

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SOCIAL SECURITY LEGISLATION (NEWLY ARRIVED RESIDENT'S
WAITING PERIODS AND OTHER MEASURES) BILL 1996

EXPLANATORY MEMORANDUM
(taking into account a corrigendum to the explanatory memorandum tabled in
the House of Representatives)

(Circulated by the authority of the Minister for Social Security,
Senator the Hon Jocelyn Newman)



SOCIAL SECURITY LEGISLATION (NEWLY ARRIVED RESIDENT'S WAITING PERIODS AND OTHER MEASURES) BILL 1996

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill will give legislative effect to a 1996 Government election policy commitment to extend the time before new migrants may get certain social security payments and other benefits.

The Bill will also implement legislation aimed at streamlining information gathering from third parties, clarify that income data for different financial years may be used in a single data-matching program cycle and make a number of minor technical amendments.

The legislation involved is the *Social Security Act 1991*, the *Student and Youth Assistance Act 1973*, the *Health Insurance Act 1973*, the *Data-matching Program (Assistance and Tax) Act 1990* and the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*.

Newly arrived resident's waiting periods

A 26 week newly arrived resident's waiting period currently applies to certain social security payments and to the youth training allowance. Refugees and humanitarian migrants are exempt from this requirement.

The Government announced as part of its 1996 election policy commitments, that the newly arrived resident's waiting period would be extended to 104 weeks for migrants who arrived in Australia on or after 1 April 1996 and who wish to claim certain social security payments or other benefits.

The commitment will be implemented as follows:

as a general rule, a newly arrived resident's waiting period of 104 weeks will apply to migrants who arrive in Australia on or after 1 April 1996 or who are granted permanent residence on or after 1 April 1996, and who wish to claim certain social security or other benefits. In the case of some other social security and other payments, a 104 week newly arrived resident's waiting period will operate in respect of migrants entering Australia, becoming Australian residents or inhabitants of Australia, as defined by the *Social Security Act 1991*, from the day of Royal Assent;

- the newly arrived resident's waiting period will not apply to refugee or humanitarian migrants, immediate family members of refugees and humanitarian migrants who are immediate family members at the time the refugee or humanitarian migrant arrives in Australia, or certain former holders of subclass 820 (Extended eligibility (spouse) visas who were subsequently granted permanent visas);

the 26 week newly arrived resident's waiting period will continue to apply to migrants who had arrived in Australia and been granted permanent residence before 1 April 1996;

- the waiting period will apply to the following payments:
 - carer pension;
 - disability wage supplement;
 - widow allowance, excluding cases where the woman has 10 years residence at some time prior to claiming payment or where both the claimant and her former partner were Australian residents at the time when they separated, became divorced or her partner died;
 - job search allowance;
 - newstart allowance;
 - mature age allowance paid under Part 2.12B of the *Social Security Act 1991*;
 - sickness allowance;
 - special benefit except for those situations where a migrant's circumstances have changed significantly following their arrival in Australia, and for reasons beyond their control;
 - partner allowance;
 - maternity allowance;
 - parenting allowance;
 - child disability allowance;
 - double orphan pension;
 - mobility allowance; and
 - youth training allowance.

In addition, a newly arrived resident's waiting period will also be imposed for the Commonwealth seniors health card, health care cards under the disadvantaged persons scheme and for the payment of more than the minimum standard family payment rate.

Further refinements to the operation of the newly arrived resident's waiting periods will ensure that:

- the existing exemption is removed for newly arrived migrants who, immediately prior to their arrival, were members of a couple and whose partner had been an Australian resident for at least 26 weeks prior to their arrival;

the waiting period will commence upon the latter of a person's arrival in Australia or grant of permanent residence, becoming an Australian resident, becoming an inhabitant of Australia or applying for a subclass 820 visa, as the case may be;

except for cases stated above relating to widow allowance, the waiting period will be extended by whatever period or periods a person is absent from Australia, if the person leaves Australia after their waiting period has commenced; and

some minor technical amendments are made such as correcting date references in certain parenting allowance newly arrived resident's waiting period provisions so as to align those references with other social security payments such as job search allowance and newstart allowance, as originally intended.

A newly arrived resident's waiting period will not apply to a person who holds a subclass 820 visa immediately before Royal Assent to the Bill. However, the Bill amends the special benefit provisions to provide that special benefit will not be payable to such a person, unless in the opinion of the Secretary to the Department of Social Security, the person has suffered a substantial change in circumstances beyond their control.

Date of effect:

Royal Assent or:

- in the case of amendments relating to mature age allowance under Part 2.12B of the *Social Security Act 1991*, the amendments will commence on, or be taken to have commenced on 1 July 1996, immediately after the commencement of Schedule 6 of the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*;
- in the case of the amendments to substitute correct date references for certain parenting allowance newly arrived resident waiting period provisions, 1 July 1995, immediately after the commencement of Schedule 1 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*.

Financial impact: program savings

1995-96 -	\$0.00m.
1996-97 -	\$31.40m.
1997-98 -	\$143.50m.
1998-99 -	\$185.60m.

