

Chair
Cabinet Business Committee

NEW ZEALAND SUPERANNUATION AND VETERAN'S PENSION LEGISLATION AMENDMENT BILL

Proposal

- 1 This paper seeks approval for the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill (the Bill) to be introduced. The Bill amends the New Zealand Superannuation and Retirement Income Act 2001 (NZSRI Act), the Veterans' Support Act 2014 (VS Act), the Social Security Act 2018 (SS Act), the Income Tax Act 2007, and the Tax Administration Act 1994.
- 2 The Bill holds category 3 priority on the 2019 Legislation Programme (to be passed if possible in 2019) [CAB-19-MIN-0049 refers].

Executive Summary

- 3 I am seeking approval for the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill to be introduced. The Bill modernises and simplifies New Zealand Superannuation (NZS) and Veteran's Pension (VP) as agreed by Cabinet [SWC-19-MIN-0050 refers], by:
 - shifting toward assessing entitlement to NZS and VP on an individual basis by closing the 'non-qualified partner' (NQP) provision, and removing the application of 'spousal deduction' from NZS and VP
 - improving the clarity and consistency of NZS and VP policy and legislation.
- 4 In the process of drafting the legislation, I have taken decisions on several minor issues. The most notable are:
 - correcting an unintentional omission from the rewrite of social security legislation that specifically affected NZS and VP. Section 421 of the Social Security Act 2018 allows regulations to be made that specify circumstances when someone can be treated as being resident and present in New Zealand only for benefits paid under Part 2 of the 2018 SS Act. Part 2 does not include NZS and VP
 - clarifying that Winter Energy Payment is not subject to spousal deduction (at present, there are no situations in which it would be deducted, but the removal of spousal deduction for NZS and VP creates such a potential situation).
- 5 The legislation is intended to come into effect from 1 July 2020. I propose that it is introduced on 15 October 2019 and referred to the Social Services and Community Select Committee following first reading, and that it be passed by the end of May 2020.

Policy

The Bill focuses on the modernisation and simplification of New Zealand Superannuation and Veteran's Pension as previously agreed by Cabinet

- 6 On 8 May 2019, the Cabinet Social Wellbeing Committee, having been authorised by Cabinet to have Power to Act, agreed to changes to legislation governing NZS and VP [SWC-19-MIN-0050 refers]. The Bill gives effect to these changes.
- 7 The agreed changes modernise and simplify NZS and VP, most significantly by shifting toward assessing entitlement to these payments on an individual basis by:
 - closing the 'non-qualified partner' (NQP) provision (with existing recipients' entitlements grandparented)
 - removing the 'spousal deduction' – the direct deduction of a government-administered overseas pension received by a superannuitant's partner from that superannuitant's rate of NZS or VP.
- 8 To support the modernisation and simplification of NZS and VP, Cabinet also agreed other changes to improve the clarity and consistency of NZS and VP policy and legislation, including:
 - treating people who volunteer overseas for secular charitable organisations similarly to missionaries when calculating their length of residence
 - exempting any voluntary component of a government-administered overseas pension from 'direct deduction'
 - removing inconsistencies with the definition of 'living alone'
 - amending the wage indexation minimum in legislation from 65 percent to 66 percent to reflect the current minimum level of indexation
 - minor and technical amendments:
 - clarifying the circumstances in which a Special Disability Allowance is paid
 - ensuring that non-standard payments of NZS and VP such as backdated payments are taxed in an appropriate way for superannuitants
 - clarifying that the "10 years after age 20" and "five years after age 50" New Zealand residence requirements can be met concurrently where applicable
 - clarifying the meaning of sections 9 and 10 of the NZSRIA with regard to 'resident and present'
 - removing a grandparented NQP rate for New Zealand Superannuation and Veteran's Pension that is obsolete.

