

Retirement Policy and Research Centre

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To: Social Services Committee

Committee Secretariat: select.committees@parliament.govt.nz

Submission: Social Security Legislation Rewrite Bill

The Retirement Policy and Research Centre thanks the Social Services Committee for the opportunity to submit on this important Bill.

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We would appreciate the opportunity to speak to this submission.

Background:

The RPRC, with the Human Rights Commission, has produced a number of publications backgrounding the history, context, issues and inequities in current policy and legislation surrounding the treatment of overseas pensions.¹ Current interpretation and practise of legislation imposes injustice and inequities and consequent hardship on many older returning or new New Zealand citizens who, during their employment overseas, saved carefully and consistently, only to find that the New Zealand Government would capture those private and employer-contributed savings under the framing of the section 70 of the current legislation. Under the current legislation, for immigrants and returning citizens, private retirement savings are too often lumped in with public provision and the New Zealand government captures those private savings under section 70 of the 19964 Social Security Act. The reality of consequent hardship, despite their considered contribution to their retirement income, are both heartbreaking and shameful.

The Rewrite Bill does nothing to address the inequities associated with private savings during overseas employment for retirement.

Overview:

New Zealand's first Social Security Act in 1938 was founded on the belief that the community is responsible for ensuring that people are not overwhelmed by circumstances against which they cannot protect themselves, and every citizen has a

¹ See Background Papers at the end of this submission.

right to a reasonable standard of living. This cohesive and egalitarian approach is severely threatened by the Social Security Legislation Rewrite Bill. The New Zealand Parliament website (http://www.parliament.nz/en-nz/pb/sc/make-submission/51SCSS_SCF_00DBHOH_BILL68669_1/social-security-legislation-rewrite-bill) states: "This bill repeals and replaces the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990, provides an improved legislative structure, and reduces the level of detail in primary legislation to enhance clarity, coherency, and consistency."

The Retirement Policy and Research Centre (RPRC) is concerned that the Bill does both more and less than this statement claims: it introduces new policies, and it does not resolve existing inequities, particularly in relation to overseas age pensions. In particular, the Ministry of Social Development's reviews of New Zealand's pension system and its relationship to those of other countries in 2004, 2005, and 2008 produced, among other recommendations,² the following:

- remove foreign state pensions built up by voluntary contributions from the scope of section 70 of the Social Security Act; and
- discontinue the policy of deducting a person's overseas pension from their partner's NZS entitlement (the 'spousal deduction').

The focus of this submission is on these two recommendations regarding the inequitable treatment of some overseas-based age pensions, and the minimal requirements for access to New Zealand Superannuation.

Submission 1: Introduce clarity, consistency and transparency regarding equivalent or analogous 'state' pensions to be deducted from a qualifying person's New Zealand Superannuation (NZS) entitlement.

Rewrite Bill: Section 174 Benefit of person affected is reduced by amount of overseas pension (1) The rate of the benefit or benefits that would otherwise be payable under the NZ benefits legislation to a person affected by the receipt of an overseas pension must be reduced by the amount of the overseas pension as determined by MSD under regulations made under section 413.

Section 413 Regulations: factors affecting benefits: overseas pensions. (2) Regulations made under subsection (1)(g) may (without limitation) include provisions— (a) prescribing the categories of overseas pensioners with whom MSD may make the arrangements.

Discussion: the chief executive of the Ministry of Social Development (MSD) may apply section 70 of the Social Security Act 1964, the direct deduction policy (DDP), if a resident receives a 'state pension' from another country that is analogous to NZS. 'Analogous' is clarified as meaning:

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 ... (Social Security Act, 1964, section 70)

² Ministry of Social Development (2008). *Review of Treatment of Overseas Pensions and Payment of New Zealand Superannuation and Veteran's Pension Overseas: Paper Two proposals*. Wellington, Ministry of Social Development: 21.

Behind closed doors, and with no requirement that the basis of the decision be made public, the chief executive of the MSD determines which overseas pensions are analogous to NZS.

The purpose of section 70 is to eliminate the possibility of a person receiving two old age (or other) state-funded pensions, which would unreasonably advantage the immigrant over New Zealand residents who have spent their entire lives in New Zealand. However, in practice, application of the DDP means that an individual retiring in New Zealand with large voluntary or compulsory retirement savings in a state or state-administered fund in another country, paid out as a pension, may receive no NZS, despite having spent long periods of their working life in New Zealand. Further, the policy is applied inconsistently, for example, the Tier 2 Canada Pension Plan is included in the DDP, while the equivalent compulsory Chilean arrangement, delivered by private providers, is not.

Most other countries have more complex pensions systems than NZS, with blurred boundaries between social insurance and private, occupational pensions. For example, Australia's basic age pension is means-tested, and the additional mandatory, contributory employment-based pension, Superannuation Guarantee, which is not government administered, benefits significantly from state subsidies. These two-tier systems are equivalent to NZS plus KiwiSaver, suggesting that that is how they need to be treated under section 70.

While the 2010 amendments to the New Zealand Superannuation and Retirement Income Act largely addressed the potential inequities for pensioners who leave New Zealand after qualifying for NZS, they did not address the anomalies and inequities for those who retire in New Zealand with an entitlement to an overseas pension.

Whether the employer or the state has contributed to a person's retirement savings, it is possible to distinguish between state-funded pensions and privately funded retirement savings. The RPRC submits that the nature of the age pension payment, and the underlying philosophy of the benefit concerned, should be more material than the identity of the provider or administrator.

Submission 2: RPRC urges that the rewritten social security legislation removes the provision which allows for abatement of a person's NZS by reason of their partner's overseas pension.

