

# **Social Assistance (Residency Qualification) Legislation Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill is an omnibus Bill introduced under Standing Order 263(a). That Standing Order states that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

Eligible New Zealanders can currently receive their New Zealand superannuation and veteran's pension in the Cook Islands, Niue, and Tokelau under provisions of the New Zealand Superannuation and Retirement Income Act 2001 and Veterans' Support Act 2014 that allow people to be paid that payment in a specified Pacific country. An amendment to these provisions, introduced in 2015, allows people in the Cook Islands, Niue, or Tokelau to apply for New Zealand superannuation or veteran's pension from the islands rather than needing to be ordinarily resident in New Zealand at the time of their application, provided they are 65 or over, and met the other residence requirements (10 years in New Zealand since age 20, and also 5 years since age 50) before they left New Zealand to live in the Cook Islands, Niue, or Tokelau.

The purpose of this Bill is to alter the residential qualifications for New Zealand superannuation and the veteran's pension to allow the requirement that a person also have 5 years' residence and presence in New Zealand over the age of 50 years to be met instead with residence and presence in New Zealand, the Cook Islands, Niue, or Tokelau, or any combination of those countries and that territory.

The changes take into account New Zealand's close constitutional relationships with the Cook Islands, Niue, and Tokelau. As people born in the Cook Islands, Niue, and Tokelau are New Zealand citizens, the Bill reflects the constitutional responsibility that New Zealand has for its citizens living in those Pacific countries and that territory, and the relationship those citizens have with New Zealand.

**Minister of Finance’s statement on consultation process followed in formulating amendment to New Zealand Superannuation and Retirement Income Act 2001 included in this 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 followed in formulating 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. The statement must include (without limitation)—

- 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):
- whether consultation has taken place with the Guardians of New Zealand Superannuation (to the extent that the amendment relates to Part 2 of the Act):
- the results of the consultation.

This Bill proposes amendments to Part 1 of the Act. The Bill also proposes amendments to the Veterans’ Support Act 2014.

**Consultation process**

The Green Party and the New Zealand National Party have been consulted and agree with the proposed changes. Whilst the New Zealand First Party are not currently listed in Schedule 4 of the Act, they have also been consulted and agree with the proposed changes.

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

The proposed amendments are clearly beneficial for people who wish to move to the Cook Islands, Niue or Tokelau. The amendments in the Bill have been the subject of a longstanding request from the leaders of the Cook Islands, Niue and Tokelau, who view greater flexibility around pension portability as a driver for increased economic activity.

The Ministry of Foreign Affairs and Trade, Veterans’ Affairs New Zealand and the Ministry for Pacific Peoples support the proposed amendments to the Act.

**Departmental disclosure statement**

The Ministry of Social Development is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=46>

### Regulatory impact assessment

The Ministry of Social Development produced a regulatory impact assessment on 31 January 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statement-improving-superannuation-portability-to-the-cook-islands-niue-and-tokelau.html>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Act will come into force on a date to be appointed by Order in Council or 12 months after the Royal assent (whichever is the later). The reason for deferred commencement is to allow for implementation of the changes made under the Bill and for the funding of these changes to be formally authorised.

## 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 (the **principal Act**).

*Clause 4* inserts *new section 5B* to give effect to *new Schedule 1AA* of the principal Act, which contains transitional, savings, and related provisions.

*Clause 5* amends section 8(c), which currently sets out, as 1 of 3 residency qualification requirements for New Zealand superannuation, that a person must also have been resident and present in New Zealand for a period or periods aggregating not less than 5 years since reaching the age of 50. The amendment expands the locations in which this requirement can be met to include New Zealand, the Cook Islands, Niue, or Tokelau, or any combination of them.

*Clause 6* amends section 31(4), which was inserted by the Social Assistance (Portability to Cook Islands, Niue, and Tokelau) Act 2015. Section 31(4) currently sets out the criteria for certain eligible people to apply for New Zealand superannuation from the Cook Islands, Niue, or Tokelau. The amendment removes the requirement that those people must meet the residency qualification requirements under section 8(b) and (c) before leaving New Zealand to reside in the relevant country or territory. This change reflects the expanded residency qualification requirement under section 8(c) (as amended by *clause 5*) because people applying for New Zealand superannuation

from the Cook Islands, Niue, or Tokelau under section 31(4) can complete the residency qualification requirements in section 8(c) after leaving New Zealand.

