

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

Government Bill

As reported from the Social Services
Committee

Commentary

Recommendation

The Social Services Committee has examined the Social Assistance (Payment of New Zealand Superannuation and Veteran's Pension Overseas) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill amends 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 while retaining their entitlement to New Zealand superannuation or a veteran's pension.

This commentary discusses the main issues we considered and explains the significant amendments we recommend to the bill. It does not address minor and technical amendments.

Payment overseas of New Zealand superannuation and veteran's pension

We recommend that clause 6 and clause 14 (which insert new section 26 and 26AA of the New Zealand Superannuation and Retirement Income Act 2001, and new section 74J and 74JAA of the War Pensions Act 1954) be amended. The amendments should specify that periods where a person is absent from New Zealand but is counted as present for the purpose of fulfilling the residential qualifications for New Zealand superannuation will be counted as periods when a person is residing in New Zealand for the purpose of the proportional payment formula.

This change would ensure that people who were outside New Zealand for special medical treatment or medical training, serving on a New Zealand-registered ship, serving in the armed forces, undertaking Volunteer Service Abroad work or missionary work, and people who are employed in New Zealand embassies overseas would have their time outside New Zealand counted as residence for the purposes of the proportional formula. To qualify, the person concerned would need to be ordinarily resident in New Zealand during the period of absence. This would prevent a person who had lost their attachment to New Zealand from taking advantage of this provision.

We are aware that these amendments would not apply to a number of people who are engaged in charitable work overseas but not through Volunteer Service Abroad or on behalf of a religious body. However, a wider provision including other charitable works would be inconsistent with other provisions in the Acts, and we therefore do not recommend such a change. Nevertheless, should the opportunity arise it may be valuable for the Government to consider this issue further.

Taxation of New Zealand superannuation and veteran's pension payments for persons travelling overseas

The Income Tax Act 2007 does not differentiate between the tax treatment of people residing overseas and those who are travelling. As a result, payments to both overseas residents and those who are travelling would be exempt from New Zealand tax under the general

portability provisions in the bill. However, while overseas residents are subject to taxation in their country of residence, New Zealanders travelling overseas would not be subject to any tax liability. For this reason, we consider the Income Tax Act 2007 should be amended to remove the tax exemption for people who are travelling, making them subject to New Zealand income tax. Such an amendment, however, would require a substantive amendment to the Income Tax Act 2007, which is not amended substantively by the bill as originally introduced. Therefore, we are prevented by Standing Order 299 from recommending such an amendment in this report. However, the Government may wish to consider this issue in depth if a review of the relevant legislation is undertaken.

Applying for general portability

We discussed the possibility of allowing people to apply for New Zealand superannuation while resident overseas. However, allowing applications from overseas would change the parameters and costs of the bill's proposals significantly. We note that people currently resident in countries that have social security agreements with New Zealand can apply for pensions and benefits, as these countries can interview applicants, verify their identities, and help establish the pertinent periods of New Zealand residence. Such assistance would not be available in non-agreement countries. For these reasons, we recommend no amendment to the bill.

Non-qualifying spouses or partners

We discussed the possibility of amending the bill to allow non-qualifying spouses or partners who are travelling with their qualifying spouses or partners to receive a proportional payment when they turn 65. This would be possible if they were allowed to apply before they left New Zealand. The non-qualifying spouse or partner could then receive a proportional rate of New Zealand superannuation in his or her own right once he or she turned 65, if necessary before returning to New Zealand.

However, we were advised that this proposal might breach the right to freedom from discrimination under section 19 of the New Zealand Bill of Rights Act 1990, because it would provide for different treatment of individuals on the basis of marital status. As a result, it

could disadvantage all other travellers who are aged under 65 when they leave New Zealand as these people would need to return to New Zealand to make an application. We therefore recommend no change in this area.

Savings provisions for current recipients paid under the general portability provisions

Submitters raised concerns that current recipients of New Zealand superannuation and veteran's pensions paid overseas under the general portability provisions would be disadvantaged by the proposed savings provisions.

We were assured that the savings provisions in clauses 10 and 17 are intended to ensure that no superannuitants or veterans would receive less under the proposals of the bill than they are receiving currently. We consider that a number of people would in fact receive more, because of the removal of direct deductions for overseas pensions. For these reasons we recommend no change in this area.

Other issues

We received many submissions that did not address the subject matter of the bill, but focused on the direct deduction policy in section 70 of the Social Security Act 1964. While we acknowledge that this matter is significant and affects many people receiving superannuation in New Zealand, it is not within the scope of this bill. However, the Government may wish to consider this issue in depth if a review of the relevant legislation is undertaken.

Appendix

Committee process

The Social Assistance (Payment of New Zealand Superannuation and Veteran's Pension Overseas) Amendment Bill was referred to us on 31 March 2009. The closing date for submissions was 29 May 2009. We received and considered 99 submissions from interested groups and individuals. We heard 13 submissions.

