

Social Welfare (Transitional Provisions— Overseas Pensions) Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation

The Social Services Committee has examined the Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Bill (the bill) and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Social Welfare (Transitional Provisions) Act 1990 (the Act), the Customs and Excise Act 1996, and the Privacy Act 1993 to give effect to the recent Agreement on Social Security (the agreement) made between the Governments of New Zealand and Australia. It also proposes minor changes to the Social Security Act 1964.

We advertised for submissions in both New Zealand and Australia but received none. However, despite not receiving submissions and therefore no suggestions for amending the bill, we are recommending amendments as set out below.

Exchange of information for social security purposes— clause 6

Sections 19B and 19C of the Act

Section 19A of the Act stipulates that agreements containing mutual assistance provisions for the exchange of information for social

security purposes or the recovery of social security debt must contain the provisions of, as appropriate, section 19B or section 19C of that Act or provisions to the same effect. A proposed amendment to clause 6 will amend section 19A so that agreements only have to be subject to sections 19B or 19C. This change is proposed because Australia is not able to agree to have the actual text of sections 19B and 19C included in the agreement.

Removal of tax reference in section 19C(1)(b)(ii) of the Act

A further change to section 19C of the Act is required to satisfy the needs of Australia. Section 19C covers the terms and conditions for exchange of information between New Zealand and Australia. Section 19C(1)(b)(ii) provides that an agreement party may supply to the other agreement party: 'such information on that person as it may obtain from the taxation authorities of that party'.

The problem for Australia with this wording is that any mention of taxation in relation to exchanging social security information will mean that the Australian tax authorities will insist on being a co-signatory to the agreement. The Australian Department of Family and Community Services considers it essential that this eventuality is avoided because of the delay required for this to occur.

Clause 6 seeks to amend section 19C(1)(b)(ii) of the Act to include reference to the border control authorities of the parties, to take account of the new provisions relating to exchange of information with the New Zealand Customs Service (Customs). We recommend that the bill be amended to delete this section from the Act as this wording will still allow the Ministry of Social Development (the ministry) to obtain information from the Inland Revenue Department and Customs and supply it to a requesting institution. The only difference is that 'taxation authorities' and 'border control authorities' will no longer be specifically mentioned in this section.

Exchange of information for Customs purposes— clause 8

Clause 8 amends the Customs and Excise Act to allow exchange of information between Customs and the ministry in order to give assistance to an agreement country. However, the current wording of this clause does not sufficiently reflect the way the exchange of data needs to happen in reality.

The wording of this clause requires the ministry to supply Customs with information supplied by another country before Customs supplies information to the ministry for passing on to the other country. In reality the ministry (International Services) will have a Customs computer terminal located in its office. When the ministry receives a claim for an Australian benefit, for example, and the information in the application is unclear or incomplete on the applicant's periods of residence in New Zealand or a third country, the ministry will send to Australia any information it is able to obtain from the Customs database. The ministry will send the information without necessarily having received any information from Australia and without having received a specific request from Australia as the clause currently stipulates. Following the current wording of this clause will add another time-consuming activity into the administrative process.

We therefore recommend that clause 8 be amended to allow the ministry to supply Customs with information about a person who has applied for a benefit under an agreement. This will be in addition to the current provision in clause 8 allowing the ministry to supply information provided by the agreement country rather than replacing this provision.

Amendment to apply the direct deduction policy to overseas government occupational pensions—clause 10

Clause 10 will ensure that overseas government occupational pensions that are paid as an alternative to similar pensions payable to the general population will be deducted from New Zealand Superannuation. Before the introduction of this bill the ministry was advised that government occupational pensions paid to 30 people, were directly deductible. The ministry accordingly set up direct deductions, to operate against their New Zealand entitlements. The ministry then established there was no legal basis for this and all 30 people had the monies refunded to them. Subsequently another 41 cases where government occupational pensions are paid have come to the attention of the ministry. No action has been taken in respect of these additional cases. If passed the new Act will not be retrospective; that is, direct deductions will commence only from the date the bill is enacted.

Appendix

Committee process

The Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Bill was referred to the committee on 13 November 2001. The closing date for submissions was 15 January 2002. We did not receive any submissions. Consideration took 59 minutes.

We received advice from the Ministry of Social Development.

Committee membership

Taito Phillip Field (Chairperson)

Mahara Okeroa (Deputy Chairperson)

Sue Bradford

Helen Duncan

Dr Liz Gordon

Dr Muriel Newman

Jill Pettis

Katherine Rich

Bob Simcock

Anne Tolley

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

Hon Steve Maharey

Social Welfare (Transitional Provisions— Overseas Pensions) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Act **2001**.
- (2) In this Act, the Social Welfare (Transitional Provisions) Act 1990¹ is called “the principal Act”.

