

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SECURITY (NON-BUDGET MEASURES) LEGISLATION
AMENDMENT BILL 1994**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

**(Circulated by the authority of the Hon Janice Crosio MP,
Parliamentary Secretary to the Minister for Social Security,
representing the Minister for Social Security)**



SOCIAL SECURITY (NON-BUDGET MEASURES) LEGISLATION AMENDMENT ACT 1994

OUTLINE AND FINANCIAL IMPACT STATEMENT

These amendments affect the *Social Security Act 1991* (the Principal Act) and are revenue neutral.

Interview requirement for claimants of sole parent pension and bereavement allowance

Division 7 of Part 2 of the *Social Security (Non-Budget Measures) Legislation Amendment Bill 1994* (the Bill) contains proposed amendments to the sole parent pension (SPP) and bereavement allowance (BA) modules of the Principal Act. If enacted, the amendments would allow the Secretary to reject a claim for SPP or BA if an applicant for one of those payments fails to attend an interview (or produce information) requested for the purposes of the determination of the applicant's claim.

The proposed amendments require that the request to attend an interview, which may be with less than 14 days' notice, must be "reasonable". They also provide that, if a person fails to attend an interview - resulting in the rejection of the claim - but subsequently satisfies the Secretary that he or she had a reasonable excuse for not complying with the requirement, then the Secretary may determine that the person's claim was *not* rejected.

It is proposed to omit these amendments.

Debt recovery - Period of grace for payments in excess of the correct maximum payment rate where customers notify

Division 19 of Part 2 of the Bill contains proposed amendments that are intended both to clarify and to simplify the debt creation provisions of the Principal Act. In the time since the introduction of the Bill, it has been discovered that the relevant provisions may not, in fact, operate as intended.

It was originally intended that the Principal Act should be amended to provide for a period of grace in relation to customers who have been paid benefits in excess of the maximum payment rate applicable to them *if* the customer has complied with the recipient notification obligations applicable to his or her payment. In those circumstances, the customer was to be allowed to keep any payments calculated using an incorrect maximum payment rate *up to the end of the relevant notification period*.

In order to achieve this result, various proposed amendments to the Principal Act were drafted. Included in those amendments are proposed amendments that operate in relation to each of the various social security payment types. An example is contained in clause 47 of the Bill, which proposes to insert a new section 73B into the age pension module of the Principal Act.

As originally drafted, proposed new section 73B would appear to create a period of grace in relation to *all* cases in which a customer - who has complied with his or her section 68 notification obligations - is paid more than he or she was entitled. If this is the case, it is contrary to what was intended.

A further problem has been identified in that proposed new section 73B (and its equivalents) would appear to preclude the Department from effecting a manual reduction of a customer's rate of payment prior to the automatic reduction coming into effect. This is both unintended and inconsistent with the equivalent provisions relating to automatic termination (see, for example, section 72).

The proposed amendments clarify (and give effect to) the original intent of the provisions contained in the Bill.

Debts of a particular class

Subparagraph 251(1)(b)(ii) of the *Social Security Act 1947* (the 1947 Act) allowed the Minister for Social Security to specify a particular class of debt that could be waived. In the rewrite of the 1947 Act in 1991, this provision was not included in the Principal Act.

The Department of Social Security is proposing to develop data matching such that its records will be matched with the Australian Taxation Office's Reportable Payments System (RPS) in relation to the incomes, in the first instance, of workers in the textile and fishing industries.

Prior to the data matching, the Department of Social Security proposes to offer a special arrangement for workers in these industries under which any debt arising under the Principal Act will be waived and a guarantee not to prosecute will be made to those who volunteer advice to the Department of their true circumstances.

Without the data matching, this type of debt (that is, undeclared income from non-PAYE workers) is unlikely to be detected. Although waiving these debts will result in some loss to Commonwealth revenue, this loss will be offset by savings that will occur due to resulting reductions in rates and cancellation of payments.

The Principal Act allows for certain debts to be waived under section 1237A. Section 1237A does not allow the special arrangement debts to be waived.

To give effect to the special arrangement, it is proposed to amend the Principal Act by introducing a new waiver provision (new section 1237AB) which would enable specified classes of debts to be waived.

Amendments consequential upon the introduction of an income support supplement

From 20 March 1995, a new payment type, income support supplement (ISS), will be introduced by amendments to the *Veterans' Entitlements Act 1986* (VEA). The relevant legislation containing these amendments is the Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994. ISS will be available to eligible armed service widows and widowers.

Currently, armed services widows and widowers receiving a pension under Part II or IV of the VEA may also qualify for certain social security payments. The rate of social security payment is, however, capped (see, for example, subsections 1064(5) and (6) of the Principal Act). The ISS is intended to replace these social security income support payments.

