



11 MAY 2016

Mr Robert Newcombe

Dear Mr Newcombe

On 14 March 2016 you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *Copies of all our evidence held by the MSD regarding our challenge of the use of outdated Section 70 at the UNHRC.*
- *Could you please state whether or not there are Chinese pensions that are funded by social security insurance payments of the nature I have described and if so whether they are subject to Section 70?*
- *Copies of any evidence in which the MSD had advised government/Ministers as to the unfairness of Section 70 as found by its reviews.*
- *Does the CEO of the MSD have the authority to allow pensions that are dissimilar to NZS in funding to be kept and not be subjected to the unfairness of Section 70?*

For the sake of clarity I will address each of your questions in turn.

Please find enclosed copies of the letters which have been provided to you on behalf of the Ministry regarding information you have requested from 16 August 2006 to 2 May 2015. The Government response that was stated in paragraphs 82–85 as outlined in my previous response was based solely on the information you and your wife provided in the complaint to the United Nations Human Rights Council. No additional information about you and your wife was obtained from any other source.

You have asked whether or not there are Chinese pensions that are funded by social security insurance payments and if so, whether they are subject to Section 70.

The nature of the Chinese state-administered pension system is not so different from the social insurance systems that exist in other countries. The difference lies in the length of time the Chinese state-administered pension system has been in place compared with the long-established, state-administered pension schemes of a number of overseas countries. For example, the United Kingdom state pension scheme was first introduced in 1948. As the United Kingdom state-administered pension system has been in place for such a long time, pensions are payable to eligible United Kingdom pensioners who are currently also eligible for New Zealand Superannuation.

In contrast, the Chinese state-administered pension system was introduced relatively recently in 1997. Pensions are not payable until an employee and their employer have paid into that state system for at least 15 years. A person must have worked in China for 15 years between 1997 and 2012 and must have migrated to New Zealand after July 2012 in order to be eligible for a Chinese state-administered pension. That person would then need to be resident and present in New Zealand for the required 10 year period to qualify for New Zealand Superannuation. Any Chinese state-administered pension payable to people also applying for New Zealand Superannuation after that time (July 2022) will be subject to section 70 of the Social Security Act 1964.

As stated in my previous letter to you, the Ministry of Social Development does not accept the suggestion that the application of section 70 is considered unfair. The 2007 review found that section 70 was broadly appropriate for New Zealand circumstances. I understand you have been provided with the copies of the reviews as a part of the Ministry's correspondence with you.

The Chief Executive of the Ministry of Social Development considers whether the overseas pension scheme:


- is administered by or on behalf of the Government of the country from which the overseas pension originates; and
- provides benefits and pensions that are paid for any of the circumstances for which New Zealand benefits or pensions would be paid.

The overseas pension reduces the rate of any New Zealand benefit or pension also payable where both of those criteria are met. If only one or neither of those criteria are met, section 70 of the Social Security Act 1964 does not apply.

I hope you find this information helpful. You have the right to seek an investigation and review of my response by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON 6143

Yours sincerely



Sacha O'Dea
General Manager, Ageing Disability and International Policy

**Communication G/SO 215/1 NZL 217
Documentation**

5. Information submitted by Mr. & Mrs. Robert and Janice Newcombe

- Letter dated 16 August 2006 from the Office of the Leader of the Opposition
 - Letter dated 17 August 2006 from the Member of Parliament for Clevedon
 - Letter dated 7 September 2006 from the Minister for Senior Citizens
 - Letter dated 2 October 2006 from the Member of Parliament for Nelson
 - Letter dated 9 April 2009 from the Human Rights Commission
 - Letter dated 22 May 2009 from the Associate Minister for Social Development and Employment
 - Letter dated 27 August 2009 from the Minister for Senior Citizens
 - Letter dated 21 September 2009 Ministry of Social development
 - Letter dated 2 May 2012 from the Office of Hon-Jo Goodhew, Minister of Senior Citizens
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OFFICE OF THE LEADER OF THE OPPOSITION

House of Representatives

16 August 2006

Mr Bob Newcombe
12 Avon Terrace
NELSON 7010

Dear Mr Newcombe

On behalf of Dr Don Brash, Leader of the Opposition, I acknowledge receipt of your letter of 8 August, regarding your overseas (UK) pension.

