



**MINISTRY OF SOCIAL  
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

30 JUN 2020

Tēnā koe

On 12 May 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information in relation to section 9 of the New Zealand Superannuation and Retirement Income Act (NZSRIA):

*Under section 9 of the New Zealand Superannuation and Retirement Act 2001 the words "special medical or surgical treatment" are mentioned.*

*I can find no definition of those words within that act or any other enactment or statute within New Zealand so as stated, I require the following information:*

- Does the department have a definition of the phrase "special medical or surgical treatment" to assist staff?*
- Does the departments legal section or department have a definition for the words "special medical or surgical treatment"*
- Has the department requested a response from crown law to what the definition of "special medical or surgical treatment" is if so, what was their response*
- Does the department have any instructions or guidelines that are issued and used by staff to help them interpret the words "special medical or surgical treatment" as mentioned in the act?*
- Has the department requested a definition of "special medical or surgical treatment" from any other source if so, what was their response?*
- Does the department have in its possession any case law that assists it to interpret the phrase or describes what the definition of "special medical or surgical treatment" is?*
- Does the department have a definition anywhere for the phrase "special medical or surgical treatment?"*

On 13 May 2020, you emailed the Ministry requesting to include, under the Act, the following information in relation to section 9 of the NZSRIA:

- I require a copy of any case law legal advice or decisions, or any other material held by the department as it relates to section 9(1)(a) of New Zealand Superannuation and Retirement Act Income Act 2001.*

On 22 May 2020, you emailed the Ministry requesting to include, under the Act, the following information in relation to section 8 of the NZSRIA:

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- *A copy of the Departments Policy and Procedures or any other instructions guides, or other material used by staff to make a determination or assessment in granting or declining applications relating to Section 8 of the New Zealand Superannuation and Retirement Act 2001.*
- *I require a copy of the Departments Policy and Procedures or any other instructions guides, or other material used by staff to make a determination or assessment in granting or declining applications relating to Section 9 of the New Zealand Superannuation and Retirement Act 2001.*

You were subsequently advised that under section 15(1AA) of the Act, if you wish to amend the original request to include the additional requests for information, the 20-working day time period starts again.

The NZSRIA and the Social Security Act 2018 provides the legislative framework for New Zealand Superannuation (NZS). NZS is neither income nor asset tested, and all people who meet the qualifying age and residential requirements are eligible.

For the sake of clarity, I will address your questions accordingly.

*Under section 9 of the NZSRIA:*

- *Does the department have a definition of the phrase "special medical or surgical treatment" to assist staff?*
- *Does the departments legal section or department have a definition for the words "special medical or surgical treatment"*
- *Does the department have a definition anywhere for the phrase "special medical or surgical treatment?"*
- *Does the department have any instructions or guidelines that are issued and used by staff to help them interpret the words "special medical or surgical treatment" as mentioned in the act?*

The Ministry does not hold a definition of the phrase "special medical or surgical treatment" as requested. Since a definition of this phrase is not held by the Ministry, no written guidelines or instructions have been developed to assist its staff with the interpretation of this phrase as the definition is not subjective from a statutory interpretation point of view.

You should know that the Ministry relies upon what is already set out in section 9 (the section) of the NZSRIA when determining the period of absence for the purpose of obtaining special medical or surgical treatment. The section provides that an absence for the purpose of medical or surgical treatment can be accepted if there is a "good and sufficient" reason for the absence. It is the reason for leaving New Zealand to obtain special treatment that is considered when making an assessment, rather than the definition of the treatment itself.

Additionally, if the assessing staff member is unsure a good and sufficient reason exists for seeking treatment outside New Zealand, they may contact the Ministry Helpline Advisors, or the Principal Health Advisor, who will consider the case on its individual points and recommend accordingly. Good and sufficient reasons may

include the necessity of the operation or treatment, and how readily and affordably it is available in New Zealand by comparison.

Therefore, your requests regarding a definition of the phrase "special medical or surgical treatment" are refused under section 18(g) of the Official Information Act as the information you have requested is not held by the Ministry and I have no grounds to believe that the information is held by another department or Minister of the Crown or organisation.

Furthermore, your request for instructions or guidelines that are issued and used by Ministry staff to help them interpret the words "special medical or surgical treatment" is refused under section 18(e) of the Official Information Act as this information does not exist or, despite reasonable efforts to locate it, cannot be found.

- *Has the department requested a response from crown law to what the definition of "special medical or surgical treatment" is if so, what was their response?*
- *Has the department requested a definition of "special medical or surgical treatment" from any other source if so, what was their response?*

I can confirm that the Ministry has not requested a definition of "special medical or surgical treatment" from Crown Law or any other source.

- *Does the department have in its possession any case law that assists it to interpret the phrase or describes what the definition of "special medical or surgical treatment" is?*
- *I require a copy of any case law legal advice or decisions, or any other material held by the department as it relates to section 9(1)(a) of the New Zealand Superannuation and Retirement Income Act 2001.*

As you have previously been advised, the New Zealand Legal Information Institute (NZLII) website provides free access to legal information such as case law from across the various courts and tribunals. As such, this aspect of your request is refused under section 18(d) of the Act on the basis that the information requested is already publicly available.

