

Departmental Disclosure Statement

New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

27 September 2019.

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Part One: General Policy Statement

This is an omnibus Bill introduced under Standing Order 263(a). The amendments in the Bill deal with an inter-related topic that can be regarded as implementing a single broad policy.

The inter-related topic is social assistance for older people (New Zealand Superannuation and Veteran's Pension).

The single broad policy is to modernise and simplify New Zealand Superannuation and Veteran's Pension by:

- shifting toward an assessment of entitlement on an individual basis, and
- improving the consistency and clarity of policy and legislation.

The shift toward assessing entitlement on an individual basis consists of 2 changes given effect to by the Bill, which are:

- removing the option for a superannuitant (including a person entitled to receive a Veteran's Pension) whose spouse or civil union partner or de facto partner is not eligible for New Zealand Superannuation or a Veteran's Pension to elect to receive a rate that is designed to provide social assistance to the couple as a whole
- exempting any standard rate of New Zealand Superannuation or Veteran's Pension from being reduced because of a government-administered overseas pension received by a recipient's spouse or civil union partner or de facto partner (known as "spousal deduction").

The Bill improves the consistency and clarity of New Zealand Superannuation and Veteran's Pension policy and legislation by

- allowing a single person living alone in a self-contained mobile home to receive the single living alone rate of New Zealand Superannuation or a Veteran's Pension
- allowing further kinds of residences for the purposes of entitlement to that rate to be set out in regulations (enabling a timely response to developments in older people's living arrangements)
- treating people who have volunteered overseas for secular charitable organisations more equitably with missionaries (including by requiring those volunteers to be treated as having been resident and present in New Zealand during the absences concerned for the purposes of deciding on eligibility for New Zealand Superannuation), and clarifying the existing position for people who have worked as missionaries overseas
- increasing the level of wage indexation relating to annual adjustment of rates of New Zealand Superannuation and Veteran's Pension to a level that reflects long-standing practice
- treating voluntary components of government-administered overseas pensions in the same way as overseas pensions that are entirely voluntary, by ensuring that those components are not deducted from New Zealand Superannuation, Veteran's Pension, or other benefits
- making minor and technical amendments, including the following:
 - requiring a person who has worked overseas to be treated as having been resident and present in New Zealand during the absence concerned (for the purposes of deciding on eligibility for New Zealand Superannuation) if the person's employer withheld New Zealand income tax on those overseas earnings

- streamlining provisions on Special Disability Allowances, by dealing with those allowances under the Social Security Act 2018 only (rather than also under the New Zealand Superannuation and Retirement Income Act 2001)
- as a consequence of removing spousal deduction from any standard rate of New Zealand Superannuation or Veteran's Pension (referred to above), also exempting the recipient's Winter Energy Payments from being reduced because of the government-administered overseas pension entitled to be received by the recipient's spouse or civil union partner or de facto partner
- allowing tax that the Ministry of Social Development must withhold from New Zealand Superannuation and Veteran's Pension, and pay to the Commissioner of Inland Revenue, to be determined by the Commissioner in consultation with the Ministry (including where those benefits are backdated).

The Bill amends 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.

The New Zealand Superannuation and Retirement Income Act 2001 and the Veterans' Support Act 2014 contain the eligibility settings for New Zealand Superannuation and Veteran's Pension respectively. Both kinds of benefit are administered under the Social Security Act 2018. Amendments to all 3 Acts are consequently required to give effect to the policy, including the shift toward assessing entitlement on an individual basis.

Amendments to the Income Tax Act 2007 and Tax Administration Act 1994 are required to give effect to the technical amendments relating to tax on New Zealand Superannuation and Veteran's Pension, referred to above.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
The Ministry of Social Development reviewed a number of aspects of New Zealand Superannuation and Veteran's Pension policy. The Ministry's findings are set out in the Regulatory Impact Analysis referred to below.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
NZS Reform Package – Ministry of Social Development – April 2019 http://msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/nzs-vp-modernisation-and-simplification.html Information is withheld concerning matters that remain under consideration by Cabinet.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Regulatory Impact Analysis was reviewed by a Ministry of Social Development Principal Analyst who was not involved in the development of the Cabinet paper or the Impact Analysis and considers it meets the quality assurance criteria. The Regulatory Impact Analysis did not meet the threshold for RIA team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
The Regulatory Impact Analysis covers the shift toward assessing entitlement on an individual basis, and the exemption of any component of a government-administered overseas pension that is derived from voluntary contributions from direct deduction. The Regulatory Impact Analysis team at the Treasury advised that a Regulatory Impact Analysis was not required for the remaining proposals.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>Costs and benefits of the shift toward assessing entitlement on an individual basis are described at pages 32-36 of the Regulatory Impact Analysis.</p> <p>Regarding 2.5(b), people who could, under the status quo, include their partner in their superannuation at some point in the future will be unable to do so under the policy to be given effect. Couples affected by the policy will have a number of options available to mitigate this loss of potential income, including employment and main benefits.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry of Social Development considered whether the policy to be given effect by the Bill is consistent with New Zealand's bilateral social security agreements. No incompatibility with these agreements was identified, and the Ministry has not identified any other international obligations that are relevant.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No specific issues were identified in the Bill that may have implications for the rights and interests of Māori. As such, no formal steps were taken to determine whether the policy given effect by the Bill is consistent with the principles of the Treaty of Waitangi.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website at introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights .

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
The New Zealand Labour Party, New Zealand First Party, and Green Party of Aotearoa New Zealand were consulted through the Government's internal consultation processes. The Minister for Social Development wrote to the leader of the New Zealand National Party in September 2019 to seek the views of that party on the policy to be given effect by this Bill.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>NZS and VP are taxable payments. However, tax is deducted from payments by MSD at source, and paid to Inland Revenue, much as it would be for an employee.</p> <p>Part 4 of the Bill creates a power for the Commissioner of Inland Revenue to determine the amount of tax for a PAYE income payment that is a payment of NZS or VP. The purpose of this is to ensure that partial and backdated payments of NZS and VP can be made correctly using MSD's systems, and to provide a consistent flow of after-tax income to superannuitants. This power already exists in respect of income tested benefits and education allowances.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>For the avoidance of doubt, clause 6 of Schedule 1AA of the New Zealand Superannuation and Retirement Income Act 2001 as inserted by section 21, validates actions taken between the commencement of the Social Security Act 2018 and the commencement of this Act concerning the treatment of periods of absence from New Zealand during which a person was paying New Zealand PAYE tax.</p> <p>These actions had been taken under the understanding that they were provided for by the regulation 7 of the Social Security Regulations 2018. However, the enabling provision under which that regulation was made did not extend to NZS and VP.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill creates powers in the NZSRI Act (new section 35A) and VP Act (new section 265(1)(27A)) to make regulations concerning the places of residence in which a single person living alone can receive the single living alone rate.</p> <p>This will allow this list to be added to in a timely way in response to developments in older people's living arrangements. It retains the requirement that people be single and living alone in order to receive the single living alone rate. It will also allow for terms such as "house or flat" to be defined in these regulations, rather than in a Ministerial direction as at present, providing a greater level of scrutiny of such definitions.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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