The National Party is aware that the issue of the portability of pensions, particularly as they relate to Section 70 of the Social Security Act, is of concern to retirees and those close to retirement who have spent part of their working lives in other countries.

In a globalised world, where international careers are increasingly the norm, this is an issue that does warrant review. Any arrangements, however, must be fair to all taxpayers of the countries involved.

Of course, a complicating factor is the many different types of state pension systems that exist in other countries. New Zealand Superannuation is a basic universal system that is paid out of the general pool of taxes, but in other countries there are various types of state-backed compulsory contributory arrangements.

You may be aware that the Government is currently reviewing the portability of overseas and New Zealand pensions. The Minister for Social Development has commissioned a report on these issues and was planning to make decisions in the first half of 2006. As at 16 August 2006, there has not been a report.

National has been examining this issue for some time and will be watching developments with a great deal of interest.

Yours sincerely

Janie Young
Executive Assistant

Ref: jy

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JUDITH COLLINS

Member of Parliament for Clevedon

17 August 2006

Bob Newcombe
12 Avon Terrace
NELSON 7010

THIS MINISTER IS NOW MINISTER
OF JUSTICE WHO STOOD BEFORE
THE CONCIL THIS YEAR

Dear Bob

Thank you for your letter dated 8 August 2006, received by my Parliamentary office on 14 April 2006. Your situation as you know, unfortunately is not unique. There are a great many migrants who are adversely affected by the provisions of Section 70 of the Social Security Act 1964, which allows the New Zealand Government to take any payments from an overseas superannuation scheme.

I would like to reiterate that my colleague Lockwood Smith has previously been involved in taking a petition to Parliament on this matter. On 10 November 2004 I also presented to Parliament a Petition from the British Pensioners Association, which requested the House to change social welfare reciprocity arrangements with the United Kingdom.

However, in August 2005 the Chairman of the Social Services Committee noted that they had considered this petition carefully but once again had no matters to bring to the attention of the House.

Unfortunately, the National Party is not in government, nor do we have a majority on the Social Services Select Committee. However, I would suggest that you and any other affected person write to the Chairman of the Social Select Committee to express your desire to have a proper inquiry into the most recent petition concerning s.70. She can be contacted at: Georgina Beyer MP, Chairman of the Social Services Select Committee, Parliament Buildings, Freepost, Wellington

Yours sincerely

Tony Bates
Executive Assistant

JUDITH COLLINS
MP Clevedon
National Spokeswoman on Social Welfare,
Veterans Affairs, the Family and Liaison for Pacific Islands Affairs



Office of Hon Ruth Dyson

Minister of Labour

Minister for ACC

Minister for Senior Citizens

Minister for Disability Issues

Associate Minister for Social Development and Employment (Child, Youth & Family Services)

MP for Banks Peninsula

- 7 SEP 2006

Mr Bob Newcombe
12 Avon Terrace
NELSON 7010

Dear Mr Newcombe

Thank you for your letter of 8 August 2006 regarding your overseas pension. I have received a number of letters from older people about the treatment of overseas pensions for New Zealand residents. I am familiar with your concerns and I can assure you that this issue is being taken seriously by the Government.

A review of the portability aspects of New Zealand Superannuation, including the direct deduction policy, has been in progress for some time. This review gives due consideration to the fact that the direct deduction policy is unpopular with some New Zealanders who receive more than one state-funded pension. Officials have reported on options to resolve some of the problems at issue, and their proposals are now under consideration. The matter is likely to be considered by Cabinet during 2006.

I wish to assure you that considerations of fairness and equity play an important role in Government's decisions about the management of New Zealand Superannuation. Cabinet's final decision on superannuation portability will take into account the variable circumstances of our increasingly mobile population.

When final decisions have been implemented Work and Income will inform you of any changes that are likely to affect your superannuation payments.

Thank you for writing to me on this matter. I hope this information is helpful.

