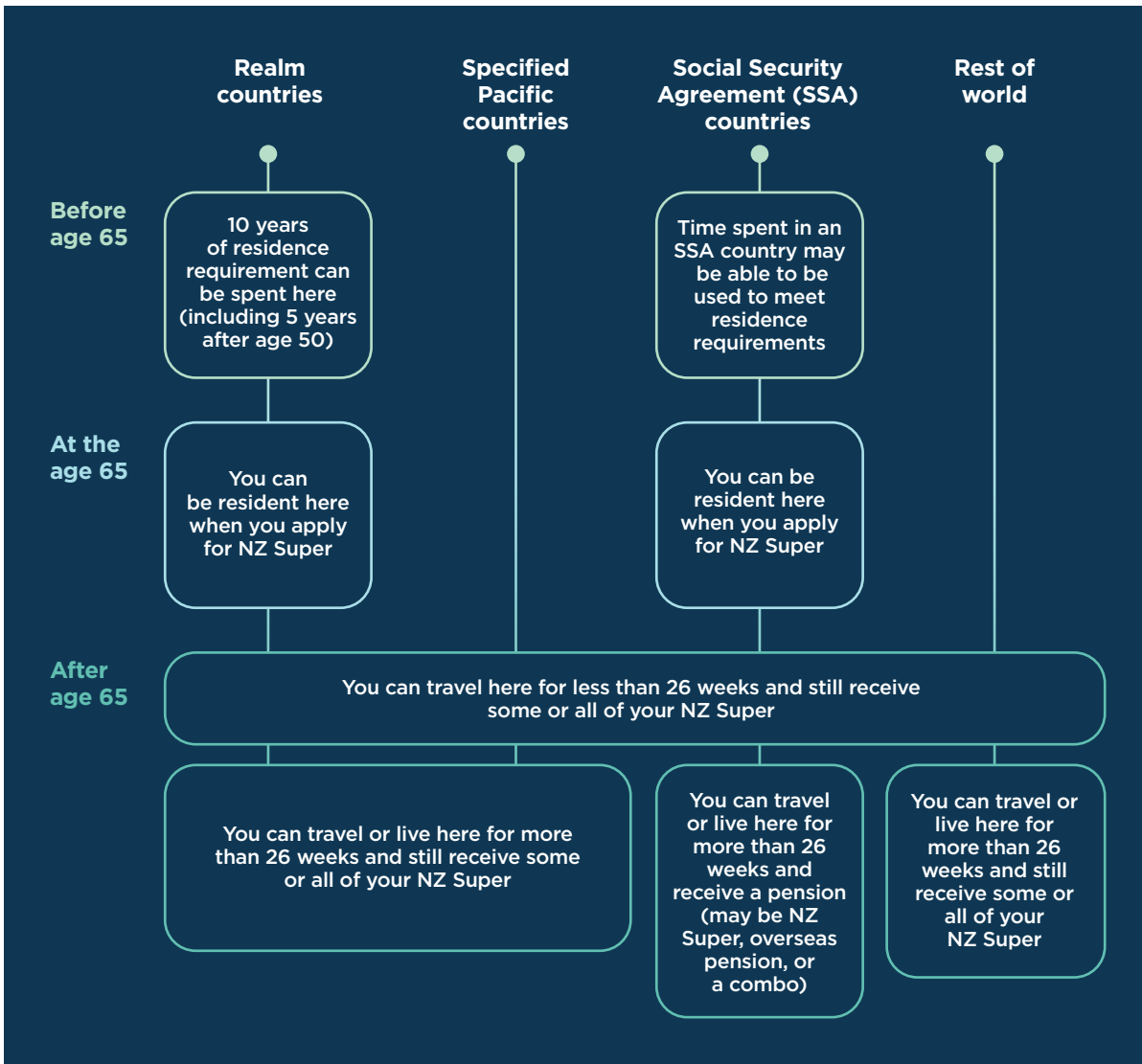


# New Zealand Super settings and a globally mobile population

## SUMMARY

This paper considers how the current policies related to New Zealand Superannuation (NZ Super) operate in the context of an increasingly globally mobile population, before, at, and after the age of eligibility. In particular, the paper focuses on two key legislative principles of "resident and present" and "ordinarily resident" that underpin current NZ Super settings. There have been a number of changes to the policy design features (settings) of NZ Super over the past few decades that reflect our change to a globally mobile population. These include improvements to portability settings and the modernisation work. However, there are further opportunities for improvement, both legislative and operational.

### Amendments made to NZ Super legislation reflecting a global mobile population



# Introduction

This paper forms part of a series of Policy Papers that consider the New Zealand retirement income system. Previous Policy Papers have looked at how the New Zealand retirement income system compares to retirement income systems across the OECD<sup>1</sup>, and provided introductions to NZ Super<sup>2</sup> and KiwiSaver<sup>3</sup> and how they operate. The focus of the current paper is to consider how the current policies related to NZ Super operate in the context of an increasingly globally mobile population, before, at, and after the age of eligibility.

The governing legislation for these settings is the New Zealand Superannuation and Retirement Income Act 2001<sup>4</sup> (NZSRI Act) and the Social Security Act 2018<sup>5</sup> (SS Act).<sup>6</sup>

This paper focuses specifically on the impact of a **globally mobile population**, and in particular, two key legislative principles of “**resident and present**” and “**ordinarily resident**” that underpin current NZ Super settings. There have been various changes to the legislative environment over the past few decades to take into account a more globally mobile population, including improvements made to portability<sup>7</sup> settings in the 1990s and 2000s, and more recently the modernisation and simplification work that took effect in 2020.

There are generally two design options for government pensions, either contributory or non-contributory. A non-contributory scheme provides a guaranteed minimum income in old age based on being a citizen or resident of a particular country, rather than on the basis of any previous formal contributions. Such schemes are generally tax financed and can be means tested or non-means tested, i.e. universal.<sup>8</sup> As non-contributory schemes attach entitlement to residence, rather than to having made a particular level of contributions to become entitled to a pension, eligibility criteria are often linked to periods of residence.

NZ Super is a universal non-contributory pension with specific eligibility criteria related to periods of residence. The **heart of eligibility for NZ Super is a close connection and contribution to New Zealand**. Because of the universality of NZ Super this is measured by residence and presence in New Zealand before the age of 65. Then at the time of application and beyond, the focus shifts to whether a person is ordinarily resident in New Zealand. Definitions of these terms, and the implications of these criteria are of key importance for a globally mobile population and are discussed in more detail in the sections that follow.

This paper has four parts. The first three parts set out the requirements that need to be met before age 65, at age 65, and after age 65. In each instance an overview of the current legislative and operational environment is provided, followed by a brief legislative history outlining the changes that have been made to adapt to a more globally mobile population and policy rationale. The fourth part of the paper provides an overview of current and potential future challenges.

1 [TAAO-RC-Policy-Paper-2021-02.pdf \(retirement.govt.nz\)](#)

2 [TAAO-RC-Policy-Paper-2021-03.pdf \(retirement.govt.nz\)](#)

3 [TAAO-RC-Policy-Paper-Kiwisaver-2021-04.pdf \(retirement.govt.nz\)](#)

4 [New Zealand Superannuation and Retirement Income Act 2001 No 84 \(as at 26 November 2022\), Public Act - New Zealand Legislation](#)

5 [Social Security Act 2018 No 32 \(as at 26 November 2022\), Public Act - New Zealand Legislation](#)

6 Throughout this paper references made to NZ Super are also generally applicable to Veterans Pensions. Veterans Pension (VP) is the equivalent to New Zealand Superannuation (NZ Super) for veterans with qualifying operational service and for their spouses or partners. Qualifying for VP depends on meeting the age and residence criteria in the NZSRI Act, and the requirements of the Veterans' Support Act 2014. VP policy settings match those of NZ Super, but there are additional benefits associated with it, such as a lump sum payment on the death of a VP recipient.

7 Portability refers to the ability to receive a pension from your home country when travelling to or migrating to live in another country.

8 [World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals \(ilo.org\)](#)



# Part 1: Before age 65:

People are generally required to spend a certain amount of time being both resident and present in New Zealand before they become eligible to receive NZ Super.

## NZ SUPER ELIGIBILITY REQUIRES

- You must be resident and present in New Zealand for at least 10 years (rising to 20 years) including 5 years over the age of 50.

## GLOBALLY MOBILE POPULATION

- 10 years (of 20 year requirement) can be in Realm countries
- 5 years after 50 can be in Realm countries
- Full time period may be spent in an SSA country

## CURRENT LEGISLATIVE AND OPERATIONAL ENVIRONMENT

Section 8(2) of the NZSRI Act requires that someone is “**resident and present**” in New Zealand for at least 10 years (increasing over time to 20 years for those born after July 1977) since the age of 20 including at least 5 years since the age of 50. The years of residence in New Zealand (including 5 years over 50) do not have to be consecutive. It can be accumulated through several periods of residence and presence but the person concerned must genuinely have been resident in New Zealand rather than another country during each period for it to be counted.