To qualify for carer pension under the current rules, a person must be caring for a severely handicapped person and either the handicapped person is receiving a social security pension or benefit or a service pension or the handicapped person is not receiving a social security or service pension by reason of failing to meet the relevant residence requirements (see paragraphs 198(1)(d) and 198(1A)(b) of the Principal Act).

Carer pensioners looking after severely handicapped armed services widows or widowers who transfer from a social security pension or benefit to ISS will lose qualification for carer pension if the current rules remain unchanged. This is because the caree is no longer receiving a social security pension or benefit or a service pension as required under the qualification conditions. Similarly, carers who apply for carer pension after 20 March 1995 and who are looking after severely handicapped armed services widows or widowers who are receiving an ISS will not qualify for carer pension.

This is an unintended consequence of the introduction of the ISS and is rectified by amendments to the Principal Act made by **Government Amendment Number 23**.

In addition, the introduction of the ISS impacts on bereavement payment for carer pensioners. It is proposed that carer pensioners do not lose entitlement to bereavement payments because the caree receives an ISS payment. In effect, this would mean that ISS payments would be treated in a similar manner to service pension for the purposes of carer pension bereavement provisions.

The amendments are revenue neutral as they preserve entitlement to carer pension and bereavement payments that was never intended to be adversely affected by the introduction of the ISS.

NOTES ON AMENDMENTS

General description of amendments

Interview requirement for claimants of sole parent pension (SPP) and bereavement allowance (BA)

Government Amendment Number 2 omits Division 7 of Part 2 of the Bill relating to the interview requirement for claimants of SPP and BA.

The proposed amendments are to be withdrawn.

Debt recovery - Period of grace for payments in excess of the correct maximum payment rate where customers notify

Clauses 47, 52, 57, 62, 67, 72, 77, 82, 87, 92, 97, 102, 107, 112, 117, 122, 126, 131 and 136 of the Bill insert new sections 73B (age pension), 141A (disability support pension), 177A (wife pension), 227B (carer pension), 290B (sole parent pension), 347A (bereavement allowance), 395A (widow B pension), 408MAA (widow allowance), 456A (disability wage supplement), 582A (job search allowance), 660EA (newstart allowance), 660XJFA (mature age allowance), 728GA (sickness allowance), 771NHA (partner allowance), 814A (special needs pension), 876A (family payment), 948A (home child care allowance), 951FA (parenting allowance) and 983A (child disability allowance) into the Principal Act.

The new sections provide for automatic reduction of the rate of a person's social security payment in situations where the person has *complied* with a recipient notification notice. New section 73B, for example, provides that if:

- (a) a person who is receiving age pension is given a notice under section 68; and
- (b) the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within the notification period; and
- (c) the event or change in circumstances occurs; and

- (d) the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change in circumstances, the person's rate of pension is to be reduced;

then the pension continues to be payable to the person, *without reduction*, until the end of the notification period and *then* becomes payable at the reduced rate.

Government Amendment Number 3 amends paragraph (e) to read:

- (e) because of the occurrence of the event or change in circumstances:
 - (i) the maximum payment rate for calculating the person's rate of pension is to be reduced; and
 - (ii) as a result, the person's rate of pension is to be reduced;.

This part of the amendment is intended to ensure that the operation of the provision is confined to situations where customers have complied with the recipient notification obligations applicable to their payment and have subsequently been paid benefits calculated using an incorrect maximum payment rate.

Government Amendment Number 3 also adds a further paragraph (f) which provides (as a further pre-condition to the application of the period of grace) that:

- (f) the person's rate of pension is not reduced before the end of the notification period;.

This part of the amendment ensures that, as in the case of automatic *terminations* of age pension (see, for example, section 72), the power to reduce the payment manually is retained.

Government Amendments Numbers 4-21 make similar amendments in relation to proposed new sections 141A (disability support pension), 177A (wife pension), 227B (carer pension), 290B (sole parent pension), 347A (bereavement allowance), 395A (widow B pension), 408MAA (widow allowance), 456A (disability wage supplement), 582A (job search allowance), 660EA (newstart allowance), 660XJFA (mature age allowance), 728GA (sickness allowance), 771NHA (partner allowance), 814A (special needs pension), 876A (family payment), 948A (home child care allowance), 951FA (parenting allowance) and 983A (child disability allowance) to the Principal Act.

Debts of a particular class

Government Amendment Number 22 inserts clauses 140A and 140B into the Bill.

Clause 140A amends section 1236A of the Principal Act (the application provision for waiver of debts) by ensuring that the new waiver provision for a particular class of debts is able to be applied.

Clause 140B of the Bill inserts a new provision, section 1237AB, into the Principal Act.

New subsection 1237AB(1) provides that the Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover debts arising under or as result of the Principal Act that are included in a class of debts specified by the Minister for Social Security by notice published in the *Gazette*.

New subsection 1237AB(2) states when the waiver decision takes effect.

If a day is not specified in the waiver decision, the decision takes effect on the day on which it was made. If a day is specified in the waiver decision, the decision takes effect on the specified day whether it falls before, after, or on the day of the decision.

