

Cost sharing of pensions paid under the 2001 and 2016 Australia-New Zealand social security agreements: should it be time for change?

Andrew Smith*

Abstract

New Zealand and Australia negotiated two social security agreements (SSAs) in 2001 and 2016 to coordinate and harmonise the payment of pensions to individuals who have migrated between the countries. Both SSAs include shared funding formulas where each country pays a part pension to a claimant based on how much of their working life that person has spent in each country. Using a modelling methodology this article examines whether these formulas result in an appropriate sharing of pension costs or whether one country gains at the expense of the other. The modelling suggests that New Zealand fiscally gains if its wealthier citizens retire in Australia irrespective of whether that wealth was accumulated in New Zealand prior to emigration or accumulated in Australia after arrival. New Zealand fiscally loses if wealthier Australian retirees retire to New Zealand and conversely gains if Australia's poorer citizens retire there.

Key words: Old age pensions, superannuation, trans-Tasman migration, social security agreements

* Associate Professor in Taxation, Victoria Business School, Victoria University of Wellington. Email: andrew.smith@vuw.ac.nz. The author wishes to acknowledge the support of the School of Taxation and Business Law at the University of New South Wales where he was a Senior Visiting Fellow while researching and writing earlier versions of this article.

1. INTRODUCTION

The issue of which country should assume responsibility of meeting the cost of pensions paid to a migrant is a topical issue as migration increases and governments become increasingly concerned about meeting the costs of an aging society. This issue is of particular concern to the Australian and New Zealand governments given the free movement of labour under the Trans-Tasman Travel Arrangement (TTTA) and high levels of migration that have taken place pursuant to that agreement.

Reflecting the free movement of labour that has existed between the two countries going back to 1920, New Zealand and Australia have negotiated a number of bilateral treaties from as early as 1943 (known as ‘social security agreements’ or ‘SSAs’¹) to coordinate and harmonise the payment of social security benefits to individuals who have migrated between the two countries. In the early stages both countries were happy to negotiate these SSAs on a ‘host country’ basis meaning that the country where the individual filed a claim for benefits would meet the cost of providing them even though they had split their working lives between the two countries or had spent most of their working life in the other country.

The host country basis for social security coordination became increasingly untenable for Australia from the 1980s as an increasing number of New Zealanders migrated to Australia which was not matched by similar migration in the opposite direction. In response to increasing concerns in Australia about the financial exposure they faced under the existing SSA with New Zealand, a revised SSA was negotiated in 1988 which required for the first time that the New Zealand Government contribute towards the cost of paying certain benefits (such as old age and veterans’ pensions) to former New Zealand residents living in Australia. The host country basis for social security coordination was, however, in principle retained at the claimant level.

The reimbursement provisions in the 1988 SSA proved insufficient for the Australian Government and in 1994 another SSA was negotiated requiring each country to make direct reimbursements to the other towards the cost of meeting social security benefits where a claimant had resided for less than 10 years in the other country.

Despite these reimbursements, friction remained between the two countries over social security issues which led to the negotiation of a completely new SSA in 2001. The 2001 SSA abandoned the host country basis for social security coordination at the claimant level and instead adopted a shared funding model based upon individual claims for pensions, with each state paying a part pension based on the time the claimant had spent in each state during their working life (from 20 to 65 years). Such an approach is more likely to produce a fairer allocation of pension costs between two states considering the tax that would have paid by the claimant during their working life. The 2001 SSA was replaced by a new SSA in 2016; however, both contain the same cost-sharing arrangements.² The shared funding model incorporated into these two SSAs is

¹ Sometimes also referred to as costing sharing agreements or totalisation agreements.

² The 2001 and 2016 SSAs are substantially the same. The 2016 SSA was negotiated to reflect changes arising from the introduction of New Zealand legislation on same-sex couples and civil unions and the Australian raising of the eligibility age for the Australian age pension from 65 to 67 years. See *Agreement on Social Security between the Government of Australia and the Government of New Zealand*, signed on 28 March 2001, Canberra (entered into force 1 July 2002), [2002] ATS 12; [2002] NZTS 4 and Social Welfare (Reciprocity with Australia) Order 2002 SR 2002/119 (NZ) (‘2001 SSA’); *Agreement on Social*

consistent with the approach adopted in New Zealand's other SSAs (except for the UK SSA)³ and follows the approach commonly adopted by European countries in their SSAs.

This article will examine how the liability to fund pension payments is allocated under the 2001 and 2016 SSAs between the Australian and New Zealand Governments through the application of a model based on a single claimant. The article is organised as follows: first, in section 2, the key features of an SSA will be reviewed followed in section 3 by a brief history of social security coordination between Australia and New Zealand. In section 4 the allocation formula in the 2001 SSA will be explained followed in section 5 by the development and application model to determine how the allocation formulas work in practice. Section 5 will also provide an analysis will be made of the results obtained and their implications for retirement income policies. Section 6 concludes.

2. WHAT IS A SOCIAL SECURITY AGREEMENT (SSA)?

Social security agreements are bilateral treaties between two states for the coordination and harmonisation of social security benefits. While they can apply to a range of social security benefits, they largely apply to old age pensions and other retirement income benefits. Entitlements to such pensions and benefits are usually accrued through contributions or residency by an individual over a long period of time spanning most of their working lives during which individuals may have migrated or worked offshore.

SSAs are designed to address several problems that can arise when two states' social security programmes overlap or where individuals migrate between states. These relate to the responsibility for the funding of social security benefits (sometimes referred to as 'dual coverage') and the coordination of benefits for claimants.

Dual coverage arises when social security programmes are financed by specific levies or contributions which may result in an individual being liable to contribute to two countries' social security schemes simultaneously but may not necessarily result in increased pension benefits. Dual coverage is not an issue between Australia and New Zealand as all social security benefits are paid out of general taxation.

Conflicts between two countries' social security programmes can arise when an individual who has entitlements or coverage in two countries claims benefits. A person who has split their working life between two countries may also find that they are disadvantaged under both countries' social security rules when they claim benefits and may end up receiving reduced pensions.⁴ These are usually addressed in an SSA by the

Security between the Government of Australia and the Government of New Zealand, signed on 8 December 2016, Wellington (entered into force 1 July 2017), [2017] ATS 10 and Social Welfare (Reciprocity with Australia) Order 2017 (NZ) ('2016 SSA').

³ The UK SSA (along with the earlier Australian SSAs) had its origins in a period when under domestic law New Zealand benefits were not payable offshore. In the late 1980s New Zealand Superannuation became payable outside New Zealand when partial benefit portability was introduced and thus the shared funding part pension approach for international social security coordination became possible.