¹ 1990 No 26

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Part 1

Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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3 Purpose

The purpose of this Act is—

- (a) to amend the principal Act, the Customs and Excise Act 1996, and the Privacy Act 1993 to enable a social security agreement with Australia to be given effect: 5
- (b) to give the amendments referred to in **paragraph (a)** effect in relation to any other country with which New Zealand enters into a social security agreement containing mutual assistance provisions:
- (c) to make a minor amendment to the Social Security Act 1964 relating to overseas pensions. 10

Part 2

Amendments to principal Act and other Acts

Amendments to principal Act

4 Inclusion of mutual assistance provisions in reciprocity agreement 15

Section 19A of the principal Act is amended by omitting from subsections (3) and (4) the word “contains”, and substituting in each case the words “is subject to”.

5 Terms and conditions for recovery of social security debts 20

(1) Section 19B(1)(a) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws),— 25

“(A) has been exhausted or has expired; or 30

“(B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and” 35

(2) Section 19B(1) of the principal Act is amended by inserting, after paragraph (f), the following paragraph:

“(fa) if a party gives assistance in respect of any social security debt for which there is no time limit for exercising any right of review or appeal of the determination of the debt under the law under which the debt was determined, or for which there is a time limit but a right of review or appeal may be exercised after its expiry in the discretion of the court or tribunal or body or person concerned, or in the discretion of any other person,—
“(i) the requesting institution must immediately advise the requested institution if any such right is exercised; and
“(ii) the requested institution must defer recovery of the debt until notified by the requesting institution that the review or appeal is finally determined:”.

(3) Section 19B of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of **subsection (1)(a)(ii)**, a right of review or appeal under the law under which a debt was determined has expired—
“(a) if the right has not been exercised within the time limit provided for its exercise; and
“(b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.”

6 Terms and conditions for exchange of information for social security purposes

Struck out (unanimous)

Section 19C(1)(c) of the principal Act is amended by inserting, after the word “taxation” in the first place where it appears, the words “or border control”.

New (unanimous)

Section 19C(1) of the principal Act is amended by omitting paragraph (b), and substituting the following paragraph:

“(b) the requested institution of a party may supply to the requesting institution any information about the person to whom the request relates that it holds or is lawfully able to obtain:”.

7 Actions by chief executive under mutual assistance provisions

(1) Section 19D of the principal Act is amended by inserting, after subsection (4), the following subsections: 10

“(4A) **Subsection (4B)** applies if—

“(a) an agreement contains a provision of the kind referred to in section 19A(2)(b); and

“(b) the social security purposes concerned are wholly or principally the administration of the agreement itself; and 15

“(c) the parties to the agreement are likely to frequently exchange information about individuals for the purposes of granting or paying benefits under the agreement, calculating the rates of benefits payable under the agreement, or calculating the rates of other benefits that are affected by the rates of benefits payable under the agreement. 20

“(4B) If this subsection applies, if any information received from the competent institution of the other country under the provision contains identifying information about any individual (including the unique identifier assigned to that individual by that institution) who has applied for a benefit payable under the agreement in either country and produces a discrepancy with information already held about that person by the chief executive, and the chief executive has not previously given notice under this subsection, the chief executive must give that individual written notice— 25 30

“(a) specifying particulars of the discrepancy and of the action the chief executive proposes to take as a result of that discrepancy; and 35

- “(b) specifying the unique identifiers assigned to that individual by the competent institutions of both countries; and
- “(c) informing him or her that information received from the other country about that individual will be matched with information in the department’s possession using those unique identifiers; and 5
- “(d) specifying the kinds of information about the individual that the chief executive is likely to receive from the other country under the agreement; and 10
- “(e) specifying the kinds of actions that the chief executive may take as a result of information about that individual received at any subsequent time from the other country under the agreement; and
- “(f) specifying the likely consequences of those actions for any benefit payable to that individual under the agreement or otherwise; and 15
- “(g) stating that the individual has 5 working days from the receipt of the notice to show cause why the chief executive should not take the action referred to in **paragraph (a)** or actions of the kinds referred to in **paragraph (e)**. 20
- “(4C) Despite subsections (3)(c) to (e) and (6), if **subsection (4B)** applies, after the expiration of the 5 working days referred to in **subsection (4B)(g)**, the chief executive is not obliged to comply with subsection (3)(c) and (d) in respect of any information that is— 25
- “(a) subsequently received from the other country under the provision; and
- “(b) received for a purpose set out in **subsection (4A)(c)**; and
- “(c) matched against information held by the chief executive using the unique identifiers assigned to the individual concerned by the competent institutions of both countries.” 30
- (2) Section 19D(5) of the principal Act is amended by adding the words “or **subsection (4B)**”. 35

