

House of Representatives

Supplementary Order Paper

Tuesday, 17 March 2015

Social Security Amendment Bill (No 3)

Proposed amendments

Hon Anne Tolley, in Committee, to move the following amendments:

New clause 5A

After *clause 5* (after line 26 on page 2), insert:

5A New section 79 substituted

Section 79 is repealed and the following section substituted:

“79 Persons who have had income tax deducted or withheld on earnings from employment overseas to be treated as resident and present in New Zealand

“(1) This section applies to any person who was employed outside New Zealand if, with respect to the person’s period of employment, the person’s employer (or other relevant person) makes—

“(a) PAYE income payments (as that term is used in the Income Tax Act 2007) from which the person, employer, or other relevant person must withhold an amount of tax under the PAYE rules as defined in that Act:

“(b) source deduction payments,—

“(i) as that term is used in the Income Tax Act 2004, from which the person, employer, or other relevant person must withhold an amount of tax under the PAYE rules as defined in that Act:

“(ii) as that term is used in the Income Tax Act 1994, from which the person, employer, or other relevant person must make a tax deduction under the PAYE rules as defined in that Act:

“(iii) as that term is used in the Income Tax Act 1976, from which the person, employer, or other rele-

- vant person must make a tax deduction under Part 11 of that Act:
- “(iv) as that term is used in the Income Tax Assessment Act 1957, from which the person, employer, or other relevant person must make a tax deduction under Part 2 of that Act.
- “(2) This section applies in respect of a period of employment, whether or not the person’s employer (or other relevant person) failed to pay an amount of tax deducted or withheld to the Commissioner of Inland Revenue if the chief executive is satisfied that—
- “(a) the employer (or other relevant person) deducted or withheld tax under **subsection (1)**; and
- “(b) the person did not contribute to the employer’s (or other relevant person’s) failure to pay that tax to the Commissioner.
- “(3) For the purposes of satisfying the residential qualification for any benefit after the return to New Zealand, on or after 23 June 1987, of the person to whom this section applies or the spouse or partner or any child of that person,—
- “(a) that person must be treated as being resident and present in New Zealand during the period to which this section applies:
- “(b) if the spouse or partner or any child of that person was with the person during that period or any part of it, the spouse or partner or child must be treated as being resident and present in New Zealand during that period or that part of it, as the case may be:
- “(c) any child of that person born outside New Zealand during that period must be treated as having been born in New Zealand.
- “(4) Nothing in **subsection (3)** may be construed to derogate from the provisions of section 77.”

New clauses 6A and 6B

After *clause 6* (after line 7 on page 3), insert:

6A Schedule 6 amended

The proviso to item 1 of Schedule 6 is amended by inserting “receiving a supported living payment under section 40B” after “any beneficiary”.

6B Schedule 18 amended

Part 1 of Schedule 18 is amended by inserting the following subparagraph after clause 2(b)(i):

- “(ia) in the case of a sole parent, at the appropriate maximum rate in item 1(ba) or (c) of Schedule

9 as if Income Test 3 applied to that rate instead of Income Test 1; or”.

Part 2 heading

In the Part 2 heading, replace “**Validation and savings**” (line 9 on page 3) with “**Validation, savings, and consequential amendments**”.

Clause 7

In *clause 7* (after line 35 on page 3), insert as subclauses (2) to (4):

- (2) For the purpose of determining the residential qualifications of any person for any benefit on and after 23 June 1987, the principal Act must be read as if **section 79** (as replaced by **section 5A** of this Act) had come into force on that date.
- (3) For the purposes of determining the validity of the rate of any supported living payment in the period beginning with 15 July 2013 and ending on the commencement of **section 6A** of this Act, the Social Security Act 1964 must be read as if the proviso to item 1 of Schedule 6 contained the words inserted by **section 6A** of this Act.
- (4) For the purposes of determining the validity of the rate of any accommodation supplement or any decision to refuse to grant an accommodation supplement on account of income in the period beginning with 15 July 2013 and ending on the commencement of **section 6B** of this Act, the Social Security Act 1964 must be read as if clause 2(b) of Part 1 of Schedule 18 contained **subparagraph (ia)** (as inserted by **section 6B** of this Act).