We received advice from the Ministry of Social Development.

Committee membership

Katrina Shanks (Chairperson from 24 June 2009)

Jo Goodhew (until 24 June 2009) (Chairperson until 24 June 2009)

Chester Borrows

Sue Bradford

Hon Annette King

Tim Macindoe

Todd McClay

Hekia Parata (from 24 June 2009)

Dr Rajen Prasad

Su'a William Sio

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Paula Bennett

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Part 2

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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**.
- 2 Commencement** 5
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** 10
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

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

6 New sections 26 and to 26A substituted

5

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~~ 10

“(a) applies to a country if it is not a country with whose government New Zealand has a reciprocal agreement or convention, in force under section 19 of the Social Welfare (Transitional Provisions) Act 1990, that relates to New Zealand superannuation; and 15

“(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, but not intending to reside for a period longer than 52 weeks in a specified Pacific country (within the meaning of section 30(1)); or 20

“(ii) intending to travel for a period longer than 26 weeks, but not intending to reside in any particular country other than New Zealand. 25

“(2) A person to whom **subsection (1) applies is entitled to be paid New Zealand superannuation at the appropriate rate ~~stated~~ specified in **subsection (4)**—** 30

“(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, but not intending to reside for a period longer than 52 weeks in a specified Pacific country (within the meaning of section 30(1)), 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) begins to reside in New Zealand again; or
- “(iii) begins to receive New Zealand superannuation otherwise than under this section; and 5
- “(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 other than New Zealand, until he or she—
 - “(i) begins to reside in a country that is not a country to which **subsection (1)** applies; or 10
 - “(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— 15
 - “(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 20
 - “(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,— 25
 - “(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; 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 New Zealand superannuation (excluding any living alone payment) 35

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.

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

“(a) for a single person, a rate that is a proportion (calculated under **section 26AA(1)**) of the amount stated in clause 1(b) of Schedule 1:

“(b) for 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 26AA(1)**) of the amount stated in clause 1(c) of that schedule.

“(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**.

“**26AA Calculation of amount of New Zealand superannuation payable overseas** 30

“(1) The proportion referred to in **section 26(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

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- “(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)**. 5
- “(2) In the determination for the purposes of **subsection (1)** of the periods during which a person has resided in New Zealand, no account is to be taken of—
- “(a) any period of absence from New Zealand of a kind described in section 9(1); or 10
- “(b) any period of absence from New Zealand—
- “(i) while the person was engaged in missionary work as a member of, or on behalf of, any religious body; or 15
- “(ii) while the person’s spouse or partner was engaged in missionary work as a member of, or on behalf of, any religious body, and the person was with his or her spouse or partner; or
- “(c) any period of absence from New Zealand while the person was (by virtue of section 79(1)(a) of the Social Security Act 1964) deemed to have been resident in New Zealand; or 20
- “(d) any period of absence from New Zealand while, as the spouse of a person deemed by section 79(1)(a) of the Social Security Act 1964 to have been resident in New Zealand, the person was also (by virtue of section 79(1)(b) of the Social Security Act 1964) deemed to have been resident in New Zealand. 25
- “(3) **Subsection (2)** applies to a period of absence only if the chief executive is satisfied that during it the person concerned remained ordinarily resident in New Zealand. 30
- “(4) **Subsection (2)(b)** applies to a period of absence only if the chief executive is satisfied that the person concerned either was born in New Zealand or— 35
- “(a) in the case of a person to whom **subsection (2)(b)(i)** applies, was ordinarily resident in New Zealand immediately before leaving New Zealand to engage in the missionary work concerned:

“(b) in the case of a person to whom **subsection (2)(b)(ii)** applies, was ordinarily resident in New Zealand immediately before leaving New Zealand to accompany or join his or her spouse or partner.

“26A Entitlement

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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)—

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“(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

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

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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”.

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(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, 77, and 82(7)~~) applies to New Zealand superannuation being paid under section 26.”

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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”.

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Part 1 cl 9

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.” 5

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— 10

(a) that commencement; and

(b) the time he or she ceases to be entitled to be paid New Zealand superannuation under that section. 15

(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**: 20

(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 25
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 30
Section 74F is amended by inserting “(other than a person who is receiving a veteran's pension overseas under section 74J)” after “a person”.