### Determination of resident and present

A key point to emphasise is that the legislation requires that a person must be both “resident **and** present” for the time period to count towards meeting the residency requirement. The terms are not defined in the legislation, however court cases, in particular *S v the Chief Executive of the Ministry of Social Development* [2011] NZAR 545 (HC), have clarified the meaning as follows: “by requiring a person to be both resident and present in New Zealand for the prescribed periods, a person must **both lawfully have his or her home in New Zealand and be physically present in New Zealand** for the specified periods.” The Court observed that while residence is not broken by temporary absences overseas, Parliament explicitly inserted the additional requirement of presence and a person is required to be physically present for the specified periods.<sup>9</sup>

MSD<sup>10</sup> explains what being “resident and present” entails from a practical perspective: “*This means that, if someone usually lives overseas, but from time to time visits New Zealand, those visits do not count as time in which they are resident and present because they are not resident. Additionally, if someone usually lives in New Zealand, but takes overseas holidays, those holidays do not count as time in which they are resident and present (even if they are employed and paying tax in New Zealand) because they are not present. This means that disputes can arise as to whether someone has been resident and present for the requisite time.*”

<sup>9</sup> In the introductory speech to the Bill that became the 1987 Amendment Act, the then Minister of Social Welfare explained the reason for cl 3 of the Bill which became s 8 of the Act as follows:

“Clause 3 clarifies an issue relating to residential qualifications for national superannuation. Eligibility for national superannuation is based on residence in New Zealand. In calculating the period of residence the department has always taken into account the period the person was physically present in New Zealand, and not any periods of absence overseas. There has recently been a question about what the law actually provides. In order to clarify the intention of the legislation, the requirement has been inserted that the person is present as well as resident in New Zealand.”

<sup>10</sup> [Policy – Report Fair Residency Bill. \(www.parliament.nz\)](http://www.parliament.nz)

## Procedures and administrative guidance followed by MSD

The guidance used by MSD when assessing the resident and present criteria<sup>11</sup> specifically highlights that a person has to be **lawfully resident** as well as **physically present** in New Zealand, including New Zealand's territorial waters, to meet the residence qualification. The guidance notes that being resident is not the same as a person's residence status under the Immigration Act 2009. It is also specifically stated that being a resident is **not** the same as being **ordinarily resident in New Zealand**.

The guidance highlights that in many cases, it will be obvious that a person is resident in New Zealand as they will have lived in New Zealand on a permanent basis for many years, however other cases may not be clear. In these cases consideration should be given to the following factors: Does the person have a fixed abode in New Zealand? Does the person own property in New Zealand? Does the person have frequent absences from New Zealand and what is the duration of and reason for those absences? What is the person's involvement with New Zealand society?

## Exceptions to being resident and present in New Zealand

### New Zealand Realm Countries:

Section 8(2) and 8(3) of the NZSRI Act set out that a person can use time spent in a Realm country (Cook Islands, Niue, and Tokelau) to meet some of the eligibility requirements. In these circumstances, the resident and present time period required in New Zealand is 10 years of the total time requirement and then for the remaining time period (if any) a person can have spent time in any one or more of New Zealand, the Cook Islands, Niue, and Tokelau. Since reaching the age of 50 years, a person must have been both resident and present in any one or more of New Zealand, the Cook Islands, Niue, and Tokelau for a period or periods totalling not less than 5 years.

### Social Security Agreement Countries:

The residency time period requirement may include time spent living in a country that New Zealand has a Social Security Agreement (SSA) with or contributing to an SSA country's pensions scheme<sup>12</sup>. A person can only use time from one of the SSA countries, and cannot combine time across multiple countries.

### Other exceptions:

Section 9 of the NZSRI Act sets out specific exceptions for periods of absence. Provided a person remains ordinarily resident in New Zealand, they are treated as being resident and present during periods of absence associated with obtaining specialist medical treatment or vocational training, work as a mariner on New Zealand ships, certain military service or engaged in eligible charity work.

There is also an exception for those who perform missionary work<sup>13</sup> under section 10 of the NZSRI Act. In this instance a person must be treated as having been both resident and present in New Zealand during a period of absence from New Zealand provided that immediately before the period, the person was ordinarily resident in New Zealand.

Finally, section 10A provides an exception for a person to be treated as having been both resident and present in New Zealand during a period of absence from New Zealand if New Zealand income tax was withheld on overseas earnings.

<sup>11</sup> [Resident and present in New Zealand - Map \(workandincome.govt.nz\)](https://www.workandincome.govt.nz)

<sup>12</sup> Depending on the specific terms of each agreement there may be a requirement to live in the country or contribute to their pensions scheme.

<sup>13</sup> Missionary work includes the advancement of religion or education and the maintenance, care, or relief, of orphans, or the aged, infirm, sick, or needy

## LEGISLATIVE HISTORY AND POLICY RATIONALE

The original Old Age Pension, introduced in 1898, required that an applicant needed to have resided continuously in New Zealand for 25 years immediately preceding the date of application.<sup>14</sup> The aim of the residence test was to require a **period of contribution to New Zealand** society before someone became eligible for the pension.<sup>15</sup> Changes to the residence requirement in the intervening years included a reduction to 20 years in 1936, and then a further reduction to 10 years for those who were resident in New Zealand on 15 March 1938. Anyone not resident on that date still had to meet the 20-year requirement.<sup>16</sup> These residence requirements continued to be used when the Age Benefit and Superannuation Benefit replaced the Old Age Pension.<sup>17</sup> In 1972, the qualification for the Superannuation Benefit was fixed at 20 years, and the Age Benefit at 10 years.<sup>18</sup>

When National Superannuation was introduced in 1977 the residence requirement was set at 10 years. At that time seven of those years were required to be within the 10 years immediately preceding the application,<sup>19</sup> and in 1987 there were changes to the language to clarify that there was a requirement to be actually present, as well as legally resident.<sup>20</sup> In 1990, the residence requirements were amended to 10 years residence and presence in New Zealand since age 20, with 5 years since age 50.<sup>21</sup> This change had been recommended by the 1987 Ministerial Task Force on Income Maintenance.<sup>22</sup> The 5 years after the age of 50 requirement and the requirement to be ordinarily resident in New Zealand when applying, ensured that the new requirements retained the principle that people should have a **recent connection with New Zealand in order to qualify for a pension.**<sup>23</sup>

In 2019, changes were made to residence requirements for those in the Cook Islands, Niue and Tokelau to remove the requirement to reside for five years after the age of 50 in New Zealand.<sup>24</sup> The requirement was seen as an obstacle to people returning to live in these Realm Countries before age 65, despite changes that had been made in 2015 to allow people residing in the Realm countries to apply for NZ Super.<sup>25</sup> The 2015 change had resulted in a smaller impact than anticipated and led to requests from the governments of the Cook Islands and Niue for New Zealand to make changes to the 'five years over 50' rule.<sup>26</sup> After the changes, the requirement that a person have five years residence and presence in New Zealand over the age of 50 can now be met instead with residence and presence in New Zealand, the Cook Islands, Niue or Tokelau (the Realm countries), or any combination of those countries and that territory.<sup>27</sup>

14 During that time they could have been absent for periods totaling up to two years

15 The rationale for this approach, as set out in the Act was that "it [was] equitable that deserving persons who during the prime of life have helped to bear the public burdens of the colony by the payment of taxes, and to open up its resources by their labour and skill, should receive from the colony a pension in their old age" [Old-age Pensions Act 1898 \(62 VICT 1898 No 14\) \(nzlii.org\)](#)

16 The introduction of this 10 year requirement was intended to provide for working people who had immigrated to New Zealand following World War One, and who, having suffered in the Great Depression, were now unable to provide for themselves. The fallback to a default 20 year residence requirement, meanwhile, was intended to stop an influx of older people taking advantage of the shorter time period. [#139 - Parliamentary debates, v.250 1938. - Full View | HathiTrust Digital Library](#)

17 With the introduction of the Social Security Act in 1938, New Zealand adopted a dual pension system for public provision: Age Benefit (not taxed, but subject to an income test, payable from age 60); and Superannuation Benefit (taxable, but not income tested, payable at age 65) [PDF File - Description of New Zealand's Current Retirement Income Framework by Ministry of Social Development - Background Paper - Periodic Report Group 2003 \(treasury.govt.nz\)](#)

18 [Social Assistance Chronology - a chronology of social assistance policy and programmes in New Zealand - 1844 to 2022 - Ministry of Social Development \(msd.govt.nz\)](#)

19 [Social Security Amendment Act 1976 \(1976 No 40\) \(nzlii.org\)](#)

20 [Social Security Amendment Act 1987 \(1987 No 106\) \(nzlii.org\)](#)

21 [Social Welfare \(Transitional Provisions\) Act 1990 \(1990 No 26\) \(nzlii.org\)](#)

22 [Benefit reform : the next steps : report to the Minister of Social Welfare for the 1987 Budget / by the Ministerial Task Force on Income Maintenance. \(natlib.govt.nz\)](#)

23 [regulatory-impact-statement-fair-residency-bill.pdf \(msd.govt.nz\)](#)

24 [Social Assistance \(Residency Qualification\) Legislation Act 2018 No 45 \(as at 21 January 2019\), Public Act Contents - New Zealand Legislation](#)

25 [31012018184450-0001.pdf \(msd.govt.nz\)](#)

26 [Social Assistance Chronology - a chronology of social assistance policy and programmes in New Zealand - 1844 to 2022 - Ministry of Social Development \(msd.govt.nz\)](#)

27 The legislative change had retrospective effect so as to count residence and presence in any of the Realm countries before the Act came into force as satisfying the 'five years over 50' requirement.



