

Chair
Cabinet Social Wellbeing Committee

ADDRESSING ISSUES WITH THE FAIR RESIDENCY BILL

Proposal

- 1 I propose agreement to recommendations for addressing issues with the New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill (the Fair Residency Bill) **s 9(2)(f)(iv), s 9(2)(h)**

Relation to government priorities

- 2 The Fair Residency Bill was originally introduced to Parliament in October 2018, in the name of Mark Patterson MP. The introduction was shortly after I had presented an oral item to Cabinet Business Committee outlining proposals for modernising and simplifying NZS and VP arising out of the Superannuation Reform Work Programme, which included an increase to the residence requirement, either to 15 or 20 years.
- 3 Cabinet ultimately agreed a package of changes to modernise and simplify NZS and VP in May 2020, but “deferred consideration of proposals to amend... the basic residence requirement...” [SWC-19-MIN-0050 refers].
- 4 Parliament read the Fair Residency Bill for a first time on 1 July 2020. It received broad (though not unanimous) support from Parliament and was directed to the Committee for consideration.

Executive summary

- 5 Currently, older people must have been resident and present in New Zealand for at least 10 years after the age of 20 in order to receive NZS or VP (as well as meeting the age requirement and a requirement for residence and presence after age 50). The Fair Residency Bill seeks to increase this main residence requirement to 20 years after age 20. It is a Member’s bill, now in the name of Andrew Bayly MP.
- 6 Introducing a longer period of residence would better ensure that NZS and VP recipients have made a meaningful contribution to New Zealand. It would also make a contribution toward the sustainability of NZS and VP in a way that is likely to seem fairer to people who have lived in and contributed to New Zealand throughout their lives than introducing means-testing or increasing the age of eligibility.
- 7 However, the Fair Residency Bill as drafted has a number of key problems:
 - It does not protect the entitlements of current superannuitants.
 - It has no lead in time to allow affected people to prepare for the change, which also means implementation would be highly challenging.
 - It is inconsistent with recent changes to improve portability of NZS and VP to the Realm of New Zealand (the Cook Islands, Niue and Tokelau).

- 8 **s 9(2)(f)(iv), s 9(2)(h)**

- 9 The Ministry of Social Development (MSD) is advising the Committee. I seek approval for MSD to recommend that the 20 year requirement takes effect through a phased increase linked to birth dates. For every two complete years a person was born after 1 July 1955, that person would require one additional year of residence and presence after age 20.¹ That means that someone born between 1 July 1957 and 30 June 1959 must meet an 11 year requirement and someone born between 1 July 1959 and 30 June 1961 must meet a 12 year requirement – up to 20 years for someone born on or after 1 July 1975.
- 10 I consider that this approach is a fair way to implement the residence requirement increase, as people whose circumstances are similar will not have significant differences in how long they need to be resident. It is likely to address the concerns of most submitters on the bill. It allows some change to take place in the near future – from 1 July 2022 – but also controls the number of people who experience poverty or hardship as a result of the increase. The change would be relatively simple for people to understand and comply with. It should avoid the need for people to make hurried decisions about where to live.
- 11 To make the change consistent with the intent and spirit of recent changes to improve access to NZS and VP in the Cook Islands, Niue and Tokelau, I seek approval for MSD to recommend that residence after age 20 in these countries may count toward the increase to the residence requirement.
- 12 I also seek approval for MSD to recommend accommodations for people who come to New Zealand after age 45 as refugees. People in this situation do not have the same degree of control over their circumstances as other migrants to New Zealand or New Zealanders who spend much of their lives overseas. They are very likely to face financial hardship and be dependent on alternative benefits if no accommodations are made for their circumstances. The proposed approach is for the current requirement to apply to people granted refugee or protected person status at or after age 55, and for those granted refugee status between age 45 and 54 to face a requirement that is no more than the difference between the date that person was granted that status, and the day they turn 65. This accommodation would apply permanently.
- 13 The implementation costs for the Fair Residency Bill – incorporating my proposed changes – are assessed at \$2.548 million for the 2021/22 financial year. The bill will reduce overall benefit costs from the 2022/23 financial year onwards. Initially those savings are modest – at \$0.609 million (net) from the 2022/23 financial year – but they build up to \$162.6 million per year by the 2041/42 financial year. As the cost of the policy will likely be at least fiscally neutral across the forecast period, I am seeking to manage these costs outside of allowances.

The Fair Residency Bill seeks to increase the main residence requirement for New Zealand Superannuation to 20 years

- 14 The Fair Residency Bill is a Member's bill that amends the New Zealand Superannuation and Retirement Income Act 2001 ('the NZSRI Act'). It would increase the minimum length of New Zealand residence after age 20 required to receive NZS or VP from 10 years to 20 years.²
- 15 The length of residence required to receive NZS and VP was one of the issues examined as part of the Superannuation Reform Work Programme in 2018. How long a residence requirement should apply for NZS and VP is principally a question of fairness – at what

¹ The requirement for 'residence and presence' is significant. For a period of time to count, the superannuitant must have both established New Zealand as their home (which does not necessarily require them to have been a citizen or held a residence permit at the time) and to have actually been physically present in New Zealand.