⁴ Staff of the Social Security Administration (US), *Social Security Handbook* [107.3], as cited by Allison Christians, 'National Report USA' in Michael Lang (ed), *Double Taxation Conventions and Social Security Conventions* (Linde Verlag, 2006) 683, 703-704. It should be noted that the United States provides for portability of social security benefits under its domestic law and merely seeks to improve portability by

concept of ‘totalisation’.⁵ As eligibility to claim benefits typically depends upon the claimant making the necessary contributions to a social security scheme or, alternatively, establishing a period of residency in a state, ‘totalisation’ is used to coordinate eligibility between the two states. The totalisation principle operates by treating residency or a contributing period in one state as residency or contributions in the other state for the purposes of eligibility. It removes any disadvantage arising in terms of eligibility because a claimant has split their working lives between two countries. It should be noted that totalisation usually applies only to eligibility for benefits. It does not necessarily affect the calculation of benefits and how much each state must pay to a claimant falling under the SSA.

Beyond totalisation, SSAs usually prescribe how benefits are to be paid by the two countries where the claimant has split their working lives between the two countries. They may require the host country to meet the full cost or alternatively provide for each country to pay a proportional benefit.

Another benefit of SSAs is that they usually allow a person to make an application for benefits from outside the country where they are lodging their claim. In the absence of such provisions, many countries do not permit applications for social security from offshore due to increased risks of fraud and their inability to verify information supplied in applications. SSAs facilitate this because the agreements usually allow the social security administration of one state to use the services of their counterpart in the other state in processing benefit applications.

A feature of many New Zealand’s SSAs is a ‘grandfathering’ clause.⁶ The grandfathering clauses allow persons who are receiving benefits under a particular SSA to continue to receive them if the SSA is terminated or replaced by another SSA. The new 2016 SSA is unusual in that rights a person may have had under the 2001 SSA are not grandfathered, but instead the 2016 SSA applies. However, grandfathering of rights a claimant has under the 1994 SSA remains.⁷ Given that the two SSAs are largely the same other than the latest one just incorporating new provisions applying to same sex and civil union couples, the lack of grandfathering of rights under the 2001 SSA is of no significance.⁸

Politically these grandfathering clauses must create constraints when an SSA is being renegotiated to ensure that existing claimants are not disadvantaged compared to those falling under a replacement SSA and possibly the reverse where existing claimants receive a better treatment than those under a later SSA or if no successor agreement is negotiated.

obtaining undertakings that neither country will impose restrictions on benefit payments based solely on criteria of residency or personal presence in the other state: Christians, 689-690.

⁵ This concept of totalisation has sometimes resulted in SSAs being termed ‘totalisation agreements’.

⁶ See 2001 SSA (Australia), above n 2, art 26(2).

⁷ See 2016 SSA, above n 2, arts 26(3) and (4).

⁸ Rights under the 1994 SSA (*Agreement Between the Government of New Zealand and the Government of Australia on Social Security*, signed on 19 July 1994, Wellington, [1995] ATS 33; [1995] NZTS 1 (‘1994 SSA’)) are still grandfathered under the 2016 SSA, above n 2.

3. BACKGROUND TO THE SOCIAL SECURITY AGREEMENTS BETWEEN AUSTRALIA AND NEW ZEALAND

New Zealand and Australia first entered into an SSA in 1943 around the time that Australia first introduced a comprehensive social security regime during World War II. Since then revised SSAs were negotiated in 1943,⁹ 1949,¹⁰ 1986,¹¹ 1988,¹² 1994,¹³ 1999, 2001¹⁴ and the current one in 2016.¹⁵ When SSAs were first negotiated by the two countries, both imposed separate social security levies; however, these were abolished in Australia in 1950 and in New Zealand in 1968. Both countries now fund social security largely out of general taxation unlike most Organisation for Economic Co-operation and Development (OECD) countries where separate levies are still found. The absence of such specific levies or taxes makes it harder to establish a link between the payment of levies or taxes into a social security scheme and the right to claim benefits. Even where a particular social risk is covered through a scheme funded by specific levies, it does not necessarily follow that the taxpayer has right of coverage or to make a claim.¹⁶

The earlier SSAs between Australia and New Zealand covered all major social security benefits on a 'host country' basis meaning that the government of the country where the person resided picked up the full cost of providing benefits to them, something only sustainable where migration between the two countries was largely balanced and income levels in both countries were roughly similar. However, as New Zealand citizens began to move to Australia in large numbers from the late 1960s and anecdotal evidence of welfare abuse by newly settled New Zealand migrants appeared, tensions emerged between the two countries over which government should meet the costs of social security benefits paid to New Zealand migrants who had settled in Australia.

The 1988 SSA departed from the strict host country principle by requiring the New Zealand Government to directly reimburse the Australian Government for New Zealand migrants who were receiving certain New Zealand benefits (New Zealand Superannuation,¹⁷ invalid and widow's benefits) at the time they migrated.¹⁸ Individuals who had migrated before becoming eligible for one of those benefits were not required to be reimbursed by New Zealand. From the perspective of a claimant the 1988 SSA

⁹ *Agreement Between the Government of Australia and the Government of New Zealand in respect to Reciprocity in Payment of Pensions*, signed on 4 August 1943, Canberra and 3 September 1943, Wellington (entered into force 1 September 1943), [1943] ATS 3 ('1943 SSA').

¹⁰ *Agreement on Social Security Between the Government of Australia and Government of New Zealand*, signed on 15 April 1949, Sydney (entered into force 1 July 1949), [1949] ATS 9 ('1949 SSA').

¹¹ *Agreement Between the Government of Australia and the Government of New Zealand Providing for Reciprocity in Matters Relating to Social Security*, signed on 5 October 1986, Melbourne (entered into force 1 October 1987), [1987] ATS 18 ('1986 SSA').

¹² *Agreement Between the Government of Australia and the Government of New Zealand Providing For Reciprocity in Matters Relating to Social Security*, signed on 31 October 1988, Canberra (entered into force 1 April 1989), [1989] ATS 8; [1988] NZTS 7 ('1988 SSA').

¹³ See 1994 SSA, above n 8.

¹⁴ See 2001 SSA, above n 2.

¹⁵ See 2016 SSA, above n 2.

¹⁶ The National Disability Insurance Scheme (NDIS) scheme being introduced in Australia is partially funded by an increase in the Medicare levy, however, non-protected SCV holders in Australia (being New Zealand citizens who migrated after 26 February 2001) are not eligible to claim benefits under the NDIS despite being liable to pay the levy.

¹⁷ Then called 'national superannuation'.

¹⁸ See 1988 SSA, above n 12, art 13.

was still a 'host country' one because they still only received a benefit from the state they resided in, although the SSA was not entirely a host-country one due to the direct reimbursement provisions.

