



MINISTRY OF SOCIAL DEVELOPMENT

Te Manatū Whakahiato Ora

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

26 AUG 2014

Robert Latimer

fyi-request-1761-8e764ec2@requests.fyi.org.nz

Dear Mr Latimer

Thank you for your emails of 29 and 30 July 2014 requesting, under the Official Information Act 1982, the following information:

- *Written documentation that proves that the Chief Executive chose to exercise his discretion under section 70 to deduct Canada Pension Plan pensions*
- *Details of the calculation process that is used when Canada Pension Plan pensions are deducted from New Zealand Superannuation benefits.*

Delegated Responsibility

In respect of all benefit entitlements, the Ministry needs to consider an individual's circumstances on a case-by-case basis. As it would not be possible for any one person to determine individual entitlements for the 600,000 people who currently receive New Zealand Superannuation payments from the Ministry, the Chief Executive delegated the responsibility for making decisions about individual entitlements, including the deductibility of overseas pensions, to employees in the Ministry of Social Development.

Section 41 of the State Sector Act 1988 allows chief executives of departments to delegate any of their functions or powers to an employee. The employee to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as those exercised by chief executives.

To be covered by section 70 of the Social Security Act 1964, an overseas pension must be part of a programme providing benefits, pensions, or periodical allowances for any of the circumstances that payments are made for under the social security legislation in New Zealand and the pension scheme must be administered by or on behalf of the Government paying the overseas pension. The Canadian Pension Plan meets the criteria for section 70 and is therefore directly deductible under the Social Security Act.

Written Documentation

There is no requirement to hold documentation which proves that the Chief Executive chose to exercise his discretion under 70 to deduct Canadian Pension Plan payments – as such the documentation you have requested does not exist. Therefore, your request for this information is refused under section 18(e) of the Official Information Act.

Furthermore, the High Court decision in *Hogan v Chief Executive* determined that the Chief Executive is required, by law, to reduce New Zealand Superannuation by the amount of the Canadian Pension Plan, in accordance with section 70 of the Social

Page 1 of 4

Security Act. I understand that you were provided with a copy of the High Court judgment on 29 July 2014. This High Court judgment confirms the authority for making the deduction whether or not specific documentation pertaining to the original decision, to undertake direct deduction in respect of the Canadian Pension Plan, can be located.

Assessing entitlement to an overseas pension

As part of an application for New Zealand Superannuation we ask the applicant to let us know if they have previously resided in an overseas country or are receiving or entitled to receive a pension from an overseas country.

If they are already receiving an overseas pension, we will ask the applicant to provide details of the type of pension they receive, who administers the pension, and the rate and frequency of the pension. We ask this so we can determine if the overseas pension may affect the applicant's rate of payment of the New Zealand benefit or pension.

If the applicant is not currently receiving an overseas pension but it appears they may be entitled to one, we request that they test that entitlement by applying to the overseas agency.

Every New Zealand Superannuation application is considered on a case-by-case basis. We will not ask an applicant to apply for an overseas benefit or pension where:

- the country does not pay benefits or pensions to people who do not reside there
- the only benefits or pensions payable are not deductible under Section 70 of the Social Security Act 1964
- it is considered unreasonable to require someone to apply.

Overseas pensions can be paid using the Direct Payment Method – where the pensioner gets their full overseas pension and their New Zealand Superannuation is reduced by the amount of the overseas pension, where the amount of the deduction is calculated in accordance with the *Social Security (Overseas Pension Deduction) Regulations 2013*.

However if the applicant is receiving an entitlement from Australia, Ireland, Jersey and Guernsey, the Netherlands or the United Kingdom then they can choose the Special Banking Option, through which the Ministry pays the pensioner the rate of New Zealand Superannuation they would be entitled to had they lived in New Zealand their whole life. In turn, the overseas pension agency pays the overseas pension into the Special Banking Option Crown account. Approximately 70% of applicants from these countries choose the Special Banking Option

More information on the Direct Payment Method and the Special Banking Option, is available on the Ministry's website and Work and Incomes website:

www.workandincome.govt.nz/individuals/brochures/payment-options-for-overseas-pensions.html#Thedirectpaymentoption2

www.msd.govt.nz/what-we-can-do/seniorcitizens/entitlements/overseas-pensions-faq.html

The rest of this response is based on payments being made through the Direct Payment Method.

Once the applicant (or overseas authority) has advised us of the value of their overseas pension, we deduct any bank fees (as specified in the Social Security (Overseas Pension Deduction) Regulations 2013) associated with transferring the money to New Zealand.

We then convert the remaining amount of overseas pension to a per annum rate in New Zealand dollars (based on the relevant exchange rate).

This is then converted to a weekly figure, in accordance with Schedule 1 of the New Zealand Superannuation and Retirement Act 2001. This amount is then deducted from the weekly amount of New Zealand Superannuation paid to the pensioner in fortnightly instalments.

Establishing the exchange rate

The exchange rates we use are determined using information from two sources:

The Advised Rate

Four countries - Canada, The Netherlands, The United Kingdom, and Ireland – provide us with exchange rate information. This is referred to as the 'Advised Rate'.

Where the country provides more than one rate the Ministry takes the average of those rates.

The Ministry does not receive exchange rate information directly from any other country.

The Westpac Average

Westpac supplies exchange rate information.

Westpac calculates this rate using the average of the daily exchange rates for the business days that occur between the 16th of one month and the 15th of the following month.

This rate is referred to as the 'Westpac Average'.

Using the most favourable rate

We then compare the Advised Rate and the Westpac Average for the relevant period and use the exchange rate that is the most favourable to the superannuitant. This is the rate that results in a smaller deduction from New Zealand Superannuation in lieu of the overseas pension.

The new exchange rates entered into our payment system apply to the New Zealand Superannuation entitlement from the day after the final pay day in a month, to the final pay day of the next month.

This approach reflects the requirements set out in the *Social Security (Overseas Pension Deduction) Regulations 2013*.

It is also the most effective and efficient way to manage exchange rate changes given we are working with over 15,800¹ superannuitants from more than 60 countries and the Ministry does not have real time access to every country's pension payment arrangements. Overseas authorities' payment periods may also differ to New Zealand's.

We do not consider it either practical or appropriate that superannuitants should be required to supply the latest exchange rates for their pensions themselves. Apart from being outside the requirements of the Regulations, this approach would place an unreasonable burden on the pensioners to access and provide us with the rates. It would also be extremely inefficient, as the Ministry would have to update the 15,800 records manually.

I hope you find this information regarding the direct deduction policy 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



Debbie Power
Deputy Chief Executive Work and Income

¹ The total of 15,800 refers to overseas pension clients that receive their payments direct from the overseas country. The balance of the overseas pension clients in New Zealand have their overseas pension paid through the Special Banking Option.