I have taken decisions on the following minor issues that arose during the drafting of the legislation

- 9 Cabinet Social Wellbeing Committee authorised me as the Minister for Social Development, in consultation where necessary with the Minister of Finance and the Minister for Veterans, to take decisions on issues of a minor nature that may arise during the drafting of the legislation and regulations [SWC-19-MIN-0050 refers].

10 Acting under that authorisation, I have taken decisions on the following minor issues:

10.1 Section 79 of the former SS Act allowed people to count a period of absence from New Zealand during which they or their partner had paid New Zealand PAYE tax as time in which they were resident and present in New Zealand.

During the rewrite of social security legislation, this specific provision became Regulation 7 of the Social Security Regulations 2018. However, the empowering provision for those regulations applies only to benefits paid under Part 2 of the SS Act which does not include NZS and VP.

To preserve superannuitants' entitlements under the former SS Act, I have included an equivalent of the former section 79 as a new section 10A of the NZSRI Act, and a savings provision to validate actions taken since the commencement of the current SS Act.

I have taken this approach, rather than amending the empowering provision in the SS Act, because it means that the provisions affecting the residence requirements for NZS and VP are located together and in the most relevant legislation, and because not all regulations made under the SS Act to modify residence requirements should affect NZS and VP. For example, regulation 7A of the Social Security Regulations 2018, which allows the residence requirements for a benefit to be waived for people affected by the Christchurch attacks is not intended to waive the residence requirements for NZS and VP.

10.2 I have clarified that the Winter Energy Payment (WEP) is never subject to spousal deduction. This is an amendment related to the removal of spousal deduction for NZS and VP. If a person qualifies for and receives payments of a main benefit, NZS or VP, they are entitled to WEP. At present, overseas pensions are not deducted from WEP, because WEP is not paid where a person has an overseas pension amount exceeds their main benefit, NZS, or VP amount. In the instance of a couple, if one partner of the couple is paid any amount of a main benefit, NZS or VP, that partner receives the couple rate of WEP. If a person qualifies for and receives payments of a main benefit, NZS or VP, they are entitled to WEP.

Unless WEP is formally exempted from spousal deduction, the removal of spousal deduction will create situations where WEP is required to be deducted.¹ Exempting WEP from spousal deduction:

- ensures that MSD does not have to require a NZS or VP applicant's partner to provide information about their eligibility for overseas pensions (the removal of spousal deduction is intended to remove this requirement)
- reflects the intent of the Superannuation and Modernisation Cabinet paper – that income tested supplementary assistance would be subject to direct deduction on a couple basis
- continues the current situation that there is no circumstance where WEP would be deducted

¹ That would occur when there are two superannuitants, one of whom has an overseas pension that exceeds their NZS entitlement. Under current legislation, the excess overseas pension would be deducted from their partner's superannuation. However, with the removal of spousal deduction for standard rates of NZS, the excess could no longer be deducted from the partner's superannuation – instead, it would be deducted from their WEP (during winter).

- ensures that all people who receive a payment of main benefit, NZS, or VP receive additional income during winter to meet their heating costs.

10.3 I have clarified that the changes to the periods of absence that can count toward the residence requirements for NZS and VP flow through to the calculation of proportional rates of payment paid under the 'general portability' provisions.²

10.4 I have retained the existing list of places of residence in which a single person living alone can receive a living alone rate of NZS or VP in primary legislation, and included in this list the agreed new provision for a self-contained mobile home. This provides additional protection for superannuitants over the policy agreed by Cabinet, under which the entire list would sit in regulations rather than primary legislation. I have included a regulation making power that allows further interpretive details and further places of residence to be included in future regulations.

10.5 I have decided not to remove the higher rate for a couple including an NQP that applies where the NQP was included in their partner's NZS prior to 1 October 1991. This is because the removal would need to have a significant commencement delay to avoid affecting the small number of existing clients receiving this rate. However, the removal of the equivalent rate for VP will continue as this is not being used.

Compliance

11 The Bill complies with each of the following as applicable:

- the principles of the Treaty of Waitangi
- principles and guidelines set out in the Privacy Act 1993
- relevant international standards and obligations; and
- *LDAC Guidelines on Process and Content of Legislation*, a publication by the Legislation Design and Advisory Committee.