The direct reimbursement provisions were revised (and effectively extended) in the 1994 SSA to cover persons who were claiming a benefit in one state where they had less than 10 years' working age residence there and they had last commenced residence in that state on or after 1 January 1983.¹⁹ A 10 year period is also the residency qualification for old age pensions under both countries' domestic laws and the purpose of these government-to-government reimbursements was to share the funding costs where a new migrant had only met the domestic residency qualification for an old age pension through totalisation under the SSA.²⁰ These provisions had broader effect than the reimbursement provisions under the 1988 SSA as they applied in respect of a greater number of claimants and also in that the Australian Government had liability to reimburse the New Zealand Government as well.

It appears that by the late 1990s the Australian authorities were finding the practical aspects of the calculations to be made for each affected claimant cumbersome and impractical.²¹ In October 1999 a Protocol was negotiated which suspended the reimbursement provisions in Article 12 of the 1994 SSA and required New Zealand to make direct lump sum payments to Australia instead.²² These amounts started at AUD 107.5 million (plus AUD 17.5 million supplement) for the year beginning 1 July 1999 and AUD 122.5 million (plus AUD 12.5 supplement) for the year beginning 1 July 2000 pending the negotiation of a new SSA.²³ It is not clear whether these lump sum amounts were discounted for the reimbursements to New Zealand that Australia would no longer have to make.

In October 2000 negotiations commenced for revised social security arrangements. Australia sought an outcome in which New Zealand increased its reimbursement for the cost of all social security benefits paid to New Zealand citizens living in Australia which at that point covered only age, veterans, single parent and disability pensions. Negotiations foundered on the amount to be reimbursed (AUD 300 million vs. AUD 1 billion)²⁴ and the reluctance of Australia to take into account the amount of tax paid by New Zealand residents in Australia, quoted at being around AUD 2.5 billion.²⁵ A

¹⁹ See 1994 SSA, above n 8, art 11.

²⁰ In addition to the provisions for direct reimbursement in the 1988 and 1994 SSAs, a number of benefits were removed from the scope of SSA coordination (such as unemployment and sole parent benefits) and stand down periods were also introduced for new migrants in each country.

²¹ *Exchange of Notes Between the Government of New Zealand and the Government of Australia To Make An Interim Amendment to the Reimbursement Provisions of the Social Security Agreement of 1994 as amended*, Canberra, 21-25 October 1999, 2, para 2.

²² *Ibid* cl 1, para 1.

²³ *Ibid* paras 3-5.

²⁴ Amounts mentioned by Helen Clark in the *Transcript of the Joint Press Conference of Prime Ministers Helen Clark and John Howard*, Wellington (26 February 2001). It appears that the figure of \$300 million was based on research undertaken by the Ministry of Social Policy by the New Zealand Institute for Economic Research (NZIER)—refer Vhari McWha and Phil Briggs, *The Opportunity Cost of Unrestricted Trans-Tasman Migration – Report to the Ministry of Social Policy*, New Zealand Institute of Economic Research (November 2000) 3. The amount is calculated as the additional costs incurred by the Australian Government by allowing the migration of lower skilled New Zealand citizens under the TTTA that would otherwise not meet the immigration standards imposed by Australia for migrants from other countries.

²⁵ Ministry of Foreign Affairs and Trade (NZ), 'National Interest Analysis, New Zealand - Australia Social Security Agreement', Wellington (2001) para 3.

compromise was reached that any cost-sharing arrangements between the two countries would be limited to age, veterans and disability pensions only and that 'policy on access to the broader range of benefits remained a policy matter for each Government'.²⁶

A new SSA was negotiated in 2001 which came into force on 1 July 2002. The key change heralded by the 2001 SSA was that funding for all the benefits covered by the SSA (being age, veterans and disability pensions) would be shared between both countries as had been occurring to some extent under the earlier SSAs but with two major changes:

- shared cost arrangements would apply to all benefits covered by the SSA (mainly old age and veterans' pensions) according to respective periods of working age residency in each country not just to those claimants who had less than 10 years' residency in the state where they resided. Thus the number of persons potentially affected by these shared funding arrangements was much wider than before;
- government to government reimbursements in respect of person claiming benefits under the 1994 SSA would be phased out.²⁷ While the 1994 SSA remained in force, it would apply only to individuals who had sought benefits under the 1994 SSA before the 2001 SSA came into effect.

In addition, at the same time as these negotiations Australia immediately amended their domestic law to remove any newly arrived New Zealand migrant's right to claim Australian social security benefits outside the scope of the 2001 SSA.²⁸

The 2001 SSA was replaced by the 2016 SSA in December 2016. The 2016 SSA is substantially similar to the 2001 one except for incorporating new provisions for same-sex relationships and civil unions arising under New Zealand law and for the increase in the eligibility age to 67 years for the Australian Age Pension.

For the year ended 31 October 2016, 15,540 former Australian residents who are resident in New Zealand received a total of NZD 63.6 million from Australia (having grown from NZD 13.2 million and 3,900 individuals in 2007). For the same period New Zealand Superannuation totalling NZD 281.7 million was paid to 42,414 claimants residing in Australia (growing from NZD 51.5 million paid to 8,000 persons in 2007), although this excludes former New Zealand residents who became ineligible for any New Zealand Superannuation due to the income and asset tests for the Australian Age Pension. No data appears to have been collected by either the New Zealand or Australian authorities as to the number of former New Zealand residents retired in Australia who

²⁶ Ibid.

²⁷ Details of the remaining lump sum reimbursements required are set out in the 2001 SSA, above n 2, art 27. They are due to terminate in 2022 according to this provision; however, the Ministry of Social Development has reported that a final lump sum payment will be made in 2015 covering 5 years' lump sums. See Ministry of Social Development (NZ), *The Statistical Report 2012* (2013) 186.

²⁸ This was done by making the SCV granted to New Zealand citizens on arrival after 26 February 2001 a temporary visa which made them ineligible to claim social security benefits under Australian law. In addition, making the non-protected SCV a temporary one removed any automatic right to apply for permanent residence in Australia and also any pathway to Australian citizenship irrespective of the length of Australian residency.

have forgone any payment of New Zealand Superannuation due to the level of their other income and assets.

4. THE COST SHARING FORMULAS IN THE 2001 AND 2016 SSAs

The 2001 and 2016 SSAs apply to old age, veterans' and disability pensions only. They continue to include totalisation provisions whereby residency in one state is deemed to be residency in the other state for the purposes of pension eligibility but not payment. For the purposes of this article, the analysis will be limited to old age pensions (being the Australian Age Pension and New Zealand Superannuation) as they are by far the most important benefit (from a cost perspective) covered by both SSAs.

As mentioned earlier, the key feature of the two SSAs is the adoption of shared funding to the benefits falling within the scope of each agreement at the claimant level rather than a government to government basis. Both states agree to pay offshore a pro rata pension to an eligible person who has migrated to the other state, based on the period of working age residency (i.e., between the ages of 20 and 65) the person had attained in the state they migrated from. In calculating the amount to be paid offshore, no account can be made of any pension payable by the state where they reside.²⁹

4.1 Payments of New Zealand Superannuation

The following provisions override the general portability rules³⁰ for New Zealand Superannuation even though they may produce a less advantageous outcome for a claimant.

