

# **New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill**

Member's Bill

As reported from the Finance and Expenditure Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

The bill would amend the New Zealand Superannuation and Retirement Income Act 2001. It would raise the minimum residence requirement to qualify for New Zealand Superannuation or the Veteran's Pension (both hereafter referred to as superannuation), from 10 years after the age of 20, to 20 years.

The bill is a Member's bill, with Andrew Bayly MP the member in charge. The bill was originally introduced in the House during the 52nd Parliament, on 18 October 2018, with Mark Patterson MP as the member in charge.

The bill is in response to the member's belief that the current minimum residence requirement does not strike a fair balance between long term and short term New Zealand residents. The basis for extending the residence requirement is that it will improve fairness of superannuation for people who have been "resident and present" in New Zealand for longer. By raising the residence requirement to 20 years, the bill would help to ensure that people who are benefitting from superannuation have a substantive connection to New Zealand. This is consistent with the original intention behind the New Zealand Superannuation and Retirement Income Act.

The bill is also intended to contribute to the sustainability of superannuation.

## **The effect that the bill would have on the Veteran's Pension**

For a person to qualify for the Veteran's Pension, they must be eligible for New Zealand Superannuation before they apply. Accordingly, eligibility for a Veteran's Pension is subject to meeting the same higher residency criteria proposed by the bill.

The bill would not affect any additional entitlements that recipients of the Veteran's Pension may be entitled to. Those entitlements include income support, impairment compensation, various grants and allowances, treatment, rehabilitation, and support services.

## **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring to the House's attention an issue with the bill. For people who have made specific financial plans based on the current eligibility criteria, the bill's lack of transitional provisions risks causing significant adverse financial and wellbeing effects. We discuss this in more detail later in this commentary.

## **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

## **Phased increase by birthdate**

We heard from many submitters who are concerned about the lack of transitional arrangements in the bill. The bill seeks to change the residence requirement from 10 to 20 years. As introduced, the new requirement would apply from the day after the date of Royal assent. People affected by the change would, almost overnight, be faced with a substantial delay of up to 10 years before they were eligible for superannuation.

People would likely have made specific financial plans on the basis of the current residence rules. We believe that the change would be unfair on those people, who may be significantly financially disadvantaged by the proposed change to superannuation requirements.

We are also concerned that many people who would be faced with this delay are likely to come from some of New Zealand's most vulnerable communities. For example, the change would particularly affect people who have arrived in New Zealand on a Parent Category visa. In many cases, those people would not qualify for superannuation until they were well into their 70s or 80s. Because of their age, remaining in employment would not be a viable option, and the bill risks leaving those people in financial hardship.

To mitigate this risk, we propose introducing the longer residence requirement through a phased increase by birthdate. We propose that, for every two complete years a person was born after 1 July 1955, they would need one additional year of

residence, up to a maximum of 20 years. Anyone born on or after 1 July 1975 would be subject to the bill's 20 year residence requirement. The total time requirement that applies to a person born in a particular age range is set out in section 8(4).

For clarity, we propose including a table in the bill, similar to the following:

<b>Age as at 30 June 2021</b>	<b>Residence requirement (after age 20)</b>
64 and over	10 years
62-63	11 years
60-61	12 years
58-59	13 years
56-57	14 years
54-55	15 years
52-53	16 years
50-51	17 years
48-49	18 years
46-47	19 years
45 and under	20 years

### **The benefits of a phased increase**

Our amendment would help people respond to the changed requirement in a way that would be proportionate to the effects on them. People would easily be able to identify what the change would mean for their eligibility. This would help them to plan in advance, taking into account the longer residence requirement. We therefore expect that most people would have options open that would help them avoid having to be dependent on benefits in their older age. This would limit any growth in income poverty amongst older people.

A phased increase by birthdate would also mitigate the perceived problem of an unfairly sudden change in entitlements. It would be significantly fairer than a jump directly from 10 years to 20 years. Therefore, people in similar circumstances would be treated similarly. For example, anyone born on or before 30 June 1957 would face a residence requirement of 10 years. Someone born the day after that date would have a residence requirement of 11 years, and not the full 20.

Our amendment would also be consistent with the overarching policy intent of the bill, which is to address some unfairness in the current requirements for longer-term New Zealand residents. It would ensure that most people would face a longer residence requirement—all people who turn 65 on or after 1 July 2022 would need to meet a residence requirement longer than 10 years. However, only those who turn 65 on or after 1 July 2040 would need to meet the full 20 year requirement.

