MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

29 October 2024

Tēnā koe

Official Information Act request

Thank you for your email of 16 October 2024, requesting a copy of REP/17/11/1050 – *Section 70 of the Social Security Act 1964 (the direct deduction policy).*

I have considered your request under the Official Information Act 1982. Please find my decision on your request set out below.

Please find attached REP/17/11/1050 – *Section 70 of the Social Security Act 1964 (the direct deduction policy)* – dated 6 November 2017. The redactions from the published version no longer apply, and so have been removed.

I have attached the Social Security Appeal Authority decision number 046/2004 as a PDF, as you requested.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

pp.

Magnus O'Neill
General Manager
Ministerial and Executive Services

Social Security Appeal Authority of New Zealand

An appeal against a decision of the Benefits Review Committee [2004] NZSSAA 46 (13 April 2004)

Last Updated: 19 September 2007

Decision No. **046**/2004

Reference No. SSA 195/03

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by of against a decision of a Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Ms M Wallace - Chairperson
Ms P McKelvey - Member
Mrs H Tukukino - Member

HEARING at AUCKLAND on 11 March 2004

APPEARANCES

The appellant in person
for Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals against the decision of the Chief Executive, varied by a Benefits Review Committee, to pay Unsupported Child's Benefit to the appellant in respect of from 20 February 2001 and not from 1997 as requested by the appellant.

Background

[2] The appellant is aged 70 years. He is currently in receipt of New Zealand Superannuation.

[3] The appellant has the full-time care of his son, , aged 8 years, and , aged 15 years.

[4] is the daughter of and . This appeal relates to Unsupported Child's Benefit in respect of .

[5] Ministry records indicate that the appellant was in receipt of a Transitional Retirement Benefit in 1994. From 4 July 1994 , mother, was included as his partner in that benefit. Two children were included in the benefit as dependent children, namely, and in 1994.

[6] On 16 August 1995 was included in the appellant's Transitional Retirement benefit after she left the care of her father, .

[7] was excluded from Transitional Retirement Benefit from 27 September 1995, however the appellant and Ms continued to receive a married rate of Transitional Retirement Benefit including three dependent children, namely, , and , until 27 March 1998.

[8] On 1 April 1998 an application to transfer to New Zealand Superannuation was received from the appellant. In his application the appellant stated that he did not have a partner and there were no children in his care. The appellant began receiving a single rate of New Zealand Superannuation from 27 March 1998.

[9] On 28 March 1998 was granted Domestic Purposes Benefit. Three children were included in her benefit initially, namely, , and . Subsequently a fourth child, , was also included in her benefit. Ms continued to receive Domestic Purposes Benefit until 12 January 1999.

[10] On 12 January 1999 was included as the appellant's partner in his New Zealand Superannuation and her Domestic Purposes Benefit was cancelled. They received the married rate of New Zealand Superannuation with , and included as dependent children until 18 February 1999.

[11] From 19 February 1999 Ms was granted Domestic Purposes Benefit again, with , and included in her benefit. The appellant was transferred to New Zealand Superannuation from 18 February 1999, paid at the living alone rate.

[12] On 22 July 1999 the appellant applied for assistance and was granted a Special Needs Grant for food of $100 as the children were in his care while their mother was on a Hikoi.

[13] On 30 November 1999, Ms completed a Personal Details Form advising that would be in the appellant's care from that date.

[14] On 12 September 2000 Mr completed a New Zealand Superannuation Review of Benefit form for the 52-week period ending 12 September 2000. In response to the question *"Who do you live with?"* the appellant named , his son, but did not include any other person.

[15] On 21 February 2001 a Personal Details Form was completed by the appellant requesting that be included in his New Zealand Superannuation from 14 February 2001. Ms completed a form on 21 February 2001 stating, *" is now in the full care of her stepfather . She wants to be with her brother, . 14.2.2001."*

[16] In an application for review of his New Zealand Superannuation lodged with the Ministry on 25 September 2002 in response to the question, *"Who do you live with?"* the appellant noted that , his daughter, and , his son, were living with him.

[17] On 11 December 2002 the appellant lodged an application for Unsupported Child's Benefit in respect of . In the application the appellant noted that had come into his care on 13 August 2001. He noted that the child's mother had deserted her.

[18] On 17 December 2002 the appellant's application was declined on the basis that mother was still willing to support her, and that to qualify for Unsupported Child's Benefit the applicant could not be the step-parent of the child.