Where New Zealand Superannuation is paid to someone resident in Australia under the SSA, the amount to be paid to them is determined by the following formula:³¹

$$\frac{\text{Number of Whole Months Working Age Residency in NZ} \times \text{Maximum benefit}}{540}$$

- All periods of working age residency in New Zealand are to be aggregated;
- the maximum rate of benefit is the maximum benefit payable for either a single or married person less a percentage agreed to in writing by the competent authorities. (This percentage reduction will be intended to be in lieu of New Zealand income tax since New Zealand Superannuation is subject to income tax in New Zealand³²);

²⁹ This prevents New Zealand from applying its deduction policy when New Zealand Superannuation is paid overseas under the SSA. Under the *Social Security Act 1964* (NZ) s 70(1A), a deduction is not made for any foreign pensions received when New Zealand Superannuation is paid overseas under the general portability rules in the *New Zealand Superannuation and Retirement Income Act 2001* (NZ) s 26. The deduction is made, however, for foreign pensions when New Zealand Superannuation is paid under the Pacific Islands portability provisions.

³⁰ *New Zealand Superannuation and Retirement Income Act 2001* ss 26, 26A and 26B.

³¹ See 2001 SSA and 2016 SSA, above n 2, art 9(1).

³² *Income Tax Act 2007* (NZ) s CF 1(e). Despite the requirement in art 9(1)(b)(i) and (ii) of the SSA that the percentage to be applied in the reduction should be published in the New Zealand Gazette, the author has not been able to find any such notice. The Work and Income New Zealand website in their explanation

- no amount of any Australian Age Pension is to be taken into account except for the cap under Article 9(3) – discussed further below.

There are specific provisions for dealing with working age residency in third countries. If a claimant is not a permanent resident of Australia under Australian immigration law, any periods of third country residency are to be treated as periods of New Zealand residency. Otherwise third country residency is not taken into account and effectively Australia bears that cost.

The amount of New Zealand Superannuation payable to a person in Australia under the above formula is, however, subject to a cap. Under Article 9(3) of the two SSAs the amount of New Zealand Superannuation payable to a person resident in Australia cannot exceed the amount that would have been payable to a person if they were entitled to receive an Australian Age Pension only. This means that the amount of New Zealand Superannuation payable to a person resident in Australia is ultimately determined by the application of the income and asset tests for the Australian Age Pension. There is, however, no corresponding cap in the other direction if a former Australian resident retires in New Zealand receiving an Australian Age Pension which is greater than the equivalent amount of New Zealand Superannuation. This latter possibility only arises under the 2001 and 2016 SSAs as under the earlier SSAs the Australian Age Pension was not payable to persons retired in New Zealand.

The justification for the cap is that it is to ensure that someone who has split their working lives between Australia and New Zealand and retired in Australia does not receive a publicly funded pension greater than someone who has spent their whole working life in Australia and has retired there. It also means that an individual claiming a benefit under either the 1994 or the 2001/2016 SSAs will receive the same levels of pensions under all of them if their circumstances are otherwise the same.

4.2 Payments of Australian Age Pensions

Article 13 applies to the calculation of the Australian Age Pension. In all cases the amount of the Age Pension is to be calculated disregarding any amount of New Zealand Superannuation received as being income for the purposes of the income test.³³

Where an Age Pension is payable to someone who is in Australia, the amount of that Age Pension is to be determined by:³⁴

- excluding any New Zealand benefit from the amount of their income assessed for social security purposes;
- the amount of any New Zealand benefit is to be deducted from the *maximum* rate of the Australian Age Pension;

of the 2001 SSA, above n 2, state that a 15 per cent reduction is applied. This amount could be greater than the applicable income tax if New Zealand Superannuation was the only income of the claimant.

³³ See 2001 SSA and 2016 SSA, above n 2, art 13(1).

³⁴ See n 33, above.

- the balance of the Australian Age Pension (after deduction of any New Zealand benefit payable) is to be applied to abatement calculations required under the Australian income and asset tests.³⁵

Where an Australian Age Pension is to be paid to a person resident in New Zealand, the amount to be paid to them is determined under two different formulas depending upon whether the person has more than 10 years' working age residency in New Zealand or not.

If they have had less than 10 years' working age residency in New Zealand, the following formula applies:³⁶

$$A = \frac{(540-Z)-R}{540}$$

where:

A = amount of the Australian Age Pension payable to someone in New Zealand;

Z = months of working age residency in New Zealand;³⁷

R = the amount of the Australian Age Pension the person would have received if they had remained in Australia.

If they have had more than 10 years' working age residency, the following formula applies:³⁸

$$A = \frac{W \times R}{540}$$

where:

A = amount of the Australian Age Pension payable to someone in New Zealand;

W = months of working age residency in Australia with a minimum of 12 months;³⁹

R = the amount of the Australian Age Pension the person would have received if they had remained in Australia.

The effect of the difference between the two formulas is not immediately apparent but it affects how periods of residency in third countries are treated. If the person has less than 10 years' working age residency in New Zealand, the period of third country residency is effectively included as Australian residency and will be taken into account for the purposes of calculating the Australian Age Pension. This is reflected in Article 13(7) of the 2001 and 2016 SSAs that states that any pension obtained from a third

³⁵ If the claimant retired in Australia is not a permanent resident of Australia any benefit received from a third country is to be deducted directly from the amount of Australian Age Pension payable: 2001 SSA and 2016 SSA, above n 2, art 13(7)(a).

³⁶ See 2001 SSA, above n 2, art 13(4)(a) and 2016 SSA, above n 2, art 13(5)(a).

³⁷ Although not explicitly mentioned it is assumed that all periods of New Zealand residency are aggregated.

³⁸ See 2001 SSA, above n 2, art 13(4)(b) and 2016 SSA, above n 2, art 13(5)(b).

³⁹ See n 38, above.

country will be excluded from the calculation of the Australian Age Pension but instead be deducted directly from it.

While there is a cap upon the amount of New Zealand Superannuation payable in Australia, which is determined with reference to the amount of the Australian Age Pension payable, there is no equivalent cap upon the amount of the Australian Age Pension payable to someone who has retired in New Zealand. It is possible for them to receive an Australian Age Pension in excess of the maximum rate of New Zealand Superannuation payable. In such cases, no New Zealand Superannuation will be payable.

Interestingly, there is no provision in the SSA placing any restriction upon New Zealand as to how it calculates the amount of New Zealand Superannuation payable to former residents of Australia. The SSA would have been negotiated with the knowledge that section 70 of the *Social Security Act 1964* (NZ) would apply which requires any foreign publicly funded benefit to be deducted from any benefit paid by the New Zealand Government.

