

Regulatory Impact Statement

Revised Social Security Agreement with Australia

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Social Development.

The 2001 Agreement on Social Security between the Government of New Zealand and the Government of Australia (the SSA) needs to be revised to update some provisions which are out of step with New Zealand and Australian legislation (eg New Zealand legislation concerning civil unions). There are also some errors and anomalies that need to be corrected. We are also responding to the forthcoming changes to the eligibility age for Australian Age Pension, which will result in the Australian Age pension age being two years higher than the New Zealand pension age.

This Regulatory Impact Statement provides an analysis of options to respond to disparity in pension ages which:

- will result in some Australian residents who have spent time in New Zealand receiving a state pension two years before other Australian residents
- may create an incentive for people to migrate to New Zealand to receive a pension earlier than they could otherwise in Australia.

The costs of taking no action have been estimated. The figures provided should be treated as providing a sense of scale for potential impacts. In calculating the costs, no assumptions have been made around any possible behavioural changes. It is not possible to estimate with any accuracy how many people might take advantage of early access New Zealand Superannuation if the age of eligibility for this pension remains at 65 years.

Three options, including the status quo, are discussed. The analysis makes assumptions about the impact of the options on free movement of people across the Tasman, equity aspects for Australia and New Zealand and the income support needs of trans-Tasman migrants.

Implementation of any changes depends on the agreement of the Australian Government to make the necessary changes to the SSA.

To be most effective any changes will need to be in place by 1 July 2017, which is the date the Australian pension age starts to increase. Meeting this deadline will partly depend on whether the Australian Government is able to pass any agreed changes to the SSA within this timeframe.

Audrey Bancroft, General Manager, Seniors, International and Disability Policy

Executive summary

1. SSAs close gaps in social security coverage for people who have lived in more than one country during their working lives. New Zealand and Australia have had SSAs since 1948, with the current SSA having been implemented in 2002.
2. The SSA allows Australian residence to count as New Zealand residence for the purposes of qualifying for a New Zealand pension (and vice versa). The SSA creates a fiscal risk because it allows Australian residents moving (or returning) to New Zealand to immediately access New Zealand Superannuation (NZS). This risk will be increased because Australia is increasing its pension age to 67, while the NZS eligibility age is remaining at 65. The forthcoming gap in pension ages may prompt Australian residents to move to New Zealand in order to receive a pension two years earlier than they could if they remained in Australia. In addition, New Zealanders in Australia over the age of 65 but below the age of eligibility to Australian Age Pension (AAP), and Australians who have spent time in New Zealand, will be able to receive NZS, while other Australian residents will have to wait until age 67 to receive an Australian or New Zealand pension.
3. There are three options available:
 - Option 1: take no action (status quo)
 - Option 2: change the NZS eligibility age under the SSA so that where a person needs to use the SSA to qualify for NZS they will only be eligible for payment if they meet the age of eligibility for AAP
 - Option 3: remove the totalisation provisions from the SSA (which allow residence in one country to count as residence in the other country for the purposes of qualifying for a pension).
4. The analysis suggests that the best option is to change the NZS eligibility age under the SSA to make the eligibility ages for NZS and AAP consistent. Changing the NZS eligibility age under the SSA would ensure that there is no increase in fiscal costs as a result of the change in the age of entitlement for AAP. It would also ensure that the equity principle agreed by the Prime Ministers of New Zealand and Australia when the SSA was negotiated is maintained. The change may be consistent with the free movement of people across the Tasman under the Trans-Tasman Travel Arrangement. It would be equitable because people crossing the Tasman to New Zealand would not be able to use the SSA to obtain a pension earlier than would be possible if they had remained in Australia, and ex-New Zealand residents in Australia would not receive a pension earlier than other Australia residents.