Clause 8

In *clause 8*, before *subclause (1)* (before line 2 on page 4), insert:

- (1AA) **Section 79** of the principal Act (as replaced by **section 5A** of this Act)—
 - (a) does not apply in respect of any application, appeal, or proceedings of a kind specified in **subsection (2)** that alleged an invalidity in the assessment of whether a person was liable for the payment of income tax on earnings from employment outside New Zealand under **section 79(1)** of the principal Act and was made or filed, as the case may be, before 6 July 2013; and
 - (b) does not affect the rights of any person who made an application to which **paragraph (a)** applies, or was a party to an appeal or other proceedings to which **paragraph (a)** applies, under—
 - (i) any decision, or any judgment of a court, in relation to that application or appeal or those proceedings, as the case may be; or

- (ii) any decision or judgment given on appeal from that decision or judgment.

In *clause 8(2)*, replace “**Subsection (1)(a)**” (line 18 on page 4) with “**Subsection (1AA)(a) or (1)(a)**”.

New clause 9 and new Schedule

After *clause 8* (after line 23 on page 4), insert:

9 Consequential amendments

The Acts set out in the **Schedule** are consequentially amended in the manner set out in that schedule.

Schedule

s 9

Acts consequentially amended

New Zealand Superannuation and Retirement Income Act 2001 (2001 No 84)

Section 26A(2)(c): omit “was (by virtue of section 79(1)(a) of the Social Security Act 1964) deemed to have been resident in New Zealand” and substitute “was treated under **section 79(3)(a)** of the Social Security Act 1964 as being resident and present in New Zealand”.

Section 26A(2)(d): omit “deemed by section 79(1)(a) of the Social Security Act 1964 to have been resident in New Zealand, the person was also (by virtue of section 79(1)(b) of the Social Security Act 1964) deemed to have been resident in New Zealand” and substitute “treated under **section 79(3)(a)** of the Social Security Act 1964 as being resident and present in New Zealand, the person was also (by virtue of **section 79(3)(b)** of the Social Security Act 1964) treated as being resident and present in New Zealand”.

War Pensions Act 1954 (1954 No 54)

Section 74JA(2)(c): omit “was (by virtue of section 79(1)(a) of the Social Security Act 1964) deemed to have been resident in New Zealand” and substitute “was treated under **section 79(3)(a)** of the Social Security Act 1964 as being resident and present in New Zealand”.

Section 74JA(2)(d): omit “deemed by section 79(1)(a) of the Social Security Act 1964 to have been resident in New Zealand, the person was also (by virtue of section 79(1)(b) of the Social Security Act 1964) deemed to have been resident in New Zealand” and substitute “treated under **section 79(3)(a)** of the Social Security Act 1964 as being resident and present in New Zealand, the person was also (by virtue of **section 79(3)(b)** of the Social Security Act 1964) treated as being resident and present in New Zealand”.

Explanatory note

This Supplementary Order Paper amends the Social Security Amendment Bill (No 3).

New clause 5A replaces section 79 of the Social Security Act 1964 (the **principal Act**) to clarify, for the purpose of satisfying the residential qualification for any benefit after the return to New Zealand, the residence status of persons (and their spouses and children) who were liable for and paid income tax on earnings while employed overseas.

New clause 6A amends item 1 of Schedule 6 of the principal Act to prevent the income disregards provisions in that clause from applying unintentionally to supported living payments on the grounds of caring for a patient requiring care under section 40D of the principal Act by ensuring that these provisions apply only to people receiving supported living payments under section 40B of the principal Act.

New clause 6B amends clause 2(b) of Part 1 of Schedule 18 of the principal Act to restore the pre-15 July 2013 calculation of the rate of non-beneficiary accommodation supplement for sole parents.

The *Part 2 heading* is adjusted to reflect the inclusion of *new clause 9*.

Clause 7 is amended to include validation provisions relating to the amendments set out in *new clauses 5A, 6A, and 6B*.

Clause 8, which is a savings provision, is amended to clarify the application of *new section 79* (as substituted by *new clause 5A*).

New clause 9 and the *new Schedule* set out amendments to the New Zealand Superannuation and Retirement Income Act 2001 and the War Pensions Act 1954 that are consequential to the replacement of section 79 of the principal Act by *new clause 5A*.

Departmental disclosure statement

The Ministry of Social Development is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2015&no=56&>.