[19] The appellant sought a review of this decision. The matter was reviewed internally and initially the decision was upheld. On 27 February 2003 the Ministry received a letter from a lawyer pointing out that the appellant could not be considered a step-parent to because he

had never been legally married to her mother. Subsequently, confirmation was received from father that he was unable to care for her on a full-time basis and the Ministry granted the application for Unsupported Child's Benefit from 6 December 2002, the date the appellant booked the appointment to apply.

[20] The appellant sought a review of the decision to grant Unsupported Child's Benefit from 6 December 2002. The matter was reviewed both internally and by a Benefits Review Committee. The Benefits Review Committee determined that Unsupported Child's Benefit should have been paid from 21 February 2001, which was the date on which documentation was received asking that be included in benefit payments. The appellant then lodged an appeal with this Authority.

[21] In summary, the appellant said that:

- had lived with him since the age of 3 years.
- He and Ms had separated in early 1997. At that time the appellant was living on a lifestyle block, 25 kilometres from . Indeed, the appellant said he owned two blocks. He said that he lived on one and Ms lived on the other.
- He had been hospitalised with cancer in 1997 and when he returned from hospital he went to live at his property at No. . Ms had lived in the other property. and had lived with the appellant at .
- He had also been hospitalised in 1999, and when he went to hospital he sent the children to a friend, , to be cared for.
- An application for a Special Needs Grant for food on 22 July 1999 confirmed that the children were in his care at that time.
- He has been aware of the existence of Unsupported Child's Benefit since about 1994 when daughter, , had been removed from her mother's care by the Child Youth and Family Service (CYFS) and placed with extended family.
- He had requested Unsupported Child's Benefit for on many occasions but had always been told that he was not eligible to apply for Unsupported Child's Benefit.
- There had been an incident where Ms had tried to uplift and from him and take them to . As a result of this incident the appellant had been told he needed to apply for custody orders in respect of the children.
- He had been very upset to discover when he came out of hospital in 1999 that Ms had been included in his superannuation. She had come into hospital and got him to sign a form while he was in hospital.
- He had had many problems with the children's mother wanting to pick them up. In 2000 had gone to stay with her mother for a few days. partner is a paedophile and an incident had occurred which had caused considerable concern. The appellant had picked up and Child Youth and Family had been informed of the situation.
- The appellant subsequently obtained interim custody of on August 2001. On 29 October 2001 access to was suspended.
- He has since sought domestic protection orders against and her children , and in respect of and . The appellant said that he has sought these orders as he is fearful of these people picking up and and taking them to their mother's home.
- He has had difficulty getting child support for from either her father or her mother. The Child Support office had told him to go to Work and Income New Zealand for further assistance for .

[22] A letter produced by the appellant from states:

"I have known for over five years and in all that time he has had on a permanent basis and on and off for the first year, and permanently from Labour Weekend 1999.

During 1999 was working in for months at a time and while she was away would be up with . When came back she would pick up and take her back to for a few days. Then was left on her own and she would phone me to tell to pick her up as she was frightened."

[23] Also included in the s.12K report is a statement from father, , confirming that he and mother had separated before was born and, whilst he has occasional contact with he is not in a position to care for her on a day-to-day basis. The statement suggests that Mr works long hours and cannot easily get away from his employment.

[24] A Direction of Judge in relation to the custody proceedings dated August 2001 records, inter alia, that Mr had sworn an affidavit on April stating that, *"Over the past five or six months has only been away from me for four days. She spent two days with her father and two days with an uncle ... ".* In paragraph [4] of the Direction in relation to mother's view of the situation the Judge records:

"My understanding of that is that she says she and Mr have joint custody of and she would like that to continue."

At paragraph [6] he notes:

"Ms is not happy that I am making an Interim Custody Order today, ... Nevertheless it is my decision that I should make an Interim Custody Order today in favour of Mr for the reasons indicated."

[25] A letter from the appellant's lawyer to the Ministry on 25 February 2003 records that:

"8. On 10th September 2001, filed a report which strongly indicated that the child would be an 'at risk child' in the care of her mother for several reasons, namely:

a) Ms current partner, Mr (who is still her partner) was an alleged paedophile, and he had acted very inappropriately toward .

b) The child was the subject of abuse and neglect (home alone, lack of sufficient and nutritious food, uncared for rotting teeth), while in the care of her mother; and

c) The child's school attendance was very poor while in the care of her mother."