5. HOW DO THE ALLOCATION FORMULAS WORK IN PRACTICE?

5.1 Domestic payment rates

The allocation formulas contained in the 2001 and 2016 SSAs are applied using amounts determined under each country's respective social security rules. In the case of New Zealand it is relatively simple to obtain those amounts as New Zealand Superannuation is a universal benefit with a range of amounts payable depending upon the circumstances of the claimant (i.e., married, single, living alone etc.). Their income and/or assets are not usually taken into account.⁴⁰ Like all social security benefits in New Zealand, New Zealand Superannuation is subject to income tax. As income tax is levied in New Zealand from the first dollar earned, the tax effects of income tax must be taken into account when analysing New Zealand Superannuation.⁴¹

The amount of an Australian Age Pension payable to a claimant is a more complex calculation because the amount payable is determined after the application of both income and asset tests. The tests are applied separately and the test that produces the lower amount of age pension is the one that is applied.⁴² Like New Zealand Superannuation, the Australian age pension is taxable in Australia, but in most circumstances it is effectively tax free because the first AUD 18,200 of income earned by a resident individual in Australia is not taxed⁴³ and this together with the Senior Australian and Pensioner Tax Offset (SAPTO) means that no income tax is payable if a

⁴⁰ If they receive an overseas pension from a publicly funded scheme similar to New Zealand Superannuation then this is deducted from the New Zealand Superannuation paid under section 70 of the *Social Security Act 1964*. If they have a spouse/partner who does not qualify (usually because the spouse/partner is below the qualifying age of 65 years) a targeted benefit is payable where income is taken into account.

⁴¹ Up to NZD 14,000 the rate is 10.5 per cent and 17.5 per cent from that amount to NZD 48,000.

⁴² In practice the assets test tends to result in abatement before the income test does. This infers there is an assumption when setting these tests that pensioners will run down their capital to supplement their incomes.

⁴³ For the income year beginning 1 July 2018. Above AUD 18,200 the marginal tax rate starts at 19 per cent up to AUD 37,000 then steeply climbs at 32.5 per cent up to AUD 90,000 and 37 per cent to AUD 180,000 and 45 per cent above that. In addition there is a Medicare Levy of 2 per cent although individuals on low incomes are exempt from this levy.

claimant's income⁴⁴ is below AUD 32,279 per year. The Australian Age Pension is also taxable in New Zealand if received by a New Zealand claimant.⁴⁵

Under the income test, a single pensioner is able earn AUD 86 per week without any reduction of their age pension.⁴⁶ Once that amount is exceeded, the age pension is abated by 50 cents for every dollar in excess of AUD 86 per week (AUD 172 per fortnight). An unusual feature of the income test is that for financial assets (shares, bonds, bank deposits and accounts, superannuation account balances) the amount of income is determined on a deemed basis and not what is actually earned. From 1 July 2017, for a single person the first AUD 50,200 of financial assets are deemed to earn 1.75 per cent and the excess 3.25 per cent. The deeming rates are reviewed annually to take into account changes in market interest rates and are lower than the rates applying in some earlier years.

The assets test is equally comprehensive. Nearly all assets owned by a claimant are included in the calculation (including potentially low value assets such as cars and household effects) but the claimant's own home is excluded.⁴⁷ Using the thresholds applying from 1 July 2018, a single person can own assets up to AUD 258,200 if they are a homeowner without any abatement but lose the right to a part-pension if their assets exceed AUD 564,000. The equivalent figures for a single person who does not own their own home are AUD 465,500 and AUD 751,500 reflecting an uplift which is very modest considering current real estate values in most major Australian cities. The rate of abatement when assets exceed the base threshold is AUD 3 per year for every AUD 1,000 of assets above the threshold.

The amounts payable under each of the benefits are as set out in Table 1.

⁴⁴ The income upon which the Senior Australian and Pensioner Tax Offset is calculated is termed 'rebate income'. It is a taxpayer's assessable income increased by any reportable employer superannuation contributions and fringe benefits received as well as any investment losses are written back.

⁴⁵ In practice it will be taxed as New Zealand taxes individuals from the first dollar of income and there are no tax reliefs available to senior citizens equivalent to the Senior Australian and Pensioner Tax Offset.

⁴⁶ There is an additional exemption for earned income of AUD 125 per week.

⁴⁷ This exclusion is claimed to create incentives to overinvest in owner-occupier housing. Any profit made from the sale of such housing is also exempt from capital gains tax. There are a range of provisions and concessions applying to claimants who do not own their own home to provide some equity with homeowners but it open to question whether these are sufficient.

Table 1: Rates of Australian Age Pension and New Zealand Superannuation Payable at September 2018

**Australian Age Pension
(From 20 September 2018, AUD)**

Rate per Fortnight (Tax exempt)	Single	Couple (each)	Couple (combined)
Max Basic Rate	834.40	629.00	1,258.00
Max Pension Supplement	67.80	51.10	102.20
Energy Supplement	14.10	10.60	21.20
Total	916.30	690.70	1,381.40

**New Zealand Superannuation
(From 1 April 2018, NZD)**

Rate per Fortnight	Single (Alone)	Single (Shared)	Couple (Each)
Basic Rate (Taxable)	886.86	815.06	671.48
<i>Less Income Tax*</i>	(117.37)	(104.74)	(79.54)
Net Payment	769.52	710.32	591.94

* Assuming it is the only taxable income of claimant.

**Comparison
(per fortnight, AUD)**

	Australia	New Zealand
Single (Living Alone)	916.30	692.57
Single (Shared Accommodation)	916.30	639.29
Married (Each Partner)	690.70	532.75

(Assumes NZ\$/A\$ = 0.9.)

Note: Some other rates applying to the Australian Age Pension and New Zealand Superannuation have been omitted for simplicity. These will apply when only one partner of a couple qualifies for a pension or where one partner is in full-time rest home or hospital care. The recently introduced New Zealand winter energy supplement of NZD 20.46 per week over five winter months has also been excluded.

The Australian Age Pension is actually less generous when compared to average Australian earnings than New Zealand Superannuation is in relation to average New Zealand earnings despite the full Australian Age Pension being higher than New Zealand Superannuation in Table 1. The combined Age Pension for a married couple cannot exceed 41.76 per cent of Male Total Average Weekly Earnings, and is also

adjusted by consumer price index (CPI) changes.⁴⁸ Single persons receive 66.7 per cent of the married rate. By comparison, New Zealand Superannuation is set so that a married couple's combined income is 66 per cent of the average net wage (after tax). The single rate is 60 per cent of that amount although a higher amount is payable to single people living alone. New Zealand Superannuation is the only benefit adjusted with reference to adult earnings; all other social security benefits in New Zealand are adjusted for the CPI only. Despite the Australian Age Pension being lower relative to Australian earnings than New Zealand Superannuation is to New Zealand earnings, the Australian Age Pension pays more than New Zealand Superannuation reflecting that average earnings are much higher in Australia than New Zealand. This difference will be a key influence in the results obtained in the modelling explained in the next section.