Allow additional information to be sought from persons (usually employers) under an initial request made under section 1307 of the *Social Security Act 1991* or section 346 of the *Student and Youth Assistance Act 1973* with a view to reducing the need for supplementary requests for information

Section 1307 of the *Social Security Act 1991* (the SSA) and section 346 of the *Student and Youth Assistance Act 1973* (the SYA) allow the Secretary to the Department of Social Security to require a person (usually employers and other third parties) to give information about a class of persons with a view to :

- detecting cases in which amounts of pension, benefit or allowance have been paid when they should not have been paid; and
- verifying the qualification of persons who made claims for those pensions, benefits and allowances.

Both sections define the type of information that may be sought.

Currently, information about when people start and end their employment may not be sought under sections 1307 or 346. The result is that employers are often faced with having to respond to a request for information under section 1307 or 346 and then having to deal with a follow up request authorised under another section of the SSA or SYA if, on the basis of the initial advice provided by them, it appears to the Department of Social Security that there has been an overlap in payment of a social security payment or youth training allowance and employment.

It would be more efficient from the viewpoint of both employers and the Department if only one request had to be made. It would also be beneficial from an individual's viewpoint. In many cases, the initial provision of more information about a person would confirm that the person was legitimately entitled to a payment and so there would be no need to undertake a follow-up that might, quite unjustifiably, result in employers drawing adverse inferences about a person.

Date of effect: Royal Assent

Financial impact: Negligible.

Ensure that income data for different financial years may be used in a single data-matching program

The *Data-matching Program (Assistance and Tax) Act 1990* will be amended so as to put beyond doubt the ability of using Australian Taxation Office income data for different financial years in a single data-matching program cycle. It would ensure, for example, that income data in respect of the 1994-95 financial year could be used so as to review the entitlement of a person to family payment for 1996 even though the person might have already lodged their 1995-96 tax return. It would also ensure that income data in respect of the 1994-95 and 1995-96 financial years could be used in a single matching cycle to enable checking on student and parental personal income details for 1995 and 1996.

Date of effect: 30 June 1996

Financial impact: It is possible that savings of up to \$43 million for the Department of Social Security alone could be foregone annually if the amendments could not proceed.

Amendments to the Social Security and Veterans' Affairs Legislation Amendment Act 1995

The *Social Security and Veterans' Affairs Legislation Amendment Act 1995* will be amended to correct a drafting error and to make a consequential amendment.

Date of effect: 20 September 1996, immediately after the commencement of Schedule 5 to the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*.

Financial impact: Negligible.

PRELIMINARY

Clause 1 of the Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Bill 1996 sets out how the amending Act is to be cited.

Clause 2 specifies when the various clauses and Schedules of the amending Act are to commence.

Clause 3 says that each Act that is specified in a Schedule to the Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Bill (the Amending Act) is amended or repealed as set out in the Schedules.

SCHEDULE 1

AMENDMENT OF THE SOCIAL SECURITY ACT 1991, THE STUDENT AND YOUTH ASSISTANCE ACT 1973 AND THE HEALTH INSURANCE ACT 1973 TO EXTEND THE NEWLY ARRIVED RESIDENT'S WAITING PERIOD

1. Summary of proposed changes

The amendments made by Schedule 1 give legislative effect to a 1996 Government election policy commitment to extend the time before new migrants may get certain social security payments and other benefits.

Some minor refinements are also made to the operation of the newly arrived resident's waiting periods.

2. Background

A 26 week newly arrived resident's waiting period currently applies to certain social security payments and to the youth training allowance. Refugees and humanitarian migrants are exempt from this requirement.

The Government announced as part of its 1996 election policy commitments, that the newly arrived resident's waiting period would be extended to 104 weeks for migrants who arrived in Australia or were granted permanent residence on or after 1 April 1996 and who wish to claim certain social security payments or other benefits.

3. Schedule and clause involved in the changes

Clause 2: Specifies the commencement dates of the items in Schedule 1.

Schedule 1:

Part 1 amends the *Social Security Act 1991 (the SS Act)*:

Division 1 (items 1 to 12) amend various definitions used in the SS Act;

- **Division 2 (items 13 and 14)** introduce a newly arrived resident's waiting period for carer pension;

Division 3 (items 15 to 17) amend the widow allowance qualification criteria that relate to a newly arrived resident's waiting period;

Division 4 (items 18 to 21) introduce a newly arrived resident's waiting period for disability wage supplement;

Division 5 (items 22 to 25) amend the job search allowance newly arrived resident's waiting period provisions;

- **Division 6 (items 26 to 29)** amend the newstart allowance newly arrived resident's waiting period provisions;
- **Division 7 (items 30 and 31)** introduces a newly arrived resident's waiting period for mature age allowance under Part 2.12B of the SS Act;
- **Division 8 (items 32 to 35)** amend the sickness allowance newly arrived resident's waiting period provisions;

Division 9 (items 36 to 38) introduces a newly arrived resident's waiting period for special benefit;

- **Division 10 (items 39 and 40)** impose a newly arrived resident's waiting period for partner allowance;

Division 11 (item 41) introduces a newly arrived resident's waiting period for maternity allowance;

- **Division 12 (items 42 to 45)** amend the parenting allowance newly arrived resident's waiting period provisions;

Division 13 (items 46 and 47) introduces a newly arrived resident's waiting period for child disability allowance;

Division 14 (items 48 and 49) introduces a newly arrived resident's waiting period for double orphan pension;

Division 15 (items 50 and 51) introduces a newly arrived resident's waiting period for mobility allowance;

Division 16 (items 52 to 54) impose a newly arrived resident's waiting period for the seniors health card; and

Division 17 (items 55 to 61) imposes a newly arrived resident's waiting period for the payment of more than the minimum standard family payment rate and multiple birth allowance, rent assistance and guardian allowance as part of family payment.