Status quo and problem definition

New Zealand has a network of SSAs

5. People who have lived in more than one country sometimes find that they do not have enough residence or contributions under a social security scheme to qualify for a pension payment. To help overcome this problem, a network of SSAs has been set up within the international community. One of the key elements of SSAs is that the partner countries

broadly share the responsibility for social security coverage. New Zealand has nine SSAs with Australia, Canada, Denmark, Greece, Ireland, Jersey and Guernsey, Malta, the Netherlands, and the United Kingdom.

6. SSAs are treaties between the partner countries. In New Zealand Cabinet must approve the signature of a SSA, and SSAs of particular importance are tabled in the House of Representatives and referred to a Select Committee for Parliamentary treaty examination. SSAs are brought into force and amended by Order in Council.

SSAs between New Zealand and Australia date back to 1948

7. The first SSA between New Zealand and Australia was introduced in 1948. By 1969, the SSA had become a full 'host country' SSA through which New Zealanders in Australia could gain immediate access to Australian social security benefits, and Australians had the same access to New Zealand benefits. In 1994 an annual reimbursement provision was introduced whereby the New Zealand government reimbursed the Australian government for the cost of Australian benefits paid to New Zealanders and vice versa. Due to the fact that there were many more New Zealanders in Australia than Australians in New Zealand the reimbursement was one sided with New Zealand paying approximately \$160 million in 2000/2001 and Australia paying \$1.5 million.
8. Despite the reimbursement provisions, in the late 1990s Australia was dissatisfied with the ongoing imbalance in the population flows and the level of social security payments it was making to New Zealanders. Australia claimed that the social security cost for New Zealanders was AUD1 billion per year. Consequently, in 1999, the Prime Ministers of New Zealand and Australia agreed to a review of the SSA.

The current SSA with Australia has limited coverage

9. At an Australia/New Zealand prime ministerial meeting in February 1999 a joint prime ministerial task force was established to develop new bilateral social security arrangements. In June 2000, the Australia and New Zealand Joint Review on Social Security comprising of officials from both countries agreed that the aims of the review of the SSA were to:
 - meet the long term income support needs of trans-Tasman migrants
 - be equitable to both countries
 - have reliable, workable and less complex administrative arrangements; and
 - be consistent with the principles underlying the Trans-Tasman Travel Arrangement (TTTA) and Closer Economic Relations (CER).
10. The negotiations towards a new SSA began in October 2000 and were completed in February 2001. Coverage of this SSA is limited to:
 - for New Zealand - NZS, Veteran's Pension and Supported Living Payment for the severely disabled

- for Australia - AAP, disability support pension for the severely disabled and carer payment in respect of the partner of a person who is in receipt of a disability support pension.

11. In February 2001, Australia also introduced measures that restricted access to certain Australian benefits for New Zealanders who do not have Australian permanent residence status or Australian citizenship.¹
12. Under the 2001 SSA New Zealanders resident in Australia are able to receive a payment based on their periods of residence in NZ over a 45 year period ie if they have lived in New Zealand for 10 years they will be eligible for 10/45ths of the maximum net rate of payment. However, this payment is capped at the income and asset tested² rate that an Australian resident would receive if that person had no connection to New Zealand. Consequently, a joint Australia/New Zealand media release of 26 February 2001 by the Australian and New Zealand Prime Ministers noted that “Under the equity principle, New Zealand Superannuitants in Australia will not be entitled to receive more than other Age Pension beneficiaries, and vice versa.”
13. Where a New Zealander in Australia is not an Australian permanent resident or citizen and has lived in a third country, periods of working age residence in the third country are counted as New Zealand residence in the payment formula. Where a person gets an overseas pension from that third country, the pension amount can be used to offset some of the NZS payment based on third country residence.