5.2 Modelling study

While the SSA incorporates specific formulas for the Australian and New Zealand Governments to share the cost of funding retirement benefits, it is not clear from a simple analysis of the formulas whether they produce an appropriate allocation of costs between the two countries. In order to determine this, a model was developed to see how the shared funding formulas work in practice and whether they result in a fair allocation of pension based on the underlying principle for allocating pension costs between the two states being periods of working age residency.

The basis of comparison adopted here in the analysis is a simple one. That is that a state assumes a liability to pay an old age pension based on the number of years the person spent in that state during their working age life, which is usually defined as the period of life between 20 and 65 years. The reason for adopting this basis is twofold. First, it is the foundation principle underpinning the 2001 and 2016 Australia-New Zealand SSAs, although the actual amounts paid under these SSAs are subject to caps which, as the results obtained in this study will show, ultimately lead to major departures from that principle. Secondly, it is a common principle underpinning many other SSAs found in the world today especially those negotiated by EU states.

This basis of costing sharing of pensions is open to criticism. It does not consider the capacity of each state to contribute paying pensions especially where there are significant differences in per capita incomes between two states or in the levels of overall taxation or the taxation mix (i.e., consumption taxes vs. direct taxes) in each state.

In making such a comparison, the simplest model that can be built is one assuming a claimant is a single person living alone. Including couples in the model will complicate it considerably because with couples it is very unusual for both of them to qualify for an age pension at the same date. Therefore the model would have to include couples where both are eligible for the pension as well as cases where only one of the two qualifies.

The modelling here assumes a hypothetical single person who has migrated between the two countries during their working life. It is also assumed that during their working lives

⁴⁸ There is a specific CPI for pensioners used as well as the general CPI.

there has been no residency in a third country. The calculations are made at their initial application for an old age pension on their 65th birthday.⁴⁹

The model has been built to take into account two key variables. The first is how many years of working age residency (being a total of 45 years between the ages of 20 and 65 years) respectively the person spent in each of the two countries. The second is the level of financial assets (which includes superannuation) a claimant has as this affects the amount of the Australian Age Pension payable.

A number of other variables have been assumed to be constant in the model. These are:

- the amount of other assets the claimant owns (AUD 30,000 of personal property). If these were to increase the asset test would result in further abatement of the Age Pension even if the additional assets produced no income;
- there are no other sources of income apart from pension income and returns from their financial assets. If these two variables were separated in the model different results could be obtained but the differences from the ones obtained may not be significant;⁵⁰
- the NZD/AUD exchange rate;
- deeming rates for financial assets which are set with reference to prevailing interest rates - currently these are at historical lows (with probably little prospect of increase in the current environment).

In summary, the assumptions adopted in the model are as follows:

- claimant: single person (living alone);
- years lived the country of origin and the country of residency: one of 10/35 years, 20/25 years, 30/15 years and 45/0 years;
- financial assets (including superannuation) – one of:
 - AUD 50,000;
 - AUD 100,000;
 - AUD 200,000;
 - AUD 300,000;
 - AUD 400,000;
 - AUD 500,000;
 - AUD 1 million;

⁴⁹ The age of eligibility for the Australian Age Pension increased to 66 years on 1 July 2019; however this change does not affect the calculations in this study nor the validity of the results obtained or the conclusions made.

⁵⁰ At higher levels of wealth it is usually the assets test that results in abatement of the Age Pension first not the income produced from these assets. There is also a concession for income from employment where the first AUD 250 per fortnight is exempt from the income test.

- household and personal assets: AUD 30,000;
- the claimant owns their own home and lives alone;⁵¹
- the NZD/AUD exchange rate is 0.90;
- no other sources of income other than Age Pension (and/or New Zealand Superannuation) and deemed income from their financial assets - i.e., no income from employment or from other assets.

A pension calculator site is used (<http://yourpension.com.au/>) to calculate the amount of Age Pension payable in Australia. However, it is not used to calculate the amount of the Age Pension payable to someone in New Zealand because the Pension⁵² and Energy Supplements are not paid offshore under Article 15(4) of the 2001 and 2016 SSAs.

The results are based on how much of the actual amounts payable under the SSAs by each of the Governments deviate from a strict proportional sharing of the total pension paid to a person under the SSAs based on their respective periods of working age residency. The issue is critical because the amount payable by one of the states to someone retired in the other state is determined by their domestic pension rules, while the total amount actually received by a claimant is determined by the pension rules of the state where they retired. There are significant differences in the pension rates set in the two countries leading to significant gaps between the proportions of the exported pension and the total pensions received.

There is also another issue to be considered. The amount of New Zealand Superannuation payable to someone who has retired in Australia is subject to a cap based upon the amount of Australian Age Pension payable to that person as if they had lived their whole life in Australia. This cap can reduce the liability of New Zealand to pay New Zealand Superannuation and results in a real gain to the New Zealand taxpayer. This absolute gain can only arise in one direction – when someone retires in Australia but has periods of working age residency in New Zealand. These savings can only accrue to the New Zealand Government. Similarly, the Australian Age Pension is taxable if paid to a New Zealand resident (although remaining exempt from tax in Australia) meaning that New Zealand gains from collecting income tax on Australian Age Pensions.

The results obtained for the situation where an individual migrates from New Zealand to Australia during their working life are shown in Tables 2 and 3. Table 2 shows the difference between the amounts actually payable by New Zealand to someone retired in Australia instead of an amount that would have been payable if New Zealand was required to pay a proportional of the Australian Age Pension actually payable to the

⁵¹ These assumptions are necessary as different thresholds apply to the assets test for the Australian Age Pension depending upon whether a claimant owns their own home or not. The assumption about living alone is necessary to determine which rate of New Zealand Superannuation is payable to someone in New Zealand. The living alone rate is not applied in calculating New Zealand Superannuation payable to a former resident retiring in Australia – refer Work and Income New Zealand website ‘Can I get extra financial help?’, at ‘Social security agreement with Australia’, <https://www.workandincome.govt.nz/pensions/travelling-or-moving/social-security-agreements/australia.html>. However the single living alone rate was required to be used in reimbursement calculations under the 1994 SSA, above n 8, art 12(2)(a)(ii)A.

⁵² Incorporates a number of allowances paid separately earlier including the Pharmaceutical Allowance, Utilities Allowance, GST Supplement and the Telephone Allowance.

claimant. These amounts arise because of the differences in the base pensions of each country, with the Australian Age Pension being much larger than New Zealand Superannuation before any abatement.