Part 2 amends the *Student and Youth Assistance Act 1973*:

Items 62 to 65 amend the youth training allowance newly arrived resident's waiting period provisions.

Part 3 amends the *Health Insurance Act 1973*:

Items 66 to 68 impose a newly arrived resident's waiting period for the provision of health care cards under the disadvantaged persons scheme.

4. Explanation of the changes

PART 1

Part 1 makes various amendments to the *Social Security Act 1991* (the SS Act) relating to the imposition of a newly arrived resident's waiting period.

Division 1 of Part 1 (items 1 to 12) amends various definitions used in the SS Act.

A person has a "qualifying residence exemption" for certain social security payments if the person satisfies the criteria set out in subsection 7(6) of the SS Act. The result is that if the person satisfies those criteria, the person will not be subject to a newly arrived resident's waiting period.

It is proposed to extend the range of social security payments to which a newly arrived resident's waiting period will apply, namely, widow allowance, mature age allowance under Part 2.12B of the SS Act, partner allowance, maternity allowance, child disability allowance, double orphan pension, mobility allowance, certain payments relating to family payment and the Commonwealth seniors health card. The amendment made by **Item 1** will ensure that a person who meets the criteria in subsection 7(6) will have a qualifying residence exemption for all those payments that have a qualifying residence exemption. No amendments are needed to insert references to carer pension, disability wage supplement or widow allowance, as being a social security pension and a social security benefit, respectively, they are already covered by existing references in subsection 7(6) and 7(6AA), as the case may be.

Item 2 provides that a person will also have a qualifying residence exemption for a social security benefit (other than a special benefit), a maternity allowance, a mobility allowance, a family payment, a seniors health card or a youth training allowance under subsection 7(6AA) if the person has been granted a permanent visa, formerly having held a subclass 820 visa or if the person was a family member of a refugee or former refugee at the time that the refugee or former refugee arrived in Australia.

One of the qualification criterion for a qualifying residence exemption under subsection 7(6A) is that the person is either an "exempt resident" or a "former exempt resident" as defined by the SS Act. The amendment made by **Item 3** to paragraph 7(6A)(b) provides that the person, alternatively, may be a family member of the exempt resident or former exempt resident.

The amendment made by **Item 4** to the Table at the end of subsection 7(6B) is consequential upon further social security payments being subject to the operation of a newly arrived resident's waiting period.

The amendment made by **Item 5** is consequential upon the fact that a person will no longer have a qualifying residence exemption merely from being the holder of a subclass 820 visa.

Item 6 provides that a special definition of "family member" will operate for the purposes of subsections 7(6) and (6A). A person (A) will be a "family member" of another person (B) if A is a partner or dependent child of B at the time B arrived in Australia or if the Secretary to the Department of Social Security considers that A should be treated as a partner or dependent child of B at the time B arrived in Australia, for the purposes of subsections 7(6) and (6A).

Items 7, 8, 9, 10, 11 and 12 amend various definitions in subsection 23(1) of the SS Act to take account of the additional social security payments that will be subject to the operation of a newly arrived resident's waiting period.

Division 2 (items 13 and 14) introduces a newly arrived resident's waiting period for carer pension.

Item 13 amends subsection 199(1) to include the operation of a newly arrived resident's waiting period as an additional ground of non-payability for carer pension.

Item 14 inserts new section 201AA to provide that a newly arrived resident's waiting period will apply to a person who qualifies for carer pension if, on or after Royal Assent to the Amending Act, the person enters Australia and either has not been an Australian resident for 104 weeks or has applied for a subclass 820 visa (Extended eligibility (spouse)) (a "subclass 820 visa") and has not been in Australia for a period of, or periods totalling, 104 weeks since applying for that visa.

The item also inserts a new section 201AB that provides that if a person is subject to a newly arrived resident's waiting period, the period starts on the day that the person first entered Australia on or after Royal Assent to the Amending Act (the start day) and ends on the day when the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

Division 3 (items 15 to 17) amends the widow allowance qualification criteria that relate to a newly arrived resident's waiting period.

Item 15 amends subparagraph 408BA(2)(d)(i) to provide that in the case of a woman who entered Australia before 1 April 1996, one of the qualification criterion for widow allowance will be that she will have to have been an Australian resident continuously for 26 weeks before the day she claims widow allowance. This criterion applied before these amendments. However, **Item 15**, in inserting new subparagraph 408BA(2)(d)(ia), also provides that in the case of a woman who entered Australia on or after 1 April 1996, one of the qualification criterion for widow allowance will be that she will have to have been an Australian resident for a period of, or periods totalling, 104 weeks before the day she claims widow allowance.

The amendment made by **Item 16** to subsection 408BA(4) and the insertion of new subsection 408BA(4A) by **Item 17**, ensure that the position that operated before 1 April 1996 to disregard certain temporary absences from Australia for the purposes of satisfying the 26 week residence period will only continue to operate in respect of those women who had entered Australia before 1 April 1996.