*Clause 7* inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions. One of those provisions states that other transitional, savings, and related provisions, relating to the principal Act as enacted and as amended prior to the amendments in this Bill, are found in the body of the principal Act.

## Part 2

### Amendments to Veterans' Support Act 2014

*Clause 8* provides that *Part 2* amends the Veterans' Support Act 2014 (the **principal Act**).

*Clause 9* inserts *new section 4A*, which gives effect to Schedule 1 of the principal Act relating to transitional, savings, and related provisions. This amendment is made in conjunction with the repeal of sections 6 and 277 (by *clauses 10 and 13* respectively), and the replacement of the heading to Schedule 1 (by *clause 14*), in order to rationalise the transitional, savings, and related provisions in the principal Act.

*Clause 10* repeals section 6 as *new section 4A* will replace section 6 in giving effect to Schedule 1 of the principal Act relating to transitional, savings, and related provisions.

*Clause 11* amends section 191(4), which was inserted by the Social Assistance (Portability to Cook Islands, Niue, and Tokelau) Act 2015. Section 191(4) sets out the criteria for certain eligible people to apply for a veteran's pension from the Cook Islands, Niue, or Tokelau. The amendment removes the requirement that those people must meet the residency qualification requirements under section 8(b) and (c) of the New Zealand Superannuation and Retirement Income Act 2001 (the **2001 Act**) before leaving New Zealand to reside in the relevant country or territory. This change reflects the expanded residency qualification requirement under section 8(c) of the 2001 Act (as amended by *clause 5*) because people applying for New Zealand superannuation from the Cook Islands, Niue, or Tokelau under section 191(4) can complete the residency qualification requirement under section 8(c) of the 2001 Act after leaving New Zealand. Section 8(c) of the 2001 Act is relevant to the eligibility requirements for a veteran's pension by virtue of section 161 of the principal Act, under which persons must be eligible to receive New Zealand superannuation in order to be entitled to a veteran's pension.

*Clause 12* amends section 265(1)(40) to update the reference to the heading of Schedule 1, which is amended under *clause 14*.

*Clause 13* repeals section 277 because *new section 4A* will replace section 277 in giving effect to Schedule 1 of the principal Act, which contains transitional, savings, and related provisions.

*Clause 14* amends Schedule 1, which contains transitional, savings, and related provisions. The amendments change the heading of Schedule 1 and make technical changes that relate to amendments in this Bill to rationalise the transitional, savings,

and related provisions in the principal Act. This clause also inserts *new Part 2 of Schedule 1*, which contains transitional provisions relating to this Bill.



*Hon Carmel Sepuloni*

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**Part 1**  
**Provisions relating to this Act as enacted**  
*Savings relating to this Act as enacted*  
*Transitional provisions relating to this Act as enacted*

	<b>Schedule 1</b>	5
	<b>New Schedule 1AA of New Zealand Superannuation and Retirement Income Act 2001 inserted</b>	
	<b>Schedule 2</b>	6
	<b>New Part 2 of Schedule 1 of Veterans' Support Act 2014 inserted</b>	

**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Social Assistance (Residency Qualification) Legislation Act **2018**.
- 2 Commencement** 5
- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council.
- (2) However, if this Act is not in force by the day that is 12 months after the date on which it receives the Royal assent, it comes into force on that day.

**Part 1** 10  
**Amendments to New Zealand Superannuation and Retirement Income Act 2001**

- 3 Principal Act**  
This **Part** amends the New Zealand Superannuation and Retirement Income Act 2001 (the **principal Act**). 15
- 4 New section 5B inserted (Transitional, savings, and related provisions)**  
After section 5A, insert:
- 5B Transitional, savings, and related provisions**  
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms. 20

- 5 Section 8 amended (Residential qualification for New Zealand superannuation)**
- Replace section 8(c) with:
- (c) has also been both resident and present for a period or periods aggregating not less than 5 years since attaining the age of 50 years in any 1 or more of—
- (i) New Zealand:
  - (ii) the Cook Islands:
  - (iii) Niue:
  - (iv) Tokelau.
- 6 Section 31 amended (Entitlement to be paid New Zealand superannuation in specified Pacific country)**
- In section 31(4)(c), replace “, before he or she left New Zealand to reside in one of the countries or in the territory specified in paragraph (b),” with “has”.
- 7 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.
- Part 2**  
**Amendments to Veterans’ Support Act 2014**
- 8 Principal Act**
- This **Part** amends the Veterans’ Support Act 2014 (the **principal Act**).
- 9 New section 4A inserted (Transitional, savings, and related provisions)**
- After section 4, insert:
- 4A Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.
- 10 Section 6 repealed (Application of provisions of this Act)**
- Repeal section 6.
- 11 Section 191 amended (Entitlement to be paid veteran’s pension in specified Pacific country)**
- In section 191(4)(c), replace “, before he or she left New Zealand to reside in one of the countries or in the territory specified in paragraph (b),” with “has”.