## Part 2: At age 65

A person must be ordinarily resident in New Zealand at the time of application for NZ Super, with specific exceptions for Realm countries and SSA countries. A person must also apply for overseas pensions, meeting specific criteria, to which they are entitled.

### NZ SUPER ELIGIBILITY REQUIRES

- You must be ordinarily resident in New Zealand when you first apply.

### GLOBALLY MOBILE POPULATION

- You can be resident in a Realm country or an SSA country instead of New Zealand

### NZ SUPER ELIGIBILITY REQUIRES

- You have to apply for an overseas pension, meeting specific criteria, to which you are entitled.

### GLOBALLY MOBILE POPULATION

- Depends on nature of pension, must be administered by or on behalf of an overseas government, only from mandatory contributions. Direct deductions impact 100,000 people (Dec 2022).

## ORDINARILY RESIDENT AT AGE 65

### Current legislative and operational environment

Section 8(1)(a) of the NZSRI Act requires that a person is “ordinarily resident in New Zealand” on the date of application. There are exceptions in Section 31(4), where a person can make an application from a specified Pacific country<sup>30</sup> if they are resident in the Cook Islands, Niue, or Tokelau on the date of the application. It is also possible to apply for NZ Super from a country with which New Zealand has an SSA.

### Determination of ordinarily resident

There is no definition of ‘ordinarily resident’ prescribed in the NZSRI Act but the Act provides that any expression used but not defined in the Act has the same meaning as it has in the SS Act.<sup>31</sup> “Ordinarily resident in New Zealand” is defined in schedule 2 of the SS Act: “ordinarily resident in New Zealand, in relation to a person, excludes the person’s being unlawfully resident in New Zealand”.

This definition has been further refined by decisions made by the New Zealand Courts and the Social Security Appeal Authority. MSD’s application of the principle of ordinarily resident is guided by these decisions. *Greenfield v Ministry of Social Development* [2015] NZSC 139<sup>32</sup> is a key judgment. It provides several considerations that apply to determine whether a person is ordinarily resident in New Zealand, to implement the purpose of the Act requiring a close and clear connection between the applicant and New Zealand. In particular, the key attributes to being ordinarily resident cover the following elements:<sup>33</sup>

<sup>30</sup> [New Zealand Superannuation and Retirement Income Act 2001 No 84 \(as at 26 November 2022\), Public Act Schedule 2 Specified Pacific countries – New Zealand Legislation](#)

<sup>31</sup> section 4(2) of the NZSRI Act

<sup>32</sup> [Dawn Lorraine Greenfield v Chief Executive of the Ministry of Social Development \[2015\] SC 10/2015 – Courts of New Zealand \(courtsfnz.govt.nz\)](#)

<sup>33</sup> THE CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT v GREENFIELD CA351/2014 [2014] NZCA 611 [12 December 2014]



- “(a) Physical presence here other than casually or as a traveller;
- (b) Voluntary presence;
- (c) Some intention to remain in the country for a settled purpose;
- (d) Continuing residence despite any temporary absences; and
- (e) Residence in New Zealand rather than anywhere else. The Act is not one which permits residence in two countries simultaneously.”

The court goes on to clarify: “[33] We also consider that “ordinarily” means something more than “residence”, indicating the place where a person regularly or customarily lives, as distinct from temporary residence in a place for holiday or business purposes.

[34] Finally, whether a particular applicant is within the expression as we have interpreted it will be a question of fact in each case. In other words, an objective determination will be required based on an assessment of all the relevant factors in the particular case.”

### Procedures and administrative guidance followed by MSD

The *Greenfield* case is used by MSD to guide operational decision making.<sup>34</sup> In general the MSD processes<sup>35</sup> refer to the same key attributes identified in that case when considering whether someone is ordinarily resident in New Zealand.

In addition, if it is not clear that someone is ordinarily resident, further information can be requested by MSD including:

- if a person is overseas, or going overseas, what are their intentions towards New Zealand (sighting return air tickets is a good indication)
- the length of time they spend in New Zealand compared to their periods of absence and the reasons for the absences
- property ownership (as this tends to suggest permanent ties with a place), including other asset ownership (for example boats, cars or caravans)
- where are their cash assets principally held (New Zealand banks or investment entities or overseas based holdings)
- is their income earned in New Zealand or overseas, and are they tax resident in New Zealand
- are they still on an electoral role and vote in central and local body elections
- do they have a personal commitment to New Zealand (for example their involvement in their immediate and extended family, community, community events, clubs and other groups)

MSD guidelines require that in determining whether a person is ordinarily resident in New Zealand, all the factors of each case must be considered. The guidelines also provide for discretion to be applied highlighting that “When making this decision **discretion can be used to give the client the benefit of the doubt.**”

<sup>34</sup> [20211110-request-for-information-relating-to-the-definition-of-ordinarily-resident.pdf \(msd.govt.nz\)](https://www.msd.govt.nz/assets/20211110-request-for-information-relating-to-the-definition-of-ordinarily-resident.pdf)

<sup>35</sup> [Deciding ordinarily resident in New Zealand - Map \(workandincome.govt.nz\)](https://www.workandincome.govt.nz/deciding-ordinarily-resident-in-new-zealand-map)





## Legislative history and policy rationale

The original Old Age Pension Act of 1898 required that someone needed to be “residing in the colony on the date when he establishes his claim to the pension.”<sup>36</sup> When National Superannuation was introduced in 1977 only someone who was “ordinarily resident in New Zealand on the date of his application” was eligible to receive National Superannuation,<sup>37</sup> and this continues to be a requirement for those applying for NZ Super.

From a policy rationale, the requirement to be ordinarily resident on the date of application provides a **degree of connection between the applicant and New Zealand**, as Parliament has decided that only applicants with the requisite degree of connection should be allowed to apply for NZ Super.<sup>38</sup> **Being ordinarily resident ensures this connection is recent.**<sup>39</sup>

The Social Assistance (Portability to Cook Islands, Niue, and Tokelau) Act 2015 introduced the ability for people who met the other residence requirements to apply for NZ Super while ordinarily resident in the Cook Islands, Niue or Tokelau.<sup>40</sup> The change was in recognition of the **close constitutional relationships with the Realm countries** as people born in these countries are New Zealand citizens. The change also removed the disincentive for people to return to Realm countries prior to age 65, and was seen as a way to help boost economic development in the Realm countries.<sup>41</sup>

## REQUIREMENT TO APPLY FOR AN OVERSEAS PENSION - DIRECT DEDUCTIONS

### Current legislative and operational environment

If a person wishes to receive NZ Super, and they are entitled to an overseas pension, they must take reasonable steps to obtain the overseas pension.<sup>42</sup> For these purposes, an overseas pension means a pension that provides for benefits/pensions for any of the contingencies for which benefits/pensions may be paid under New Zealand legislation, that is administered by or on behalf of an overseas government, from mandatory contributions.<sup>43</sup>

The requirement to obtain the overseas pension arises because the amount of NZ Super payable is reduced by the amount of the overseas pension – known as a ‘direct deduction’.

Using the three-tier classification system of the OECD,<sup>44</sup> this means that all first-tier pensions are covered, along with all publicly administered second-tier pensions. Third tier pensions and savings schemes are not covered.

The funding mechanism of the pension is not relevant, so whether it is a contributory or non-contributory scheme is not a factor, rather what matters is that it is a government administered and mandated system.