Division 4 (items 18 to 21) introduce a newly arrived resident's waiting period for disability wage supplement.

Items 18 and 19 make amendments to the qualification criteria for disability wage supplement in subsections 409(1) and 410(1), respectively. These amendments are consequential upon the insertion of new sections 410A and 410B that provide for a newly arrived resident's waiting period for disability wage supplement and the duration of that period.

Item 20 ensures consistency in the qualification criteria for those who apply for disability wage supplement on the basis of a continuing inability to work and those who are permanently blind. This is achieved by inserting new subparagraph 410(1)(d)(ia) that provides that a person who is permanently blind will, amongst other things, qualify for a disability wage supplement if the person has a qualifying residence exemption for a disability wage supplement. This subparagraph mirrors existing subparagraph 409(1)(f)(ia).

Item 21 inserts new section 410A to provide for a newly arrived resident's waiting period for disability wage supplement. The section provides that a person is subject to a newly arrived resident's waiting period if the person, on or after the day of Royal Assent of the Amending Act, enters Australia and becomes the holder of a permanent visa.

Subsections 410A(2), (3) and (4) provide that certain persons will be exempt from the operation of the newly arrived resident's waiting period. The exemption applies if the person:

- has already served a newly arrived resident's waiting period; or
- has a qualifying residence exemption for a disability wage supplement; or

satisfies all of the following :

- has a physical, intellectual or psychiatric impairment;
 - that impairment is of 20% or more under the Impairment Tables;
 - because of the impairment the person has a continuing inability to work;
 - the person first had the continuing inability to work while in Australia; or
- is permanently blind and became permanently blind while in Australia.

Item 21 also inserts new section 410B to provide for the duration of the newly arrived resident's waiting period. The period is to start on whichever is the latter day of the person first entering Australia on or after the Royal Assent to the Amending Act or becoming the holder of a permanent visa, and ending when the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

Division 5 (items 22 to 25) amends the job search allowance newly arrived resident's waiting period provisions.

Item 22 omits subsection 541B(4) to give effect to the decision that a person will not be exempted from the operation of a newly arrived resident's waiting period just because the person was a member of a couple immediately before entering Australia and the person's partner had been an Australian resident for at least 26 weeks when the person entered Australia.

The amendment made by **Item 23** to subparagraph 541B(5)(c)(i) clarifies the position that one of the grounds of exemption from the operation of a newly arrived resident's waiting period is that a person entered Australia *before 1 January 1993* (the date from which newly arrived resident's waiting periods first began to operate) and the person held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.

Items 24 and 25 provide for the amendments to extend the duration of newly arrived resident's waiting periods.

Item 24 amends subsection 514C(1) to provide that the day on which a person's newly arrived resident's waiting period starts is whichever day is the latter of the person entering Australia or being granted a permanent visa.

The end of a newly arrived resident's waiting period for those persons who held valid "designated temporary entry permits" (as defined in subsection 7(1) of the SS Act) immediately before 1 September 1994 - and which is set out in subsection 541C(2) - is not affected by these amendments.

The end of a newly arrived resident's waiting period for anyone else, however, is set out in subsection 541C(3), which is amended by **Item 25**.

Item 25 provides that the end of a person's newly arrived resident's waiting period is worked out as follows:

person entered Australia AND was granted a permanent visa before 1 April 1996
(new paragraph 541C(3)(a))

if entry into Australia was later, 26 weeks after that entry;

if grant of permanent visa was later, 26 weeks after that grant

person entered Australia AND was granted a permanent visa on or after 1 April 1996
(new paragraph 541C(3)(b))

if entry into Australia was later, on the day after the person has been in Australia for a period of 104 weeks after that entry, or on the day after the person has been in Australia for periods totalling 104 weeks after that entry;

if grant of permanent visa was later, on the day after the person has been in Australia for a period of 104 weeks after the grant, or on the day after the person has been in Australia for periods totalling 104 weeks after that grant

person doesn't satisfy either situation outlined above and entered Australia before 1 April 1996 BUT was granted a permanent visa on or after 1 April 1996 (new paragraph 541C(3)(c))

- on the day after the person has been in Australia for a period of 104 weeks after the permanent visa was granted, or on the day after the person has been in Australia for periods totalling 104 weeks after that grant

person doesn't satisfy any of the situations outlined above and was granted a permanent visa before 1 April 1996 BUT entered Australia on or after 1 April 1996 new paragraph 541C(3)(d))

on the day after the person has been in Australia for a period of 104 weeks after that entry, or on the day after the person has been in Australia for periods totalling 104 weeks after that entry.

Identical amendments are made in:

Division 6 (items 26 to 29) relating to the newstart allowance newly arrived resident's waiting period provisions;

Division 8 (items 32 to 35) relating to the sickness allowance newly arrived resident's waiting period provisions; and

Division 12 (items 42 to 45) relating to the parenting allowance newly arrived resident's waiting period provisions.

For ease of reference, the following items correspond:

Item 22 - items 26, 32 and 42

Item 23 - items 27, 33 and 43

Item 24 - items 28, 34 and 44

Item 25 - items 29, 35 and 45.