Yours sincerely

Hon Ruth Dyson
Minister for Senior Citizens



HON DR NICK SMITH

Member of Parliament for Nelson

02 OCT 2006

Mr Bob Newcombe
12 Avon Terrace
The Wood
NELSON 7001

Dear Bob

Thank you for your letter regarding the situation with UK contributory pensions that are administrated by the State being offset against New Zealand Superannuation payouts.

The Government is currently reviewing the portability of overseas and New Zealand pensions. The Minister for Social Development has commissioned a report on these issues and was planning to make decisions in the first half of 2006. However, to date the report has not been released.

National has been examining this issue for some time and will be watching developments with a great deal of interest.

Thank you for your further inquiry about this matter.

Yours sincerely



Nick Smith
MP NELSON



Human Rights
Commission
Te Kāhui Tika Tangata

Ref: 52592

09 April 2009

Robert Newcombe
12 Avon Terrace
Maitai Valley
Nelson 7010

Dear Mr Newcombe

Thank you for your letter of the 12 March relating to the abatement of overseas pensions against New Zealand Superannuation.

As I have already told you, the Human Rights Commission has given considerable thought about how to progress this matter and has decided against treating it as a complaint that is within jurisdiction. The problem is that it is the nature of the pension - rather than the origin - that is the determining factor which effectively means that there is no relevant ground.

The Commission remains of the view that the best way to approach this is through a policy initiative and that in order to do this properly we need to be more fully informed about both the different types of pension and the need to ensure equity for all stakeholders. The second paper that has been commissioned from the Retirement Policy and Research Centre will address these issues.

I am aware that this is not the outcome you had hoped for and repeat that you have the option of taking your complaints about how the Commission has handled your complaint to the Ombudsman or you can apply to the Director of Human Rights Proceedings for representation to allow you to complain to the Human Rights Review Tribunal about the substantive issue.

Yours sincerely

Sylvia Bell
PRINCIPAL LEGAL & POLICY ANALYST



22 MAY 2009

Bob Newcombe
12 Avon Terrace
Maitai Valley Reserve
NELSON 7010

Office of Hon Tariana Turia
MP for Te Tai Hauāuru
Minister for the Community and Voluntary Sector
Associate Minister for Social Development and Employment
Associate Minister for Disability Issues
Associate Minister of Health
Private Bag 18041
Parliament Buildings
Wellington 6160
New Zealand
p 64 4 4 817 6826
f 64 4 4 817 6526
e t.turia@ministers.govt.nz

Tēnā koe Bob, i ngā āhuatanga o te wā

Thank you for your letter of 4 May 2009 about the direct deduction of overseas pensions from New Zealand Superannuation.

You advise that you are refusing to give up your UK Pension as you say most of your pension contains no government funding. I am aware that the issue of deducting overseas pensions from New Zealand Superannuation is a matter of some concern to you and others in the same situation.

This matter falls within the portfolio of responsibilities of my colleague, Hon John Carter, the Minister for Senior Citizens. I have therefore written to the Minister advising that I am passing this matter to him for his consideration and response. I hope this course of action is acceptable to you.

Thank you for bringing your concerns to my attention.

Heoi anō

nā Hon Tariana Turia
Associate Minister for Social Development and Employment



Office of Hon John Carter

Minister of Civil Defence
Minister for Senior Citizens
Minister for Racing

Associate Minister of
Local Government

27 AUG 2009

Mr Robert Newcombe
12 Avon Terrace
Maltai Valley
NELSON 7010

Dear Mr Newcombe

Thank you for your letter of 15 July 2009, addressed to the Prime Minister, Hon John Key, and responding to his letter of 30 June 2009 on "Protecting Superannuation in tough economic times." Your letter has been referred to me because the subject of superannuation falls within my area of responsibility.

I have taken note of your comments. For my own part I have nothing to add to the comments I made to you in my letter of 25 May 2009.

Yours sincerely

Hon John Carter
Minister for Senior Citizens

IN HIS PREVIOUS LETTER TO ME HE
STATED THE LEGISLATION IS FAIR



Te Manatū Whakahiato Ora

Ministry of Social Development, Bowen State Building, Bowen Street 6011, PO Box 1556, Wellington 6140
• Telephone: 0-4-916 3300 • Facsimile: 0-4-918 0099

21 SEP 2009

Mr Robert Newcombe
12 Avon Terrace
Maitai Valley
NELSON 7010

Dear Mr Newcombe

Thank you for your letter of 25 August 2009 about the direct deduction policy that applies to some overseas pensions in New Zealand.