36 [Old-age Pensions Act 1898 \(62 VICT 1898 No 14\) \(nzlii.org\)](#)

37 [Social Security Amendment Act 1976 \(1976 No 40\) \(nzlii.org\)](#)

38 THE CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT v GREENFIELD CA351/2014 [2014] NZCA 611 [12 December 2014]

39 [regulatory-impact-statement-fair-residency-bill.pdf \(msd.govt.nz\)](#)

40 [Social Assistance \(Portability to Cook Islands, Niue, and Tokelau\) Act 2015 No 61, Public Act – New Zealand Legislation](#)

41 [Portability of New Zealand Superannuation to the Realm of New Zealand - Ministry of Social Development \(msd.govt.nz\)](#)

42 SS Act section 173 sets out this obligation and requires that a person “*must take all reasonable steps to obtain the overseas pension to which either or both of them may be entitled or that may be granted*”. The term “reasonable steps” is not defined in the Act. MSD has internal guidance for staff to help them when making decisions on whether all reasonable steps have been taken. Which includes assessing whether the client can practically and/or physically take reasonable steps.

43 SS Act 2018 (sections 187-191)

44 Retirement income schemes are classified by the OECD as either a tier 1, 2, or 3 scheme based on the objectives they aim to achieve. Tier 1 aims to protect from poverty in old age, tier 2 aims to ensure the adequacy of retirement income, and tier 3 aims to raise the individual income replacement rate. NZ Super is classified as tier 1 and KiwiSaver as tier 3. Tier 2 schemes are mandatory and there is no tier 2 pension in New Zealand.

The superannuitants who are impacted by this policy setting includes both migrants to New Zealand and those born in New Zealand who have spent time living and working overseas.

The effect of the deduction is that a person should receive the same pension amount as someone who stayed in New Zealand for their whole working life. As an example (figures are only to illustrate and are not based on actual amounts), if the NZ Super Payment was \$400 per week for a specific individual and that individual was also entitled to a payment of \$150 from a government-administered pension in another country, then the amount of NZ Super they would be eligible to receive would be \$250. This means that they would still receive a pension payment of \$400 a week, but only \$250 would come from NZ Super, and the balance of \$150 would be paid to them from the overseas pension. The result is that they would receive the same amount as a person in New Zealand who has no entitlement to an overseas government pension. The reduction formula is set out in Regulation 125.<sup>45</sup> The amount that is deducted is the gross amount of overseas pension (i.e. the rate before the deduction of any income tax). The only exception is when there is an SSA with a country that specifically allows otherwise.

MSD figures from December 2022 show that 96,579 overseas pensions are currently subject to a direct deduction from NZ Super, representing around NZD \$503 million. 61% of the pensions are from the United Kingdom and 24% are from Australia.<sup>46</sup>

### Legislative history and policy rationale

The requirement to apply for overseas pensions, and the resultant direct deduction, dates back to 1938 and the introduction of the Social Security Act.<sup>47</sup> The rationale behind this policy was **that a person with an overseas pension should not be advantaged over a person who had remained in New Zealand their entire working lives.**<sup>48</sup>

In terms of the original Act, the Social Security Commission had discretion to reduce the rate of benefit payable by the amount of any overseas government pension received. The Social Security Amendment Act 1972<sup>49</sup> clarified that the discretion was only to determine whether or not an overseas benefit or pension was analogous to a New Zealand benefit.<sup>50</sup>

The aim of the policy is to ensure that all qualifying New Zealand residents get 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 pensioners and taxpayers. The policy means that New Zealanders who have lived in New Zealand all their lives are not disadvantaged compared with others who have worked overseas, or immigrants to New Zealand who have entitlement to overseas state pensions. There are broader equity issues in the retirement income system, which are beyond the scope of this paper, these issues are detailed more fully in the 2022 Review of Retirement Income Policies.<sup>51</sup>

45 [Social Security Regulations 2018 \(LI 2018/202\) \(as at 12 May 2023\) 125 Reduction formula – New Zealand Legislation](#)

46 [28Q22023-data-on-countries-numbers-and-amounts-of-overseas-state-pension-subject-to-section-187-191-of-the-ssa-for-november-and-december-2022..pdf \(msd.govt.nz\)](#)

47 [Social Security Act 1938 \(2 GEO VI 1938 No 7\) \(nzlii.org\)](#)

48 [PDF File - Description of New Zealand's Current Retirement Income Framework by Ministry of Social Development - Background Paper - Periodic Report Group 2003 \(treasury.govt.nz\)](#)

49 [1972 No 133 Social Security Amendment \(nzlii.org\)](#)

50 [Social Assistance Chronology – a chronology of social assistance policy and programmes in New Zealand – 1844 to 2022 - Ministry of Social Development \(msd.govt.nz\)](#)

51 [2022 Review of Retirement Income Policies | Retirement Commission Te Ara Ahunga Ora](#)

The direct deduction policy is also underpinned by the **‘one pension principle’**, which means that a person should not be able to get two forms of state financial assistance for the same or similar circumstances.<sup>52</sup>

The direct deductions legislation remained largely unchanged until recently when modifications were made as part of the New Zealand Superannuation and Veteran’s Pension: Modernisation and Simplification work.<sup>53</sup> The core of the modernisation and simplification work was a shift to assessing entitlement to NZ Super on an individual basis. Two aspects of the direct deduction framework were amended as a result of this work: spousal deductions and voluntary contributions.

Previously in the case of couples, the amount of any overseas pension that was in excess of one partner’s NZ Super entitlement also had to be deducted from the other partner’s entitlement (spousal deduction). As part of the package of legislative amendments the spousal deduction ceased from November 2020.

The legislation had also required that the entire overseas pension amount be deducted, even in the case where a people had made extra payments (voluntary contributions) into government-administered overseas pension schemes. The new legislative changes exempted any part of a government-administered overseas pension, which was attributable to voluntary contributions, from being deducted from a New Zealand benefit or pension.<sup>54</sup> This meant that the ‘standard’ pension amount continues to be deducted but the additional amount (from previous voluntary contributions) can be received by the superannuitant.

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52 [Overseas pensions deductions - Work and Income](#)

53 [New Zealand Superannuation and Veteran’s Pension Legislation Amendment Act 2020 \(nzlii.org\)](#)

54 [New Zealand Superannuation and Veteran’s Pension: Modernisation and Simplification - Ministry of Social Development \(msd.govt.nz\)](#)



## Part 3: After age 65

Superannuitants are required to be ordinarily resident in New Zealand to continue to receive NZ Super, with specific exceptions for both temporary and more permanent absences.

### NZ SUPER ELIGIBILITY REQUIRES

You have to remain ordinarily resident in New Zealand

### GLOBALLY MOBILE POPULATION

- You can travel outside New Zealand for up to 26 weeks and still receive the full amount of NZ Super provided you remain ordinarily resident in New Zealand.
- You can travel or live outside New Zealand for more than 26 weeks and still receive some or all of your NZ Super (with the amount depending on how long you have lived in New Zealand) if you travel to or live in a specified Pacific country or non-SSA country.
- You can travel or live outside New Zealand for more than 26 weeks and still receive a pension (which may be NZ Super, or a foreign pension, or a combination of both) if you travel to or live in an SSA country.

### ORDINARILY RESIDENT AFTER AGE 65

Section 204 of the SS Act sets out that MSD may refuse or cancel NZ Super if a person is not “**ordinarily resident**” in New Zealand. The same principles, as discussed in Parts 1 and 2, apply to determine whether someone is ordinarily resident.<sup>55</sup> In addition, Section 21 of NZSRI Act states that NZ Super cannot be paid while someone is absent from New Zealand. However, there are specific exemptions that allow NZ Super to be paid to someone who is overseas:

- temporary absences (section 22-24 of the NZSRI Act) where a person remains ordinarily resident in New Zealand
- longer term absences, where there is no requirement to remain ordinarily resident in New Zealand (s 204 (2) SS Act)
  - where general portability applies (section 26 of the NZSRI Act)
  - where special portability applies for those resident in a specified Pacific country (section 31-33 of the NZSRI Act)
  - Overseas payments in countries governed by SSAs

Each of the above situations are discussed in more detail in the following sections.

<sup>55</sup> [Deciding ordinarily resident in New Zealand - Map \(workandincome.govt.nz\)](https://www.workandincome.govt.nz)

## ABSENCES FROM NEW ZEALAND AFTER AGE 65

### Temporary absences

NZ Super continues to be paid to people who temporarily leave New Zealand, provided they remain ordinarily resident in New Zealand during this absence.