Division 7 (items 30 and 31) imposes a newly arrived resident's waiting period for mature age allowance under Part 2.12B of the SS Act. (Mature age allowance under Part 2.12B of the SS Act will commence on 1 July 1996.)

Item 30 amends paragraph 660YCA(c) to provide that one of the grounds of non-payability of mature age allowance is that a person is subject to a newly arrived resident's waiting period and that period has not ended.

Item 31 inserts new sections 660YCFA and 660YCFB to impose a newly arrived resident's waiting period on certain claimants of mature age allowance under Part 2.12B of the SS Act and set the duration of that period, respectively.

New section 660YCFA(1) provides that a person who entered Australia on or after 1 July 1993 and who holds a permanent visa is subject to a newly arrived resident's period. This subsection is identical to that which already applies to those social security payments subject to the operation of a newly arrived resident's waiting period.

New subsection 660YCFA(2) exempts those persons who have a "qualifying residence exemption" (see subsections 7(6) and 7(6AA) of the SS Act) from being subject to a newly arrived resident's waiting period.

New subsections 660YCFA(3) and (4) also exempt:

certain holders of valid "designated temporary entry permits";

persons who are already subject to, or have served, a newly arrived resident's waiting period; and

- persons who had previously entered Australia before 1 January 1993 and who held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.

Again, subsections 660YCFA(2), (3) and (4) are identical to those which already apply to social security payments subject to the operation of a newly arrived resident's waiting period.

As noted above, new section 660YCFB sets the duration of the newly arrived resident's waiting period.

New subsection 660YCFB(1) is in identical terms to the amendment proposed by **item 24** above.

New subsection 660YCFB(2) is in identical terms to existing subsection 541C(2). (That subsection provides for the calculation of the end of a newly arrived resident's waiting period for those persons who held valid "designated temporary entry permits" (as defined in subsection 7(1) of the SS Act) immediately before 1 September 1994.)

New subsection 660YCFB(3) is in identical terms to the amendment proposed by **item 25** above.

Identical amendments are made in **Division 10 (items 39 and 40)** to impose a newly arrived resident's waiting period for partner allowance.

Division 9 (items 36 to 38) imposes a newly arrived resident's waiting period for special benefit.

Item 36 amends paragraph 729(2)(f) to modify the residency grounds that must exist before the Secretary to the Department of Social Security may determine, at his or her discretion, that special benefit may be granted to a person.

Item 37 inserts new paragraph 732(1)(da) to provide that special benefit is not payable if a person is subject to a newly arrived resident's waiting period and that period has not ended.

Item 38 inserts new section 739A to impose a newly arrived resident's waiting period on certain claimants for special benefit.

New section 739A(1) provides that, subject to new section 739A, a person who either has entered Australia or becomes the holder of a permanent visa or the holder of a subclass 820 visa on or after Royal Assent to the Amending Act, is subject to a newly arrived resident's waiting period.

New subsection 739A(2) introduces a newly arrived resident's waiting period to limit the payment of special benefit to persons who were holders of a subclass 820 visa before Royal Assent to the Amending Act.

New subsection 739A(6) exempts those persons who have a "qualifying residence exemption" (see subsection 7(6A) of the SS Act) from being subject to a newly arrived resident's waiting period.

New subsection 739A(7) also exempts a person who, in the opinion of the Secretary to the Department of Social Security, has suffered a substantial change in circumstances beyond the person's control.

The operation of the newly arrived resident's waiting period is set out in new subsections 739A(3), (4) and (5).

If a person is subject to a newly arrived resident's waiting period and the person applies for a subclass 820 visa or such other class of visa as is determined by the Minister for Social Security (irrespective of when that application was made), then subsection 739A(3) provides that the person's waiting period starts on the day on which the person applied for that visa and ends on the day after the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

Subsection 739A(4) provides that if a person is subject to a newly arrived resident's waiting period and the person was, immediately before Royal Assent to the Amending Act, the holder of a subclass 820 visa, the person's waiting period starts on the day on which the person applied for that visa and ends on the day after the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

If a person is subject to a newly arrived resident's waiting period but neither subsection 739A(3) nor 739A(4) applies to the person, then the person's waiting period starts on whichever is the latter day of the person first entering Australia or becoming an Australian resident and ends on the day after the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

New section 739B provides that the Secretary to the Department of Social Security must exercise the powers under subsection 739A(7) in accordance with guidelines from time to time in force under subsection 739C(1).

The guidelines for the exercise of the Secretary's powers are to be set, according to new subsection 739C(1), by determination in writing by the Minister for Social Security. The Minister may vary or revoke the guidelines. A determination made under subsection 739C(1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 11 (item 41) inserts a newly arrived resident's waiting period for maternity allowance.

Item 41 inserts an additional requirement into the qualification criteria for maternity allowance.

New subsection 900B(6) provides that:

- the person must have been in Australia as an inhabitant of Australia for a period of, or periods totalling, 104 weeks before the child's birth; or
- the person must since applying for a subclass 820 visa or such other class of visa determined by the Minister, have been in Australia for a period of, or periods totalling, 104 weeks before the child's birth;

Item 41 also inserts new subsection 900B(7) to provide that this requirement does not apply to a person if the person has a qualifying residence exemption for maternity allowance or the person has already served a newly arrived resident's waiting period.