The letter records that as a result of this report, on October 2001, an order had been made suspending all access by Ms to . The letter notes that came into the appellant's care in October 2000.

[26] Mr also produced a copy of information from the Child Youth and Family Service relating to . This information records that was living with her mother until 21 October 2000, and that the appellant had advised that had been living with him since 21 October 2000.

[27] CYFS notes of an interview with on November 2000 indicated that said at that stage *"I live with , sometimes Mum and ."* At another part of the interview she says, *"Me and Mum live in because they are angry at each other."*

[28] In an interview with the appellant on November 2000 it is recorded that the appellant told the case worker that had been staying with him for the past three weeks. He had gone to house and removed because he believed was in danger from Mr . The appellant said that he would only return back to Ms if she was safe. Mr stated that he believed that would like Mr and to resume their relationship.

[29] The information included in the CYFS notes records that any form of physical/sexual abuse and/or neglect was unsubstantiated. was interviewed and no allegations or concerns were raised. is now living with her father.

[30] Notes of a proceeding in the District Court at on March 2003 relating to the appellant's applications for domestic protection orders on behalf of and against their siblings record Ms as advising the Court that she had not seen for 18 months.

[31] On behalf of the Chief Executive it is submitted that:

- Section 80 of the Social Security Act 1964 provides that a benefit shall commence on the later of –

[a] The date the applicant became entitled to receive it; or

[b] The date the application for it was received.

- In this particular case the appellant approached Work and Income New Zealand for financial assistance with the care of on February 2001. He came with written confirmation from the mother of the child that the child would be in his care from 14 February 2001.
- In order to accept that an application was made at an earlier date the Chief Executive must be satisfied that – (i) There has been an application in writing for a benefit which could be treated as an application for another benefit. (ii) The applicant must have given the Department sufficient information at the time of the application for one benefit to alert the Department to consider whether he met the conditions for that other benefit. (iii) The applicant must at that time have been clearly eligible for that other benefit.
- It is submitted that an application for Special Needs Grant for food is quite a different matter from an application for Unsupported Child's Benefit.
- Further, it is noted that on 12 September 2000 in an Application for Review of New Zealand Superannuation the appellant did not list as living with him.
- It is submitted that the decision to grant Unsupported Child's Benefit from 21 February 2001 is correct.

Legislation Relevant to this Appeal

[32] Section 80(1) of the Social Security Act 1964 provides:

"[[80 Commencement of benefits

(1) Except as otherwise provided in this section or the Social Welfare (Transitional Provisions) Act 1990 [or Part 6 of the War Pensions Act 1954] [or the New Zealand Superannuation Act 2001], a benefit shall commence on the later of--

(a) The date the applicant became entitled to receive it; or
(b) The date the application for it was received."

[33] Section 29 of the Social Security Act 1964 provides:

"[[29 Unsupported child's benefit

A person who is a principal caregiver in respect of a dependent child shall be entitled to receive an unsupported child's benefit in respect of the child if--

(a) That person is not the natural parent, adoptive parent, or step-parent of the child; and

(b) Because of a breakdown in the child's family, no natural parent, adoptive parent, or step-parent of the child is able to care for the child or to provide fully for the child's support; and

(c) The applicant is likely to be the principal caregiver in respect of the child for at least 1 year from the date of application for the benefit; and

(d) The applicant is aged 18 years or over; and

(e) Either--

(i) The child is both resident and present in New Zealand; or

(ii) The applicant has been both resident and present in New Zealand for a continuous period of 12 months at any time.]]"

Our Findings

[34] We note at the outset that neither the Chief Executive nor this Authority have power to backdate a benefit. In certain limited situations there may have been a request for assistance for a particular purpose which might be considered to be an application for a particular benefit prior to a formal application for a particular benefit being lodged.

[35] The questions in this case are whether or not the appellant made application for Unsupported Child's Benefit prior to 21 February 2001, and whether a person considering an application for Unsupported Child's Benefit in respect of prior to 21 February 2001 would have been satisfied that the appellant was eligible to receive Unsupported Child's Benefit in respect of .