14 New sections 74J and to 74JA substituted

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

“74J Payment overseas of veteran's pension

- “(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~~
- “(a) applies to a country if it is not a country with whose government New Zealand has a reciprocal agreement or convention, in force under section 19 of the Social Welfare (Transitional Provisions) Act 1990, that relates to the veteran's pension; 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, but not intending to reside for a period longer than 52 weeks in a specified Pacific country (within the meaning of section 74N(1)); or~~ 15
- “(ii) intending to travel for a period longer than 26 weeks, but not intending to reside in any particular country other than New Zealand. 20
- “(2) A person to whom **subsection (1)** applies is entitled to be paid a veteran's pension at the appropriate rate ~~stated~~ specified in **subsection (4)**— 25
- “(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, but not intending to reside for a period longer than 52 weeks in a specified Pacific country (within the meaning of section 74N(1)), until he or she— 30
- “~~(i) begins to reside in a country that is not a country to which **subsection (1)** applies; or~~ 35
- “(ii) begins to reside in New Zealand again; or
- “(iii) begins to receive a veteran's pension otherwise than under this section; and

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Part 2 cl 14

- “(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 other than New Zealand, 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—
- “(i) begin to receive a veteran's pension otherwise than under this section; or
- “(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,—~~
- “(a) ~~if he or she has not made and is not entitled to make an election under section 74(2),—~~
- “(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;~~
- “(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: 5
- “(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): 10
- “(4) The rates referred to in **subsection (2)** are,—
- “(a) for a single person, a rate that is a proportion (calculated under **section 74JAA(1)**) of the amount stated in clause 1(b) of Schedule 11: 15
- “(b) for a person who is married or in a civil union or in a de facto relationship, a rate that is a proportion (calculated under **section 74JAA(1)**) of the amount stated in clause 1(c) of that schedule. 20
- “(4A) If section 74D applies to a person for whom an amount is specified by **subsection (4)**, the calculation under **section 74JAA(1)** of the proportion of it he or she is entitled to be paid must be made in respect of that amount after it has been abated under that section. 25
- “(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 30
- “(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 35
- “(d) dividing by 540 the total calculated under **paragraph (c)**;
- “(6) This section is subject to **section 74JA**.

**“74JAA Calculation of amount of veteran’s pension payable
overseas**

“(1) The proportion referred to in **sections 74J(4) and (4A) 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 ap-
plicable) additional days; and** 5

**“(b) adding the number of additional days (if any), dividing
the total by 30, and disregarding any remainder; and** 10

**“(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)**.**

“(2) In the determination for the purposes of **subsection (1) of the
periods during which a person has resided in New Zealand, no
account is to be taken of—** 15

**“(a) any period of absence from New Zealand of a kind de-
scribed in section 9(1) of the New Zealand Superannua-
tion and Retirement Income Act 2001; or** 20

“(b) any period of absence from New Zealand—

**“(i) while the person was engaged in missionary
work (within the meaning of section 10(4) of the
New Zealand Superannuation and Retirement
Income Act 2001) as a member of, or on behalf** 25
of, any religious body; or

**“(ii) while the person’s spouse or partner was engaged
in missionary work (within the meaning of sec-
tion 10(4) of the New Zealand Superannuation
and Retirement Income Act 2001) as a member** 30
**of, or on behalf of, any religious body, and the
person was with his or her spouse or partner; or**

**“(c) any period of absence from New Zealand while the per-
son was (by virtue of section 79(1)(a) of the Social Se-
curity Act 1964) deemed to have been resident in New
Zealand; or** 35

**“(d) any period of absence from New Zealand while, as
the spouse of a person deemed by section 79(1)(a) of
the Social Security Act 1964 to have been resident in**

New Zealand, the person was also (by virtue of section 79(1)(b) of the Social Security Act 1964) deemed to have been resident in New Zealand.

“(3) **Subsection (2)** applies to a period of absence only if the Secretary is satisfied that during it the person concerned remained ordinarily resident in New Zealand. 5

“(4) **Subsection (2)(b)** applies to a period of absence only if the Secretary is satisfied that the person concerned either was born in New Zealand or—

“(a) in the case of a person to whom **subsection (2)(b)(i)** applies, was ordinarily resident in New Zealand immediately before leaving New Zealand to engage in the missionary work concerned; 10

“(b) in the case of a person to whom **subsection (2)(b)(ii)** applies, was ordinarily resident in New Zealand immediately before leaving New Zealand to accompany or join his or her spouse or partner. 15

“74JA Entitlement

A person is not entitled to be paid a veteran's pension under section 74J unless he or she— 20

“(a) has made an application for the payment of a veteran's pension 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 25

“(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— 30

“(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.”

15 Relationship with other benefit provisions 35

(1) Section 74M(1) and (2) are repealed.

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Part 2 cl 16

- (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”.
- (4) ~~Section 74M(5) is amended by inserting “69G to 69I, 70, 74(1)(a),” before “75”.~~ 5
- (4) Section 74M(5) is amended by omitting “75” and substituting “69G to 69I, 70, 74(1)(a), 75, 76, 77, and 82(7)”.

16 Social Security Act 1964 consequentially amended

Section 70 of the Social Security Act 1964 is consequentially 10
amended by inserting the following subsection after **subsection (1A)** (as inserted by **section 10 9 of this Act**):

- “(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~~ a veteran’s pension 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 25
rates:

- (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. 30

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Legislative history

22 September 2008
31 March 2009

Introduction (Bill 301-1)
First reading and referral to Social Services
Committee