Division 13 (items 46 and 47) introduces a newly arrived resident's waiting period for child disability allowance.

Item 46 amends section 953 to make that section subject to new section 953A. Section 953 sets out the conditions under which a disabled child is a child disability allowance (CDA) child of another person.

Item 47 inserts new section 953A to provide for a newly arrived resident's waiting period.

New subsection 953A(1) provides that a disabled child is not a CDA child of a person if the child enters Australia on or after Royal Assent to the Amending Act and has not been in Australia for a period of, or periods totalling, 104 weeks.

However, the newly arrived resident's waiting period will not apply in certain circumstances (subsection 953A(2)). Those circumstances are where:

- the disabled child resides in Australia and is a refugee; or
- the disabled child resides in Australia and is a dependent child of a refugee, a former refugee, an exempt resident or a former exempt resident at the time that the refugee or exempt resident arrived in Australia. (The definitions of refugee and exempt resident are those set out in subsections 7(6B) and 7(6C), respectively; or
- the disabled child is the dependent child of a person who is, or has been, an inhabitant of Australia for a period of, or periods totalling, 104 weeks; or
- the disabled child became a disabled child within the meaning of section 952 on or after becoming an inhabitant of Australia.

Division 14 (items 48 and 49) provides for the introduction of a newly arrived resident's waiting period for double orphan pension.

Item 48 amends section 993 to make that section subject to new section 993A. Section 993 sets out the conditions under which a young person who is not a refugee child, is a double orphan.

Item 49 inserts new section 993A to provide for a newly arrived resident's waiting period.

New subsection 993A(1) provides that young person is not a double orphan if the young person enters Australia on or after Royal Assent to the Amending Act and has not been in Australia for a period of, or periods totalling, 104 weeks.

However, the newly arrived resident's waiting period will not apply in certain circumstances (subsection 993A(2)). Those circumstances are where:

either parent of the young person is, or had been, an inhabitant of Australia for a period of, or periods totalling, 104 weeks; or

the young person became a double orphan on or after becoming an inhabitant of Australia.

Division 15 (items 50 and 51) introduces a newly arrived resident's waiting period for mobility allowance.

Item 50 inserts an additional ground of non-payability for mobility allowance in section 1036.

Item 51 inserts new section 1039AA. That section provides that a person who, on or after Royal Assent to the Amending Act, enters Australia and becomes the holder of a permanent visa, is subject to a newly arrived resident's waiting period.

However, the waiting period will not apply in certain circumstances. Those circumstances are where:

- the person has a qualifying residence exemption for mobility allowance (subsection 1039AA(2)); or
- the person has already served a newly arrived resident's waiting period (subsection 1039AA(3)); or
- the person became a "handicapped person" (as defined by section 19 of the SS Act) while in Australia (subsection 1039AA(4)).

Item 51 also inserts new section 1039AB to provide for the duration of the newly arrived resident's waiting period for mobility allowance.

If a person is subject to a newly arrived resident's waiting period, the period starts on the day on which the person first entered Australia after Royal Assent to the Amending Act or became the holder of a permanent visa (the start day) and ends on the day after the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

Division 16 (items 52 to 54) introduces a newly arrived resident's waiting period for the seniors health card.

Item 52 inserts new paragraph 1061ZA(1)(ca) to provide that a person will only qualify for a seniors health card if the person was subject to a newly arrived resident's waiting period and that period has ended.

Item 53 inserts new subsections 1061ZA(2) to (4) to introduce a newly arrived resident's waiting period on certain claimants for the seniors health card and set the duration of that period.

New subsection 1061ZA(2) provides that, subject to new subsections 1061ZA(3) and (4), a person who enters Australia and becomes the holder of a permanent visa on or after Royal Assent to the Amending Act, is subject to a newly arrived resident's waiting period.

New subsection 1061ZA(3) exempts those persons who have a "qualifying residence exemption" (see subsection 7(6) of the SS Act) from being subject to a newly arrived resident's waiting period.

New subsection 1061ZA(4) exempts those persons who have already served a newly arrived resident's waiting period.

Item 54 inserts new section 1061ZAA to set the duration of the newly arrived resident's waiting period. It provides that the period starts on whichever day is the latter of the person first entering Australia on or after Royal Assent to the Amending Act or becoming the holder of a permanent visa and ends on the day after the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

Essentially identical amendments are made by **Division 17 (items 55 to 60)** to introduce a newly arrived resident's waiting period for the payment of more than the minimum standard family payment rate and multiple birth allowance, rent assistance and guardian allowance as part of family payment except that instead of the "critical dates" being entering Australia and becoming the holder of a permanent visa, the "critical dates" are entering Australia and becoming the holder of a permanent visa or an approved visa. An "approved visa" for these purposes is defined to be a temporary visa declared in writing to be an approved visa for the purposes of the definition of inhabitant of Australia in subsection 23(1).

Item 61 ensures that the FP rate for a FP child who is subject to a newly arrived resident's waiting period will be indexed.

PART 2

Part 2 makes various amendments to the *Student and Youth Assistance Act 1973* relating to the imposition of a newly arrived resident's waiting period for youth training allowance.

The amendments made by **items 62, 63, 64 and 65** are identical in terms to the amendments made by **items 22, 23, 24 and 25**, respectively.

