Appendix Two

Further minor and technical changes to be included in the New Zealand Superannuation and Veteran's Pension Legislation Amendment Bill

Special Disability Allowance

The Special Disability Allowance (SDA) is payable to certain partners of people in residential or hospital care. The SDA helps with the extra costs associated with having their partner in care.

Under section 89 of the Social Security Act (SSA), the SDA may be paid to recipients of NZS or VP, as well as those receiving some main benefits, where their partner is either a patient in hospital receiving a reduced rate of main benefit under the SSA (which does not include NZS or VP) or is in subsidised residential care.

The SDA is also payable to NZS recipients under section 20 of the New Zealand Superannuation and Retirement Income Act (NZSRIA), where their partner is either a patient in hospital receiving a reduced rate of NZS or in subsidised residential care.

The current legislative settings appear to create both overlaps and gaps in coverage which are not in line with the intentions of either Act. For example, where both partners are recipients of NZS and one partner is in subsidised residential care, there is coverage under both the SSA and the NZSRIA. However, where both partners are recipients of NZS and one partner is in hospital receiving a reduced rate of NZS, there is only coverage under the NZSRIA, as the SSA does not include NZS in its definition of 'main benefit'.

An additional issue relates to the tax treatment of the SDA. An SDA payable under the SSA is not subject to income tax, while an SDA payable under the NZSRIA is taxed because it is a 'non-standard entitlement of NZS'. The SDA was included in the NZSRIA because the then Minister desired that superannuitants should be able to ascertain all their superannuation entitlements in one Act.

There is a risk that people could apply for and receive the SDA under both Acts. At the end of June 2018, around 2,700 beneficiaries were receiving an SDA. The vast majority of recipients were superannuitants (around 2,500). MSD's practice has been to pay only one SDA to each superannuitant who applies. MSD computer systems do not deduct income tax from SDA payments.

To mitigate risk and align with current practice and policy intent – that only one SDA should be payable – I propose to repeal section 20 of the NZSRIA and amend the SSA to remove the aforementioned overlaps and gaps. The amendments to the SSA would mean that a recipient of NZS would be eligible to receive an SDA if their partner was in hospital and receiving a reduced rate of NZS under the NZSRIA, or other reduced benefit under the SSA.

Because this change will simply align legislation with current practice it will have no fiscal impact.

Tax treatment of partial and backdated payments

NZS and VP rates as specified in legislation are gross rates. They are paid on a 14 day cycle. MSD is required to calculate the amount of tax to be deducted from the NZS and VP rates on a 'pay as you earn basis'. The amount of after tax NZS and VP that superannuitants receive is the gross rate of NZS or VP minus the tax that MSD deducts and pays directly to Inland Revenue.

This is different to the process for main benefits under the SSA, which are specified in the SSA as net rates. MSD pays the net rate to the client, and then calculates the tax to pay to Inland Revenue. There are provisions in the SSA and the Income Tax Act 2007 (ITA) to allow this.

Under a progressive tax system, the amount a person pays in tax depends on their annual income. The amount of tax that is deducted for a pay period is determined by scaling up the amount to an annual figure and working out the correct tax from that basis.

In practice, if a NZS or VP recipient receives a payment that is lower than usual (eg a part-period payment) or higher than usual (eg backdated payments), MSD systems pay a proportion of that fortnightly payment to Inland Revenue in tax which is linked to the usual fortnightly amount and not determined by scaling up the amount to an annual figure and working out the amount of tax from that basis.

Furthermore, discrepancies can arise where backdated NZS or VP payments relate to previous tax years. Backdated NZS or VP payments are subject to tax in the period in which they are paid. However, backdated net NZS or VP payments are calculated based on the tax rates that applied in the entitlement period, this can cause incorrect amounts of tax being paid where tax rates in the entitlement period are different to those in the period in which the payment is being paid.

I propose to amend the SSA and ITA to allow the Commissioner of Inland Revenue, in consultation with the Chief Executive of MSD, to determine the appropriate tax deduction for partial payments of NZS and VP and backdated lump sum payments of NZS and VP.

Currently, there is a proposed amendment before the house which seeks that, in certain circumstances, if the amount of tax that is directly paid to Inland Revenue from NZS or VP payments is incorrect, Inland Revenue would not seek to recover any extra amount of tax that the recipient would usually be required to pay.

Nevertheless, this proposal would align the legislation with current practice and avoid the need for MSD to make expensive system changes or a high number of manual adjustments.

Concurrence of "10 years after age 20" and "five years after age 50" requirements

The residential qualification for NZS and VP is described as "(b) … resident and present in New Zealand for a period or periods aggregating not less than 10 years since attaining the age of 20 years; and (c) has also been both resident and present for a period or periods aggregating not less than 5 years since attaining the age of 50 years…"

This section has always been interpreted as allowing people to meet the two requirements concurrently (if necessary). For example, if someone arrived in NZ at age 55, they could qualify for NZS or VP at age 65 because the ten years they would spend in NZ would count toward both the "10 years after 20" and "five years after 50" requirements. For the avoidance of doubt, I propose to amend section 8 of the NZSRI Act to clarify that this is the case.

Periods of absence during which somebody is "resident and present"

Sections 9 and 10 of the NZSRIA specify circumstances under which, in determining the period an applicant has been "present" in New Zealand, "no account is taken of" periods of absence from New Zealand. The purpose of these sections is to allow people to use these periods of absence to meet the *residency requirements* under section 8.

Section 8, however, expresses these residency requirements in terms of “resident and present” rather than only “present”. The Supreme Court has also noted that the sections are expressed in an “awkwardly negative way”.

For the avoidance of doubt, and to allow sections 9 and 10 to be more easily understood, I propose to amend these sections to ensure they state positively that the periods of absence they describe count as periods in which a person was “resident and present” in New Zealand.

Removal of grandparented NQP rate

A couple including an NQP can receive a maximum rate equal to that for a couple who both qualify if they began receiving this rate (the grandparented rate) before 1 October 1991. There are now only a handful of NZS couples receiving the grandparented rate, and no VP couples.

I propose to remove the VP grandparented rate from the Veterans’ Support Act 2014 and to remove the NZS grandparented rate from the NZSRIA subject to a commencement date that will allow the last NQPs on this rate to qualify for NZS in their own right.