² There is also a requirement for five years residence after age 50 in one or more of New Zealand, the Cook Islands, Niue or Tokelau. The Fair Residency Bill does not change this.

point is someone's connection with or contribution to New Zealand strong enough or substantial enough that they should be entitled to receive NZS or VP?

- 16 Opinions on what is a sufficient level of contribution to New Zealand to merit entitlement to NZS can change over time. High levels of migration in and out of New Zealand may have changed New Zealanders' views on what a fair level of contribution for NZS is. When almost all New Zealanders spend a majority of their lives in New Zealand a ten year residence period may be accepted. However, an increasing number of older people have been resident in New Zealand for more than 10 years but less than 20.³ In this context, a 10 year requirement can appear too generous. It is notable that even many submitters on the Fair Residency Bill who are concerned with its effect on them personally accept the general rationale for increasing the residence requirement to 20 years.
- 17 Because New Zealand is experiencing structural population ageing, there is also frequent attention to the sustainability of NZS. This is often accompanied by calls to increase the age of entitlement and/or introduce means-testing. Increasing the residence requirement may appear a fairer way to reduce costs compared to those options (especially to those unaffected by a residence increase), although it would have a relatively modest impact on long-term NZS costs.

I previously proposed including an increase to the residence requirement in the Superannuation Reform Work Programme

- 18 The Fair Residency Bill was originally introduced to Parliament in October 2018, in the name of Mark Patterson MP. The introduction was shortly after I had presented an oral item to Cabinet Business Committee outlining proposals for modernising and simplifying NZS and VP arising out of the Superannuation Reform Work Programme, which included an increase to the residence requirement, either to 15 or 20 years.
- 19 My later advice to Cabinet explained that:
- a longer period of residence would better ensure that people who qualify have made a meaningful contribution to New Zealand
 - the vast majority of New Zealanders have a connection to New Zealand much longer than 10 years by the time they reach age 65, meaning a longer history of contribution
 - Cabinet must find the appropriate balance between income adequacy for older people who are recent migrants or returnees, and fairness to long-term residents who have sustained and continue to sustain New Zealand's society and economy.
- 20 Cabinet ultimately agreed a package of changes to modernise and simplify NZS and VP in May 2020, but "deferred consideration of proposals to amend... the basic residence requirement..." [SWC-19-MIN-0050 refers].

The Fair Residency Bill was later introduced into the House and has received broad support

- 21 Parliament read the Fair Residency Bill for the first time on 1 July 2020. It received broad though not unanimous support from Parliament and was directed to the Committee for consideration.

³ The number of over-65s with 10-19 years residence increased from only 7,700 at the 2006 Census (6.1 percent of overseas born over 65s) to 25,900 at the 2018 Census (13.5 percent of overseas born over 65s).

- 22 The Committee opened submissions on the bill and provided a request to my office for departmental advisers to be available to help the committee in its consideration of the bill. Submissions to the Committee closed on 16 December 2020. Around 360 submissions were received covering a number of topics:
- A vast majority of the submissions opposed the bill as it is drafted, with submitters noting that they would lose their entitlement or be faced with a significant extension until they were eligible for NZS
 - A transition period to 20 years that protected existing recipients' current and near-future eligibility was favoured amongst some submitters
 - A number of submitters had made specific financial plans based on current residence requirements and emphasised they would face significant financial hardship should the bill progress without transition arrangements
 - Some submissions also raised suggestions around other policy settings around NZS such as the removal/change of the direct deduction policy, making NZS proportional, and entering into more Social Security Agreements/increasing the portability of NZS.
- 23 Following the election, Andrew Bayly MP became the sponsor of the Fair Residency Bill. The bill was reinstated following the opening of Parliament, and now has a report back date from the Committee of 4 May 2021.

MSD has identified a number of issues with the Fair Residency Bill

- 24 The Fair Residency Bill amends a number in a section of the NZSRI Act, changing the requirement of residency (after age 20) from 10 to 20. The bill, as currently drafted, presents a number of issues, mainly around transition issues such as not protecting current superannuitants' entitlements or allowing people to plan effectively for the future. I will deal with each of these points in turn.

The bill does not protect the entitlements of current superannuitants

- 25 The NZSRI Act states that no person is entitled to NZS (or by extension, VP) unless the person meets all the residential requirements in section 8. The requirements for residence after age 20 and after age 50 always apply – they do not only apply at the point of application.
- 26 This means the Fair Residency Bill as drafted would increase the residence requirement for both current and future superannuitants. I understand, based on reporting of the original sponsor's statements, that this was not intended.
- 27 Not protecting the entitlements of current superannuitants would have a number of detrimental effects:
- It would severely impact the financial stability of affected recipients, with no option for them to mitigate the impact.
 - Superannuitants currently receiving a payment under general portability, or special portability other than in the Realm of New Zealand, and possibly also in Australia, would need to return to New Zealand to re-establish entitlement.
 - It would require MSD to review the situations of tens of thousands of superannuitants to determine whether or not they qualify under the new requirement.

The bill has no lead in time to allow affected people to prepare for the change...