PART 3

Part 3 amends the *Health Insurance Act 1973* to impose a newly arrived resident's waiting period for the provision of health care cards under the disadvantaged persons scheme.

Item 66 amends subsection 5B(2) to provide that the making of a declaration by the Secretary to the Department of Social Security under that subsection is also subject to new subsection 5B(5A).

Item 67 inserts new subsection 5B(5A). New subsection 5B(5A) provides that the Secretary must not make a declaration under subsection 5B(2) that a person is a disadvantaged person if the person is subject to a disadvantaged low income newly arrived resident's waiting period under new section 5BA and that period has not ended.

Item 68 inserts new section 5BA that imposes a newly arrived resident's waiting period and sets the duration of that period.

New section 5BA(1) provides that, subject to new subsections 5BA(2), a person who enters Australia on or after the commencement of the section, is subject to a newly arrived disadvantaged low income resident's waiting period.

New subsection 5BA(2) exempts a person who has a "qualifying disadvantaged low income residence exemption" or who has already served a newly arrived disadvantaged low income resident's waiting period or who has been an Australian resident for a period of, or periods totalling, 104 weeks.

New subsection 5BA(3) sets the duration of the newly arrived resident's waiting period. It provides that the period starts on whichever day is the latter of the person first entering Australia or becoming an Australian resident and ends on the day after the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

New subsection 5BA(4) provides that for the purposes of subsection 5BA(2), a person has a disadvantaged low income qualifying residence exemption if the person resides in Australia and is either a "refugee", a "former refugee", a "family member" of the refugee or former refugee at the time that the refugee or former refugee arrived in Australia, an "exempt resident", a "former exempt resident" or a "family member" of the exempt resident or former exempt resident.

New subsection 5BA(5) provides that expressions used in new section 5BA have the same meanings as in the *Social Security Act 1991*.

5. Commencement

Apart from the amendments relating to mature age allowance under Part 2.12B of the *Social Security Act 1991*, the amendments commence on the day of Royal Assent. The amendments relating to mature age allowance under Part 2.12B of the *Social Security Act 1991* will commence on, or be taken to have commenced on 1 July 1996, immediately after the commencement of Schedule 6 of the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*. This different commencement date is necessary because mature age allowance under Part 2.12B of the *Social Security Act 1991* does not commence until 1 July 1996.

SCHEDULE 2

AMENDMENT OF THE SOCIAL SECURITY ACT 1991 AND THE STUDENT AND YOUTH ASSISTANCE ACT 1973 TO ALLOW ADDITIONAL INFORMATION TO BE SOUGHT

1. Summary of proposed changes

The amendments made by Schedule 2 will allow additional information to be sought from persons (usually employers) under an initial request made under section 1307 of the *Social Security Act 1991* or section 346 of the *Student and Youth Assistance Act 1973* with a view to reducing the need for supplementary requests for information.

2. Background

Section 1307 of the *Social Security Act 1991* (the SSA) and section 346 of the *Student and Youth Assistance Act 1973* (the SYA) allow the Secretary to the Department of Social Security to require a person (usually employers and other third parties) to give information about a class of persons with a view to :

detecting cases in which amounts of pension, benefit or allowance have been paid when they should not have been paid; and

verifying the qualification of persons who made claims for those pensions, benefits and allowances.

Both sections define the type of information that may be sought.

Currently, information about when people start and end their employment may not be sought under sections 1307 or 346. The result is that employers are often faced with having to respond to a request for information under section 1307 or 346 and then having to deal with a follow up request authorised under another section of the SSA or SYA if, on the basis of the initial advice provided by them, it appears to the Department of Social Security that there has been an overlap in payment of a social security payment or youth training allowance and employment.

It would be more efficient from the viewpoint of both employers and the Department if only one request had to be made. It would also be beneficial from an individual's viewpoint. In many cases, the initial provision of more information about a person would confirm that the person was legitimately entitled to a payment and so there would be no need to undertake a follow-up that might, quite unjustifiably, result in employers drawing adverse inferences about a person.

3. Schedule and clause involved in the changes

Clause 2: Specifies the commencement date of Schedule 2 as the day of Royal Assent

Schedule 2: **Item 1 of Part 1** amends subsection 1307(2) of the *Social Security Act 1991*.

Item 1 of Part 2 amends subsection 346(2) of the *Student and Youth Assistance Act 1973*.

4. Explanation of the changes

Item 1 of Part 1 and **Item 1 of Part 2** amend subsection 1307(2) of the *Social Security Act 1991* and subsection 346(2) of the *Student and Youth Assistance Act 1973*, respectively, to include the start and end dates of a person's employment as types of information that the Secretary to the Department of Social Security may require a person to provide.

5. Commencement

The amendments commence on the day of Royal Assent.

SCHEDULE 3

AMENDMENT OF THE DATA-MATCHING PROGRAM (ASSISTANCE AND TAX) ACT 1990

1. Summary of proposed changes

The *Data-matching Program (Assistance and Tax) Act 1990* (the DMPA) will be amended so as to put beyond doubt the ability of using Australian Taxation Office income data for different financial years in a single data matching program cycle. It would ensure, for example, that income data in respect of the 1994-95 financial year could be used so as to review the entitlement of a person to family payment for 1996 even though the person may have already lodged their 1995-96 tax return. It would also ensure that income data in respect of the 1994-95 and 1995-96 financial years could be used in a single matching cycle to enable checking on student and parental personal income details for 1995 and 1996.