12 The Ministry of Justice has vetted the consistency of the Bill with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

13 A disclosure statement has been prepared and is attached to this paper.

Consultation

Departmental consultation

14 Veterans' Affairs, the Inland Revenue Department, the Ministry of Justice and the Treasury have been consulted. The Department of Prime Minister and Cabinet was informed.

² 'General portability' is the mechanism for paying NZS or VP to someone who is living outside New Zealand, in a country with which New Zealand does not have a social security agreement, and which is not one of the specified Pacific countries that are covered by 'special portability'.

Minister of Finance's statement on consultation

- 15 Section 73 of the NZSRI Act provides that the Minister must, on the introduction into the House of Representatives of a Government Bill that proposes an amendment to this Act, bring to the attention of the House the consultation process that was followed in the formulation of the proposed amendment. That 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)
 - whether consultation has taken place with the Guardians of New Zealand Superannuation (to the extent that the amendment relates to Part 2)
 - the results of the consultation.
- 16 No consultation is required with the Guardians of New Zealand Superannuation, as the Bill does not propose to amend Part 2 of the NZSRI Act.
- 17 I have consulted the New Zealand Labour Party, New Zealand First Party and Green Party of Aotearoa New Zealand as part of the Government's internal consultation processes.
- 18 I wrote to the leader of the New Zealand National Party in September 2019 to seek that party's feedback on the policy to be given effect by the Bill, and received approval from that party.
- 19 The statement on consultation carried by the current draft of the Bill is subject to the approval of the Minister of Finance, and any required adjustment, before introduction.

Binding on the Crown

- 20 The amendment legislation should bind the Crown, because the principal Acts it will amend bind the Crown, and because the amendments are not so significant to merit reconsideration of the binding nature of those principal Acts [cf CO (02) 4, paragraphs 13-14; SWC-19-MIN-0050 refers].

Allocation of decision making powers

- 21 The Bill does not involve the allocation of decision making powers between the executive, the courts and tribunals.

Associated regulations

- 22 The Bill creates a power under both the NZSRI Act and the VS Act to make regulations setting out a list of places of residence in which a single person living alone can receive the Single Living Alone Rate.
- 23 This regulation making power introduced for the NZSRI Act also provides for regulations to be made for "any other matters contemplated by [that] Act, necessary for its administration, or necessary for giving it full effect". This is a standard drafting feature for regulation making provisions, and already exists for the VS Act.

Other instruments

- 24 As indicated when Cabinet agreed the policy changes [SWC-19-MIN-0050 refers], and as provided by existing powers, I intend to:
- rescind the 'Ministerial Direction - Single Living Alone Rates' (to coincide with the introduction of regulations on the Single Living Alone Rate, which will include the contents of that Ministerial Direction)
 - amend the 'Direction in relation to Emergency Benefit and Benefits on Ground of Hardship', to cover situations where the partner of a superannuitant is in hardship, and is unable to qualify for a main benefit because they need to provide care for that superannuitant or for a dependent child.

Definition of Minister/department

- 25 The Bill does not contain a definition of Minister or department.

Commencement of legislation

- 26 The Bill comes into force on 1 July 2020.

Parliamentary stages

- 27 The Bill should be introduced on 15 October 2019 and passed by the end of May 2020.
- 28 The Bill should be referred to the Social Services and Community Select Committee.

Impact analysis

- 29 A Regulatory Impact Analysis was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet's approval of the policy relating to the Bill was sought [see SWC-19-SUB-0050].

Proactive release

- 30 I intend to proactively release this paper within 30 working days. The Bill and Disclosure Statement will be available upon introduction to the House.