Rewrite Bill: Section 158 (2) If this section applies,— (a) A and A's spouse or partner must take all reasonable steps to obtain the overseas pension to which either or both of them may be entitled or that may be granted to either or both of them; and (b) A must take all reasonable steps to obtain the overseas pension to which A's dependant may be entitled or that may be granted to A's dependant.

Section 162 Applicant for benefit must provide information as to rate of overseas Pension.

Section 173 Persons affected by receipt of overseas pension. A person (**P**) is a person affected by the receipt of an overseas pension if P is a person who is qualified to receive a benefit under the NZ benefits legislation and— (a) P is entitled to receive or receives a qualifying overseas pension in respect of any of the following persons: (i) P; (ii) P's spouse or partner; (iii) any dependant of P; or (b) P's spouse or partner is entitled to receive or receives a qualifying overseas pension; or (c) any of P's dependant or dependants is entitled to receive or receives a qualifying overseas pension.

Discussion: The so-called 'spousal deduction', or family status discrimination, a particularly egregious aspect of the current DDP practice, occurs when a spouse loses some or all of their NZS if the partner's overseas pension income exceeds their own NZS entitlement. As the Retirement Commissioner reported in the 2010 retirement incomes review:³

In some cases it can mean that a New Zealand citizen who has lived and worked all their lives in this country receives no NZS because their partner receives a public pension from overseas. This is an inconsistent piece of policy that goes against the principle of universal individual entitlement and needs to be changed.

Although NZS is described as a 'benefit' in section 3 of the Social Security Act, it is not a welfare benefit. NZS, a universal pension, is granted as an individual entitlement under separate legislation and without regard to the pensioner's own 'other income' or the spouse's income.

The Rewrite Legislation Bill does not resolve the inequity of the spousal deduction policy.

Submission 3: Qualifying conditions for access to NZS need to reflect prevailing international conditions.

Rewrite Bill: No changes to current qualifying requirements for NZS.

Discussion: The current requirements of the comparatively low age (65 years vs 67 years), short residency (10 years vs 45 years), zero contribution (vs pension amount related precisely to contributions), make New Zealand a very desirable retirement destination for ageing citizens of countries with less benign retirement conditions.

Most other countries have more complex pensions systems than NZS, with blurred boundaries between social insurance and private, occupational pensions, and often little distinction between private and public pensions. Most age pensions are contributory, with individual pension entitlements closely linked to individual contributions.

In contrast, NZS is universal, and qualifying for NZS on reaching age 65 is remarkably easy. An applicant who is a New Zealand resident is required to have lived for only 10 years in New Zealand, with five of those after the age of 50 (the 10(5) rule). Unlike most OECD countries, a contributory record is not required. The threshold is 'all or nothing': there is no pro-rata entitlement; however, those who do not meet the 10(5) rule may qualify under a reciprocal social security agreement, meaning their time spent in another country, for example, Australia, counts as time spent in New Zealand.

Reciprocal social security agreements between countries facilitate pension portability; ensure pension payment costs are distributed based on the location of the accumulated 'pension pot'; eliminate residence and citizenship barriers to access to social security; and ensure that individuals who have divided their working lives between two countries receive appropriate coverage when they retire in their country of choice. However, the inequitable application of the DDP prevents the possibility of New Zealand concluding reciprocal social security agreements with some countries, including Austria, Germany, Switzerland, Sweden and the United States.

New Zealand's bilateral social security agreements with Australia, Canada, Denmark, Greece, Ireland, Jersey and Guernsey, the Netherlands and the UK, allow people to use their residency in New Zealand to qualify for a state pension in the agreement country or

³ Retirement Commission (2010) 2010 *Review of Retirement Income Policy*, Wellington: Retirement Commission, p. 79.

to receive up to 100% of NZS. In the 1980s, general portability provisions were introduced that allowed superannuitants to take 50% of their gross NZS with them. The amendments to the New Zealand Superannuation and Retirement Income Act (NZSRI Act) 2010 then extended 100% (gross) NZS portability on a pro rata basis to non-agreement countries.

A further critical point, not addressed in this submission but recognised in the Background Paper, is that in addition to universal NZS, New Zealand has a publicly funded health care system. As migration patterns globally increase and diversify, the problems, inequities and fiscal risks identified in this submission will continue to escalate.

Most anomalous and distressing is the fact that, if the spirit and purpose of the existing legislation was applied, none of the current injustices and inequities would occur.

Retirement Policy and Research Centre and Human Rights Commission Background Papers:

- [2014 Forum Proceedings: Overseas pensions: a fairer future](#)
- [Pension Briefing 2014-3 New Zealand's treatment of pensioners whose spouses have overseas state pensions](#)
- [2013 RPRC Forum Proceedings: Overseas pensions: Justice delayed?](#)
- [New Zealand's overseas pensions policy - Enduring anomalies and inequalities](#) M Claire Dale and Susan St John. Policy Quarterly, Vol 8, Issue 2, May 2012, pp. 54-63. (2012)
- [Working Paper 2012-1 New Zealand Superannuation and Overseas Pensions: Reform Option 2](#)
- [Working Paper 2011-1: Overseas pensions: the next steps](#)
- [Working Paper 2010-4: New Zealand Superannuation and Overseas Pensions](#)
- [Working Paper 2010-3: Reforming New Zealand Superannuation for a mobile trans-Tasman population](#)
- [Working Paper 2009-2: New Zealand superannuation and overseas pensions: Issues and principles for reform](#)
- [Working Paper 2009-1: Literature review: New Zealand superannuation and overseas pensions](#)
- [Pension Discussion 2007. Passing the buck.](#)