

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EMPLOYMENT SERVICES (CONSEQUENTIAL AMENDMENTS) BILL
1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Education and Training,
the Honourable Simon Crean MP)

EMPLOYMENT SERVICES (CONSEQUENTIAL AMENDMENTS) BILL 1994

(Amendments and clauses to be moved on behalf of the Government)

OUTLINE

These amendments to the *Employment Services (Consequential Amendments) Bill 1994* would provide for provisions relating to extension of the *Freedom of Information Act 1982* and the *Privacy Act 1988* to operate in an alternative way to the current provisions of the Bill. Under the current provisions, the identification of what documents are subject to the *Freedom of Information Act 1982* can be found in Schedule 2 to that Act. There are complementary provisions in the *Privacy Act 1988*.

Amendments to the Bill which would amend the *Ombudsman Act 1976* are proposed to allow for the transfer of information relevant to the operation of the case management system from the Ombudsman to the Employment Services Regulatory Authority (ESRA). These amendments follow from a recommendation of the House of Representatives Standing Committee on Legal and Constitutional Affairs which recently tabled an advisory report on the Bill.

As this Bill would amend the *Privacy Act 1988*, the opportunity is being taken to propose a minor technical amendment to *Australian Capital Territory Government Service (Consequential Provisions) Act 1994*.

Amendments to the Bill which would, in turn, amend the *Social Security Act 1991* in relation to deferment periods for the payment of job search and newstart allowances are also proposed. The proposed amendments would provide for the following:

- . removal of the requirement for any period of notice to be given for the commencement of the deferment period;
- . removal of the requirement for a formal determination of the day a deferment period starts;
- . replacement of the requirement that a deferment period commences after a notice is received to commencement when a notice is given;
- . clarification of the operation of the deferment and waiting period by permitting time spent off allowance after notice is given, to count toward the deferment period; and
- . other technical amendments.

PURPOSE OF THE AMENDMENTS

The purpose of the current provisions relating to amendments to the *Freedom of Information Act 1982* and the *Privacy Act 1988* is to extend the operation of those Acts to the case management services provided by private sector case managers. The amendments would not change the policy but provide for a simpler and more direct implementation of that policy.

The amendments to affect the *Ombudsman Act 1976* will enable the Ombudsman to provide information on matters relevant to the operation of the case management system without the need to make a formal report to the responsible Minister in all cases.

The purpose of the amendments which would, in turn, amend the *Social Security Act 1991* is to address difficulties created by recent amendments to the *Social Security Legislation Amendment Bill (No 2) 1994*. The amendments related to the reciprocal obligations of persons who receive Job Search Allowance or Newstart Allowance under that Act.

The amendments were intended to provide for a period of notice to an allowance recipient before a deferment period was imposed because she or he had breached her or his obligations under the Act. The intended effect was that a person would receive an additional two instalments (four weeks) of Job Search Allowance or Newstart allowance before payment of allowance was cancelled.

In the Working Nation White Paper, to complement the increased assistance to be provided to job seekers, the Government announced enhanced reciprocal obligations for those receiving benefits. The Government believes that provision of a period of notice before payment of an allowance is deferred sends the wrong signals to job seekers in regard to the importance of their reciprocal obligations.

Nevertheless the Government agrees that the legislation should require that allowance recipients be notified of the imposition of a deferment period in order to avoid the situation of people ceasing to receive payment without explanation.

The amendments have also raised a number of matters of administrative and technical concern for both the Department of Social Security and the Department of Employment Education and Training who are responsible for the administration of this legislation. For example, a deferment period cannot be expressed to commence until after the notice specifying the commencement date is actually received by the client. Therefore the decision maker is being asked to make a decision on an event about which he or she could not be certain at the time the decision is made.

FINANCIAL IMPACT

There would be no financial impact on the Commonwealth arising from these amendments.

NOTES ON CLAUSES

Amendment Number 1

Subclause 2(1) would be amended to clarify the commencement of the proposed new subclause 2(1A).

