



2 FEB 2018

Mr Guenter Langenbucher
Fyi-request-7094-da8ef05a@requests.fyi.org.nz

Dear Mr Langenbucher

This letter responds to your two pieces of correspondence, sent 19 December 2017 and 9 January 2018, regarding German pensions and New Zealand Superannuation.

For the sake of clarity, I will respond to each part of your request in turn.

- *Who did the research which was used to decide that the German Pension can be from New Zealand Superannuation:*
- *Qualification/position of this (these) person(s)?*
- *Exactly what articles were researched, were these articles in English or have they been translated into English? Copy of these articles or reference please.*

The determination that German pensions administered by the Deutsche Rentenversicherung (DRV), the German Statutory Pension Insurance Scheme, are subject to section 70 of the Social Security Act 1964 (the Act), was made by the Ministry's internal legal team. All solicitors involved were legally qualified with a Bachelor of Laws or higher. The legal team's determination was based on an understanding of New Zealand law and the intention of section 70 of the Act, and the application of this knowledge to information regarding the German Pension scheme available on the English language pages of the German Government's website.

Please note that legal advice is subject to legal privilege and, if requested, is likely to be withheld under section 9(2)(h) of the Official Information Act in order to maintain this privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

The determination that payments under the German Pension scheme are required to be deducted pursuant to section 70 of the Act has been examined several times by the Social Security Appeals Authority (SSAA). The SSAA has found, in each instance, that pension payments from the DRV meet the criteria for deduction under section 70 of the Act. The reports of the SSAA, containing information regarding why section 70 is applied to the German Pension scheme, are publicly available on the website of the New Zealand Legal Information Institute here: www.nzlii.org/form/search1.html?mask=nz/cases/NZSSAA.

- *Have the reports from 2004 and 2005 from the Ministry's Chief Executive been taken into consideration when these decisions were made? These reports state very clearly that the German Pension has little or nothing to do with New Zealand Superannuation.*

Page 1 of 3

The Ministry is unable to identify the reports to which you are referring. The following two reports on the subject of overseas pension deductions were identified, however:

- *'New Zealand Superannuation Portability'*, dated 14 February 2003, and
- *'Review of New Zealand Superannuation Portability'*, dated 31 May 2004.

These reports discuss New Zealand Superannuation policies as they relate to the growing number of migrants to New Zealand with residual pension rights in their country of origin. Neither of these reports state that German pensions have little or nothing to do with New Zealand Superannuation.

- *Is the Ministry aware that the German Pension is not universal and not a benefit, contrary to New Zealand Superannuation?*
- *Does the Ministry know that not everybody in Germany receives a pension from the DRV?*

The Ministry is aware that the German Pension is not universal. However, as a statutory pension insurance system, it does meet the criteria under section 70 of the Act, which are that the pension forms part of a programme providing benefits, pensions, or periodic allowances for any of the contingencies for which benefits, pensions, or periodic allowances are paid under the New Zealand income support legislation. You may be interested in the report of the SSAA in decision [2011] NZSSAA 62, which examines the applicability of section 70 to the German Pension scheme. This report is publicly available here: www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSSAA/2011/62.html?query=deutsche.

- *Is the Ministry aware that the German Pension is not paid or administered on behalf of the German government? Proof of this is provided to the Ministry in two letters from German authorities confirming this fact.*
- *Is this a breach of New Zealand Law, to deduct a pension under section 70, which states clearly, that the pension must be paid by or administered on behalf of the Government of the country in which the pension is issued?*
- *Does the Ministry know that the German Pension paid by The Deutsche Rentenversicherung (DRV) is not a benefit administered or paid on behalf by the German Government?*

The German Pension scheme, including pensions paid by the DRV, are paid under social security laws, enacted by the German Government, to provide financial support where required. The Federal Ministry of Labour and Social Affairs, a government agency, provides general supervision of the German Pension scheme, and the German Federal Insurance Institute, also a government agency, supervises the administrative functions of the German Pension Insurance. Therefore, the German Pension is administered on behalf of the German Government.

As such, the deduction of these payments is not a breach under New Zealand law, and is required under section 70 of the Act.

- *Does the Ministry know that the German Government is not paying any benefits to people who reside permanently outside of Germany?*

German pensions may be paid to individual living outside of Germany. More information regarding the process for receiving a German Pension while living outside of Germany is available on the DRV's website here: www.deutsche-rentenversicherung.de/Allgemein/en/Inhalt/04_international/dt_rentenzahlung_anderer_staat.html.

- *Does the Ministry know that the pension paid by DRV is considered personal property by Law in Germany and will be treated as such?*
- *Can you please explain why [the Ministry does not accept the evidence provided that the German Pension scheme is not administered on behalf of the German Government].*

German law is not binding in New Zealand. As per the decision of the Benefits Review Committee in your recently heard review of decision, it is up to the New Zealand courts to interpret New Zealand legislation, including the phrase in section 70 of the Act "on behalf of a government of a country". The status of these payments under German law is not relevant to the application of section 70 of the Act. The Ministry does not confiscate the German Pension from recipients, and instead deducts the value of this pension from the payment of New Zealand Superannuation, as is required by section 70 of the Act.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter available to the wider public shortly. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted and the Ministry will not publish any information that would identify you as the person who requested the information.

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

If you are not satisfied with this response regarding the application of section 70 of the Social Security Act to the German Pension scheme, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely



Agnes Sefo

General Manager, Ministerial and Executive Services