### Current legislative and operational environment

Under Section 22 of the NZSRI Act a person may receive their NZ Super for the first 26 weeks of any absence from New Zealand that does not exceed 30 weeks.<sup>56</sup>

If a person decides to extend their stay beyond 26 weeks, their NZ Super payments will cease at 26 weeks. If they do not return to New Zealand within 30 weeks they are required to repay 26 weeks of NZ Super (unless their return is prevented by circumstances beyond the person's control which could not reasonably have been foreseen at the time of departure).

If, due to unforeseen circumstances beyond their control, a person's stay is extended beyond 26 weeks they can apply for payment of NZ Super overseas. This is referred to as a portable pension and is discussed in more detail in the general portability section.

It is also possible to continue to receive NZ Super for absences of over 26 weeks up to a cumulative total of up to two years if they are for medical treatment for a person, their partner, a dependent child, or their sibling, but only if the Ministry of Health is providing assistance for the treatment. Entitlement can also continue for up to 156 weeks if the absence from New Zealand is because the person engaged in full-time unpaid voluntary humanitarian work with a recognised aid agency and they are not depriving someone else of paid employment.

### Remaining ordinarily resident during temporary absences

Section 22 of the NZSRI Act allows a person to have multiple overseas temporary absences if each is 26 weeks or less, but this is subject to the requirement that a person must remain ordinarily resident in New Zealand to continue to receive NZ Super (section 204 of the SS Act).

The approach to determining ordinarily resident in these circumstances is once again based on the criteria identified in *Greenfield v Ministry of Social Development* [2015] NZSC 139,<sup>57</sup> as operationalised by MSD<sup>58</sup>, where time spent outside New Zealand is one of the factors considered in the assessment of being ordinarily resident. If someone is only present in New Zealand for short periods of time, even if they are never away longer than 26 weeks at a time, it may be more difficult to establish that they are ordinarily resident in New Zealand.

This means that someone cannot circumvent the requirement to remain ordinarily resident by returning transitorily to New Zealand before returning to reside overseas. New Zealand should be the place where they have their day to day lives. However, a recent ruling from the Social Security Appeal Authority<sup>59</sup>, has clarified that just because someone was considered to be "travelling way too often", was not grounds for determining that they were not ordinarily resident. Rather it is an important factual and legal evaluation. In that case the decision was made that someone "who lived in New Zealand all his life, then embarked on travel, had regular and lengthy periods of absence from New Zealand, but never sought to or established a home elsewhere, he always returned to New Zealand at regular intervals (he was never absent for more than 26 weeks for any expedition), and maintained a range of enduring connections in New Zealand" met the requirement for being ordinarily resident.

<sup>56</sup> NZSRI Act S 22

<sup>57</sup> [Dawn Lorraine Greenfield v Chief Executive of the Ministry of Social Development \[2015\] SC 10/2015 – Courts of New Zealand \(courtsfnz.govt.nz\)](#)

<sup>58</sup> [Deciding ordinarily resident in New Zealand - Map \(workandincome.govt.nz\)](#)

<sup>59</sup> [Auckland v Sanders \(justice.govt.nz\)](#)

As set out in the Greenfield case, “*The Act is not one which permits residence in two countries simultaneously.*” Therefore, if someone is ordinarily resident elsewhere in the world, they would be required to make use of the general or special portability provisions, or alternatively SSAs, to continue to receive payments, rather than relying on the temporary absence criteria.

### **Requirement to pay back first 26 weeks if absent for longer than 30 weeks**

Temporary absences, as set out in section 22 (NZSRI Act), have a specific time limit within which a person must return to New Zealand. The effect is that a person can generally only receive NZ Super for the first 26 weeks of a temporary absence if their total period of absence does not exceed 30 weeks (section 22 (a)). The **receipt of NZ Super is therefore conditional on the absence not exceeding 30 weeks**. If someone leaves New Zealand temporarily, and remains overseas for longer than 30 weeks, then an overpayment is established<sup>60</sup> on the basis that they were not entitled to receive NZ Super during the 26 week time period as they did not meet the condition of returning within the 30 week time period.

There are exceptions to this rule (section 22(b)) and an overpayment is not established if an absence of more than 30 weeks is due to circumstances beyond that person’s control that could not reasonably have been foreseen before departure. While previous versions of the SS Act had been interpreted by the courts as providing the Chief Executive with discretion to direct that an overpayment established as a debt to the Crown not be recovered<sup>61</sup>, section 362 of the SS Act 2018 specifically states that MSD has a duty to recover debts (including overpayments).<sup>62</sup>

If someone intends to be away for more than 26 weeks and wishes to keep receiving NZ Super, they need to make use of SSAs or general or special portability provisions and make the appropriate application before leaving New Zealand. Otherwise, they will become ineligible for NZ Super and have to pay back the 26 weeks. These longer-term absences are discussed in more detail later in this paper.

### **Legislative history and policy rationale**

A 26-week temporary absence provision was introduced in June 1985<sup>63</sup> and replaced a 13 week temporary absence provision (15 weeks if unavoidably delayed) that had been in existence since August 1979.<sup>64</sup> Prior to this, payment during periods of overseas absence was made at the discretion of the Social Security Commission.<sup>65</sup>

At the time it was introduced, the government of the day considered the 26-week temporary absence provision to be a reasonable period of absence, which allowed superannuitants to have **sufficient time overseas for a “once-in-a-lifetime” trip or to visit family members**. To add flexibility, a four-week period was included in the legislation to allow payment of NZ Super for the first 26 weeks of absence where superannuitants were unable to return within 26 weeks, but returned within 30 weeks.<sup>66</sup> Provision was also made for those who were not able to return for reasons beyond the person’s control.<sup>67</sup>

60 [Temporary absence - Map \(workandincome.govt.nz\)](https://www.workandincome.govt.nz)

61 [NZSSAA-025-8-April-2016.pdf](#)

62 Sections 304 to 306 of the SS Act 2018 provide the legislative basis for reviewing the Applicant’s payments. Section 362 sets out what payments that are debts due to the Crown. Regulations 206 to 208 of the SSR 2018 sets out the rules for recovery of payments made in excess of authorised rates.

63 [Social Security Amendment Act 1985 \(1985 No 111\) \(nzlii.org\)](#)

64 [Social Security Amendment Act 1979 \(1979 No 14\) \(nzlii.org\)](#)

65 [Social Assistance Chronology – a chronology of social assistance policy and programmes in New Zealand – 1844 to 2022 – Ministry of Social Development \(msd.govt.nz\)](#)

66 The 30 weeks timeframe is based on an assessment that if something happens to delay return that was planned for 26 weeks, then a 4 weeks grace period provides sufficient time to return to NZ before an overpayment is created

67 [#376 - Parliamentary debates. JUNE 11-JULY 11 1985\(V. 463\). - Full View | HathiTrust Digital Library](#)

Government considered the extension of the temporary absence provision to 26 weeks to be an interim measure pending a comprehensive review of the payment overseas provisions. These provisions were then further considered by the *1987 Ministerial Task Force on Income Maintenance*<sup>68</sup> and by the *1988 Royal Commission on Social Policy*<sup>69</sup> with their recommendations informing the Government's general portability provisions introduced in April 1990. At about the same time, New Zealand began a programme of expanding its social security agreement network. These aspects are discussed in more detail in the *General Portability and Social Security Agreements* sections below.

## **Longer term absences:**

### **General portability**

For longer term absences to non-SSA countries, and countries not covered by special portability provisions, people can generally continue to receive some or all of their NZ Super. This is known as 'general portability'.

### ***Current legislative and operational environment***

To receive a portable pension, a person must apply before they leave New Zealand (unless they are unable to return due to unforeseeable circumstances in which case an application can be made from offshore). They must be entitled to NZ Super and be ordinarily resident in New Zealand at the time they apply.

If a person travels in, or moves to, any country not covered by an SSA or special portability for a period of 26 weeks or more, they may take a proportion of their NZ Super with them, as set out in section 26 of the NZSRI Act. The proportion reflects the time a person has spent in New Zealand between the ages of 20 and 65<sup>70</sup> and may be less than the NZ Super amount they would receive in New Zealand. For example, someone who has resided in New Zealand full time between ages 20 and 65 (i.e. they have been in New Zealand for 540 months out of a possible 540 months between age 20 and 65) will receive 100 percent of the NZ Super payment. However, if someone has spent time outside the country, and has only been in New Zealand for 300 months of a possible 540 months between age 20 and 65, they will qualify for 56 percent of the NZ Super payment (300 months/540 months = 56%). The proportional amount will be based on either the NZ Super single sharing accommodation rate, or the married, civil union or de facto rate.