Amendment Number 2

A new subclause 2(1A) is to be added to the commencement provisions of the Bill to allow for amendment number 18, which would insert a new Division 4 of Part 6 of the Bill, to commence on Royal Assent.

Amendment Number 3

Clause 8 - Employment Education and Training Act- Transitional provision - continuation of national committee.

The reference to a national committee established under subclause 11(1) of the Employment Services Bill would be altered to a reference to clause 11. The amendment would be a consequence of Government amendment number 1 to the main Bill, which would substitute a new clause 11.

Amendment Number 4

Clause 9 - Employment Education and Training Act- Transitional provision - continuation of other committees.

The amendment would omit clause 9, which relates to the continuation of other CES committees created under the *Employment, Education and Training Act 1988*, there being no relevant committees in respect of which the transitional provisions would operate.

Amendment Number 5

Clause 12: Freedom of Information Act 1982 - Interpretation

A new clause 12 would be substituted which is substantially similar to the current clause twelve but would have the effect of including the reference to an **eligible case manager** in the definition of **agency** rather than in the definition of **prescribed authority** in section 4 of the *Freedom of Information Act 1982*.

Amendment Number 6

Clause 13: Freedom of Information Act 1982 - Insertion of new section

This amendment would substitute a new section 13 for the current provision. The new provision would include a new section 6B in the *Freedom of Information Act 1982*. This would provide for rights of access under the *Freedom of Information Act 1982* to a document of an eligible case manager, if the document relates to the provision of case management services to a person referred under Part 4.3 of the *Employment Services Act 1994* or the performance of a function conferred on a case manager under that Act. The amendment would move the reference to documents covered under the *Freedom of Information Act 1982* from Schedule 2, as currently proposed, to the proposed new section 6B of that Act.

Amendment Numbers 7, 8 & 9

Clause 16 - Ombudsman Act 1976 - Interpretation

Amendment number 7 would substitute "definitions" for "definition" in paragraph (k) because of the additional definition that would be inserted by amendment numbers 8 and 9.

Amendment number 8 would insert a definition of **case manager** in section 3 of the Principal Act that would have the same meaning as in the *Employment Services Act 1994*.

Amendment number 9 would insert a definition of **ESRA** in section 3 of the Principal Act that would mean the Employment Services Regulatory Authority established under the *Employment Services Act 1994*.

Amendment Number 10

Clause 18 - Ombudsman Act 1976

Proposed subclause 6(4I) of the Principal Act would be omitted because the definition of **ESRA** would be included in section 3 of the Principal Act.

Amendment Number 11

Clause 18A - Ombudsman Act 1976 - Disclosure of Information by Ombudsman

Recommendation 14 of the advisory report on the Employment Services Bills by the House of Representatives Standing Committee on Legal and Constitutional Affairs suggested amendments to provide for the Ombudsman to be able to advise ESRA directly about complaints where relevant to ESRA's functions. The Committee also suggested that the natural justice safeguards which apply to reports to Ministers and the Government should also apply to such reports to ESRA. The proposed amendment is in response to the Committee's recommendation.

A new subclause 35A(3A) of the Principle Act would be added to provide that that Act does not prevent the Ombudsman from disclosing information or making a statement to ESRA in the following circumstances:

- the Ombudsman has information about a particular case manager; and
- the information is relevant to the performance of ESRA's functions or the exercise of ESRA's powers; and
- in the opinion of the Ombudsman it is either in the interest of ESRA, the case manager or a complainant, or otherwise in the public interest, to disclose the information or to make a statement to ESRA.

Subclause 35A(3B) would provide that subclause 35A(3A) would not, by implication, limit the generality of subsection 35A(1) which deals with the disclosure of information or the making of a statement to a person or to the public or a section of the public when the Ombudsman considers such disclosure or statement to be in the interests of a Department, a prescribed authority or person or otherwise in the public interest.

Subclause 35A(3C) would provide that the Ombudsman must not disclose information or make a statement under subclause 35A(3A) if the information was obtained in the course of an investigation and the disclosure or the making of a statement is likely to interfere with that or any other investigation under the Act or the making of a report under the Act.

