the results of the consultation.

The Social Assistance (Payment of New Zealand Superannuation and Veteran's Pensions Overseas) Bill (the **Bill**) proposes amendments to Part 1 of the Act. It does not propose to amend Part 2, Part 3, Part 4 or any of the schedules of the Act. The Bill also proposes corresponding amendments to the War Pensions Act 1954.

Consultation process

On 13 August 2008, the Minister for Social Development and Employment wrote to the parties that are in agreement with the Part proposed to be amended (as listed in Schedule 4 of the Act (the Green Party, the National Party, the Progressive Party and United Future

New Zealand). The letter advised them of the government's intention to introduce an omnibus Bill to make amendments that will:

- Allow payment of New Zealand Superannuation and Veteran's Pension to be made to superannuitants and veteran's pensioners who wish to reside in or travel to, in, or between any country or countries for longer than 26 weeks;
- Allow payment of New Zealand Superannuation and Veteran's Pension to be paid based on a formula of 1/540th for every month of residence in New Zealand between the ages of 20 and 65; and
- resolve some existing inconsistencies in the New Zealand Superannuation and Retirement Income Act 2001 and the War Pensions Act 1954.

No consultation was undertaken with the Guardians of New Zealand Superannuation as the Bill does not propose to amend Part 2 of the Act.

Consultation was also undertaken with the New Zealand First Party as part of the Confidence and Supply Agreement.

Results of the consultation

The Green Party, the National Party, New Zealand First, the Progressive Party and United Future New Zealand have indicated that they will support the Bill.

The Ministry of Social Development, as the government department responsible for administration of Part 1 of the Act, the Ministry of Veteran's Affairs, and the Treasury also support the proposed amendments to the Act.

Hon Dr Michael Cullen
Minister of Finance

Hon Ruth Dyson

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and Veteran's Pension Overseas)
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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**. 5

2 Commencement
 This Act comes into force on 2 November 2009.

Part 1
Amendments to New Zealand
Superannuation and Retirement 10
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 15
 Section 21 is amended by omitting “29” and substituting “35”.

5 First 26 weeks of certain temporary absences 20
 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— 5
- “(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— 10
 - “(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. 15
- “(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— 20
 - “(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 25
 - “(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— 30
 - “(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— 35
- “(a) he or she—
 - “(i) interrupts his or her overseas travel, and travels to and stays briefly in New Zealand, in order to

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- 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. 5
- “(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,— 10
- “(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. 15
- “(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. 25
- “(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. 30
- “(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 35
- “(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**. 5
- “**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)— 10
- “(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 15
- “(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 20
- “(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. 25
- (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.” 30

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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.

Part 2

Amendments to War Pensions Act 1954

11 Principal Act amended

This Part amends the War Pensions Act 1954.

12 Effect of absence from New Zealand on veteran's pension

Section 74E is amended by omitting “74M or section”.

13 First 26 weeks of certain temporary absences

Section 74F is amended by inserting “(other than a person who is receiving a veteran’s pension overseas under section 74J)”.

14 New sections 74J and 74JA substituted

Section 74J is repealed and the following sections are substituted: 5

“74J Payment overseas of veteran’s pension

“(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 10

“(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 15

“(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 a veteran’s pension at the appropriate rate stated in **subsection (4)**— 20

“(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— 25

“(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 a veteran’s pension otherwise than under this section; and 30

“(iv) begins to receive New Zealand superannuation under the New Zealand Superannuation and Retirement Income Act 2001; 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— 35

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- “(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— 5
- “(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 10
 - “(ii) resumes his or her overseas travel; and
 - “(b) he or she does not while in New Zealand—
 - “(i) begin to receive a veteran's pension otherwise than under this section; or 15
 - “(ii) begin to receive New Zealand superannuation under the New Zealand Superannuation and Retirement Income Act 2001.
- “(4) The rates referred to in **subsection (2)** are,— 20
- “(a) if he or she has not made and is not entitled to make an election under section 74(2),— 20
 - “(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 veteran's pension (excluding any living alone payment, and after abatement under section 74D if that section applies to him or her) that he or she would be entitled to receive if he or she resided in New Zealand: 25 30
 - “(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 veteran's pension (excluding any living alone payment, and after abatement under section 74D if that section applies to him or her) that he or she would be entitled to receive if he or she and his or her spouse or partner resided in New Zealand. 35

- “(b) if he or she has made or is entitled to make an election under section 74(2), a rate that is a proportion (calculated under **subsection (5)**) of the gross rate of veteran’s pension payable under clause 1(c) of Schedule 11 (after abatement under section 74D if that section applies to him or her) . 5
- “(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 10
- “(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 15
- “(d) dividing by 540 the total calculated under **paragraph (c)**.
- “(6) This section is subject to **section 74JA**.
- “**74JA Entitlement** 20
- A person is not entitled to be paid a veteran’s pension under section 74J unless he or she—
- “(a) has made an application for the payment of a veteran’s pension under that section stating either (as the case may be)— 25
- “(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 30
- “(b) is ordinarily resident and present in New Zealand on the day he or she makes the application, and—
- “(i) is entitled to receive a veteran’s pension on that day; or
- “(ii) will become entitled to receive a veteran’s pension before he or she leaves New Zealand.” 35

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15 Relationship with other benefit provisions

- (1) Section 74M(1) and (2) are repealed.
- (2) Section 74M(3) is amended by inserting “living alone payment,” after “receive any”.
- (3) Section 74M(4) is amended by omitting “80” and substituting “80BD”. 5
- (4) Section 74M(5) is amended by inserting “69G to 69I, 70, 74(1)(a),” before “75”.

16 Social Security Act 1964 consequentially amended

Section 70 of the Social Security Act 1964 is consequentially amended by inserting the following subsection after **subsection (1A)** (as inserted by **section 10 of this Act**): 10

“(1B) Subsection (1) does not apply to a veteran’s pension payable overseas under section 74J of the War Pensions Act 1954.”

17 Saving 15

- (1) This subsection applies to a person who, immediately before the commencement of **section 14**, was entitled to be paid a veteran’s pension under section 74J of the principal Act, between—
 - (a) that commencement; and 20
 - (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 a veteran’s pension at the higher of the following rates: 25
 - (a) the rate at which he or she was entitled to be paid immediately before the commencement of **section 14**;
 - (b) the rate at which he or she became entitled to be paid on that commencement.