You can access New Zealand case law here: [www.nzlii.org/databases.html#nz\\_cases](http://www.nzlii.org/databases.html#nz_cases). By selecting either one of the following categories: 'Supreme Court of New Zealand 2004', 'Court of Appeal of New Zealand 1888', 'High Court of New Zealand 1847', or 'Social Security Appeal Authority of New Zealand Decisions 2003', you will be directed to the database search function which provides the various cases relevant to these categories that are believed to be in scope of your request.

For ready reference, and to assist you with your search, I have located two decisions that may be in scope of your request which can be accessed at the following links:

[www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSSAA/2017/5.html?query=special%20medical%20or%20surgical%20treatment](http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSSAA/2017/5.html?query=special%20medical%20or%20surgical%20treatment)



[www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSSAA/2016/42.html?query=special%20medical%20or%20surgical%20treatment](http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSSAA/2016/42.html?query=special%20medical%20or%20surgical%20treatment)

*Under section 8 of the NZSRIA:*

- *A copy of the Departments Policy and Procedures or any other instructions guides, or other material used by staff to make a determination or assessment in granting or declining applications relating to Section 8 of the New Zealand Superannuation and Retirement Act 2001.*
- *I require a copy of the Departments Policy and Procedures or any other instructions guides, or other material used by staff to make a determination.*

The legislation set out in Section 8 of the NZSRIA is clear on what types of absences allow a person to remain resident and present in New Zealand for the duration. It is also clear that the absence may only be counted where a person would otherwise be "ordinarily resident" in New Zealand, that is, their day-to-day lifestyle is usually based in New Zealand and they have travelled overseas primarily for one of the reasons set out in Section 8.

Please find enclosed a copy of the Ministry's staff training material – NZS overview.

More information on deciding ordinarily resident in New Zealand is available on the Work and Income website at: [www.workandincome.govt.nz/map/income-support/main-benefits/new-zealand-superannuation/deciding-ordinarily-resident-in-new-zealand-01.html](http://www.workandincome.govt.nz/map/income-support/main-benefits/new-zealand-superannuation/deciding-ordinarily-resident-in-new-zealand-01.html).

Further information regarding NZS is also located on the Work and Income website at: [www.workandincome.govt.nz/map/income-support/main-benefits/new-zealand-superannuation/index.html](http://www.workandincome.govt.nz/map/income-support/main-benefits/new-zealand-superannuation/index.html).

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

· If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding sections 8 and 9 of the NZSRIA, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Bridget Saunders', with a small checkmark at the end.

Bridget Saunders  
**Manager, Issue Resolution  
Service Delivery**

# NZS - Overview

## New Zealand Superannuation

### What is NZ Superannuation?

**NZ Super (NZS) provides a retirement income to those who have reached the qualifying age of 65 and meet the residency criteria to receive payment.**

While Veterans Pension (VP) does have a unique set of qualifiers, rates of payment are the same for VP as they are for NZS, so when we mention NZS, we are also referring to VP.



#### Other Training Material

[Accommodation Supplement - The Application](#)

[Accommodation Supplement - Home Ownership costs](#)

[Accommodation Supplement - Reviews](#)

[TAS Overview](#)

[Death and Winter Energy Payments \(WEP\)](#)

[LSUMS - Adding current and previous Tax Year debts](#)

[SWIFTT Information](#)

[SWIFTT - LSUM letters](#)

### Qualifications

#### Age and Residency

To qualify for NZS, clients must:

- Have reached 65 years of age
- Be a New Zealand citizen or permanent resident (that is, not be in New Zealand unlawfully or here on a temporary permit) and
- Be ordinarily resident in New Zealand at the time of application

**In addition, clients:**

- Must have been resident and present in New Zealand for at least 10 years since the age of 20, five of which must have been since the age of 50.

**Ordinarily resident**

Means someone who is normally and lawfully in New Zealand and intends to stay here. That is, they consider New Zealand to be their home.

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## Resident and Present



### Resident

**To be resident a client must either:**

- Make their home in New Zealand - in other words they have been living in New Zealand on a permanent basis or
- If you are considering a period when the client had only recently arrived in New Zealand, the client intended to make their home in New Zealand for the foreseeable future

### Present

Generally, to be present in New Zealand, the client has to be physically in New Zealand. This includes the territorial waters around New Zealand.

**Remember:** The client must be lawfully resident as well as present in New Zealand to meet the residence qualification.

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## Periods of Absence



## Periods of absence not counted

Any periods of absence from New Zealand are not regarded as being present in New Zealand and are not included in the assessment of the New Zealand Superannuation residency qualifications.