Table 2: Proportionate Gains/Losses to Pension Costs from Migration from New Zealand to Australia under the 2001 and 2016 SSAs, by Years of Residency and Financial Assets (AUD/fortnight)*

Financial Assets (AUD)	Years Residency (New Zealand/Australia)			
	10/35	20/25	30/15	45/0
50,000	-64.33	-128.66	-153.73	-230.48
100,000	-64.33	-128.66	-153.73	-230.48
200,000	-42.06	-84.13	-126.38	-189.48
300,000	-8.76	-17.53	-26.33	-39.48
400,000	24.54	49.07	73.72	0.00
600,000	91.14	118.43	70.93	0.00
1,000,000	0.00	0.00	0.00	0.00

* Negative value: Australian loss and New Zealand gain; positive value: Australian gain and New Zealand loss.

Note: The amounts in these tables are calculated as A - B where: A is the amount of New Zealand Superannuation payable into Australia in Australian Dollars after a 15 per cent deduction in lieu of New Zealand tax; and B is the total amount of the Australian Age Pension payable to the claimant (after application of the asset and income tests) apportioned according to the years of working age residency in New Zealand.

Table 3 shows the savings arising to the New Zealand Government from the application of the assets and income test abatements to the Australian Age Pension which caps the amount of New Zealand Superannuation payable into Australia.

Table 3: Absolute Gains from Reduced Pension Costs Accruing to New Zealand from Migration under the 2001 and 2016 SSAs, by Years of Residency and Financial Assets (AUD/fortnight)

	Years Residency (New Zealand/Australia)			
Financial Assets (AUD)	10/35	20/25	30/15	45/0
50,000	0.00	0.00	0.00	0.00
100,000	0.00	0.00	0.00	0.00
200,000	0.00	0.00	0.00	0.00
300,000	0.00	0.00	0.00	0.00
400,000	0.00	0.00	0.00	110.52
600,000	0.00	158.41	344.96	410.52
1,000,000	138.42	276.84	415.89	586.41

Note: The amounts in these tables are calculated as A - B where: A is the amount of New Zealand Superannuation payable into Australia in Australian Dollars after a 15 per cent deduction in lieu of New Zealand tax; and B is the total amount of the Australian Age Pension payable to the claimant (after application of the asset and income tests) without any apportionment for working age residency in both states. Only positive amounts are shown as the cap only applies in one direction.

These gains are real savings to New Zealand that would not otherwise arise under any of New Zealand's other SSAs due to cap on the amount of New Zealand Superannuation payable to former New Zealand residents retired in Australia.

The results obtained for the situation where an individual migrates from Australia to New Zealand during their working life are as set out in Table 4.

Table 4: Proportionate Gains/Losses to Pension Costs from Migration from Australia to New Zealand under the 2001 and 2016 SSAs, by Years of Residency and Financial Assets (AUD/fortnight)*

Financial Assets (AUD)	Years Residency (Australia/New Zealand)			
	10/35	20/25	30/15	45/0
50,000	-13.28/36.73	-26.56/73.45	-39.90/110.34	-59.83/105.61
100,000	-13.28/36.73	-26.56/73.45	-39.90/110.34	-59.83/105.61
200,000	7.95/31.40	-15.91/62.80	-23.90/94.34	-35.83/141.43
300,000	34.23/-10.78	68.45/-21.56	102.83/-32.39	154.17/-48.57
400,000	100.83/-77.38	201.65/-154.76	302.93/-232.49	454.17/-348.57
600,000	177.19/-153.75	354.39/-307.50	532.38/-461.94	798.17/-692.57
1,000,000	177.19/-153.75	354.39/-307.50	532.38/-461.94	798.17/-692.57

* Negative value: Australian loss and New Zealand gain; positive value: Australian gain and New Zealand loss.

Note: For the Australian amounts in the left of each column they are calculated as A - B where: A is the amount of Australian Age Pension payable into New Zealand in Australian Dollars gross; and B is the total amount of gross New Zealand Superannuation payable to the claimant apportioned according to the years of working age residency in New Zealand.

For the New Zealand amounts in the right of each column they are calculated as A - B where: A is the net amount of New Zealand Superannuation payable to the claimant after tax (assuming it is their base assessable income) apportioned according to the years of working age residency in New Zealand expressed in Australian Dollars; and B is the net amount of New Zealand Superannuation payable to the claimant after deduction of the Australian Age Pension received and New Zealand income tax on both amounts.

The results in Table 4 are different for each country recognising that New Zealand taxes both New Zealand Superannuation and the Australian Age Pension if received in New Zealand. Thus New Zealand gains by collecting tax on the Australian Pension.

5.3 Analysis of results

The first trend noticeable from a casual perusal of Tables 2 and 4 is that the 2001 and 2016 SSAs which aim for the New Zealand and Australian Governments to share in the pension costs of retirees according to the periods of respective working age residency in each country do not necessarily achieve anything like that. The reason for this is that the amount of pension 'exported' to the other country is determined using the 'exporting' country's rules but the amount ultimately paid to the claimant is determined solely by the rules of the country where they reside.⁵³ The host government is required to pick up the difference and thus, despite the shared funding model for social security

⁵³ The one exception to this is where the Australian Age Pension is paid to someone retired in Australia and the net amount after New Zealand tax exceeds the amount of New Zealand Superannuation that would otherwise be payable.

coordination, there is still a host country liability which can be substantial and not recoverable from the other state. There are also fundamental differences in the design of each country's pension scheme with one being asset and income tested while the other is largely universal. In addition, New Zealand's pension payments are subject to income tax while Australia's are effectively tax free which in some ways reflects the differences in income tax burden imposed upon lower income earners in each country.

Secondly, less wealthy pensioners (those with financial assets including superannuation balances below AUD 200,000) proportionately cost the Australian Government more with the effect more pronounced if the claimant has retired in Australia. Average superannuation balances in Australia have been reported at around AUD 271,000 for males aged 60 to 64 and around AUD 157,000 for females in 2015-16⁵⁴ so that the thresholds used in the model at AUD 200,000 and AUD 300,000 are realistic in assessing the potential liability of Australia under the SSA. As the current Australian superannuation regime (the 'superannuation guarantee') has only been in place since 1992, not all workers have built up balances in their superannuation accounts over all of their working lives. Average balances will substantially increase in future decades (due to more contributions as well as the compounding effects of income earned on existing contributions) so that in two decades' time average balances may be nearer to AUD 400,000 to AUD 500,000 for males at least. With average financial assets around those levels, the proportionate liability shifts to New Zealand more.

New Zealand proportionately gains from the migration of its less wealthy because Australia will pick up more of their pension costs if they retire there, while if they retire in New Zealand they will bring a substantial public pension with them (Australian Age Pension) which reduces New Zealand's liability to pay New Zealand Superannuation as well as providing a tax revenue since the Australian Age Pension is taxable in New Zealand.