Recommendations

- 31 I recommend that the Committee:
- 1 **note** that the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill holds a category 3 priority on the 2019 Legislation Programme (to be passed if possible in the year)
 - 2 **note** that the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill is an omnibus bill amending the New Zealand Superannuation and Retirement Income Act 2001, the Veterans' Support Act 2014, the Social Security Act 2018, the Income Tax Act 2007, and the Tax Administration Act 1994

- 3 **note** that the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill modernises and simplifies New Zealand Superannuation and the Veteran's Pension as agreed by Cabinet Social Wellbeing Committee [SWC-19-MIN-0050 refers] by:
 - 3.1 shifting toward assessing entitlement to these payments on an individual basis, including:
 - 3.1.1 closing the non-qualified partner provision (with existing recipients' entitlements grandparented)
 - 3.1.2 removing the direct deduction of a government-administered overseas pension received by a superannuitant's partner from that superannuitant's rate of New Zealand Superannuation or Veteran's Pension
 - 3.2 improving the consistency and clarity of policy and legislation, including:
 - 3.2.1 treating people who work overseas for secular charitable organisations similarly to missionaries when calculating their length of residence
 - 3.2.2 exempting any voluntary component of a government-administered overseas pension from 'direct deduction'
 - 3.2.3 removing inconsistencies with the definition of 'living alone'
 - 3.2.4 amending the wage indexation minimum in legislation from 65 percent to 66 percent to reflect the current minimum level of indexation
 - 3.2.5 minor and technical amendments (detailed in Appendix 2 under SWC-19-SUB-0050) and
- 4 **note** that Cabinet authorised me as Minister for Social Development, in consultation where necessary with the Minister of Finance and the Minister for Veterans, to take decisions on issues of a minor nature that may arise during the drafting of the legislation
- 5 **note** that acting under that authorisation, I have addressed the unintentional omission from the rewrite of social security legislation of an equivalent of section 79 of the Social Security Act 1964 ('Persons who have had income tax deducted or withheld on earnings from employment overseas to be treated as resident and present in New Zealand') for New Zealand Superannuation by including in the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill:
 - 5.1 an equivalent of that section as new section 10A of the New Zealand Superannuation and Retirement Income Act 2001
 - 5.2 a provision to validate actions taken as if under that section since the replacement of the Social Security Act 1964 on 26 November 2018

- 6 **note** that acting under that authorisation, I have also made several clarifications and improvements:
 - 6.1 as a consequence of recommendation 3.1.2, I have clarified that Winter Energy Payment is not subject to spousal deduction
 - 6.2 in respect of recommendation 3.2.1, I have clarified that the changes to the periods of absence that can count toward the residence requirements for New Zealand Superannuation and Veteran's Pension flow through to the calculation of proportional rates of payment paid under 'general portability'
 - 6.3 in respect of recommendation 3.2.3, I have retained the existing list of places in residence in which a single person living alone receives the single living alone rate in primary legislation, and added the new category of a self-contained mobile home (and included a regulation making provision in the Bill which will allow additional places of residence to be included in future regulations)
 - 6.4 in respect of recommendation 3.2.5, with regards to minor and technical amendments, I have decided to remove the pre-1991 grandparented rate for a couple including a non-qualified partner only for Veteran's Pension only
- 7 **note** that the Minister of Finance's statement on consultation carried by the current draft of the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill (as required for a Bill amending part 1 of the New Zealand Superannuation and Retirement Income Act 2001) is subject to approval by the Minister of Finance, and any required adjustment, before introduction
- 8 **approve** the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill for introduction, subject to:
 - 8.1 any required adjustment to the Minister of Finance's statement on consultation, and that Minister's approval of that statement
 - 8.2 the final approval of the government caucuses
 - 8.3 sufficient support in the House of Representatives
- 9 **agree** that the Minister for Social Development may, in consultation with Parliamentary Counsel Office, make minor and technical amendments to the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill prior to Cabinet consideration
- 10 **agree** that the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill be introduced on 15 October 2019

11 **agree** that the government propose that the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill be:

11.1 referred to the Social Services and Community Select Committee for consideration

11.2 enacted by the end of May 2020.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Social Development