

***New Zealand Superannuation and Veteran's Pension (Entitlements of Spouses and Partners of People in Long-Term Residential Care and Remedial Matters) Bill***

14 February 2006

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

NEW ZEALAND SUPERANNUATION AND VETERAN'S PENSION (ENTITLEMENTS OF SPOUSES AND PARTNERS OF PEOPLE IN LONG-TERM RESIDENTIAL CARE AND REMEDIAL MATTERS) BILL

1. We have considered the New Zealand Superannuation and Veteran's Pension (Entitlements of Spouses and Partners of People in Long-term Residential Care and Remedial Matters) Bill (PCO 6757/7) for consistency with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). We understand the Bill is scheduled to be considered by the Cabinet Legislation Committee on 16 February 2006.
2. We have concluded that the Bill appears to be consistent with the Bill of Rights Act.
3. The Bill would make changes to the eligibility rules for superannuation and veteran's pensions in the following areas:
  - extending eligibility for the single or single living alone rate of New Zealand superannuation and veteran's pension to all New Zealand superannuitants and veterans' pensioners living in the community who have a spouse or partner in long-term residential care in a hospital or rest home;
  - removing the "sharing expenses rule" for the living alone payment, so that entitlement to the living alone payment for New Zealand superannuitants and veterans' pensioners is based solely on actual living arrangements;
  - increasing the period of time a person can continue to receive New Zealand superannuation or veteran's pension while overseas and working voluntarily for an aid agency from 52 weeks to 156 weeks; and
  - allowing additional increases in rates of veteran's pension by Order in Council.

*Same-sex de facto couples*

4. The Bill does not provide for the recognition of same-sex de facto couples until 1 April 2007, consistent with the overall policy of social security legislation. The Bill therefore draws a distinction on the ground of sexual-orientation. However, we do not consider this raises an issue in terms of s 19(1) of the Bill of Rights Act.

5. Persons living in a same-sex de facto relationship are not currently recognised by the principal Acts and are therefore not subject to the married rate of superannuation or veteran's pension; they already receive the single or single living alone rate. As the Bill simply enables married couples to receive the single or single living alone rate in recognition of the fact that their partner is receiving long-term residential care, there is no disadvantage to same-sex couples.
6. The Ministry of Social Development has advised that on 1 April 2007 same-sex de facto partners of superannuitants and veterans' pensioners living in long-term residential care in a hospital or rest home will be recognised under the Bill and will continue to receive the single or single living alone rate of superannuation or veteran's pension.

Jeff Orr  
Chief Legal Counsel  
Office of Legal Counsel

Stuart Beresford  
Principal Legal Advisor  
Bill of Rights/Human Rights Team

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