The migration of the wealthy and also those whose fortunes change through migration also has significant implications for both Governments but largely the reverse of those above. There is a substantial liability for New Zealand for wealthy retirees in New Zealand if they have lived most of their working lives in Australia. The irony is that their ability to accumulate substantial financial assets would have been driven by Australian retirement income policies supplemented by generous tax preferences.

Because the amount of New Zealand Superannuation payable in Australia is subject to a cap determined by the amounts of Australian Age Pension payable after the application of income and asset tests, New Zealand can enjoy substantial savings by not having to pay New Zealand Superannuation to more wealthy emigrants.⁵⁵ This arises whether the individuals concerned brought wealth with them from New Zealand or instead it was accumulated in Australia after they arrived. Ironically New Zealand gains when its migrants are financially successful after they arrive in Australia and accumulate wealth there including the boost to their wealth accumulation from

⁵⁴ Ross Clare, *Superannuation Account Balances by Age and Gender* (The Association of Superannuation Funds of Australia Limited Research and Resource Centre, Sydney, October 2017) 9, Table 1.

⁵⁵ While wealthy individuals may forgo any public pension if they migrate to Australia from New Zealand, they may derive major income tax savings if they qualify as a temporary resident of Australia for income tax purposes as they will not be subject to Australian tax on any foreign sourced income. They will also be liable to tax on any Australian capital gains as a non-resident.

Australian tax preferences for superannuation accounts and for ‘negative gearing’ of rental property investments.

Concerns about a ‘brain drain’ to Australia from New Zealand and the losses to the latter might be tempered with knowledge of these gains from savings of New Zealand Superannuation, although this does not take into account the losses to the wider economy from the migration of skilled labour.

The figures obtained in the earlier Tables are based upon an NZD/AUD exchange rate of 0.90. As both currencies float in international markets and the exchange rate has shown considerable variability both within years and between years this rate is highly unlikely to apply over any period of time. The author varied the exchange rate used in the above model from 0.95 to 0.80 and repeated the above calculations. While the revised figures have not been included in this article in interests of brevity, the effect of the Australian dollar increasing in value *vis-à-vis* the New Zealand dollar results in New Zealand increasing its gains on a proportionate basis and also reducing its proportionate losses. Australia on the hand increases its proportionate losses and suffers a reduction in its proportionate losses. Given that the exchange rate of 0.90 initially used in the modelling is higher than the rates that have prevailed in earlier decades, the results obtained here in the model are likely to be more favourable to Australia than to New Zealand to some degree.

Given the current Australian Government policies concerning social security for New Zealand migrants in Australia who have migrated there under the TTTA, the fact that they still retain a disproportionate liability for the pension costs of these migrants may lead to pressures for a future review of the SSA between the two countries. New Zealand also has potentially very large liabilities if former Australian residents relocate to New Zealand. If the divergence in the economic performance of the two countries continues at the same rate as it has done in previous decades, the gains/losses to each respective government will be amplified. If the costs of this arrangement become too much for New Zealand, a question that arises is: will the price of sustaining some form of social security coordination with Australia means that it will be forced to harmonise its retirement income policies with Australia more, especially by raising the age of eligibility for New Zealand Superannuation and introducing targeting for this pension?

The results obtained also pose major questions concerning equity and fairness. While this article concerns the cost sharing of pensions for trans-Tasman migrants for the Australian and New Zealand Governments, there are clearly equity issues concerning the claimants themselves. Wealthy Australians can migrate to New Zealand to retire and receive full payment of New Zealand Superannuation even though they have contributed little or nothing by way of taxes to New Zealand during their working lives. Wealthy New Zealanders migrating to Australia forgo any publicly funded pension even though they may have substantially contributed to the New Zealand tax base during their working lives and would be able to receive full payment of New Zealand Superannuation under the portability rules if they retired outside New Zealand to any other country.

At the Governmental level there are also major equity issues. Australia is a much wealthier country than New Zealand both in size and on a per capita basis. Yet the results flowing from the cost sharing formulas found in the 2001 and 2016 SSAs leave New Zealand with substantial greater liabilities than Australia faces. The disparity in size also means that in any negotiations there is unequal bargaining power. Furthermore,

the factor that has enabled substantial levels of trans-Tasman migration and therefore makes the issue of cost sharing in respect of old age pensions so important, is the TTTA, which is nothing more than an ‘understanding’ between the two countries which can be unilaterally altered or terminated by either country. Given that the TTTA is probably more important to New Zealand than Australia, both economically and politically, the imbalance in bargaining power in respect of cost sharing over pensions is probably much greater than initially appears.

6. CONCLUSIONS

The 2001 and 2016 SSAs between Australia and New Zealand are of considerable importance to both countries given the substantial migration that has occurred for decades under the Trans-Tasman Travel Arrangement. The importance of these SSAs extends beyond just persons of retirement age who may decide to migrate between the two countries because it applies to anyone who has migrated between the two countries during their working life even if they have ultimately returned to their country of birth.

The model developed for the analysis in this article is simple but takes into account two key variables – the number of years during their working life a person has spent in each country and their wealth and income which affects the amount of Australian Age Pension payable. These two variables are the most critical in determining the amount of Age Pension payable under the SSA although other factors are relevant. Variations in the NZD/AUD exchange rate will also have effect as well as the deemed returns to financial assets set for the income test for the Australian Age Pension. At the moment with interest rates being at historic lows, a return to more normal interest rates will reduce the amount of the Australian Age Pension payable due to increased abatements under the income tests.

There are too many unknowns to answer the question in the title of this article, ‘should it be time for change?’, in a conclusive way. Each country can be viewed as gaining or losing under the SSA in respect of individuals with different circumstances. However, given that migration from New Zealand to Australia has been much greater than migration in the opposite direction, and that the average superannuation balances will continue to increase in the latter country in future decades, the balance of gains/losses under the SSA to New Zealand may move more into the ‘loss’ zone for New Zealand, although the cap upon the amount of New Zealand Superannuation payable in Australia provides a significant restraint upon the actual liability especially if New Zealand migrants do well there. There is a much greater liability if such migrants return to New Zealand to retire and this is where the greatest risk to New Zealand arises under the SSA. The results obtained from the modelling in this article however lead to questions as to whether the cap upon New Zealand Superannuation payable in Australia is really an imperative for Australian negotiators or whether New Zealand secretly promotes it in negotiations as it appears it is the net benefactor from the cap.

The approach of determining whether a country wins or loses in terms of old age pension costs can be also criticised in that it considers only one aspect of migration between the two countries. There is no consideration of the cost of meeting healthcare and other social supports for the elderly which continue to be met on a ‘host country’ basis. There is also no consideration of the wider benefits migrants bring to their country of adoption including higher economic growth. These might easily outweigh any increased pension costs.