Subclause 35A(3D) would provide that the Ombudsman must not disclose information or make a statement under subclause 35A(3A) if the information was obtained in the course of making preliminary inquiries under section 7A of the Principal Act and the disclosure or the making of a statement is likely to interfere with those or any other preliminary inquiries, the carrying out of an investigation, or the making of a report under the Act.

Subclause 35A(3E) would provide that the Ombudsman, in disclosing information or making a statement under subclause 35A(3A), must not:

- set out opinions which are critical of a case manager or person unless they have been given the chance to make submissions in relation to the information or statement, either orally or in writing; or
- disclose the name of a complainant or any matter that would allow a complainant to be identified unless it is fair and reasonable in all the circumstances to do so.

Amendment Number 12

Clause 22 - Privacy Act 1988

This provision would amend clause 22 to remove the reference to paragraph 7(1)(c) of the *Privacy Act 1988* which deals with Schedule 2 of the *Freedom of Information Act 1982*. The reference is no longer required because of the amendments described above.

Amendment Numbers 13 & 14

Clause 22 - Privacy Act 1988

These amendments would effect a minor re-ordering of provisions in Section 7 of the *Privacy Act 1988* to take account of recent amendments to that Act.

Amendment Number 15

Clause 25A - Consequential amendment of the Australian Capital Territory Government Service (Consequential Provisions) Act 1994

As this Bill would amend the *Privacy Act 1988*, the opportunity is being taken to propose a minor technical amendment to *Australian Capital Territory Government Service (Consequential Provisions) Act 1994*. The amendment is a technical correction and would change the references at the end of each paragraph from "and" to "or". The amendment does not represent any change in policy.

Amendment Number 16

Clause 30 - Social Security Act 1991 - Insertion of notes

The reference to sections 543 and 627 of the *Social Security Act 1991* in clause 30(1) would be changed to sections 546C and 630C to reflect recent amendments to that Act.

Amendment Number 17

Clause 30 - Social Security Act 1991 - Insertion of notes

The note proposed to be included at the end of sections 546C and 630C would be amended to include a reference to section 26A of the *Employment Services Act 1994*. This would result from Government amendments to be proposed to the Employment Services Bill.

Amendment Number 18

Clauses 31 to 36 - Social Security Act 1991 - Deferment periods

A new Division 4 of Part 6 of the Bill relating to deferment periods (as defined in the Schedule to these amendments) for job search allowance and newstart allowance is proposed to be added.

Clause 31

This clause is proposed to be added to state that the object of the Division is to make amendments to the *Social Security Act 1991* relating to deferment periods for job search allowance and newstart allowance.

Clause 32

New clause 546B (Job Search Allowance Activity Test Breaches)

This clause would substitute a new clause 546B of the *Social Security Act 1991*. The clause would provide that the Secretary must give notice to a person of the commencement of an automatic deferment period and that such period commences on the day the notice is given.

Clauses 546B(3) & (4) provide that, if a person is subject to one or more pre-existing deferment periods at the time notice of an additional deferment period is given, then that additional deferment period will commence after the completion of any pre-existing deferment period(s).

The effect of clause 546B(6) is that, if a job search allowance has ceased to be payable to a person before what would have been the commencement date of a deferment period, then the period for which the job search allowance has ceased to be payable will be taken to form part of the deferment period. This allows for a person to serve part or all of a deferment period before reclaiming benefit.

New clause 546BA

The effect of this clause would be to allow a person to whom an automatic deferment period applied, because of circumstances that arose before a claim for allowance was made, to be regarded as having served the whole or part of that deferment period prior to making a claim for allowance. The provision would have effect in relation to circumstances in which the person's unemployment was due to his or her voluntary act or misconduct (cf ss 544 & 545 of the *Social Security Act 1991*). Any part of the deferment period remaining to be served when a claim is made will be served in addition to any waiting period that might also apply to the claimant.

New clause 546BB

A new clause 546BB would be inserted in the *Social Security Act 1991* to simplify the relationship between a waiting period that a person may be required to serve under that Act and any contemporaneous automatic deferment period that may be imposed. This can occur when a person makes a new claim for benefits and is either already the subject of a deferment period or circumstances are such that an additional deferment period is required to be imposed.