- 28 As drafted, the bill would come into effect on the day after that date on which it receives the Royal assent.
- 29 Even if current superannuitants' entitlements were protected, this would mean that people who are close to receiving NZS but could not meet the new requirement prior to the change would have no reasonable opportunity to adapt to it.
- 30 People who have come to New Zealand on the basis that they could be entitled to NZS or VP after 10 years residence, and have structured their finances accordingly may not be able to accommodate the change. While some would be able to continue or commence working to support themselves, it is unlikely that they would be able to do so for (up to) an additional 10 years.
- 31 There would consequently be a significant increase in the number of people reliant on 'working age' benefits, for example Jobseeker Support, that are not designed for older people into their 70s and beyond. The other impact of a sudden change (while protecting current superannuitants' entitlements) would be a dramatic and avoidable difference in the treatment of people in similar circumstances immediately before and after the enactment.
- 32 It is also important to note that only times during which a person was both resident and present count toward the residence requirements. This could mean that there are people who assume they would be entitled to receive NZS or VP before the change to a twenty year residence requirement are actually not covered.

... which would also make implementing the bill highly challenging

- 33 This style of commencement, based only on when the bill receives Royal assent, means that MSD has no certainty over the date on which it would need to implement the bill. This would make it very difficult to make the necessary changes to MSD systems, processes and information for staff at the time of the legislative change.
- 34 MSD could also not communicate effectively with clients or potential clients about the change, as it would not be able to tell them when it would take effect.

The bill is inconsistent with recent changes to improve portability of NZS and VP to the Realm of New Zealand

- 35 In 2018 I led the passage of the Social Assistance (Residency Qualification) Legislation Act 2018 (the 2018 Legislation Act). This Act made it possible for people to meet the requirement for 5 years residence after the age of 50 using residence in the Realm of New Zealand – the Cook Islands, Niue or Tokelau.
- 36 The purpose of the Act was to recognise the special relationship New Zealand has with the Realm, and to avoid incentivising its depopulation, by allowing people to return there and ultimately receive NZS or VP without having lived for 5 years after age 50 in New Zealand. People must still have met the 10 years after age 20 requirement to receive NZS – and receive full NZS only after 20 years New Zealand residence.
- 37 The Fair Residency Bill as drafted would mean that intended future superannuitants who are now residing in the Realm, or intend to reside there, would need to return to New Zealand and become resident, or remain in New Zealand, for up to an additional 10 years. This could undermine the intent of the 2018 Legislation Act, and could be detrimental to New Zealand's relationship with the Realm.

s 9(2)(f)(iv), s 9(2)(h)

38 s 9(2)(f)(iv), s 9(2)(h)

39 s 9(2)(f)(iv), s 9(2)(h)

40 s 9(2)(f)(iv), s 9(2)(h)

41 s 9(2)(f)(iv), s 9(2)(h)

I recommend that the transition to a 20 year residence requirement should take place through a phased increase by birth date

- 42 In order to address the lack of grandparenting or a transitional process, I seek approval for MSD to recommend in its departmental report on the bill that the 20 year residence requirement take effect through a phased increase linked to birth dates.
- 43 For every two complete years a person was born after 1 July 1955, that person would require one additional year of residence and presence after age 20, up to a maximum of 20 years in total for a person born on or after 1 July 1975.
- 44 The following table shows the new requirement that people would have to meet.

Birth date	Age as at 30 June 2021	Residence requirement (after age 20)
On or before 30 June 1957	64 and over	10 years
Between 1 July 1957 and 30 June 1959 (inclusive)	62-63	11 years
Between 1 July 1959 and 30 June 1961 (inclusive)	60-61	12 years
Between 1 July 1961 and 30 June 1963 (inclusive)	58-59	13 years
Between 1 July 1963 and 30 June 1965 (inclusive)	56-57	14 years
Between 1 July 1965 and 30 June 1967 (inclusive)	54-55	15 years
Between 1 July 1967 and 30 June 1969 (inclusive)	52-53	16 years
Between 1 July 1969 and 30 June 1971 (inclusive)	50-51	17 years
Between 1 July 1971 and 30 June 1973 (inclusive)	48-49	18 years
Between 1 July 1973 and 30 June 1975 (inclusive)	46-47	19 years
On or after 1 July 1975	45 and under	20 years

45 This approach has a number of key advantages:

- *It is fairer than approaches based on a fixed date after which the residence requirement changes.*

This is because it minimises differences in the treatment of people who are near in age and interests – who will have similar existing expectations for when they will be able to qualify for NZS.

- *It allows some change to take place in the near future.*

Under this approach, everyone who turns 65 on or after 1 July 2022 would need to meet a residence requirement higher than 10 years.

- *But it controls the number of people who would experience poverty or hardship as a result of the increase.*

The number of people whose entitlement to NZS or VP is delayed would grow steadily but slowly.⁴ Only those who turn 65 on or after 1 July 2040 would need to meet the full 20 year residence requirement. The amount of time that a person has to adjust to the increase in the residence requirement would be proportional to the size of the adjustment that they have to make.

In most cases, affected people would have options open to avoid being dependent either meet the new requirement in time by returning earlier to New Zealand or not spending time overseas, or to make financial preparations for needing to wait longer to receive NZS or VP.

- *It will be simple to understand and to comply with.*

By looking at a table of birth dates, people will be able to immediately identify how long they will need to be resident and present in order to qualify. This can be difficult under approaches based on a fixed date after which the requirement jumps because people need to be able to calculate whether they will qualify before or after that date (which can have significant negative impacts if they miscalculate).