Application prior to 21 February 2001

[36] We do not consider that the application for a Special Needs Grant for food on 22 July 1999 could be regarded as an application for Unsupported Child's Benefit. Whilst the application indicates that Ms children were in the appellant's care at that stage the indication was clearly that it was a temporary arrangement while their mother was on a Hikoi. There was nothing in the application to indicate that the appellant might qualify for Unsupported Child's Benefit in respect of at that stage.

[37] The appellant appears to rely primarily on what he says were verbal representations made to the Ministry for Unsupported Child's Benefit made on various unspecified occasions. In this regard we note it would seem surprising that the appellant would make a verbal request for Unsupported Child's Benefit but not seek to have included in his New Zealand Superannuation. It may well be the case that the appellant made verbal inquiries about Unsupported Child's Benefit after was included in his New Zealand Superannuation on 21 February 2001 but we are not satisfied that any inquiries he made prior to 21 February 2001 could be regarded as application for Unsupported Child's Benefit.

[38] We note moreover that the appellant received a Transitional Retirement Benefit in which was included as a dependant child up until 18 February 1999 at the married rate. On that basis alone the appellant could not have been entitled to receive Unsupported Child's Benefit prior to 18 February 1999. We further note that

he completed an application for Living Alone payment on 8 December 1999. In his application he clearly stated that he was living alone.

Eligibility for Unsupported Child's Benefit

[39] We have significant doubt as to whether the appellant would have been eligible for Unsupported Child's Benefit prior to 21 February 2001.

[40] The criteria for Unsupported Child's Benefit require the applicant to establish that:-

(i) There has been a breakdown in the child's family;

(ii) No natural parent, adoptive parent or step parent of the child is able to care for the child or to provide fully for the child's support, and

(iii) The applicant is likely to be the principal caregiver in respect of this child for at least one year from the date of application for the benefit.

[41] The evidence of when the applicant became principal caregiver is not entirely clear. was apparently included in her mother's Domestic Purposes Benefit until 21 February 2001 and when completing a New Zealand Superannuation Review of Benefit form on 12 September 2000 the appellant made no mention of living with him. The CYFS notes suggest that the incident which may have resulted in Mr uplifting from her mother's care occurred on or about 21 October 2000 as does his lawyer's letter to the Ministry. The information suggests that may have lived for periods with her mother and periods with Mr prior to October 2000 but there is nothing to suggest that prior to 21 October 2000 the appellant was her principal caregiver. This is supported by the reference in Judge direction of 13 August 2001 that Mr affidavit of 5 April indicated that had been living principally with him over the previous five or six months. On the basis of the evidence available it seems more likely than not that the appellant became principal caregiver on or about Labour Weekend of 2000.

[42] There is no information that the Ministry were informed that the appellant had become principal caregiver in October 2000. Moreover, the question for any decision-maker at that stage would have been whether or not it was likely that Mr would remain principal caregiver for at least one year from the date of application for the benefit.

[43] The evidence suggests that mother was not willing to relinquish sole custody of to the appellant at that point and in our view it was not until the appellant obtained an interim custody order in August 2001 that a decision-maker could be satisfied that it was likely that Mr would remain principal caregiver for the next 12 months.

[44] We do not consider that prior to 21 February 2001 the appellant could have satisfied the Chief Executive that mother was unable to care for her or that he would be likely to be her principal caregiver for at least a year.

Conclusion

[45] We note that the appellant has now been granted Unsupported Child's Benefit from 21 February 2001. We do not propose interfering with that grant. However we are not satisfied either that the appellant made any representation to the Ministry which might have amounted to an application for Unsupported Child's Benefit or indeed that he would have been eligible for Unsupported Child's Benefit in respect of prior to that date.

[46] The appeal is dismissed.

DATED at WELLINGTON this 13th day of April 2004

_____
Ms M Wallace
Chairperson

_____
P McKelvey
Member

_____
H Tukukino
Member

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MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Report

Date: 6 November 2017 **Security Level:** IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development

Hon Tracey Martin, Minister for Seniors

Section 70 of the Social Security Act 1964 (the direct deduction policy)

Purpose of the report

1 The Minister for Seniors recently received correspondence about removing the direct deduction policy. This report responds to the request of the Minister for Seniors for a briefing on the direct deduction policy and the potential impacts of amending or removing the policy.

Recommended actions

It is recommended that you:

1 **Note** the contents of this report

2 **Note** that the Minister for Social Development has overall policy and legislative responsibility for the direct deduction policy

3 **Note** that we suggest a holding response is prepared to respond to correspondence on the direct deduction policy until you have had the opportunity to meet with officials to discuss the content of this report.