Clause 546BB(1) would provide that a deferment period that would otherwise have commenced during a waiting period would be taken to commence immediately following the end of that waiting period.

Clause 546BB(2) would provide that a deferment is suspended for the duration of any waiting period that might be applicable to a person.

Clause 546BB(3) would provide that where a person is the subject of waiting periods that overlap, then the reference to the end of a waiting period under subclauses (1) & (2) is a reference to the end of the later waiting period.

Clause 546BB(4) would provide that "waiting period" includes a liquid assets test waiting period under section 519 of the *Social Security Act 1991*.

New clause 546BC

The purpose of clause 546E is to make it clear that an automatic deferment period may only commence because of the application of clauses 546B, 546BA and 546BB but that these clauses do not prevent an allowance ceasing to be payable for reasons other than the application of an automatic deferment period.

Clause 33

New clause 547B (Job Search Administrative Breaches)

A new clause 547B of the *Social Security Act 1991* would be substituted. The clause would provide that the Secretary must give notice to a person of the commencement of an automatic deferment period and that such period commences on the day the notice is given.

Clauses 547B(3) & (4) provide that, if a person is subject to one or more pre-existing deferment periods at the time notice of an additional deferment period is given, then that additional deferment period will commence after the completion of any pre-existing deferment period(s).

The effect of clause 547B(6) is that, if a job search allowance has ceased to be payable to a person before what would have been the commencement date of a deferment period, then the period for which the job search allowance has ceased to be payable will be taken to form part of the deferment period. This allows for a person to serve part or all of a deferment period before reclaiming benefit.

New clause 547C

A new clause 547C would be inserted in the *Social Security Act 1991* to simplify the relationship between a waiting period that a person may be required to serve under that Act and any contemporaneous automatic deferment period that may be imposed. This can occur when a person makes a new claim for benefits and is either already the subject of a deferment period or circumstances are such that an additional deferment period is required to be imposed.

Clause 547C(1) would provide that a deferment period that would otherwise have commenced during a waiting period would be taken to commence immediately following the end of that waiting period.

Clause 547C(2) would provide that a deferment period is suspended for the duration of any waiting period that might be applicable to a person.

Clause 547C(3) would provide that where a person is the subject of waiting periods that overlap, then the reference to the end of a waiting period under subclauses (1) & (2) is a reference to the end of the later waiting period.

Clause 547C(4) would provide that "waiting period" includes a liquid assets test waiting period under section 519 of the *Social Security Act 1991*.

New clause 547D

The purpose of clause 547D is to make it clear that an automatic deferment period may only commence because of the application of clauses 547B and 547C but that these clauses do not prevent an allowance ceasing to be payable for reasons other than the application of an automatic deferment period.

Clause 34

New clause 630B (Newstart Allowance Activity Test Breaches)

This clause would substitute a new clause 630B of the *Social Security Act 1991*. The clause would provide that the Secretary must give notice to a person of the commencement of an automatic deferment period and that such period commences on the day the notice is given.

Clauses 630B(3) & (4) provide that, if a person is subject to one or more pre-existing deferment periods at the time notice of an additional deferment period is given, then that additional deferment period will commence after the completion of any pre-existing deferment period(s).

The effect of clause 630B(6) is that, if a newstart allowance has ceased to be payable to a person before what would have been the commencement date of a deferment period, then the period for which the newstart allowance has ceased to be payable will be taken to form part of the deferment period. This allows for a person to serve part or all of a deferment period before reclaiming benefit.

New clause 630BA

The effect of this clause would be to allow a person to whom an automatic deferment period applied, because of circumstances that arose before a claim for allowance was made, to be regarded as having served the whole or part of that deferment period prior to making a claim for allowance. The provision would have effect in relation to circumstances in which the person's unemployment was due to his or her voluntary act or misconduct (cf ss 628 & 629 of the *Social Security Act 1991*). Any part of the deferment period remaining to be served when a claim is made will be served in addition to any waiting period that might also apply to the claimant.