There is a fiscal risk from Australian residents moving to New Zealand

14. Under the SSA a person who is 65+ can move from Australia to New Zealand and immediately receive NZS. Any AAP which they are entitled to receive will be deducted from their NZS entitlement. However, some people will have no or very limited

¹ Since 1 September 1994 all non-citizens in Australia have been required to hold a valid visa. As a result, the Special Category Visa (SCV) was introduced specifically for New Zealand citizens. This visa is issued on arrival and there is no need to apply prior to entering Australia. To obtain an SCV a New Zealand citizen must present a valid New Zealand passport and an incoming passenger card to immigration officials upon arrival in Australia. The SCV is classed as a temporary visa, and temporary visa holders do not have the same rights and benefits as Australian citizens or permanent residents. To access such rights, temporary migrants, including those from New Zealand, must obtain permanent visas. By contrast, on entering New Zealand, all Australian citizens and permanent residents are automatically granted residence visas, and they may apply for permanent residence after having held a residence visa continuously for two years.

Prior to 2001, New Zealand citizens in Australia on SCVs could access social security and obtain Australian citizenship without first becoming permanent residents. In February 2001 Australia amended citizenship laws for New Zealand citizens. Under these changes, all New Zealand citizens who arrived in Australia after 26 February 2001 and who want to access certain social security payments, obtain citizenship or sponsor family members for permanent residence may only do so after applying for, and being granted, permanent residence through the migration program.

Transitional arrangements were put in place for New Zealanders in Australia at the time of the amendments. This means that New Zealanders who were already in Australia as SCV holders on 26 February 2001 may continue to apply for citizenship, sponsor family members for permanent residence and access social security payments without being granted permanent visas.

² The Australian Age Pension is subject to an income and asset test. The income test reduces a couple's Age Pension to zero when their combined fortnightly income reaches A\$2,922.80 and a single person's Age Pension to zero when his or her fortnightly income reaches A\$1,909.80. For homeowners a single person's assets will begin to affect their age pension rate once they exceed A\$205,500, and for homeowner couples the figure is A\$291,500.

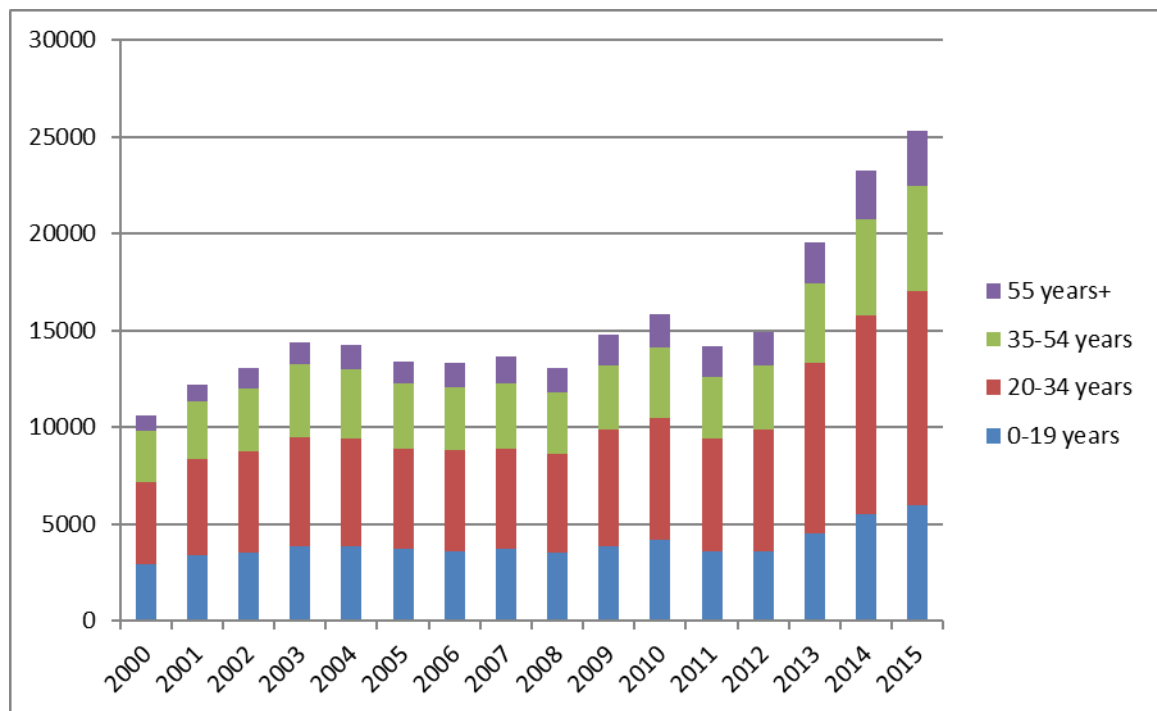
entitlement to AAP because of their level of income and assets so there would be no or only a small amount of AAP to deduct.