Alex McKenzie
Acting General Manager
Seniors and International
Ministry of Social Development

06/11/2017
Date

Hon Carmel Sepuloni
Minister for Social Development

08/11/2017
Date

Hon Tracey Martin
Minister for Seniors

Date

Background

2 Under the direct deduction policy, state-administered overseas pensions (overseas pensions) are deducted from New Zealand Superannuation (NZS) and other New Zealand social security benefits on a dollar-for-dollar basis.[1] This provision was first implemented in 1939.

3 Under the policy, an overseas pension is deductible if it:

- forms part of a programme providing benefits, pensions or periodic allowances for any of the contingencies for which New Zealand benefits, pensions or periodic allowances are provided (eg for the contingencies of old age, disability, death of a spouse); and
- is administered by or on behalf of the overseas government paying the pension.

4 Private pensions and savings plans that are similar to Kiwisaver are not covered by the policy.

The policy provides an equitable level of state pension

5 The aim of the policy is to ensure that all qualifying New Zealand residents receive an equitable level of state pension, whether the amount of that pension is fully funded by New Zealand, partially funded by New Zealand and another country, or fully funded by another country. "Equitable" here means having due regard for the interests of both New Zealanders who have lived most or all of their life in New Zealand and overseas pensioners who have lived in New Zealand for a shorter period and who may have lived overseas for a substantial proportion of their life.

6 The policy means that New Zealanders who have lived in New Zealand all their lives are not financially disadvantaged compared with others who have worked overseas, or immigrants to New Zealand, who have entitlement to overseas pensions.

7 In the case of couples, the amount of any overseas pension that is in excess of one partner's NZS entitlement is deducted from the other partner's entitlement (the spousal deduction). If only one person in the couple receives a New Zealand entitlement, any overseas pension that the other person receives is deducted from the New Zealand entitlement received by the first person.

8 Both first-tier pensions (ie basic universal flat-rate state pensions), and second-tier pensions (ie contributory earnings-related state pensions) that are paid into New Zealand by or on behalf of other governments, are taken into account. Pensions that are mandated by a government but are nevertheless private in nature, eg pensions

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[1] There are two payment methods for overseas pensions paid into New Zealand – the Direct Payment Method and the Special Banking Option:

- Under the Direct Payment Method, a person has their overseas pension paid directly into their own bank account. The amount of their New Zealand entitlement is reduced by the amount of the overseas pension. However, together the two pensions add up to an amount that is similar to the full rate of the New Zealand entitlement.
- Under the Special Banking Option, a person can choose to have their overseas pension paid into a special bank account that only MSD and the bank can access. In return, the person receives the full amount of New Zealand entitlement. The Special Banking Option is only available to those who receive overseas pensions from the UK, Australia, Ireland, the Netherlands, or Jersey and Guernsey.

paid from the Chilean scheme in which workers make compulsory contributions into private accounts, are not covered by the policy.

NZS is different from pensions in other Western countries

9 NZS, with its simple residency rules, no means-testing and flat rate entitlement, is easy to understand, efficient to administer and, combined with the high rates of mortgage-free home ownership for older people in New Zealand, ensures there is a low level of material hardship amongst older people. Nevertheless, NZS is different from the pension systems operating in most other Western countries.

10 In most other Western countries, a person's pension entitlement is based on social security contributions made by that person and, in most instances, also by their employer, over their working life. The full payment of NZS after 10 years residence makes it difficult to interface NZS with other countries' pension systems. In other countries a person would generally receive a proportional pension based on the number of years they have worked in that country. A person who has worked in a number of countries would have a number of proportional pensions, which add up to the equivalent of one full pension. For example, a person who worked in Canada for half their working life, and the United States for the other half of their working life, would receive approximately 50 percent of their pension from each country, which adds up to one full pension.

11 By contrast, a person who worked in New Zealand for half their working life may be eligible for the full New Zealand payment, and if they worked in Canada for the remainder of their working life they would be entitled to 50 percent of the Canadian pension. This adds up to more than one pension. New Zealand addresses this issue by having the direct deduction policy.