- *People will not be forced to make decisions about where to live hurriedly.*

Because people who are overseas or considering leaving New Zealand for a period will have to meet the same residence requirement regardless of when they return, any pressure to return to New Zealand before they are ready will be minimised. This should help to avoid the increase in the residence requirement unintentionally creating pressure on the housing market, or people returning without a clear plan for employment.

- *The increase could be paused.*

We may ultimately find that a minimum residence requirement that is less than 20 years is appropriate. This approach would allow for the transition to 20 years to stop or pause at some point if a lesser change is considered sufficient.

- 46 Since there will be some impact in the near future, this approach will realise some savings relatively early. However, the full savings from increasing the residence requirements will not be realised until after 2040.
- 47 There will be implementation costs estimated at \$2.548 million in the 2021/22 financial year. It is expected that the overall cost of the policy will be at least fiscally neutral across the forecast period, and I therefore recommend they be managed outside of allowances.
- 48 This approach could mean future operational complexity for MSD if there should be other changes around NZS between now and 2041. An example would be if a future government wished to change the eligibility age for NZS. This would also need to be aligned with the increase in residency requirement. The nature of the phased

⁴ To give a sense of the impact of a one year increase, there were around 840 people granted NZS in the year to the end of August 2020 who are recorded as having only 10 years residence. However, most people granted NZS after 10 years residence are older than 65 so the *initial* impact would likely be smaller. In total, around 4,400 people who were granted NZS or VP in the year to the end of August 2020 had 10 to 19 years residence recorded.

There are caveats to this data:

- the quality of MSD records on residence is uneven
- some applicants will have had residence in a country with which New Zealand has a social security agreement, so would still qualify on that basis
- there are also applicants who have less than 10 years residence recorded – who presumably have residence in a social security agreement partner country, but who might not have sufficient residence to qualify under a higher threshold.

implementation could however provide an opportunity to pause the programme should future policy changes be required.

49 I considered other approaches – introducing the 20 year increase through a one-off increase in 2031, or an increase to 15 years in 2026 followed by an increase to 20 years in 2036. These are discussed in detail in the regulatory impact analysis.

50 Examples of how people would be affected by the increase in the residence requirement under this transition approach are provided in **Appendix One**.

I recommend that Realm country residence should also count towards the increase in the residence requirement

51 The Social Assistance (Residency Qualification) Legislation Act 2018 allowed people to count residence in the Cook Islands, Niue or Tokelau toward the 5 years after age 50 residence requirement. This has led to significant improvements in access to NZS and VP in the Cook Islands, Niue and Tokelau, including for people with less than 20 years residence, who receive part payments of NZS or VP.⁵

52 To avoid undermining these achievements for the future, and to alleviate the expected concerns of the governments of the Realm countries, I recommend that residence and presence (after age 20) in the Cook Islands, Niue or Tokelau should count toward the increase in the residence requirement.

53 This would mean that once the 20 year requirement is fully introduced, it would consist of:

- 10 years residence and presence since age 20 in New Zealand; and
- a further 10 years residence and presence since age 20 in one or more of New Zealand, the Cook Islands, Niue and/or Tokelau.

54 For avoidance of doubt, the 5 years after 50 requirement will continue to apply and people can continue to count residence in the Cook Islands, Niue or Tokelau toward the 5 years after age 50 residence requirement.

55 This will ensure that the increase in the residence requirement does not encourage depopulation of the Realm or disadvantage people who have already returned to the Realm. People planning to migrate to the Realm and one day receive NZS would not be delayed from doing so.

56 Only New Zealand residence counts toward the calculation of payments in the special portability formula (or the general portability formula). This means that there would be no difference in the level of payments made to the Realm compared to the current situation.

57 Assessments of eligibility for people who rely on residence in a Realm country may be more complex than other assessments as the relevant information is not held by the New Zealand government. However, MSD already relies on information about Realm country residence after age 50, which should mean that the added burden is not significant.

⁵ At the end of November 2020, there were around 150 people receiving NZS or VP in the Cook Islands, Niue or Tokelau who had less than 20 years residence. Two years previously there had been fewer than 20 people receiving NZS or VP in the Realm with less than 20 years residence.

I recommend that accommodations be made for refugees who come to New Zealand later in life

- 58 Increasing the residence requirements will result in an increase in the number of older people experiencing poverty or material hardship. There are a number of reasons why somebody might find themselves in New Zealand in old age with little means to support themselves, and without access to NZS or VP due to not meeting an increased residence requirement.
- 59 The extent to which this will seem fair to other New Zealanders will likely vary significantly between situations, but this will on some level come down to people's choices to migrate to or from New Zealand. Moreover, the many different possible situations mean that it would not be practical to design policies to accommodate them all.⁶
- 60 It would be appropriate, however, to make an exception for refugees who arrive in New Zealand later in life. Refugees have much less control over where and when they migrate to New Zealand compared to non-refugees. Additionally, because refugees are granted a particular legal status, there is an objective basis for distinguishing their situations from those of other New Zealanders.
- 61 The relatively small number of refugees who come to New Zealand later in life⁷ – for these purposes, at age 45+ – generally find life in New Zealand more difficult than younger refugees. Learning English is a particular challenge, many lack formal qualifications, and they are less likely to find work than younger former refugees or protected persons.
- 62 Consequently, I recommend that:
- the 10 year residence and presence requirement is retained for a person granted refugee or protected person status in New Zealand at age 55 or higher
 - the total residence and presence requirement for a person granted refugee or protected person status in New Zealand while aged 45-54 be no more than the difference between the date that person was granted that status, and the date on which that person turns 65.
- 63 This would mean there is little to no difference in when refugees who come to New Zealand at age 45 or greater can qualify. For people aged 45-54, it would effectively mean that they can receive NZS from age 65 – delayed only by any time they spend outside NZ that cannot be counted as presence in New Zealand under one of the special provisions in the NZSRI Act.
- 64 As an example, consider a person born on 1 August 1974, who is granted refugee or protected person status after arriving in New Zealand on 1 November 2026. Under my proposed transition process, a person born on this day would normally need to wait to receive NZS until they have been resident and present in New Zealand for 19 years. My proposed accommodation for refugees would allow this person to receive NZS once they have been resident and present in New Zealand for 12 years and 2 months – the time between their refugee status being granted and when they turn 65.
- 65 While the concession would marginally reduce the savings accruing from increasing the residence requirement, this would be minimal in the context of NZS expenditure given