15. This raises a number of risks:

- if more New Zealanders currently in Australia and/or Australian citizens decide to move to New Zealand in retirement there will be more expenditure on NZS
- health expenditure could rise as these people would be eligible for free health care
- there could be additional pressure on the housing market.

16. While the incentive for retirees to move from Australia to New Zealand to receive NZS currently exists, there will also be strong reasons for retirees to remain in Australia, especially where people have lived in Australia for long periods and have strong family ties in Australia. Data on permanent and long-term arrivals shows that there has been a significant increase in arrivals from Australia across all age groups. The proportion of arrivals in the 55+ age group has increased from 7 percent of total arrivals in 2000 to around 11 percent in 2009, but has been steady at 11 percent since then.

Figure 1: Permanent and long-term arrivals from Australia (2000-2015)



Australia is increasing its pension age to 67 while New Zealand's will remain at 65 which increases the fiscal risk

17. Australia is raising the age of eligibility for AAP from 65 to 67 years. The age will increase by six months every two years starting from 1 July 2017 and settling at age 67 years on 1 July 2023. The age of eligibility for NZS will remain at 65.

18. Currently the age of eligibility for both New Zealand Superannuation and Australian Age Pension is 65 so there is no incentive to move from one country to the other to get a pension payment from an earlier age. The forthcoming difference in pension ages may

create an additional incentive for people to move from Australia to New Zealand to receive a pension at an earlier age.

19. The totalisation provisions³ in the SSA mean New Zealand will be required to pay NZS at age 65 to a range of people who might otherwise have had to wait until the AAP age to receive a pension:

- *Australians who move to New Zealand* - Australians who are between the ages of 65 and 67 and are not eligible for AAP because of their age may have an incentive to move to New Zealand.
- *New Zealanders returning to New Zealand* - Some New Zealanders who return to New Zealand will have insufficient residence in New Zealand to qualify for NZS. Under the totalisation provisions of the SSA their residence in Australia would be able to count as residence in New Zealand for the NZS residence test. These people may have an incentive to return to New Zealand to be able to receive a pension two years earlier than they could if they remained in Australia.
- *New Zealanders in Australia over the age of 65 but below the age of eligibility for AAP* - New Zealanders in Australia who are 65 or over, but below the AAP age, would be able to receive NZS while Australians would have to wait until 67 to receive a pension. This would be inconsistent with the equity principle agreed to when the 2002 SSA was negotiated, because these people would be advantaged over other Australian residents.
- *Australians in Australia who have prior residence in New Zealand* - The minimum amount of New Zealand residence needed to receive NZS in Australia is one year. Therefore some Australians who have spent periods of time in New Zealand would be eligible for a part pension from New Zealand from the age of 65. Again, this would go against the equity principle agreed to when the 2002 SSA was negotiated, because these people would be advantaged over other Australians.

Costs and benefits of the status quo

20. It is not possible to estimate with any accuracy how many people might take advantage of the totalisation provisions in the SSA to gain eligibility to NZS if the age of eligibility for NZS remains at 65 years. However, indicative high level estimates of the impacts can give some sense of the possible fiscal consequences. We have not made any assumptions around any possible behavioural changes.