12 The Australian system bears some similarities to the New Zealand system and therefore there are some similarities in the way overseas pensions are treated. For example, if a person migrates to Australia from Canada on retirement, that person would be covered by the social security agreement between Australia and Canada, which would mean that he would immediately be entitled to an Australian Age Pension. Australia would directly deduct the amount of that person's Canadian pension, until such time as he or she qualifies for Age Pension in his own right (currently after 10 years residence in Australia). Once the person qualifies for Age Pension in his or her own right, the Canadian pension will no longer be directly deducted, but will be taken into account for the income and asset test that applies to the Australian Age Pension.

New Zealand has a "one pension" principle

13 The direct deduction policy is underpinned by the "one pension principle", which means that a person should not be able to receive two forms of state financial assistance for the same or similar circumstances. For example, a disabled person over the age of 65 cannot receive both Supported Living Payment and NZS, despite the fact that he or she may meet the qualifying criteria for both benefits. This same principle extends to the treatment of overseas state pensions.

14 In 1972, the Royal Commission of Inquiry into Social Security[2] noted that:

The New Zealand social security legislation has always aimed to prevent anybody receiving more than one benefit for the same set of circumstances. This policy has applied to people living in New Zealand who receive pensions from some overseas source.

... In our opinion it is reasonable, in general, that people living in New Zealand receiving overseas pensions from obligatory national pension schemes should not be placed in a more advantageous position than New Zealand social security beneficiaries (including superannuitants). We therefore see no reason to depart from the present broad concepts that nobody should receive more than one benefit for the same set of circumstances, and that overseas pensions or benefits which are deemed to be analogous to New Zealand social security benefits should be deducted from any New Zealand benefit entitlement.

15 Other countries also have an equivalent to the one pension principle. For example, under the terms of the Social Security Agreement between New Zealand and Australia, the rate of combined NZS and Australian Age Pension that New Zealanders in Australia receive is "capped" at the rate that lifelong Australian residents receive. The Netherlands Government reduces the amount of Netherlands Old Age Pension where the combined amount of this pension and NZS exceeds the maximum rate paid to lifelong residents of the Netherlands.

16 When a person migrates to New Zealand, or returns home after a period overseas, they may bring with them a pension entitlement from another country. In some instances, the overseas pension amount can be quite substantial, especially where a person migrates or returns to New Zealand later in life. If a person were to receive their overseas pension entitlement as well as the full rate of NZS, they would be financially advantaged compared to people who have lived in New Zealand all their lives.

There is a common misconception that overseas pensions are private savings

17 The overseas pensions that are deducted under section 70 are paid out from state-administered or public pension schemes. Participation in these schemes is normally compulsory for all employees. Public pension schemes are established under a country's national legislation, are often financed on a pay-as-you-go basis (where current contributions pay for current benefits and pensions) and are administered by or on behalf of the Government of the country paying the pension. True private savings or pensions schemes are not administered by Governments but by private providers such as financial institutions, banks, employers or groups of employers.

18 Some overseas pensioners believe that the amount paid into the overseas pension scheme is the amount that is returned to them as a state retirement pension. However, this is not generally correct. Many overseas schemes also finance invalidity and/or survivor benefits. In some schemes, there may be also an element of taxpayer funding where the amount of contributions collected is insufficient to cover the cost of the pensions required to be paid out. Taxpayer funding may take on a more significant role in the future as a number of overseas state pension systems are underfunded. Taking into account that most pension schemes finance a number of

[2] *Social Security in New Zealand*, Report of the Royal Commission of Inquiry, March 1972.

different types of benefits, the amount of overseas retirement pension a person receives cannot directly relate back to the amount of contributions that person has made over their working life.

19 Some people consider that contributory pensions should be treated differently from taxpayer-funded pensions like NZS because the contributions are deducted from a person's own earnings. However, personal income tax is deducted from a person's own earnings and many superannuitants consider that, by paying New Zealand tax throughout their working life, they have effectively contributed towards their NZS entitlement. In reality, given that most public pension schemes are funded on a pay-as-you-go basis, there is generally no individual account for the current worker to access in the future when that person retires.