### **Modifications for the Cook Islands, Niue, and Tokelau**

Recent changes to the superannuation and veteran's pension schemes allow people to migrate to New Zealand's "Realm" countries (the Cook Islands, Niue, and Tokelau) before they turn 65, and still receive superannuation (at a rate broadly proportional to the amount of time they have been resident and present in New Zealand). For some-

one to be eligible despite migrating to a Realm country, they must still have been resident and present in New Zealand for at least 10 years since the age of 20. And they could meet the requirement for 5 years residence after the age of 50 by using residence in one or more of the Realm countries. The policy intention behind the recent changes is to help the Realm countries' efforts against depopulation.

The bill as introduced would increase the requirement on everyone to spend at least 20 years in New Zealand to qualify for superannuation. This would include people who have already migrated to, or who are planning to migrate to, the Realm countries. We are concerned that this amendment would incentivise people who were otherwise intending to live in a Realm country to return to New Zealand, or stay longer in New Zealand instead. We believe this would be contrary to the policy intention of helping to prevent depopulation within the Realm countries.

The bill as introduced would disadvantage people who have already migrated to the Cook Islands, Niue, or Tokelau. It would also be highly disruptive for people who are planning to migrate to one of those countries. Those people may have migrated, or made plans to, on the basis of the recent changes to the superannuation scheme. We believe the bill would be unfair to them, as they could have reasonably assumed that the recent changes were permanent.

We therefore recommend amending the bill by including in section 8 the ability to count residence and presence in the Cook Islands, Niue, or Tokelau toward the additional residence requirement. This is provided in section 8(2)(b). Our amendment would ensure that residence in the Cook Islands, Niue, or Tokelau would count toward the increased time requirement. People planning to migrate to one of these countries and one day receive superannuation would not be delayed from doing so. This would ensure that the longer residence requirement would not encourage depopulation of these countries; nor would it disadvantage people who have already returned there.

We expect that our amendment would have a minimal effect on the expected savings in government expenditure as a result of the lengthened residence requirement.

### **Modifications for refugees and protected persons**

New Zealand has a strong and ongoing commitment to its international humanitarian obligations. This includes a commitment to help refugees and protected persons to successfully settle in New Zealand without undue hardship. The bill as introduced would risk increasing financial hardship on some refugees and protected persons.

As noted, the bill as introduced would increase the requirement on those seeking superannuation to spend at least 20 years resident in New Zealand. This would include all refugees and protected persons. The rationale behind this change is to ensure that those who benefit from superannuation have a strong connection with New Zealand.

Despite our general support for strengthening this principle, we believe that the more stringent requirement should not apply to older refugees. Refugees do not have a choice as to when they arrive in New Zealand. An expatriate New Zealander could

choose to return home sooner to qualify for the bill's longer residence requirement. A refugee, however, has no control over factors such as when they were accepted into the Refugee Quota Programme. Nor can they simply choose to return to their home country to receive an equivalent benefit—by definition, it is unsafe for a refugee to do so. Even if they could, the countries that New Zealand accepts refugees from often lack suitable economic safety nets.

We therefore propose amending the bill by inserting clause 5, new section 8A. Our amendment would retain the current 10 year residence requirement for a refugee or protected person who becomes a resident at age 55 or higher (Part 1, clause 5, new section 8A(4)).

Our amendment would also provide for refugees who are between the ages of 45 and 55 (when they become resident). It would ensure that the total residence requirement for a refugee is limited to no more than the difference between the date that person first becomes resident in New Zealand, and the date on which that person turns 65 (Part 1, clause 5, new section 8A(3)(a)). If they would otherwise have a lesser residence requirement, that lesser residence requirement applies (new section 8A(3)(b)). For refugees aged between 45 and 55, our amendment would provide a middle ground of between 10 and 20 years.

Under the provisions we propose, a refugee would still be required to have a substantive connection with New Zealand. This would be defined in a way that is not likely to result in prolonged hardship for someone who has had little agency over their situation.

Because this amendment would only apply to a limited number of individuals, we expect that it would have a minimal effect on the savings expected to result from the longer residence requirement.

### **The bill's COVID-19 implications**

The bill does not specifically account for people who may have had their ability to return to New Zealand restricted because of the COVID-19 pandemic. The time during which a person has been restricted from travelling due to the pandemic would not be counted towards the residence requirement, unless covered by a specific exception in the New Zealand Superannuation and Retirement Income Act (sections 9, 10, or 10A), or by a social security agreement.

We expect, however, that our recommended amendment to the bill—the phased increase of residence criteria by birthdate—would mitigate this problem as an issue. Under our amendment, people who are nearing the age of 65 would have less of an immediate need to return to New Zealand than in the bill as introduced.

### **Differing view of the Green Party of Aotearoa New Zealand**

This bill does not align with the Green Party's value of social responsibility or our vision for an Aotearoa where everybody has enough income for their family well-being and a dignified standard of living that enables them to participate in, and feel part of, their local community. Having liveable incomes is critical for many senior

citizens to perform duties of care in intergenerational households. In many migrant and former refugee intergenerational households, our elderly perform caregiving labour, such as looking after whānau and volunteer work in the community.