⁶ At least not without introducing an element of subjectivity to decision-making that would make it very difficult for people to understand when it is likely that they would be able to qualify for NZS or VP.

⁷ MSD administrative data suggests that around 80 refugees were granted NZS or VP in the year to August 2020.

the small number of people who would benefit each year, and the high likelihood that most would otherwise receive a main benefit and supplementary assistance.

- 66 The concession could marginally increase the administrative complexity of NZS but would have no impact on the ease of understanding NZS for anyone other than the refugees who benefit from it.
- 67 If there are no special accommodations for refugees and protected persons, they will still be eligible to receive means-tested support through the benefit system in the same way as other New Zealanders who do not meet the residence requirement for NZS or VP.

Legal advice

68 s 9(2)(f)(iv), s 9(2)(h)

69 s 9(2)(f)(iv), s 9(2)(h)

Implementation

- 70 In order to implement the adoption of the Fair Residency Bill as a Government bill, I will (subject to Cabinet's approval of the adoption):
- confirm with the Member responsible that he consents to the adoption
 - notify the speaker in writing that the bill has been adopted as required by standing orders.
- 71 Subject to Cabinet approval, MSD will recommend that the Committee adopt the proposed transition approach, accommodations for the Realm, and accommodations for refugees in its report back on the Fair Residency Bill.
- 72 Once the Fair Residency Bill is passed, MSD will make the necessary changes to IT systems, business processes, operational policy, and internal and external communications to give effect to it. The effective implementation date for the Bill will be 1 July 2022 – as this is when a higher residence requirement will first begin to apply to people. However, changes to websites and publications will be needed earlier so people know when they will qualify.

Financial implications

- 73 Implementing the Fair Residency Bill will have a cost assessed at \$2.548 million, in the 2021/22 financial year. The Fair Residency Bill will reduce NZS and VP costs from 2022/23 financial year onwards, therefore tax revenue on benefit will reduce as well.⁸

Vote Social Development	\$ million – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & outyears

⁸ NZS, VP and other benefits are subject to PAYE income tax, therefore the reduction in benefit payments will lead to reduction on the Crown's tax revenue.

Operating balance impact					
<i>NZS/VP and other benefits</i>	-	-	(0.498)	(1.030)	(2.215)
<i>IT costs</i>	-	1.340	-	-	-
<i>Other implementation costs</i>	-	1.208	-	-	-
No impact (tax on benefits)	-	-	(0.111)	(0.232)	(0.502)
Total	-	2.548	(0.609)	(1.262)	(2.717)

- 74 The overall cost of these policy changes across the forecast period are likely to be at least fiscally neutral. I therefore recommend that they be managed outside of allowances.
- 75 The net savings on this initiative will build up gradually from \$0.609 million in 2022/23 financial year to \$162.6 million per year from 2041/42 financial year onwards.
- 76 MSD has made assumptions around the future characteristics of the older population, and the behavioural changes people might make in response to a change in the residence requirements.
- 77 MSD has not modelled financial implications outside Vote Social Development. It is likely that there will be a range of other financial implications but these cannot be reliably determined. For example the following:
- There will be effects on labour force participation. While these are likely to be positive, there is no way to reliably judge the size of the effect or how it would influence the Crown's position.
 - There could be effects on health expenditure. To the extent that the policy dissuades older migrants or New Zealanders from coming to New Zealand this could reduce demand on the health system. However, some people are likely to return to New Zealand earlier than anticipated, which would result in a counterbalancing increase in demand. It is impossible to state where the balance of those effects would fall. People who need aged residential care will receive a higher subsidy if they receive a main benefit instead of NZS or VP. However, my proposed transitional approach should all-but-eliminate the likelihood of a significant effect as the people closest to needing aged residential care will be least affected.

Legislative implications

- 78 It is expected that the proposed amendments to the Fair Residency Bill will be given effect through the Committee's report back of the bill. There may be further opportunity to make amendments through SOPs if necessary.