The single living alone rate is not payable to a person receiving general portability (section 26(6) of NZSRI Act). Historically a Living Alone Payment was a benefit available to single recipients of NZ Super, which had to be applied for separately. When portability improvements were made in 2010, extra assistance such as the Living Alone Payment, Disability Allowance and Accommodation Supplement were not paid overseas and payment of these stopped upon departure from New Zealand. When the living alone payment was replaced in 2013 with the single living alone rate for NZ Super, this legacy treatment remained in place.<sup>71</sup>

The guidance used by MSD staff when assessing applications for general portability specifically highlights the requirement that a person must be ordinarily resident and present in New Zealand on the date they apply for general portability.<sup>72</sup> In particular, New Zealanders who usually live overseas should not be regarded as ordinarily resident in New Zealand if they have recently returned in order to apply for portable NZ Super. The general guidance provided is that people should apply 6 weeks before they leave New Zealand (although this time frame is not dictated by the legislation).<sup>73</sup>

68 [Benefit reform : the next steps : report to the Minister of Social Welfare for the 1987 Budget / by the Ministerial Task Force on Income Maintenance. \(natlib.govt.nz\)](#)

69 [The April report : report / of the Royal Commission on Social Policy = Te Komihana a te Karauna mo nga Ahuatanga-A-Iwi. \(natlib.govt.nz\)](#)

70 A person must be treated as having resided in New Zealand during a period of absence from New Zealand if section 9, 10, or 10A requires the person to be treated as having been resident and present in New Zealand during the period.

71 [Social Assistance Chronology - a chronology of social assistance policy and programmes in New Zealand - 1844 to 2022 - Ministry of Social Development \(msd.govt.nz\)](#)

72 [General portability : Contents - Map \(workandincome.govt.nz\)](#)

73 [Applying for payment - Map \(workandincome.govt.nz\)](#)



## *Legislative history and policy rationale*

For much of the 20th century, migrant flows were principally to and from Australia and the United Kingdom, and pension portability between these countries and New Zealand was governed by the specific terms of the SSAs between each of these countries and New Zealand. However, by the late 1980s migration patterns had started to change, and the government faced pressure to provide seamless social security coverage for those who immigrated from, or emigrated to, countries other than Australia and the United Kingdom. This was brought about by extending the number of countries with SSAs and the introduction of general portability for non SSA countries.<sup>74</sup>

The portability changes were part of the policy reforms contained in the Social Welfare (Transitional Measures) Act 1990, and were intended, according to the Minister of Social Welfare at the time, to *“rectify unfair policies that restricted the ability of older New Zealanders to travel freely outside New Zealand”*.<sup>75</sup>

Portability was introduced to allow a flat rate payment at 50 percent of the gross rate to qualifying superannuitants who wished to reside overseas for more than 26 weeks in a country with which New Zealand did not have an SSA. Portability (at 40 percent of the gross rate) had been recommended by the 1987 Ministerial Task Force on Income Maintenance. The rate was chosen to reflect the surcharge<sup>76</sup> that applied at that time to those who lived in New Zealand and the fact that portable pensions would not be taxed in New Zealand.

The task force had also recommended that such payment be restricted to persons who have lived for 20 years in New Zealand, including 5 years since age 50.<sup>77</sup> However, the Social Welfare (Transitional Measures) Act 1990 did not include this additional residency requirement. There was some criticism of the rate of 50 percent in the submissions made to the Social Services Committee, but it was noted in the report of the Social Services Committee that this rate was a considerable improvement on the status quo where there was no provision for portability.<sup>78</sup>

Further changes were made to general portability in 2008 and 2009.<sup>79</sup> The main change was that when superannuitants migrated to a country with which New Zealand did not have an SSA or other specific policies, **superannuation portability would be proportional to years of qualifying residence in New Zealand**. This replaced the previous provision that capped portability payments at 50 percent, reflecting the fact that the surcharge (which had been given as a reason for limiting payments to 50 percent) had been abolished in 1998.<sup>80</sup> In addition, there were concerns that the flat rate payment of 50 percent provided insufficient income to allow a reasonable standard of living in retirement in most countries.

The other significant change related to the requirement that payment was linked to residence in one particular overseas country, which meant that superannuitants were not able to travel to or between multiple countries and continue to receive payment. This provision was removed, allowing people to travel and live in multiple countries. The primary purpose of the amendments was to ensure that **older New Zealanders had more freedom to decide where to live or travel in their retirement**. The amendments related only to general portability provisions and did not affect SSAs or the provisions for Pacific countries.<sup>81</sup>

74 PDF File - Description of New Zealand's Current Retirement Income Framework by Ministry of Social Development - Background Paper - Periodic Report Group 2003 (treasury.govt.nz)

75 #131 - Parliamentary debates. v.503 yr.1989. - Full View | HathiTrust Digital Library

76 The surcharge was an additional tax levied on top of normal income taxation. The New Zealand Superannuation surcharge applied to the other income of people receiving New Zealand Superannuation where this other income was above a defined exemption threshold level (Preston, 2008 RETIREMENT INCOME RESOURCE DOCUMENT)

77 Benefit reform : the next steps : report to the Minister of Social Welfare for the 1987 Budget / by the Ministerial Task Force on Income Maintenance. (natlib.govt.nz)

78 #631 - Parliamentary debates. v.505 yr.1989. - Full View | HathiTrust Digital Library

79 The legislative amendment process was started by the Labour Government in 2008 and completed under the National Government in 2009.

80 <https://assets.retirement.govt.nz/public/Uploads/Retirement-Income-Policy-Review/Background-papers/History-and-trends/27b4c9b6d8/RI-Review-BP-Retirement-Income-History-2008.pdf>

81 New Zealand Superannuation and Retirement Income Amendment Bill - New Zealand Parliament (www.parliament.nz) ; Social Assistance (Payment of New Zealand Superannuation and Veteran's Pension Overseas) Amendment Bill - New Zealand Parliament (www.parliament.nz)

The Social Security Select Committee considered whether it was feasible to allow applicants to apply for a portable pension while resident overseas, as was allowed for those who lived in SSA countries. However, in SSA countries there were processes in place to interview applicants, verify their identities and establish pertinent periods of New Zealand residence and such assistance would not be available in non-agreement countries. Therefore, the final legislation required that applications for general portability had to be made before leaving New Zealand.<sup>82</sup> There were no changes made to the existing exception available in terms of section 27 of the NZSRI Act, which allows an application for a portable pension to be made from overseas when someone is unable to return after a temporary absence due to unforeseen circumstances.

### **Special portability**

New Zealand has a special arrangement which covers 22 Pacific countries, known as ‘special portability’. These countries are American Samoa, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Island, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna.

### ***Current legislative and operational environment***

If a person intends to live in one of the 22 specified Pacific countries for more than 52 weeks, they can apply for special portability (section 31-33 of the NZSRI Act). Generally, they must also be ordinarily resident and present in New Zealand and entitled to NZ Super before leaving and the application should be made before they leave New Zealand. However, if a person lives in the Cook Islands, Niue, or Tokelau, they don’t have to be in New Zealand to apply as they can apply from these countries. The amount received will depend on how long a person has lived in New Zealand. A person can receive 50 percent of the rate of NZ Super payable in New Zealand if they have had ten complete years of residence in New Zealand since age 20, rising by 5% for each additional complete year of residence, up to 100 percent at 20 years’ residence.

### ***Legislative history and policy rationale***

The special portability provisions were first introduced in 1993 with three Pacific countries: Niue, the Cook Islands and Tokelau, and were enacted to reflect the special ties that New Zealand had with these countries as Realm countries. The provisions for special portability were more generous than general portability provisions at the time (which were capped at 50 percent) as a person in one of these three countries could receive full NZ Super after 40 years’ residence in New Zealand. However, the formula also meant those with less than 20 years New Zealand residence received less than 50 percent.<sup>83</sup>

The formula was therefore amended in 1999<sup>84</sup> to allow a person to receive full NZ Super after 20 years New Zealand residence, and a pro-rata amount for those with less than 20 years residence. Based on the new formula someone who had spent 10 years in New Zealand since the age of 20 would now receive 50 percent of the full NZ Super amount. At the same time the number of Pacific countries covered by these provisions also increased to 22.<sup>85</sup> The Special Portability arrangement is designed to recognise the contribution Pacific peoples make to New Zealand and the inability of Pacific countries to fulfil the reciprocal obligations necessary to conclude SSAs with New Zealand.<sup>86</sup>

82 [b4f188fc76528e4261af8e9ea03c1ef0cea14589 \(www.parliament.nz\)](https://www.parliament.nz)

83 [Social Welfare Reform Bill \(No. 3\) 1993 \(239-1\) \(nzlii.org\)](#)

84 [Social Welfare \(Transitional Provisions-Special Portability Arrangement\) Amendment Act 1999 \(1999 No 80\) \(nzlii.org\)](#)

85 [PDF File - Description of New Zealand's Current Retirement Income Framework by Ministry of Social Development - Background Paper - Periodic Report Group 2003 \(treasury.govt.nz\)](#)

86 [r-20200130-negotiations-and-arrangements-between-the-government-of-nz-and-the-government-of-the-cook-islands.pdf \(msd.govt.nz\)](#)

## Social Security Agreements

Another way that people are able to receive a government pension outside of New Zealand is if they move to an SSA country.