Extending the time people have to live in New Zealand before receiving superannuation is likely to increase poverty amongst our senior citizens, while doing very little to achieve the goal of making our superannuation scheme more sustainable. This is reflected in the figures given in the submission by the Ministry of Social Development. Hardship amongst New Zealand's senior citizens who are not wealthy has been on the rise, with senior citizens needing hardship grants from Work and Income to make ends meet.<sup>1</sup> Access to decent incomes is one of the most important determinants of health. By reducing the incomes of a portion of our senior citizen population, we are not only putting their health at risk but also burdening our public health infrastructure.

For the reasons above, the Green Party of Aotearoa New Zealand is not in support of the bill and recommends to the House that it be rejected.

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<sup>1</sup> RNZ, *Number of hardship grants given to over-65s increases 50% in 5 years*, 30 July 2018 <https://www.rnz.co.nz/news/national/362919/number-of-hardship-grants-given-to-over-65s-increases-50-percent-in-5-years>

## Appendix

### Committee process

The New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill was referred to the Finance and Expenditure Committee of the 52nd Parliament on 1 July 2020. On 26 November 2020 the bill was reinstated with the Finance and Expenditure Committee of the 53rd Parliament.

The closing date for submissions on the bill was 16 December 2020. We received and considered 362 submissions from interested groups and individuals. We heard oral evidence from 15 submitters in Wellington.

We received advice on the bill from the Ministry of Social Development. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

### Committee membership

Dr Duncan Webb (Chairperson)

Andrew Bayly

Barbara Edmonds

Ingrid Leary

Anna Lorck

Greg O'Connor

Damien Smith

Chlöe Swarbrick

Helen White

Nicola Willis

Hon Michael Woodhouse



**New Zealand Superannuation and Retirement Income  
(Fair Residency) Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



Andrew Bayly

# New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill

Member's Bill

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**The Parliament of New Zealand enacts as follows:**

- |          |   |    |
|----------|---|----|
| <b>1</b> | <b>Title</b><br>This Act is the New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Act <b>2018</b> .                           |    |
| <b>2</b> | <b>Commencement</b><br>This Act comes into force on the day after the date on which it receives the Royal assent.                                       | 5  |
| <b>3</b> | <del><b>Principal Act</b></del><br><del>This Act amends the New Zealand Superannuation and Retirement Income Act 2001 (the <b>principal Act</b>).</del> | 10 |
| <b>4</b> | <del><b>Section 8 amended (Residential qualification for New Zealand superannuation)</b></del><br><del>In section 8(b), replace 10 with 20.</del>       |    |

**Part 1**

**Changes to New Zealand Superannuation and Retirement Income Act 2001** 15

- |          |   |    |
|----------|---|----|
| <b>3</b> | <b><u>Principal Act</u></b><br><u>This Part amends the New Zealand Superannuation and Retirement Income Act 2001.</u>         |    |
|          | <i><u>Changes to residential qualification</u></i>  | 20 |
| <b>4</b> | <b><u>Section 8 replaced (Residential qualification for New Zealand superannuation)</u></b><br><u>Replace section 8 with:</u> |    |

**8 Residential qualification for New Zealand superannuation**

- (1) A person (A) is entitled to New Zealand superannuation only if A—
- (a) is ordinarily resident in New Zealand on the date of application for New Zealand superannuation, unless section 31(4) of this Act or section 191(4) of the Veterans’ Support Act 2014 applies; and
  - (b) meets the residency requirements in **subsections (2) and (3)**.

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- (2) Since reaching the age of 20 years, A must have been both resident and present for a period or periods totalling not less than the total time requirement calculated under **subsection (4)**—

- (a) in New Zealand for 10 years of the total time requirement; and
- (b) in any 1 or more of New Zealand, the Cook Islands, Niue, and Tokelau for the remaining time (if any) of the total time requirement.

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- (3) Since reaching the age of 50 years, A must have been both resident and present in any 1 or more of New Zealand, the Cook Islands, Niue, and Tokelau for a period or periods totalling not less than 5 years.