21. The full effect of the increasing age of eligibility for AAP will not occur until the 2023/24 year. We have estimated impact for the 2017/18 year, assuming an immediate two year increase occurs rather than a stepped approach over five years. This is done to provide a sense of scale of the impact.

³ The residence requirement for New Zealand Superannuation is 10 years' New Zealand residence and presence from the age of 20, with five years being since the age of 50. The SSA allows residence in Australia to be treated as residence in New Zealand to assist people to meet the residence criteria for New Zealand Superannuation. For example, a person is able to combine one year of New Zealand residence and presence with nine years of Australia residence and presence. This provision is known as 'totalisation'.

22. Two estimates are shown below - one for people residing in Australia with at least one year of New Zealand residence and the other for returning New Zealanders, and Australians moving to New Zealand, who would be able to access NZS at age 65 or 66.
23. We have estimated the average number of Australian residents who would be able to access NZS at age 65 or 66 would be 5,900 with an associated cost of \$34.7 million per year. We have also estimated the minimum and maximum number of people likely to be affected. These figures are based on the number of Australian residents who have been granted NZS in the past six financial years.

Table 1: Estimate of the potential number of Australian residents who would be able to access New Zealand Superannuation at age 65 or 66

2017/18	Estimated Numbers	Estimated Costs (\$ million)
Minimum	4,700	27.6
Average	5,900	34.7
Maximum	6,500	38.2

24. We have estimated that the average number of returning New Zealanders, and Australians moving to New Zealand, who would be able to access NZS at age 65 or 66 would be 1,900 with an associated cost of \$8.2 million per year. We have also estimated the minimum and maximum number of people likely to be affected. These figures are based on the number of returning New Zealanders, and Australians who have moved here, who have been granted NZS in the past six financial years.

Table 2: Estimate of the number of returning New Zealanders, and Australians moving to New Zealand, to access NZS paid in New Zealand at age 65 or 66

2017/18	Estimated Numbers	Estimated Costs (\$ million)
Minimum	1,100	\$4.8
Average	1,900	\$8.2
Maximum	2,300	\$10.0

Objectives

25. Any options to address the disparity in the ages of entitlement should be assessed against the objectives of the social security arrangements between Australia and New Zealand which are:
- free movement of people across the Tasman

- to be consistent with the principles underlying the Trans-Tasman Travel Arrangement (TTTA) and Closer Economic Relations (CER).
- equitable - to both countries, and to trans-Tasman migrants so that New Zealand superannuitants in Australia will not be entitled to receive more than other Australian age pension beneficiaries, and vice versa
- to have reliable, workable and less complex administrative arrangements; and
- meet the long-term income support needs of trans-Tasman migrants
- to minimise fiscal costs.

Options and impact analysis

26. The options in response to the effects of the increasing age of eligibility for AAP are:

- Option 1: No action – the status quo – the age of eligibility for AAP will rise to 67 while the age of eligibility for NZS will remain at 65, regardless of whether a person qualifies solely through the provisions of the SSA.
- Option 2: The eligibility age is made consistent under the SSA - Amend the SSA, so that, where a person has to use the SSA to qualify for NZS, they will only be eligible if they meet the age of eligibility for AAP.
- Option 3: Amend the SSA to remove the totalisation provisions – this means that Australian residents would need to complete 10 years residence in New Zealand to gain entitlement to NZS and New Zealanders would need to complete 10 years residence in Australia to gain entitlement to AAP.

Option 1: Status quo

27. Option 1, the status quo may result in an increase in older people moving from Australia to New Zealand which may result in an additional cost of over \$40 million which will be borne by the New Zealand Government. There is already an incentive for people to move from Australia to New Zealand at pension age because a person resident in New Zealand can receive NZS which is not subject to an income or asset test, whereas a person in Australia would receive AAP which is income and asset tested. Taking no action increases the incentive for people between the ages of 65 and 67 to move to New Zealand as once the AAP age increases they would get no AAP if they remained in Australia.