The amendments will commence on the day of Royal Assent.

Amendments consequential upon the introduction of an income support supplement

Government Amendment Number 23 inserts a new Division 20 B into the Social Security (Non-Budget Measures) Legislation Amendment Bill 1994. The amendments made by **Government Amendment Number 23** are consequential upon the introduction of income support supplement (ISS) into the *Veterans' Entitlements Act 1986*.

New clause 140C inserts a new definition into subsection 23(1) of the Principal Act. "Income support supplement" means an income support supplement under Part IIIA of the *Veterans' Entitlements Act*.

New clause 140D amends section 198 of the Principal Act. This section outlines the qualification conditions that must be satisfied by a customer claiming carer pension. Among other conditions, a person must be caring for a severely handicapped person and either the handicapped person is receiving a social security pension or benefit or a service pension or the handicapped person is not receiving a social security or service pension by reason of failing to meet the relevant residence requirements (see paragraphs 198(1)(d) and 198(1A)(b) of the Principal Act).

New clause 140D amends paragraphs 198(1)(d) and 198(1A)(b) by inserting a reference in each provision to an income support supplement after the current references to a service pension.

Section 235 of the Principal Act allows for continuation of carer pension for the bereavement period where the person cared for is not the carer's partner and dies. Under subsection 235(3), the carer can elect not to receive bereavement payments and instead receive any other payments to which the carer may be entitled. If a carer makes such an election, paragraph 235(4)(a) provides that the Principal Act or Part III of the *Veterans' Entitlement Act* (that provides for payment of service pension) has effect accordingly.

New clause 140E inserts a reference to Part IIIA of the *Veterans' Entitlement Act* (that provides for payment of the ISS) into paragraph 235(4)(a) of the Principal Act after the current reference to Part III of the *Veterans' Entitlements Act*.

Section 236A of the Principal Act enables the carer, in certain circumstances, to convert bereavement payments into a lump sum. A lump sum is payable to a carer pensioner if the carer is caring for another person who is not the carer's partner, the caree dies and, immediately before the death, either

- the caree was not a member of a couple; or
- the caree was a member of a couple and the caree's partner was not receiving a social security pension or benefit, youth training allowance or a service pension.

If the partner of the caree was receiving one of these payments, the partner would receive bereavement payments in respect of the caree under other provisions.

Accordingly, new clause 140F amends subparagraph 236A(1)(d)(ii)(C) of the Principal Act to insert a reference to income support supplement after the current reference to a service pension.

Section 237 of the Principal Act outlines the qualification conditions for bereavement payment where the partner of a carer pensioner dies. Payments to cover the bereavement period are available if, immediately before the partner's death, the partner was receiving certain social security pensions or allowances or a service pension. This provision is amended by new clause 140G by the insertion of a reference to income support supplement into subparagraph 237(1)(d)(viii).

Section 238 of the Principal Act specifies the amount payable to a person who qualifies for payments under section 237. The amount is worked out by reference to amount the deceased partner would have received but for the death. Paragraph 238(1)(b) deals with the situation where a deceased partner was receiving a service pension. As the service pension and income support supplement payment cycles are similar, new clause 140H inserts references to income support supplement and Part IIIA of the Veterans' Entitlement Act into this provision.

Subsection 242(1) of the Principal Act allows for adjustment of bereavement payments if an amount to which the deceased partner would have been entitled has been paid under the Principal Act or Part III of the Veterans' Entitlements Act and the Secretary is not satisfied that the surviving carer pensioner partner has not had the benefit of that amount.

New clause 140I(a) inserts a reference to Part IIIA of the Veterans' Entitlements Act into paragraph 242(12)(b) of the Principal Act.

Subsection 242(2) deals with the situation where amounts to which the deceased partner would have been entitled under the Principal Act or Part III of the Veterans' Entitlements Act have been paid into an account with a financial institution and those amounts are paid to the surviving carer pensioner partner. If the amounts paid to the carer pensioner do not exceed those amounts to which the deceased partner would have been entitled if the partner had not died, then the financial institution is not liable to any action, claim or demand by the Commonwealth or anyone else in respect of the payments to the carer pensioner.

New clause 140I(b) inserts a reference to Part IIIA of the Veterans' Entitlements Act into paragraph 242(2)(b) of the Principal Act.

Subsection 246(1) of the Principal Act provides that if a carer pensioner dies and either the deceased was not a member of a couple or was a member of a couple and the person's partner was not receiving a social security or service pension, then the Secretary has a discretion to pay an instalment of carer pension to another appropriate person. This provision is amended by new clause 140J by the insertion of a reference to an income support supplement into subparagraph 246(1)(b)(ii)(C) after the current reference to service pension.

Government Amendment Number 1 provides that these amendments commence on 20 March 1995 (the date from which income support supplement will be introduced).