Amendment to Customs and Excise Act 1996

8 New sections 280A and 280B inserted in Customs and Excise Act 1996

The Customs and Excise Act 1996 (1996 No 27) is amended by inserting, after section 280, the following sections: 5

“280A Interpretation

In **section 280B**, unless the context otherwise requires,—

“**authorised officer** means any officer, employee, or agent of the department who, with the approval of the chief executive of the Customs, is authorised by the chief executive of the department to supply information or receive information from the chief executive of the Customs under **section 280B** 10

“**department** means the department for the time being responsible for the administration of the Social Security Act 1964 15

“**identifying information** means personal information that identifies an individual, which may include the individual’s passport number

“**social security agreement** means an agreement or convention, or alteration to an agreement or convention, in respect of which an Order in Council has been made under section 19 of the Social Welfare (Transitional Provisions) Act 1990. 20

Compare: 1994 No 166 ss 85B and 85C

“280B Disclosure of arrival and departure information for purposes of mutual assistance provision contained in social security agreement 25

“(1) The purpose of this section is to facilitate the exchange of information between the Customs and the department for the purpose of giving assistance to the Government of a country with which New Zealand has a social security agreement that contains a mutual assistance provision of the kind referred to in section 19A(2)(b) of the Social Welfare (Transitional Provisions) Act 1990, to enable compliance with that agreement. 30

Struck out (unanimous)

“(2) For the purpose of this section, the chief executive of the department may supply to the chief executive of the Customs any identifying information supplied to the department by the Government of that country.

New (unanimous)

- “(2) For the purpose of this section, the chief executive of the department may supply to the chief executive of Customs—
- “(a) any identifying information supplied to the department by the Government of that country; and
 - “(b) any identifying information obtained by the department about a person who has applied for a benefit to which that social security agreement applies.
- “(3) If, in relation to any person, identifying information is supplied in accordance with **subsection (2)**, the chief executive of the Customs may compare that information with any arrival and departure information held by the Customs that relates to that person.
- “(4) If the Customs has arrival or departure information relating to a person, the chief executive of the Customs may, for the purpose of this section, supply to an authorised officer any of the following information held by the Customs if that information is of a type specified in an agreement made under section 19C(1)(d) of the Social Welfare (Transitional Provisions) Act 1990:
- “(a) the person’s full name:
 - “(b) the person’s date of birth:
 - “(c) the person’s sex:
 - “(d) the person’s passport number:
 - “(e) the person’s nationality:
 - “(f) if the person arrived or, as the case may be, departed by aircraft, the flight number:
 - “(g) if the person arrived or, as the case may be, departed by ship, the name of the ship:
 - “(h) the date on which the person arrived in, or, as the case may be, departed from, New Zealand.

- “(5) If the chief executive of the Customs has supplied information under **subsection (4)** to an authorised officer, the department may supply that information to the competent institution of the Government of the other country in accordance with the mutual assistance provision of the social security agreement. 5
- “(6) If information is supplied to the chief executive of the Customs under **subsection (2)**, that chief executive—
- “(a) may use that information for the purposes set out in **subsections (3) and (4)**: 10
- “(b) may not supply that information to any other country without the prior written consent of the chief executive of the department, and that supply or consent may be subject to any conditions that the chief executive of the department considers appropriate to impose.” 10

Amendment to Privacy Act 1993 15

- 9 Privacy Act 1993 consequentially amended**
- The Third Schedule of the Privacy Act 1993 (1993 No 28) is amended by omitting from the item relating to the Customs and Excise Act 1996 the expression “Section 280”, and substituting the words “**Sections 280 and 280B**”. 20

Amendment to Social Security Act 1964

- 10 Interpretation**
- The definition of **Government occupational pension** in section 3(1) of the Social Security Act 1964 (1964 No 136) is amended by adding the word “; but” and also by adding the following paragraph: 25
- “(d) does not include a benefit, pension, or periodical allowance of the kind set out in paragraph (a) if the person would have been entitled to receive a similar benefit, pension, or periodical allowance paid by, or on behalf of, the Government of that country under a scheme or other arrangement in respect of persons who were not employees or in the service of that Government.” 30

**Social Welfare (Transitional Provisions—
Overseas Pensions) Amendment**

Legislative history

31 October 2001	Introduction (Bill 165-1)
13 November 2001	First reading and referral to Social Services Committee
