

26 October 2018

Hon David Parker, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill**

1. We have considered whether the New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill ('the Bill'), a member's Bill in the name of Mark Patterson, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. The Bill amends the New Zealand Superannuation and Retirement Income Act 2001 ('the principal Act'). The Bill raises the minimum residency qualification for New Zealand Superannuation from 10 years to 20 years after age 20. Currently, a resident of 10 years is entitled to full New Zealand Superannuation.
3. We have considered whether the amendment to section 8 of the principal Act, which raises the minimum residence requirements for receiving superannuation, could constitute a limit on the right to freedom from discrimination. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993. Section 21 of the Human Rights Act provides that ethnic or national origin, which includes nationality or citizenship, is a prohibited ground of discrimination.
4. The Bill confers a greater entitlement on individuals based on their length of residence and presence in New Zealand. This imposes a material disadvantage on those who have resided in New Zealand for less than 20 years. However, this disadvantage occurs irrespective of an individual's nationality or citizenship status. Length of residence in a state is not a protected characteristic and, therefore, does not, on its face, limit the right to be free from discrimination.
5. To the extent that the Bill may discriminate indirectly, we view the limitation on the right to be justified. The allocation of limited government resources in the context of social policy is complex and may require some bright-lines to be drawn.
6. The Bill's objective is to ensure that the New Zealand superannuation scheme is fair and not over-burdened. To do so, the Bill increases the length of time that individuals must have made a contribution to New Zealand to be entitled to superannuation. Accordingly, the objective of the provision is sufficiently important to justify some limit on s 19(1) and any potential limit on the right appears rationally and proportionately connected to that objective.
7. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.