Impact Analysis

- 79 The Quality Assurance panel, made up of Principal Analysts from the Ministry of Social Development, considers that this proposal meets Cabinet's quality assurance criteria. As described in the Regulatory Impact Statement, the context of this work – development of departmental comments and recommendations on a Private Members Bill – has constrained the scope and conduct of the analysis. Although consultation on the substantive proposals has been limited, the proposals have been developed in response to public submissions on the original bill and in consultation with relevant government agencies. On balance, the panel considers that the Regulatory Impact Statement adequately meets the criteria.

Population implications

- 80 Increasing the residence requirements to 20 years is expected to affect different population groups in significantly different ways. Here those implications are assessed based on the proposed transition arrangement and accommodations.

Population group	Implications
Current seniors	The proposed transition arrangements mean there is no effect on anybody currently aged 64+
Those aged 63 and below (as at 30 June 2021)	<p>People aged 63 and below will need to meet a higher requirement, based on their age.</p> <p>Those who already meet the applicable higher requirement do not need to do anything new.</p> <p>Most of those who do not yet meet the applicable higher requirement will meet it by the time they reach age 65 without doing anything new.</p> <p>People living outside New Zealand or considering living outside New Zealand, and intending to receive NZS or VP, will need to consider their options. If their absence or intended absence would mean they do not meet the applicable higher requirement, they will need to decide whether to:</p> <ul style="list-style-type: none"> • change their plans to receive NZS or VP earlier • not change their plans, and face a delay in receiving NZS or VP • not return to New Zealand. <p>Where people are unable to meet the higher residence requirement by the point they would qualify under the status quo, or decide not to change their plans to meet the higher residence requirement, they will have a number of options:</p> <ul style="list-style-type: none"> • They may support themselves during the period they do not qualify for NZS by working, through a private pension or overseas government pension, or through their personal savings. • They will have recourse to social security assistance appropriate to their circumstances – Jobseeker Support for those who are able to work, Supported Living Payment for those who are unable to work due to a health condition, disability, or full-time care responsibilities, or an Emergency Benefit if they do not meet the criteria for a main benefit and experience hardship. <p>It is likely that there will be increased levels of poverty and hardship amongst people who are unable or unwilling to support themselves. People who are able to support themselves through the delay are still likely to face increased difficulties later, given that they will use resources that could have benefited them later in life.</p>
Expatriate New Zealanders	<p>Expatriate New Zealanders must meet the same conditions as migrants, based on their age.</p> <p>However, a high proportion of expatriate New Zealanders live or have lived in a country with which New Zealand has a social security agreement. When this is the case, they are able to combine residence in an agreement partner country with residence in New Zealand. This is likely to mean that most expatriate New Zealanders are not affected in practice. Some people intending to live in New Zealand but who are reliant on Australian residence will be impacted because they must meet the Australian Age Pension qualifying age to use that residence.</p>
People who can't return to New Zealand because of the COVID-19 pandemic	New Zealanders who are stranded overseas due to the effects of COVID-19 and who are born on or after 1 July 1957 may be impacted by the proposed changes, depending on their situation. For example, if an individual was stranded overseas for a year during the pandemic after being resident and present in New Zealand prior to becoming stranded, this absence may require them to complete an additional year of being resident and present in New Zealand along with the further residency requirements proposed by the bill (which will be dependent on their age if the preferred transitional approach is adopted), before being eligible for NZS/VP. Officials are determining MSD's approach to how periods of time

	<p>spent stranded abroad as a result of COVID-19 will be treated in the context of calculating periods of residency for NZS/VP entitlement.</p> <p>New Zealanders who are born on or before 30 June 1957 will retain a 10 year residence requirement for NZS/VP. It is possible some New Zealanders who were born on or before 30 June 1957 who are trapped overseas because of COVID-19 will not be able to meet the 10 year residence requirement. The proposed changes do not impact this group.</p>
Māori	<p>Māori must meet the same conditions as New Zealanders of other ethnicities.</p> <p>MSD administrative data about the ethnicity of the superannuitant population is inconsistent, and data about length of residence is of varying qualities.</p> <p>Based on the data that is currently available however, it is likely that very few Māori will be impacted by the increase in the residence requirements. While it is possible that number of Māori reaching age 65 who have spent less than 20 years in New Zealand will grow (due to economic and social reasons), most will have spent much of the remainder of their lives in an agreement partner country (usually Australia), limiting the effects of the increase as residency in both countries will be able to be used to meet the new requirements.</p> <p>Older Māori intending to live in New Zealand but who are reliant on Australian residence will be impacted as they must meet the Australian Age Pension qualifying age (67 instead of 65) to use that residence.</p> <p>An increase in residence requirements will also likely have an impact on those who are outside of agreement partner countries. As MSD administrative data about the ethnicity of the superannuitant population is inconsistent and data about length of residence is of varying qualities, data is unable to be provided regarding the number of Māori currently residing in non-agreement countries.</p>
Pacific peoples	<p>The Pacific region includes both the Realm of New Zealand and other countries that are covered by the 'special portability' provisions. Special portability provisions enable NZS or VP to continue to be paid when someone moves to one of the Pacific countries included in the special arrangement. This was introduced in context of New Zealand's proximity to, and linkages with, Pacific Island nations. The amount of NZS/VP paid is dependent on how long someone has been resident and present in New Zealand since age 20. For 20 complete years or more since age 20 the full basic rate is paid, for between 10 – 20 complete years since age 20 1/20th of the basic rate is paid for each year lived in NZ since the age 20, and for 10 complete years since age 20 half of the basic rate is paid. The special portability provisions are more generous than the alternative of payment through general portability (payment of NZS/VP outside of agreement countries and nations covered by special portability).</p> <p>People who have moved to or are considering moving to the Realm of New Zealand are unlikely to be affected unless they have spent significant time in a third country. This is because the proposed approach allows residence and presence after the age 20 in the Realm to be counted towards the increase in the residence requirement.</p> <p>People from or hoping to live in non-Realm Pacific nations will be required to meet the new requirements, and will not be able to return to reside in a nation outside the Realm until they qualify under those new requirements if they wish to receive NZS or VP.</p> <p>Based on MSD administrative data, the main countries of birth of Pacific people who may be affected by the increase are Fiji and Samoa.⁹ However, this data reflects a point in time and it is difficult to predict the makeup of future NZS and VP aspirants.</p> <p>Pacific people who do face a delay in their eligibility for NZS or VP are likely to face greater financial hardship than other affected people. Pacific people in New Zealand experience lower wages, increasing the difficulty of independently saving for their retirements. Industries employing Pacific peoples are primarily trades, health care, social assistance etc. requiring greater physical work. Increased residence requirements raise concerns for Pacific peoples having to work longer during later life and the impact on their health and wellbeing. They also face lower life expectancy than the national average, which means they do</p>