I note your decision not to request copies of correspondence at this time.

Article 15 of the Social Security Agreement between New Zealand and the United Kingdom has similar provisions to section 70 of the Social Security Act 1964. It ensures that treatment of UK pensions under the Agreement is consistent with the treatment of overseas pensions from all other countries under section 70. In the following comments, references to "section 70" should be read as also embracing article 15:

The quotation in your letter is from an internal document of the Ministry that does not have official status. Nevertheless, I accept the view expressed in it that "section 70 authorises the direct deduction of second-tier earnings-related pensions". Section 70 sets out its own criteria for the application of the direct deduction policy. Section 70 is silent on whether the overseas pensions to which it applies are first-tier or second-tier. If an overseas pension meets the criteria specified in section 70, it does not matter whether the pension concerned is first-tier or second-tier; section 70 applies to both.

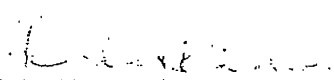
Nor does it matter whether an overseas pension is funded by direct contribution or from taxation, for section 70 is also silent on funding. What does matter is:

1. whether the overseas pension is part of a programme;
2. whether that programme exists for the same contingencies as New Zealand benefits and pensions, e.g. to provide income in retirement and old age; and
3. whether the programme is administered by or on behalf of the government of the country issuing the pension.

If all three questions are answered in the affirmative, section 70 must be applied.

I hope you find this information helpful.

Yours sincerely


Peter Hughes
Chief Executive



Office of Hon Jo Goodhew

MP for Rangitata

Minister for the Community and Voluntary Sector

Minister for Senior Citizens

Minister of Women's Affairs

Associate Minister of Health

- 2 MAY 2012

Denis O'Rourke
Member of Parliament
PARLIAMENT BUILDINGS

*Committee from Winston
Dunne*

Dear Mr O'Rourke

Denis

Thank you for your letter of 17 April 2012 about the direct deduction of overseas pensions from New Zealand Superannuation. You wrote on behalf of Mr Bob Newcombe.

Mr Newcombe has written to previous ministers and the position has been explained to him many times. Perhaps it will help if I set out the matter for you in some detail.

The direct deduction policy has been in place in New Zealand since 1938 and was part of the original social welfare legislation of that era. Its purpose was then and is still, to ensure that people with overseas pensions do not secure a combined New Zealand and overseas entitlement that exceeds the amount received by someone who has lived and worked their whole lifetime in New Zealand. By making overseas pensions up to the standard level of New Zealand Superannuation, it also ensures that no person's combined retirement income falls below the level of a full payment of New Zealand Superannuation.

All New Zealand governments since 1938 have endorsed and applied the policy. Legal authority for the policy is currently found in Section 70 of the Social Security Act 1964, which has been tested several times in the High Court and upheld on each occasion.

Opponents tend to see the issue as exclusively one of equity, comparing what they receive in return for their contributions or taxes with what others receive. That is not a test that ought to be applied to any of the programmes making up New Zealand's social security infrastructure.

Nor does it take account of the fact that New Zealand provides a universal retirement payment that has quite different characteristics to those provided by most other countries. The qualifications are very easy to meet. An applicant needs only to be 65 years old, a permanent resident of New Zealand, and to have lived here for a minimum of ten years, with five of those years since age 50. ✓

The rate is not based on contributions made or taxes paid. Unlike pensions in many other countries, payment is not tested for income or assets. New Zealand Superannuation guarantees married couples a payment equivalent to at least 65% (currently 66%) of the average ordinary time wage. The rate is determined according to marital status and/or living arrangements.

The OECD has acknowledged that our New Zealand Superannuation scheme has important advantages, such as its low cost, its simplicity, and its excellent record in fending off poverty in old age. There is no need to make fundamental changes to New Zealand Superannuation to ensure that it continues to meet its purpose of providing income support and security to our older citizens.

Legislation wrong in saying a guest pension