**There are six exceptions where a period of absence counts as being resident and present in New Zealand. These are:**

- Special medical or surgical treatment or vocational training (if there was good and sufficient reason for the client to leave New Zealand for this)
  - Seamen serving on a ship registered or owned in NZ and engaged in trading to and from NZ
  - Overseas services in forces as a member of any naval, military or air force of any Commonwealth country.  
This includes war service as a member of any organisation attached to such a force, for example, YMCA, church, Red Cross
  - As an accredited volunteer appointed by Volunteer Service Abroad
  - A period that a person has worked overseas and paid tax in New Zealand on the earnings from that work
  - Missionary work (defined as including 'the advancement of religion or education and the maintenance, care or relief of orphans, or the aged, infirm, sick or needy')
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## Rates of NZ Super



**NZS is paid at different rates, depending on the client's circumstances:**

- Single, living alone
- Single sharing accommodation
- Married person or partner in a civil union or de facto relationship (both qualify)
- Married person or partner in a civil union or de facto relationship (one qualifies)
- Married person or partner in a civil union or de facto relationship, non-qualified partner included (NQS)

**For information on NZS/NQS rates, see [http://doogole/map/deskfile/nz\\_superannuation\\_and\\_veterans\\_pension\\_tables/new\\_zealand\\_superannuation\\_tables.htm](http://doogole/map/deskfile/nz_superannuation_and_veterans_pension_tables/new_zealand_superannuation_tables.htm)**

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## Single Living Alone Rate





## **The single living alone rate is the highest rate of NZS paid to clients who:**

- Receive NZS/VP
- Are single (or married with a partner in long term care)
- Are living alone
- Are living in a principal place of residence

**Clients can still be regarded as living alone if they have dependent children under the age of 18 living with them.**

Clients can be living in a:

- House or flat
- Boat or craft moored within New Zealand territory
- Hotel room/motel unit
- Room in a boarding house or
- Unit of accommodation in a caravan park

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## **Non Qualified Spouse**

**A non-qualifying partner can be included in the clients NZ Super/VP, if the client chooses and the partner meets the residency qualifications.**

**See Map:** <http://doogle.ssi.govt.nz/map/income-support/main-benefits/new-zealand-superannuation/including-a-non-qualified-partner-01.html>

- Receive NZS/VP
- Are single (or married with a partner in long term care)
- Are living alone
- Are living in a principal place of residence

**Clients can still be regarded as living alone if they have dependent children under the age of 18 living with them.**

Clients can be living in a:

- House or flat
- Boat or craft moored within New Zealand territory
- Hotel room/motel unit
- Room in a boarding house or
- Unit of accommodation in a caravan park

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## **Tax**

**NZ Super is taxable and clients need to nominate the tax rate they would like to have applied to their NZ Super payments.**

Each tax code equates to a specific tax percentage.

Standard tax codes from 1 October 2010:		
<b>M – Main source of income (this is a merged rate)</b>		
\$0 to \$14,000	at	10.5%
\$14,001 to \$48,000	at	17.5%
\$48,000 to \$70,000	at	30.0%
\$70,001 +	at	33.0%
<b>S - Tax percentage = 17.5</b>		
<b>SH - Tax percentage = 30.</b>		
<b>ST - Tax percentage = 33.</b>		

Go to the link below to read more about tax and selecting tax codes (flowchart)

<http://doogie.ssi.govt.nz/resources/helping-clients/procedures-manuals/seniors/standard-tax-codes.html>

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## Commencing Payment

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### The entitlement date for New Zealand Superannuation is:

- The date the client reaches the qualifying age or
  - Meets the residency criteria
- Whichever is the later.

## The commencement date is:

- The date of entitlement or
- The date of application  
Whichever is the later.

**Note:** There is no stand-down for NZ Super and there is no provision to backdate NZS if a client doesn't make an application from the earliest date of entitlement.

## Payment

NZS is paid fortnightly on a Tuesday - in arrears.

The pay period is from the Wednesday to the Tuesday payday (see calendar)

JAN						
M		6	13	20	27	
T		7	14	21	28	
W	1	8	15	22	29	
T	2	9	16	23	30	
F	3	10	17	24	31	
S	4	11	18	25		
S	5	12	19	26		
week	1	2	3	4		

## Date of Application

### As per the previous slide, Senior Services have two dates to consider when granting a client NZ Super.

- The client's date of **entitlement** and the client's date of **application**.
- The date of entitlement is the date the client qualifies for NZ Super based on age and residency. This date is not necessarily the date we will grant from.
- The date a client first contacts us is their potential date of application. A client may contact the Ministry at any time, through various methods
  - e.g. at reception at a Service Centre, via telephone through one of the Contact Centres, or online via Work and Income website.

The client has 20 working days from their date of first contact to complete the application process.

The client does not need to specify at the date of first contact the type of assistance they may require.

Therefore, the date of first contact may apply to more than one type of assistance.

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**If you are the client's first point of contact in initiating an application for payment, you MUST note on their record the date they first requested financial assistance.**

This is done via CMS in the 'New Request for Financial Assistance' screen. When booking an appointment to apply for NZ Super, you should send the client a letter (available in CMS) to confirm their date of first contact.

- If a client does not apply for NZ Super until after their date of entitlement, we cannot grant the payment until their date of application.
- If a client applies before their date of entitlement, the grant can be taken from the date of entitlement.
- It is extremely important that we are recording the client's first date of contact.

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