⁹ Around 300 people born in Fiji, and around 120 people born in Samoa, who were granted NZS or VP in the year to the end of August 2020 had between 10 and 19 years of New Zealand residence recorded.

	<p>not necessarily get the same value from NZS or VP as other New Zealanders, and this would be further reduced for those whose entitlement is delayed.</p> <p>For people from or hoping to live in non-Realm Pacific nations impacted by the new requirements, the change may also have impacts on family connectedness and the labour market in New Zealand and in the Pacific. Increasing the residence requirement can disincentivize Pacific peoples from returning to their home countries, which contributes to the Pacific region's depopulation and skills drain, which can in turn undermine efforts to support their sustainable development.</p> <p>As an indication of the number of people impacted, according to MSD data around 50 people in the Pacific (excluding the Realm) are receiving NZS/VP under the special portability provision and have 10 – 19 years of NZ residence meaning they are receiving a proportional payment. Although MSD administrative data regarding length of residence is of varying quality, for the purposes of ascertaining eligibility for payments under special portability this is specifically recorded.</p>
<p>Disabled people</p>	<p>Disabled people are probably no more likely to face a delay in qualifying for NZS or VP than other New Zealanders. This is because people who are disabled through much or all of their lives may face both practical and administrative barriers in migrating to or from New Zealand (such as being less likely to be granted a visa).</p> <p>However, those disabled people who face delays in qualifying for NZS or VP are likely to be affected to a significantly greater extent than other people who face delays, given that they may have higher costs, and will face additional challenges in providing for themselves. Disabled people are less likely to be employed – and likely, if employed – to be paid considerably less than someone without a disability. Those who have been disabled throughout their lives are unlikely to have had a sufficient opportunity to build retirement savings, and these savings may be rapidly depleted during a delay in eligibility of NZS or VP.</p> <p>The outcome of this is that there will be an increase in poverty and material hardship amongst the disabled people affected by the delay, and likely to a greater extent than for non-disabled people affected by the delay. It is likely that there will be increased demand for government services such as a disability employment services.</p> <p>To the extent that some disabilities or health conditions reduce life expectancy, it may seem less fair for people with these disabilities or health conditions to face delays in receipt of NZS or VP – since they cannot expect to receive the same amount of NZS or VP as others in any case. On the other hand, the change may improve fairness between long-term New Zealanders with life expectancy limiting conditions, and people with less connection to New Zealand who currently can expect to receive NZS or VP for longer.</p>
<p>Migrants...</p> <p>...from agreement partner countries</p> <p>...from non-agreement countries with well-developed pension systems</p>	<p>Migrants to New Zealand must meet the same conditions as expatriate New Zealanders, based on their age. However, there will be significant differences in the experiences of different migrant groups.</p> <p>In calculation of anticipated costs and savings, an assumption was included that 35% of people who would be affected by the impact of the change would arrive earlier to become eligible for NZS. This assumption is not broken down by ethnic groups or by nationality (due to uncertainties about the future population, and data quality issues). The information below is based on our current understanding of people receiving NZS, however this may not be applicable to future behaviours which we cannot quantify.</p> <p>Migrants from agreement partner countries are unlikely to be affected by the change unless they have spent significant time in a third country.</p> <p>Migrants from non-agreement countries will be more likely than the average expatriate New Zealander or migrant from an agreement partner country to be affected by the increase in the residence requirements.</p> <p>Where someone has lived for an extended period in a non-agreement country with a well-developed government pension system (eg Switzerland), they may well have an overseas pension that helps to support them through the delay in their NZS or VP eligibility. However, where they need benefit support this</p>