New clause 630BB

A new clause 630BB would be inserted in the *Social Security Act 1991* to simplify the relationship between a waiting period that a person may be required to serve under that Act and any contemporaneous automatic deferment period that may be imposed. This can occur when a person makes a new claim for benefits and is either already the subject of a deferment period or circumstances are such that an additional deferment period is required to be imposed.

Clause 630BB(1) would provide that a deferment period that would otherwise have commenced during a waiting period would be taken to commence immediately following the end of that waiting period.

Clause 630BB(2) would provide that a deferment is suspended for the duration of any waiting period that might be applicable to a person.

Clause 630BB(3) would provide that where a person is the subject of waiting periods that overlap, then the reference to the end of a waiting period under subclauses (1) & (2) is a reference to the end of the later waiting period.

Clause 630BB(4) would provide that "waiting period" includes a liquid assets test waiting period under section 598 of the *Social Security Act 1991*.

New clause 630BC

The purpose of clause 630BC is to make it clear that an automatic deferment period may only commence because of the application of clauses 630B, 630BA and 630BB but that these clauses do not prevent an allowance ceasing to be payable for reasons other than the application of an automatic deferment period.

Clause 35

New clause 631B (Newstart Allowance Administrative Breaches)

This clause would substitute a new clause 631B of the *Social Security Act 1991*. The clause would provide that the Secretary must give notice to a person of the commencement of an automatic deferment period and that such period commences on the day the notice is given.

Clauses 631B(3) & (4) provide that, if a person is subject to one or more pre-existing deferment periods at the time notice of an additional deferment period is given, then that additional deferment period will commence after the completion of any pre-existing deferment period(s).

The effect of clause 631B(6) is that, if a newstart allowance has ceased to be payable to a person before what would have been the commencement date of a deferment period, then the period for which the newstart allowance has ceased to be payable will be taken to form part of the deferment period. This allows for a person to serve part or all of a deferment period before reclaiming benefit.

New clause 631C

A new clause 631C would be inserted in the *Social Security Act 1991* to simplify the relationship between a waiting period that a person may be required to serve under that Act and any contemporaneous automatic deferment period that may be imposed. This can occur when a person makes a new claim for benefits and is either already the subject of a deferment period or circumstances are such that an additional deferment period is required to be imposed.

Clause 631C(1) would provide that a deferment period that would otherwise have commenced during a waiting period would be taken to commence immediately following the end of that waiting period.

Clause 631C(2) would provide that a deferment is suspended for the duration of any waiting period that might be applicable to a person.

Clause 631C(3) would provide that where a person is the subject of waiting periods that overlap, then the reference to the end of a waiting period under subclauses (1) & (2) is a reference to the end of the later waiting period.

Clause 631C(4) would provide that "waiting period" includes a liquid assets test waiting period under section 598 of the *Social Security Act 1991*.

New clause 631D

The purpose of clause 631D is to make it clear that an automatic deferment period may only commence because of the application of clauses 631B and 631C but that these clauses do not prevent an allowance ceasing to be payable for reasons other than the application of an automatic deferment period.

Clause 36

This clause provides for further amendments relating to deferment periods.

Amendments are required to the index of terms in the *Social Security Act 1991*.

Subsection 23(1) of the *Social Security Act 1991* would be amended to include a definition of "deferment period".

Consequential amendments are proposed to certain provisions in the *Social Security Act 1991* relating to activity test deferment periods because of the previous amendments which would provide that a deferment period would commence upon the giving of the appropriate notice. Those provisions are: subsections 542(1), 542A(1), 542B(1) which relate to job search activity test breaches and subsections 624(1), 625(1) and 626(1) which relate to newstart activity test breaches.

A minor technical amendment is proposed for section 630A(6)(b) of the *Social Security Act 1991* to correct the reference to become "job search allowance".

Other technical amendments are proposed to correct subdivision headings in relevant areas of the *Social Security Act 1991* and item references in Schedule 1A to that Act.



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