20 For example, National Insurance contributions (NICs) paid into the UK scheme are not considered to be private savings. Lord Hoffman in an appeal to the United Kingdom House of Lords (R (Carson and Reynolds) v. Secretary of State for Work and Pensions [2005]) stated: *It is, I suppose, the words 'insurance' and 'contributions' which suggest an analogy with a private pension scheme. But, from the point of view of the citizens who contribute, National Insurance contributions are little different from general taxation which disappears into the communal pot of the consolidated fund. The difference is only a matter of public accounting.*

The direct deduction policy reduces expenditure on NZS

21 There are approximately 90,000 New Zealanders who have their NZS or other benefit reduced because they receive an overseas pension. The annual amount of the deductions is approximately $355 million. Deduction amounts are likely to increase in subsequent years, driven by increasing numbers of pensions being paid to New Zealand residents by Australia and the United Kingdom.

Is there a viable alternative to direct deduction?

22 NZS is uncomplicated and relatively low-cost compared with the pension expenditure, as a percentage of Gross Domestic Product (GDP), of other Organisation for Economic Co-operation and Development (OECD) countries. However, the simplicity of NZS, in particular having a short period of residence and presence requirement and an 'all or nothing' entitlement, makes the interface with foreign pension systems problematic. Over the years consideration has been given to alternatives to the direct deduction. As yet no option has been identified that would satisfactorily replace the policy.

23 The answer for some people is moving to a proportional system of entitlement. Under this system full NZS entitlement would only be accrued after 45 years residence in New Zealand. When taken at face value this type of system seems to be a logical solution that would provide an equitable outcome for New Zealand taxpayers and recipients of foreign pensions. Closer analysis reveals some significant issues:

- Superannuitants' incomes would be impacted. In 2012, the Ministry advised the Social Services Committee that we estimate that up to 90 percent of superannuitants who have overseas pensions could be disadvantaged by a proportional system. People who have spent time overseas between the ages of 20 and 65 and who have no overseas pension, or only a small overseas pension that does not sufficiently cover their years outside New Zealand, would have a reduction in overall pension income.

- There would be a particular problem for migrants from the United Kingdom as the United Kingdom does not index link (increase by inflation) pensions it pays into New Zealand. Consequently United Kingdom pensioners would have a gradually diminishing combined United Kingdom and New Zealand pension income as inflation gradually reduced their real United Kingdom pension amount.

- People would need to be provided with an adequate lead-in period in which they could adjust to a proportional payment of NZS.

- There could be significant client compliance and service delivery implications. A proportional model may require the Ministry to verify all NZS applicants' actual residence in New Zealand. This would be resource intensive and would place an additional compliance burden on NZS applicants. There would be significant IT costs to set up a new system which calculates varying NZS rates based on length of residence in New Zealand.

- Superannuitants with insufficient income from NZS would need to apply for supplementary assistance – this would create significant additional interaction with Work and Income for these people. There are no supplementary payments currently available which could top-up superannuitants' incomes to address hardship on an on-going basis. Therefore we would need to consider whether the current Temporary Additional Support (TAS) provisions would be suitable for this purpose or whether new provisions would need to be developed.

24 Around 2,000 people with overseas pensions receive New Zealand working age benefits (i.e. benefits other than NZS). Consideration would need to be given to how overseas pensions would be treated for this group.

There would be some advantages to repealing direct deduction...

25 A divisive policy would be removed. The direct deduction policy can be contentious for some recipients of overseas pensions and for the overseas governments that pay the pensions. For some overseas pensioners, whether migrants or returning expatriates, it comes as a surprise that they will not receive a full NZS entitlement on top of their overseas state pension. Some other governments consider that New Zealand is using their pensions simply to reduce its own pension liabilities.

26 Spousal deduction is an extension of the direct deduction policy and ensures that couples with overseas pensions are not financially advantaged over couples who are life-long New Zealand residents. Spousal deduction occurs where the excess amount of overseas pension of one partner is deducted from the other partner.

27 The direct deduction can also be difficult to administer. Everyone who applies for NZS is required to state whether they have resided overseas and therefore, could be eligible for an overseas pension. The Ministry is required to assist people who may be eligible for an overseas pension, to test their eligibility. Currently, the Ministry assists around 10,000 people a year to test their eligibility. In most instances the Ministry has to follow up with applicants numerous times to get the process completed.

...however NZS would become less fair

28 The direct deduction policy carries the fairness and simplicity principles of NZS through to treatment of overseas pensions. People who have lived and worked overseas, both returning New Zealanders and migrants to New Zealand, will not have contributed to this country to the same extent as life-long New Zealand residents.

The direct deduction policy ensures that all superannuitants receive an amount of state pension that is at least equivalent to the full rate of NZS.