2. Background

Section 6 of the DMPA provides that data about persons may be transferred between agencies, matched or otherwise dealt with by the "matching agency" or the "tax agency", and that the results of the matching may be given to "source agencies", in accordance with the data matching program made up of data matching cycles the steps in which are set out in section 7.

Under paragraph 1 of Step 1 of a data matching cycle the assistance agencies give the matching agency the basic data about persons that is held by those agencies for the purposes of "personal assistance". The matching agency checks the validity of the tax file number (TFN) data given under paragraph 1 and also gives the tax agency the TFN data and any identification numbers for the purposes of personal assistance.

Paragraphs 7 and 8 of Step 3 are as follows:

7. The tax agency uses tax data and data given to it under Step 2 to find out the following available and current data in respect of each person who has a tax file number:
 - (a) tax file number;
 - (b) personal identity data;
 - (c) declared income;
 - (d) surname and any other name or initial of any other name of a spouse in respect of whom spouse rebate is claimed;

- (e) surname and any other name or initial of any other name of any spouse of the person.
8. The tax agency gives the matching agency the data found out under paragraph 7 and any identification numbers for the purposes of personal assistance of the person.

The matching agency then carries out identity matching (Step 4), payment matching and income matching (Step 5) and provides the results of the matching to each relevant source agency.

In broad terms, the aim of data matching is to ensure that personal assistance (such as family payment that is paid under the *Social Security Act 1991*) and income tax are paid correctly.

A doubt arose, however, as to whether the words "available and current" meant that, for example, income data in respect of the 1994-95 financial year could not be used in a data-matching program cycle so as to review the entitlement of a person to family payment for 1996 because if the 1995-96 income data was available, it meant that the 1994-95 income data, whilst it might be available, would not be the current income data.

3. Schedule and clause involved in the changes

Clause 2: Specifies the commencement date of Schedule 3 as 30 June 1996.

Schedule 3: **Item 1 and 2** amend paragraph 7 of Step 3 in section 7 of the *Data-matching Program (Assistance and Tax) Act 1990*.

4. Explanation of the changes

Items 1 and 2 of Schedule 3 amend the opening words of paragraph 7 of step 3 so as to put the matter beyond doubt that income data in respect of different financial years could be used in a single matching cycle so as to review the entitlement of a person.

5. Commencement

The amendments commence on 30 June 1996.

SCHEDULE 4

AMENDMENT OF THE SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT ACT 1995

1. Summary of proposed changes

The *Social Security and Veterans' Affairs Legislation Amendment Act 1995* will be amended to correct a drafting error and to make a consequential amendment.

2. Schedule and clause involved in the change

Clause 2: specifies the commencement date of Schedule 4 as immediately after the commencement of the SSVA Act on 9 January 1996.

Schedule 4: corrects a drafting error and makes a consequential amendment.

3. Explanation of the change

Item 1 amends item 26 of Schedule 5 of the SSVA Act to ensure that item 26 will operate as originally intended and will not be affected by the amendments made by Schedule 1 of the Amending Act.

Item 2 amends the SSVA Act to correct a drafting error by omitting item 240 of Schedule 5 of that Act. The error arose because that Act failed to take account of (then) recent amendments made by the *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995* relating to advance payments.

4. Commencement

The amendments made by **Schedule 4** are taken to have commenced immediately after the commencement of Schedule 5 of the SSVA Act on 20 September 1996.

SCHEDULE 5

OTHER AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

1. Summary of proposed changes

Amendments will be made to the *Social Security Act 1991* to:

correct note references to the definition of "inhabitant of Australia" and the "Impairment Tables";

omit a superfluous subsection relating to special benefit and a note relating to that subsection; and

correct date references in certain parenting allowance newly arrived resident's waiting period provisions so as to align those references with other social security payments such as job search allowance and newstart allowance, as originally intended.

2. Schedule and clause involved in the changes

Clause 2: specifies the commencement date of items 1 to 5 of Schedule 5 as the day of Royal Assent and specifies the commencement date of items 6 to 8 as 1 July 1995, immediately after the commencement of Schedule 1 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*.

Schedule 5: corrects note and date references and omits a superfluous subsection and note.

3. Explanation of the changes

Item 1 corrects an incorrect note reference to the definition of inhabitant of Australia.

Items 2 and 3 correct note references to the Impairment Tables.

Items 4 and 5 omit a superfluous subsection and note relating to special benefit.

Items 6 to 8 correct incorrect date references in certain parenting allowance newly arrived resident's waiting period provisions.

Sections 921 and 922 were modelled on equivalent newly arrived resident's waiting period provisions that applied, for example, to job search allowance or newstart allowance. Accordingly, the date references in those sections should have been to "1 September 1994", the same date that operated in respect of job search allowance and newstart allowance" not to (effectively) 1 July 1995, the date of the commencement of sections 921 and 922.

4. Commencement

The amendments made by **items 1 to 5** commence on Royal Assent.

The amendments made by **Items 6 to 8** are taken to have commenced on 1 July 1995, immediately after the commencement of Schedule 1 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*.