28. Taking no action may result in flow-on costs in health care as these people would be eligible for free health care either because they are New Zealand citizens, or under the reciprocal health agreement with Australia. There may also be additional pressure on the housing market.

29. There could be some resentment from New Zealand residents about people from Australia being able to receive NZS despite their limited contribution to New Zealand. This risk appears small however, as the situation already exists for people from all

countries with which New Zealand has a SSA, and we have not observed any resentment at this situation.

30. This option would compromise the equity principle which underpins the SSA. Qualifying people who move to Australia between the ages 65 and 67 would be able to receive NZS while other Australian residents would not be able to receive a state pension until they reach age 67.

Option 2: Amend the SSA to make the eligibility ages consistent

31. Under Option 2 the SSA would be amended to require that, where a person needs to use the SSA to qualify for NZS they will only be eligible for payment of NZS if they meet the age of eligibility for AAP.
32. Option 2 would remove the additional incentive for older people to move from Australia to New Zealand to receive a pension earlier. It would minimise any financial risk associated with people using the totalisation provisions to gain eligibility to NZS at age 65. Lifelong New Zealanders and New Zealanders returning from Australia who meet the residence criteria for NZS in their own right would still qualify for NZS at age 65.
33. New Zealanders who qualify at age 65 and then move to Australia will lose their eligibility to NZS until they reach the age of eligibility to AAP. This will mean New Zealanders in Australia become eligible for NZS two years later than New Zealanders living elsewhere.
34. Aligning the age of eligibility of NZS with the age of eligibility for AAP for people applying for NZS under the SSA would be consistent with the way that a similar issue was dealt with under the previous 1995 SSA with Australia. Under the 1995 SSA the age of eligibility for AAP for men was 65 and for women 60, but rising from 60 to 65 for women between 1994 and 2014. At the same time, the age of eligibility for NZS for both men and women was rising from 60 to 65 between 1991 and 2001. This issue was solved by limiting the age of eligibility in the SSA to the later age required either under the domestic legislation of New Zealand or of Australia.
35. Option 2 would be consistent with the original policy intent of the SSA, as expressed by the Prime Ministers of New Zealand and Australia when the terms of the 2002 SSA were announced (ie that New Zealand Superannuitants in Australia will not be entitled to receive more than other Age Pension beneficiaries, and vice versa).

Option 3: Remove the totalisation provisions from the SSA

36. The third option, removing the totalisation provision from the SSA would be a departure from the normal SSA template. Totalisation is one of the key provisions in SSAs which help to ensure that people covered do not have gaps in social security coverage. Removing it would mean that all people moving between New Zealand and Australia would have to wait for ten years before they become eligible for a local pension in the country they migrated to. Depending on their situation this could mean they have a long period with a very limited level of pension.
37. This may have a detrimental effect on labour movement under the TTTA as potential migrants would be concerned about their pension entitlements should they return to their home country on retirement. For example, without totalisation, a New Zealander who

moved to Australia at the age of 45 and returns to New Zealand would receive a reduced Australian Age Pension based on the payment formula in the SSA, which is also likely to be further reduced by the income and asset test. However, they would have no entitlement to NZS until they have completed five years of residence in New Zealand (to be eligible for NZS a person must have 10 years residence in New Zealand, five of which must be after the age of 50).

38. Overall this change would be likely to be seen as a backward step for the relationship between the two countries.

Assessment of the options against the objectives of the SSA

39. Table 3 below assesses the alignment of the options with the objectives of the social security arrangements between New Zealand and Australia.

Table 3: Alignment of options with objectives

	Take no action	Change NZS eligibility	Remove totalisation
Free movement of people across the Tasman	Yes	Yes	No
Consistent with economic integration under CER	Yes	Yes	No
Equitable to both countries	No	Yes	Yes
Reliable and less complex administration	Yes	Yes	Yes
Meets income support needs	Yes	Probably	No
Minimises fiscal costs	No	Yes	Yes

40. When assessed against the objectives of the social security arrangements between New Zealand and Australia, we consider that changing the NZS eligibility age appears to be the most desirable option.