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*How to calculate total time requirement*

- (4) For the purposes of **subsection (2)**, if A was born during the period specified in column 1 of the following table, A’s total time requirement is the number of years specified in column 2:

<u>Column 1</u>	<u>Column 2</u>
<u>Period during which A was born</u>	<u>Total time requirement</u>
<u>On or before 30 June 1957</u>	<u>10 years</u>
<u>Between 1 July 1957 and 30 June 1959 (inclusive)</u>	<u>11 years</u>
<u>Between 1 July 1959 and 30 June 1961 (inclusive)</u>	<u>12 years</u>
<u>Between 1 July 1961 and 30 June 1963 (inclusive)</u>	<u>13 years</u>
<u>Between 1 July 1963 and 30 June 1965 (inclusive)</u>	<u>14 years</u>
<u>Between 1 July 1965 and 30 June 1967 (inclusive)</u>	<u>15 years</u>
<u>Between 1 July 1967 and 30 June 1969 (inclusive)</u>	<u>16 years</u>
<u>Between 1 July 1969 and 30 June 1971 (inclusive)</u>	<u>17 years</u>
<u>Between 1 July 1971 and 30 June 1973 (inclusive)</u>	<u>18 years</u>
<u>Between 1 July 1973 and 30 June 1975 (inclusive)</u>	<u>19 years</u>
<u>On or after 1 July 1975</u>	<u>20 years</u>

**Example**

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A person (B) is born overseas on 30 June 1965. B moves to New Zealand and becomes both resident and present in New Zealand on 1 July 2020 at age 55. The earliest date on which B can meet their total time requirement is 14 years later, on 1 July 2034, at age 69. B meets this requirement by being both resident and present in New Zealand for a total of 12 years, in the Cook Islands for a total of 1 year, and in Niue for a total of 1 year.

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**5** **New section 8A inserted (Special total time requirement for refugees or protected persons 45 years of age or older on relevant date)**

After section 8, insert:

**8A** **Special total time requirement for refugees or protected persons 45 years of age or older on relevant date**

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*Application of this section*(1) This section applies to a person (A) who—(a) is recognised as a refugee or protected person in New Zealand; and(b) is 45 years of age or older on the relevant date.(2) For the purposes of **section 8(2)**, A’s total time requirement must be calculated under this section instead of under **section 8(4)**.

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*Requirement for persons between 45 and 55 years of age*(3) If A is 45 years of age or older but younger than 55 years of age on the relevant date, A’s total time requirement is the lesser of the following:(a) the period, calculated in days, that starts on the relevant date and ends on A’s 65th birthday;

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(b) the total time requirement calculated under **section 8(4)**.**Example**A person (B) is born overseas on 1 January 1975. B moves to New Zealand on 1 January 2025 at age 50. B is also recognised as a refugee in New Zealand, and becomes both resident and present in New Zealand, on that date. The earliest date on which B can meet their total time requirement is their 65th birthday, 15 years after B arrives in New Zealand.

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*Requirement for persons 55 years of age or older*(4) If A is 55 years of age or older on the relevant date, A’s total time requirement is 10 years.

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*Meaning of relevant date*(5) In this section, **relevant date** means the date on which A first becomes both resident and present in New Zealand, whether that date is before, on, or after the date on which A is recognised as a refugee or protected person in New Zealand.

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*Consequential amendments***6** **Section 9 amended (Treatment of various periods of absence)**In section 9(1), replace “section 8(b) and (c)(i)” with “**section 8(2) and (3)**”.

- 7** **Section 10 amended (Treatment of periods of absence as missionary)**  
In section 10(1), replace “section 8(b) and (c)(i)” with “**section 8(2) and (3)**”.
- 8** **Section 10A amended (Treatment of periods of absence if New Zealand income tax withheld on overseas earnings)** 5  
In section 10A(1), replace “section 8(b) and (c)(i)” with “**section 8(2) and (3)**”.
- 9** **Section 31 amended (Entitlement to be paid New Zealand superannuation in specified Pacific country)**  
Replace section 31(4)(c) with: 10  
(c) who has met the residency requirements for New Zealand superannuation set out in **section 8(2) and (3)**; and
- 10** **Schedule 1AA amended**  
(1) In Schedule 1AA, heading to clause 3, replace “section 8(c)” with “**section 8(3)**”. 15  
(2) In Schedule 1AA, clause 3(2), replace “section 8(c)” with “**section 8(3)**”.
- Part 2**  
**Consequential amendments to Veterans’ Support Act 2014**
- 11** **Principal Act** 20  
This Part amends the Veterans’ Support Act 2014.
- 12** **Section 191 amended (Entitlement to be paid veteran’s pension in specified Pacific country)**  
Replace section 191(4)(c) with:  
(c) who has met the residency requirements for New Zealand superannuation set out in **section 8(2) and (3)** of the New Zealand Superannuation and Retirement Income Act 2001; and 25
- 13** **Schedule 1 amended**  
(1) In Schedule 1, heading to clause 17, replace “section 8(c)” with “**section 8(3)**”.  
(2) In Schedule 1, clause 17(2), (3), and (4), replace “section 8(c)” with “**section 8(3)**”. 30

**New Zealand Superannuation and Retirement Income  
(Fair Residency) Amendment Bill**

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**Legislative history**

18 October 2018

1 July 2020

Introduction (Bill 107–1)

First reading and referral to Finance and Expenditure Committee

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Wellington, New Zealand:

Published under the authority of the House of Representatives—2021