**12 Section 265 amended (Regulations)**

In section 265(1)(40), replace “application, savings, and transitional provisions” with “transitional, savings, and related provisions”.

**13 Section 277 repealed (Application, savings, and transitional provisions)**

Repeal section 277.

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**14 Schedule 1 amended**

(1) In the Schedule 1 heading, replace “**Application, savings, and transitional provisions**” with “**Transitional, savings, and related provisions**”.

(2) In the Schedule 1 heading, replace “6” with “**4A**”.

(3) In the Schedule 1 heading, delete “, 277”.

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(4) In Schedule 1, replace the Part 1 heading with:

**Part 1**  
**Provisions relating to this Act as enacted**

*Savings relating to this Act as enacted*

(5) In Schedule 1, replace the Part 2 heading with:

15

*Transitional provisions relating to this Act as enacted*

(6) In Schedule 1, after clause 15, insert the **Part 2** set out in **Schedule 2** of this Act.

**Schedule 1**  
**New Schedule 1AA of New Zealand Superannuation and Retirement  
Income Act 2001 inserted**

**s 7**

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

**s 5B**

**Part 1**  
**Transitional, savings, and related provisions relating to Act as  
enacted or as amended prior to 2018**

10

**1 Transitional, savings, and related provisions in body of Act**

In addition to the transitional, savings, and related provisions set out in this Schedule, other transitional, savings, and related provisions apply as set out in the body of this Act.

**Part 2**  
**Provisions relating to Social Assistance (Residency Qualification)  
Legislation Act 2018**

15

**2 Interpretation**

In this Part, **2018 Act** means the Social Assistance (Residency Qualification) Legislation Act **2018**.

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**3 Application of section 8(c)**

- (1) This clause applies to a person who, on or after the date on which the **2018 Act** comes into force, applies for New Zealand superannuation.
- (2) In determining whether the person has met the residential qualification in **section 8(c)**, the person's residence and presence in any of the countries or the territory before the **2018 Act** came into force must be taken into account.

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## Schedule 2

## New Part 2 of Schedule 1 of Veterans' Support Act 2014 inserted

s 14(6)

<b>Part 2</b>		
<b>Provisions relating to Social Assistance (Residency Qualification) Legislation Act 2018</b>		5
<b>16</b>	<b>Interpretation</b>	
	In this Part,—	
	<b>2001 Act</b> means the New Zealand Superannuation and Retirement Income Act 2001	10
	<b>2018 Act</b> means the Social Assistance (Residency Qualification) Legislation Act <b>2018</b>	
<b>17</b>	<b>Application of section 8(c) of the New Zealand Superannuation and Retirement Income Act 2001</b>	
(1)	This clause applies to a person who, on or after the date on which the <b>2018 Act</b> comes into force, applies for a veteran's pension.	15
(2)	In determining for the purposes of section 161(1)(b) or (2)(a), 162(1)(b) or (2)(a), or 163(1)(a) or (2)(a) of this Act whether the person is eligible to receive New Zealand superannuation and, specifically whether he or she meets the residential qualification under <b>section 8(c)</b> of the 2001 Act, the person's residence and presence in any of the countries or the territory before the <b>2018 Act</b> came into force must be taken into account.	20
(3)	In determining for the purposes of section 163(1)(c) of this Act whether a veteran, had he or she not died, would have been eligible to receive New Zealand superannuation and, specifically whether the veteran would have met the residential qualification under <b>section 8(c)</b> of the 2001 Act, the veteran's residence and presence in any of the countries or the territory before the <b>2018 Act</b> came into force must be taken into account.	25
(4)	In determining for the purposes of section 191(4)(c) whether a person has met the residential qualification for New Zealand superannuation under <b>section 8(c)</b> of the 2001 Act, the person's residence and presence in any of the countries or the territory before the <b>2018 Act</b> came into force must be taken into account.	30