41. When considered against the objective of facilitating free movement of people across the Tasman continuing with the status quo and changing the NZS eligibility age are unlikely to impede free movement. However, removing totalisation (Option 3) does not align with this objective because it will create gaps in pension coverage where there are none now.
42. The status quo and changing the NZS eligibility age are also in line with the objective of economic integration under CER. Removing totalisation is not consistent with the objective as it would be likely to constrain the free movement of labour by removing certainty around pension entitlements for workers who move between New Zealand and Australia.
43. In terms of equity for both countries, taking no action will mean that people in Australia who have spent time in New Zealand, and people in New Zealand who have spent some time in Australia, would be able to receive a pension before other Australian residents and at some cost to the New Zealand taxpayer. This appears to be inequitable for New Zealand. Nevertheless some people moving to Australia would argue that they should be able to receive NZS at the same age as all other NZS recipients. Removing totalisation would be equitable for both countries, but would diminish the rights of New Zealand and Australian citizens.
44. None of the options have any significant effect on the reliability and complexity of the administration of the SSA.
45. Taking no action is the option which best meets income support needs (with a trade-off of lack of equity for New Zealand as noted above). Some people who move to New Zealand at the age of 65 to receive a pension two years earlier than they could in Australia may have genuine income support needs while some will not. Changing the NZS eligibility age will deny some people an earlier pension. In the case of people moving to Australia they would still have the option of remaining in New Zealand until they reach the age of 67 to ensure that they can receive NZS. Removing totalisation will leave some people who have moved between Australia and New Zealand with a gap in pension coverage and therefore will not meet their income support needs.
46. The status quo may result in an additional cost of over \$40 million which will be borne by the government. Changing the NZS eligibility age under the SSA and removing the totalisation provisions would prevent this fiscal cost. Removing the totalisation provisions may produce other fiscal savings which have not been estimated.

Consultation

47. No consultation has been undertaken. Consultation was not considered as the change does not represent a change to the principles of the SSA as espoused by the Prime Ministers of New Zealand and Australia in 2001. It is also a longstanding practice that government-to-government negotiations on social security agreements are made in confidence so consultation with third parties is not a normal part of the negotiation process.

Conclusions and recommendations

48. The analysis suggests that the best option is to change NZS eligibility criteria so that where a person needs to use the SSA to qualify for NZS (eg if they are residing in

Australia, or if they are residing in New Zealand but do not meet the New Zealand residence criteria in their own right), they will only be eligible for payment of NZS if they meet the age of eligibility for the Australian Age Pension.

49. This option would be consistent with free movement of people across the Tasman under the TTTA and with economic integration under CER. It would be equitable because people crossing the Tasman would not be able to use the SSA to obtain a pension earlier than would be possible under domestic pension rules. It would also ensure that there is no increase in fiscal costs for the SSA.
50. The SSA is a negotiated document between the governments of New Zealand and Australia, therefore the Australian government must agree to any amendments. Australian officials have indicated that in principle Australia can agree to this change, subject to approval by the Australian Cabinet.

Implementation

51. Changing the NZS eligibility criteria in the SSA can be implemented by replacing the Social Welfare (Reciprocity with Australia) Order 2002.
52. The revised SSA will come into force on the first day of the third month following the month in which both countries have given the other written notification that it has complied with all requirements for the entry into force of the SSA.
53. The change should ideally be implemented before the Australian Age Pension eligibility age starts to increase on 1 July 2017.

Monitoring, evaluation and review

54. No specific monitoring and evaluation of the proposed amendments to the SSA is planned.
55. The SSA is reviewed by the New Zealand and Australian authorities on a regular basis. If a review reveals that the change is not having the intended consequences further changes to the SSA may need to be considered.