### *Current situation*

New Zealand has SSAs with specific countries called Agreement Countries. These are currently Australia, Canada, Denmark, Republic of Ireland, Jersey and Guernsey, Greece, Malta, Netherlands, South Korea, and the United Kingdom. Each agreement allows New Zealanders to access certain benefits or pensions if they move to these countries, and people who move from these countries to New Zealand are able to access certain benefits or pensions in New Zealand.

If a person qualifies for NZ Super and moves to live in one of these countries (or they may already be living there), the amount a person receives will depend on the SSA of the country where they reside. In some countries they may get some or full NZ Super, in others they will get the basic pension payable in that country, or a person may get a combination of part NZ Super and part payment of the other country's pension. Depending on the terms of the agreement, a person may need to apply for that country's pension.<sup>87</sup>

The terms of the agreements may also allow people to make use of residence or contributions made in one country to the agreement to qualify for a pension in the other country. However, if someone makes use of this aspect of the SSA, then the terms of the SSA will define aspects of their future entitlement to receive the pension, in particular if they decide to travel or move elsewhere. For instance, under the Social Welfare (Reciprocity with the United Kingdom) Order 1990, a person who becomes entitled to NZ Super by virtue of residence in the United Kingdom is not entitled to payments of NZ Super when they cease to be usually resident in New Zealand, e.g. they have moved to live in another country<sup>88</sup> (they may however be eligible to receive a United Kingdom retirement pension if they have moved to the United Kingdom).<sup>89</sup>

### *Legislative history and policy rationale*

The oldest SSAs are with Australia (1943) and United Kingdom (1948). These agreements accepted the principle that as a basis of a reciprocal agreement, a person transferring permanently from one country to another should accept the responsibilities of the country they moved to and be entitled to benefits at the rates and conditions prescribed by that country. In 1988, as part of the move to provide seamless social security coverage for those who immigrated from, or emigrated to, countries other than Australia and the United Kingdom, the Government announced that it was prepared to negotiate reciprocal SSAs on a country-by-country basis and that these agreements could incorporate payment of New Zealand benefits in the other country. Before then, SSAs with the United Kingdom and Australia reflected the 'host country' model<sup>90</sup> where people with the required period of New Zealand residence could receive United Kingdom or Australian benefits and pensions.

In the following decade the majority of the present-day agreements were signed. Only two new agreements have been entered into since the 1990s, one with Malta (2013), and the most recent signed with South Korea which came into effect in March 2022.<sup>91</sup>

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<sup>87</sup> [Social Security Agreements and special arrangements with Pacific countries - Work and Income](#)

<sup>88</sup> [2019-nzssaa-8.pdf \(justice.govt.nz\)](#)

<sup>89</sup> [Social Welfare \(Reciprocity with the United Kingdom\) Order 1990 \(SR 1990/85\) \(as at 26 November 2018\) Schedule Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand - New Zealand Legislation](#)

<sup>90</sup> Following the approach set out at the *Inter-Empire Conference on Reciprocity* in London in 1947

<sup>91</sup> [Social Assistance Chronology - a chronology of social assistance policy and programmes in New Zealand - 1844 to 2022 - Ministry of Social Development \(msd.govt.nz\)](#)

There have been revisions to agreements over the years. In particular, changes were made to the agreement with Australia in 2017, to align the age of entitlement for age-related pensions. The reason the change was required was that Australia was increasing the pension age from 65 to 67, while New Zealand pension age remained at 65. In order to fulfil the objective of the agreement that requires equitable treatment (New Zealand superannuitants in Australia should not be entitled to receive more than other Australian age pension beneficiaries, and vice versa) people who use the Agreement to qualify for NZ Super are required to meet the age of eligibility for the Australian Age Pension (i.e., from 1 July 2023 they must be 67 years old).<sup>92</sup>

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<sup>92</sup> [regulatory-impact-statement-revised-social-security-agreement-with-australia.doc \(live.com\)](#)



## Part 4: Current and future challenges

This paper has outlined the various ways in which the legislative environment has evolved over time to adapt to a more globally mobile population, from major changes to portability in the 1990s and 2000s, to the more recent modernisation and simplification work that saw spousal deductions and voluntary contributions removed from the direct deduction policy.

At the same time, there have been recent challenges, which have highlighted potential shortcomings. In particular the closure of borders during the COVID-19 pandemic, and more recently, the international community's response to Russia's illegal invasion of Ukraine. Both of these events have negatively impacted superannuitants who were caught up in these events and each is discussed in more detail below, followed by consideration of the impact of the 20 year eligibility change for NZ Super, and issues arising with direct deductions.

### COVID-19 BORDER CLOSURES

The COVID-19 border closures resulted in many superannuitants being unable to return to New Zealand within the 30 week time period allowed for temporary absences. More detail regarding the issues encountered by superannuitants is available in our Stranded Superannuitants research report.<sup>93</sup>

At the time of the border closure MSD took proactive steps to assist those who were unable to return to New Zealand. The "New Zealanders Stranded Overseas Support Programme" was implemented to support those who had left the country prior to the borders closing in March 2020 and people continued to be paid until they managed to return to New Zealand<sup>94</sup> (the package was extended twice and ended in Aug 2021).<sup>95</sup>

The support package did not apply to those who left New Zealand after March 2020 so eligibility for NZ Super was assessed under the usual legislative criteria (NZSRI Act s22(b) and 27(20), which provides for discretion to be applied when people are unable to return to New Zealand due to circumstances beyond their control that could not reasonably have been foreseen at the time of departure). Initially, according to MSD, for superannuitants who left New Zealand on or after 26 March 2020, being unable to return due to the effects of COVID-19 on travel was reasonable to expect.

There were changes to this approach over time, and a recognition that challenges to return to New Zealand, including closure of the "travel bubble" with Australia, along with problems securing places in the managed isolation and quarantine (MIQ) booking system, could not have been reasonable foreseen before departure.<sup>96</sup> The approach now being taken by MSD for those impacted by border closures during the COVID-19 pandemic is that assessments are made on a case-by-case basis to establish if an absence of more than 30 weeks was due to circumstances beyond that person's control that could not reasonably have been foreseen before departure. The usual review and appeal process is available to those who disagree with any decision made by MSD, starting with an internal review. If the internal review outcome is not favourable for the applicant, the decision goes before the Benefits Review Committee without any further request from the applicant. Thereafter, there is a right to appeal to the Social Security Appeal Authority.<sup>97</sup>

<sup>93</sup> 'Stranded Superannuitants' experiences with MSD during NZ border closures in 2020-2022, [Office of the Retirement Commissioner | Te Ara Ahunga Ora Retirement Commission](#)

<sup>94</sup> [Notice Under the Social Security Act 2018 - 2020-go1713 - New Zealand Gazette](#)

<sup>95</sup> [Extending the COVID-19 New Zealanders Stranded Overseas Support Programme - Ministry of Social Development \(msd.govt.nz\)](#)

<sup>96</sup> [18102022-requesting-all-relevant-documentation-regarding-nzs-recipients-stranded-in-australia-not-required-to-pay-back-debt-and-nzs-stranded-in-other-countries-are-still-required-to-repay-debt-1-.pdf \(msd.govt.nz\)](#)

<sup>97</sup> [Review of Decision Flowchart- long description - Ministry of Social Development \(msd.govt.nz\)](#)

## RUSSIAN PENSION DIRECT DEDUCTIONS

Following the invasion of Ukraine by Russia, the international community responded through economic sanctions and banking restrictions, both of which have contributed to widespread disruptions to transactions with Russia. This means that people in New Zealand who were entitled to a Russian pension may not be able to access these payments. However, MSD continued to deduct these pension amounts from their NZ Super payments, in line with the direct deduction legislation. The SS Act requires overseas pensions that fall under the direct deduction policy to be directly deducted from NZ Super, regardless of whether the individual can reasonably access this overseas pension. There is limited flexibility available in the application of this legislative requirement.

There are other forms of social security assistance that may be accessed by affected individuals, but this would generally be a reduced amount, meaning that they are unlikely to be receiving an equitable level of state pension, despite the fact the direct deduction settings intend to produce that outcome.

The situation highlights a need for discretion in the case of unusual, unlikely, but impactful events such as a war restricting receipt of the overseas pension.