<p>...from non-agreement countries without well-developed pension systems</p>	<p>overseas pension will not assist them as it would be deducted from any main benefit they are eligible for.</p> <p>Migrants from non-agreement countries with less developed government pension systems (eg India) are most likely to be significantly affected by the increase in the residence requirements, as they are less likely to have a significant government pension to fall back on. They may need to wait for a longer period of time to build their length of residency in NZ to be eligible for NZS. They may be eligible for alternative assistance through the benefit system if needed, but this will be worth less than NZS.</p> <p>On current administrative and census data, migrants from China, India, South Africa and Fiji are most likely to be affected.¹⁰</p>
<p>Refugees</p>	<p>Refugees who enter New Zealand at age 45-54 can receive NZS at age 65 as long as they remain resident and present. Those who enter New Zealand at age 55+ can receive NZS after 10 years residence and presence.</p>

Human Rights

- 81 The Ministry of Justice assessed the Fair Residency Bill for consistency with the rights and freedoms affirmed in the Bill of Rights Act 1990 in 2018. This assessment found that the bill was compliant.
- 82 The proposed implementation is based on the age of potential applicants. In the assessment of MSD, this is necessary to fully realise the important public purpose described in the Ministry of Justice’s report of ensuring that the NZS scheme is ‘fair and not over-burdened’.

Consultation

- 83 The Office for Seniors, the Office for Disability Issues, Veterans’ Affairs, the Ministry for Pacific Peoples, Te Puni Kōkiri, the Department of Internal Affairs (including the Office for Ethnic Communities), the Ministry of Foreign Affairs and Trade, the Ministry of Business, Innovation and Employment, the Ministry of Justice, the Ministry of Health, and the Treasury were consulted. The Department of the Prime Minister and Cabinet was consulted.

Communications

- 84 Following the adoption and Committee report back, MSD will post advice on its website indicating that changes to the residence requirements are planned but not yet agreed by Parliament. Once the Fair Residency Bill receives Royal Assent, MSD will amend its website and external communications to reflect the change.

Proactive Release

- 85 This paper will be proactively released following the Committee report back, currently scheduled for 4 May 2021.

Recommendations

- 86 It is recommended that the Committee:

¹⁰ In the year to the end of August 2020, around 740 people born in China, 470 people born in India, 400 people born in South Africa, 300 people born in Fiji, 130 people born in the Philippines, 120 people born in Samoa and 120 people born in Malaysia who were granted NZS in the year to the end of August 2020 had 10-19 years New Zealand residence recorded.

Transition approach

- 2 **agree** that the New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill be amended so that:
- 2.1 for every two complete years someone was born after 1 July 1955, that person must have met one additional year of residence and presence in New Zealand after age 20
 - 2.2 anybody whose date of birth is on or before 30 June 1957 remains subject to the existing 10 year requirement

Accommodation for the Realm of New Zealand

- 3 **agree** that the New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill be amended so that:
- 3.1 only residence and presence in New Zealand after age 20 may count toward the first 10 years of the residence requirement; but
 - 3.2 residence and presence in any one or more of New Zealand, the Cook Islands, Niue or Tokelau after age 20 count toward the additional period; and
 - 3.3 residence in the Cook Islands, Niue or Tokelau does not count as residence in the calculation of rates of New Zealand Superannuation or Veteran's Pension payable under any portability provision

Accommodation for refugees

- 4 **agree** that the New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill be amended so that:
- 4.1 the 10 year residence and presence requirement continues to apply to any person granted refugee or protected person status in New Zealand at age 55 or higher; and
 - 4.2 the total requirement for residence and presence in New Zealand after age 20, for a person granted refugee or protected person status in New Zealand while aged 45-54 is to be no more than the difference between the date that person was granted that status and the date on which that person turns 65

Implementation

- 5 **agree** that the Ministry of Social Development include the recommendations for policy changes above in its departmental report for the Finance and Expenditure Committee
- 6 **agree** to delegate to the Minister of Social Development and Employment any further minor and technical amendments to the recommendations in the departmental report for the Finance and Expenditure Committee, in line with policy intent agreed to by Cabinet

Financial implications

- 7 **agree** to increase spending to provide for implementation costs associated with policy agreed in recommendation 2 above, with the following impacts on the operating balance and net core Crown debt:

Vote Social Development	\$ million – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & outyears
Operating balance impact	-	2.548	(0.498)	(1.030)	(2.215)
Crown Debt Impact					
Operating Balance Only Impact	-	-	-	-	-
Net Core Crown Debt Only Impact	-	-	-	-	-
No impact (tax on benefits)	-	-	(0.111)	(0.232)	(0.502)
Total	-	2.548	(0.609)	(1.262)	(2.717)

- 8 **approve** the following changes to appropriations to give effect to the policy decision in recommendation 2 above:

Vote Social Development Minister for Social Development and Employment	\$ million – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & outyears
Departmental Output Expenses:					
Income Support and Assistance to Seniors (funded by Revenue Crown)	-	2.548	-	-	-
Benefits or Related Expenses:					
New Zealand Superannuation	-	-	(0.954)	(1.972)	(4.231)
Veterans' Pension	-	-	(0.006)	(0.011)	(0.022)
Supported Living Payment	-	-	0.194	0.399	0.850
Jobseeker Support and Emergency Benefit	-	-	0.157	0.322	0.686
Total Operating	-	2.548	(0.609)	(1.262)	(2.717)

- 9 **agree** that the fiscal impacts in recommendation 7 and the appropriation changes in recommendation 8 be managed outside of allowances as they are likely to be at least fiscally neutral across the forecast period.

Hon Carmel Sepuloni
Minister for Social Development and Employment

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