29 Removing section 70 would continue to ensure that everyone receives an amount of state pension that is at least equivalent to NZS, but some people with overseas state pensions would be able to receive significantly more combined state pension amounts than other New Zealanders.

For example:

- A single person living alone receives an Australian Age Pension based on 20 years residence in Australia of AU $794.80 (NZ $850.75 per fortnight). If they also got paid NZS they'd receive another $780.40 net per fortnight for a total payment $1,631.15. A life-long New Zealander would only get $780.40 per fortnight.

- A married couple who emigrated to New Zealand from the Netherlands get a combined Dutch state pension of €292.48 per fortnight (NZ $470.33 per fortnight). If they also got paid the married couple rate of NZS they'd get another $1,200.60 per fortnight for a total payment of 1,670.93. A lifelong New Zealand couple would only get $1,200.60 per fortnight.

30 The residence period to qualify for NZS is currently 10 years. If the residence period was increased this would moderate some of the lack of fairness created by removing the direct deduction policy because people with foreign pensions would need to wait longer to qualify for full NZS. Nevertheless it would still be possible for some people who have lived and worked in countries with relatively generous pension systems to be significantly better off than other NZS recipients.

31 Removal of the direct deduction policy may also create divisiveness between lifelong New Zealanders and people who have entitlement to overseas pensions as the overseas pensioner group would have access to two state pensions and would be financially advantaged compared with lifelong New Zealanders.

Amendments could be made to the spousal deduction

32 In most situations, the spousal deduction means that couples receive the same amount of state-administered retirement income, whether the amount they receive is fully funded by New Zealand or by New Zealand and another country, or just by an overseas country.

33 However, there are a small number of cases arising where both partners are aged 65 or over, but only one is eligible to receive NZS and the other is receiving an overseas pension, which is deducted in full from their partner's NZS entitlement. In these instances the couples are financially disadvantaged compared with a couple who both receive the married rate of NZS. This is illustrated in the table below:

	Couple – one person eligible for NZS, the other receives an overseas pension (OSP)		Couple - both receive NZS with no OSP	
	Client	Partner	Client	Partner
NZS rate	$340.80	$0.00	$340.80	$340.80
OSP	$0.00	$345.00	$0.00	$0.00
NZS less partner's OSP	$-4.20	n/a	n/a	n/a
NZS payable	$0.00	$0.00	$340.80	$340.80
Total (as a couple)	**$345.00 (OSP only)**		**$681.60**	

34 A change to legislation could be made to remove this inequity. This change would mean that the non-qualified spouse would not necessarily need to qualify for NZS, but the Ministry would be able to assume that the person did qualify. The Ministry would therefore be able to deduct only the amount of overseas pension that exceeds the NZS entitlement of the receiving partner. This would place couples in this situation on the same financial basis as other couples where both partners qualified for NZS

Could we remove the entire spousal deduction policy?

35 Although the spousal deduction has been a contentious aspect of the direct deduction policy, we consider it generally fit for purpose. Around 450 people are affected by spousal deduction and, if this provision were removed, NZS expenditure would increase by around $1.66m per year.

36 Removal of the spouse deduction would also be inequitable for:

- single superannuitants who have the entire overseas pension amount deducted from NZS and, where there is an excess amount, the excess is deducted from any supplementary benefit payments also payable
- working age beneficiary couples with an overseas pension who also have the entire amount of overseas deducted from the married rate of working age benefit.

Social security agreements do not affect direct deductions

37 Social Security Agreements (SSAs) are bilateral treaties that close gaps in social security coverage for people who migrate between countries. They do this by overcoming barriers to benefit entitlements in domestic legislation, such as requirements for citizenship, minimum contributions, past residence, and current country of residence.

38 Current policy is that the social security agreements (SSAs) do not affect the direct deduction of pensions and benefits paid by SSA partner countries. However, a SSA could override the direct deduction legislation.

39 A number of countries have pressured New Zealand to rescind the direct deduction for their pensions. We recommend declining any proposals to compromise the direct deduction from SSA partners or potential SSA partners because this would:

- provide many pensioners covered by the SSA with an unfair financial advantage by enabling them to receive a combined New Zealand and foreign pension amount higher than the rate of NZS everyone else receives
- set a precedent so that other countries with which we have SSAs would be likely to seek concessions to the direct deduction policy
- create additional fiscal costs for New Zealand (over $300 million of direct deductions are from SSA countries).

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