## 20 YEAR RESIDENCY REQUIREMENT

The change to the residency period, which is gradually increasing from 10 years to 20 years, could present some challenges for a globally mobile population. The first challenge is that people need to be aware of the requirement, and in particular the need to be both resident and present during the eligibility period. People may not understand that this is a day count calculation i.e., currently 3650 days (10 years), increasing to 7300 days (20 years), which excludes periods of time spent out of New Zealand, even for holidays (as an example, someone who, after the age of 20, lives in New Zealand only from age 45 to 65, and who spends 30 days each year travelling outside New Zealand, will only be eligible to receive NZ Super 600 days after they turn 65 (30 days x 20 years)).

In the past, the 10-year requirement was relatively easy to achieve over the time period from age 20 to 65, even with long periods of absence from New Zealand. This will not necessarily be the case now that the time period has doubled and international travel is more common than in the past.

Those impacted by this change will include:

- People who move to New Zealand as adults
- People born in New Zealand who travel and live overseas during their adult years

The increase to 20 years may result in an increase in the number of people relying on SSAs to meet the residency requirements before age 65. There are implications for those who wish to live overseas after the age of 65 if they have made use of an SSA to qualify for NZ Super because absences longer than 26 weeks will be governed by the terms of the SSA and not by the NZSRI Act. This may lead to situations where people are not able to continue to receive their NZ Super payments if they move elsewhere.<sup>98</sup> Those making use of the Australian SSA, would only qualify to receive NZ Super at the Australian pension eligibility age (67 years from July 2023).

While some people who spend time overseas will be able to count this time towards their

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<sup>98</sup> For example, those entitled to NZ Super by virtue of residence in the United Kingdom are not entitled to payments of NZ Super when they cease to be usually resident in New Zealand

eligibility period, others will not, and this will depend on the countries involved. Those who spend time in SSA countries can count this time towards their eligibility period. However, time spent in countries without an SSA with New Zealand will not be counted. The ethnic diversity of permanent migrants has increased over time with significant recent growth in the number of migrants from China, India, South Africa and other countries that do not have SSAs with New Zealand.

To mitigate these challenges, it is important to make sure that there is clear and timely communication about residency requirements. Wording that states that a person needs to “live in New Zealand” for a specific period of time may not be sufficient. Examples with day count calculations (showing the impact of leaving the country even for temporary absences) may be helpful in ensuring that people understand what the actual requirements look like in practice.

## DIRECT DEDUCTIONS

There are some existing challenges with overseas pension direct deductions. Although it has been a policy setting of NZ Super since it was first introduced in 1938, it is not necessarily well-known, and the offset may come as a surprise. Details are provided on both the MSD website and Immigration’s ‘New Zealand Now’ website, and while it may be possible to advise new migrants of this resource, there is no natural point of interaction for the government to advise those who leave New Zealand of this policy setting.

Other challenges relate to the terminology of ‘administered by or on behalf of an overseas government’. People who made mandatory contributions (and/or whose employer made mandatory contributions) into a government-administered pension scheme often think of the resulting pension as a private pension, particularly when their government does not directly contribute financially to the scheme or contributes minimally. However, if the scheme is government-administered, then the person’s NZ Super will be offset by the amount of the overseas pension (e.g. US Social Security).

There are other issues that potentially undermine the policy rationale of the direct deduction legislation, which is that all qualifying New Zealand residents get an equitable level of state pension. The first relates to the requirement for the superannuitant to take reasonable steps to obtain an overseas pension (section 173 of the SS Act). The term “reasonable steps” is not defined in the Act. While MSD has internal guidance for staff to help them when making decisions, people may differ in their assessment as to whether “reasonable steps” have been taken to obtain an overseas pension. Section 176 of the SS Act gives MSD the ability to refuse to grant NZ Super or suspend (and later cancel) NZ Super if a person does not comply with the notice to take reasonable steps within a specified time period. If this occurs, a person who has been unable to obtain their overseas pension within the specified time period will not receive an equitable level of state pension.

Another instance where people are potentially not receiving an equitable level of state pension arises as a result of the requirement to deduct the overseas pension before tax.<sup>99</sup> If taxation is automatically deducted by an overseas jurisdiction, and a tax credit is not available, the person ends up receiving less than the equivalent amount that a person without an overseas pension would receive.

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<sup>99</sup> [Social Security Regulations 2018 \(LI 2018/202\) \(as at 12 May 2023\) 125 Reduction formula - New Zealand Legislation](#)





A further consideration is that jurisdictions around the world are increasingly introducing financial incentives to delay claiming a pension. Under current settings, the direct deduction approach limits the ability of a person to delay claiming the pension: New Zealand legislation requires them to apply for an overseas pension as soon as they become eligible for the overseas pension as well as NZ Super. As an example, for those who are eligible to receive US Social Security, this benefit can be accessed from age 62. However, full retirement age (the time at which a person starts receiving their “full retirement benefit”) only occurs at a later date (and is determined by birth year) and the amount received is higher once a person reaches full retirement age. The full retirement age is currently 66 and is increasing gradually until it reaches 67 (for anyone born 1960 or later).

Under current settings, if a person applies for NZ Super at age 65 they are expected to apply for US Social Security at the same time. However, by claiming Social Security at age 65, rather than age 67, a person will receive approximately 15% less in Social Security payments, and if they defer their claim until age 70 they receive an extra 24%.<sup>100</sup> If this Social Security payment ends up exceeding the amount of NZ Super, the person is financially disadvantaged if they are obligated to apply before “full retirement age”.

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<sup>100</sup> [Early or delayed retirement \(ssa.gov\)](https://www.ssa.gov)



## Conclusions and Recommendations

This paper has outlined the evolution of the retirement income legislation over time, in particular focussing on how changes have occurred to settings in response to an increasingly globally mobile population. Both the work to improve portability settings in the 1990s and 2000s and the more recent modernisation work have done much to ensure that the legislation accounts for a globally mobile population.

However, recent events have highlighted that there is room for improvement, and that **there should be sufficient flexibility to allow exceptions for unusual, unlikely, but impactful events such as pandemics and wars**. In the case of the borders closing, this flexibility and discretion already existed within legislation, however the interpretation of whether events were foreseeable or not was at the core of the problem with resolving the situation of those who were not able to return to New Zealand during COVID-19. From the perspective of the direct deductions of Russian pensions, legislative change to allow for flexibility in interpreting the law is required.

A further question that arises from the analysis of the settings and legislation is whether there are operational barriers to people obtaining (and retaining) NZ Super. The lack of definitions within the legislation opens the door to subjectivity or narrow interpretation.<sup>101</sup> People may differ in their opinion about whether “reasonable steps” have been taken to obtain an overseas pension. The same may occur in cases where a decision needs to be made about what is “unforeseeable” and prevents a return from a temporary visit outside New Zealand, or whether someone is “ordinarily resident” in New Zealand. In the latter case MSD guidelines require that all the factors of each case must be considered. The guidelines also provide for discretion to be applied highlighting that “When making this decision discretion can be used to give the client the benefit of the doubt.” However, in other instances the guidance is less clear. In all cases **there needs to be thoughtful and careful consideration of the facts to ensure that the correct interpretation and outcome are ensured**.

In essence NZ Super is available to those who have spent sufficient time in New Zealand prior to age 65, and who have a close connection with New Zealand at the time of application. After age 65, NZ Super settings have been changed over time to ensure that people are able to travel outside New Zealand, beyond the originally imagined “once-in-a-lifetime” trip, but also have the flexibility to choose to settle elsewhere in the world after age 65. With this in mind, it is important to **ensure that the people who are required to make decisions about NZ Super eligibility are prepared and empowered to give advice about getting (and retaining) NZ Super and that the eventual operational decision is not at odds with the underlying policy rationale**.

**As the global pension landscape continues to evolve, there is also a need to carry out environmental scans on an ongoing basis** to ensure that changes to overseas pensions legislation, such as financial incentives to delay accessing overseas pensions, are considered in the context of the direct deduction settings and, where necessary, incorporated into New Zealand legislation.

Finally, there is an emerging **need to better educate people about NZ Super settings in the context of increasing global mobility**. People need to have a better understanding of the eligibility requirements, in particular the need to be both resident and present for specific time periods in the time leading up to age 65, and the implications of using an SSA to meet residency requirements. Those who have spent sufficient time in other countries to qualify for a pension need to understand direct deductions, and how this may impact on their eventual retirement income. Once someone has qualified for NZ Super, they need to be aware of the impact of travel, both short term trips and longer-term absences, to ensure that they are able to make use of the flexibility that legislation provides for those who wish to continue to be globally mobile after age 65.

<sup>101</sup> Noting that the difficulty with prescribing definitions within legislation is that it doesn't provide for discretion/flexibility in application. When something is more narrowly prescribed, or guidance is heavily detailed, then there is limited ability to take a more generous approach.