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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister  
representing the Minister for Social Security  
the Hon I B C Wilson MP)

## OUTLINE

This Bill proposes to amend the Social Security Act 1947 in three respects -

- (1) it extends qualification for sickness benefit to certain persons who, because they cannot show an actual loss of income arising from their incapacity for work, are not qualified to receive sickness benefit under current arrangements;
- (2) it extends qualification for family allowance and additional pension or benefit in respect of full-time student children who, having left school, college or university, do not attract payment of family allowance, or additional pension or benefit under current arrangements. The maximum period for the extension of eligibility is the 6 weeks following cessation of studies during which unemployment benefit would not be payable to the former student; and
- (3) it allows a person who qualifies for sickness benefit to be paid supplementary allowance, without having to undergo the statutory 6 week waiting period, where the person was in receipt of supplementary assistance or incentive allowance (or an equivalent amount in the case of a person in receipt of a rehabilitation allowance) immediately before becoming qualified for sickness benefit.

SOCIAL SECURITY AMENDMENT BILL 1982Clause 1 : Short title, etc

By this clause, the amending Act would be cited as the Social Security Amendment Act 1982, and the Social Security Act 1947 would be referred to in the amending Act as the Principal Act.

Clause 2 : Commencement

By reason of sub-section 5(1A) of the Acts Interpretation Act 1901, an Act comes into operation on the 28th day after the day of the Royal Assent unless the contrary intention appears in the Act. This clause proposes that the amending Act would come into operation on the day on which it receives the Royal Assent.

Clause 3 : Certain persons deemed to continue to receive  
full-time education

Under current arrangements, a full-time student more than 16 years of age but less than 25 years of age may be considered to be a child of a person, with the consequence that family allowance (including double orphan's pension and handicapped child's allowance), additional pension or benefit, or funeral benefit may be payable under the Principal Act in respect of that child. When the student ceases studies, the payments could no longer be made.

Clause 3(1) proposes to insert a new section 6B in the Principal Act which would enable these payments to continue, in effect, during the 6 week period after the student ceases studies. The specific period is linked to the period in which unemployment benefit is not payable to a school-leaver by virtue of section 120A of the Principal Act. In general, that period is 6 weeks after the student ceases studies.

The effect of the new section 6B would be that, during the 6 week period that a former student is not able to receive unemployment benefit although qualified to be paid that benefit, the family of the former student could continue to receive the payment being made before the student ceased studies. However, the other eligibility conditions in respect of a full-time student child would still have to be satisfied. In particular, the former student would have to continue to be wholly or substantially dependent upon the person receiving the payment.

Clauses 3(2) and (3) propose special application rules for the operation of the new section 6B, which are designed to ensure that students ceasing studies at the end of the normal 1982 school year could continue to attract payment under the new provision.

Clause 4 : Family allowance to cease in certain circumstances

This clause is consequent upon the amendment proposed by clause 3, and is technical only.

Clause 5 : Sickness benefits

Under current arrangements, a person may qualify for sickness benefit under the Principal Act if the person is temporarily incapacitated for work and, in consequence, has suffered a loss of salary, wages or other income. The loss of income must be an actual loss of income, rather than a possible loss of income. This clause proposes to change these arrangements.

Clause 5(1)(a) is a technical amendment only.

Clause 5(1)(b) proposes to omit the current provision requiring an actual loss of income arising from an incapacity for work (paragraph 108(1)(c) of the Principal Act), and to substitute a new provision with a broader loss of income test. The new paragraph 108(1)(c) would contain two elements. The first, sub-paragraph 108(1)(c)(i), would repeat the current situation. The second, sub-paragraph 108(1)(c)(ii), would enable a person to qualify for sickness benefit if he would have qualified for unemployment benefit under the Principal Act but for his

incapacity for work. Such a person would not have to show any loss of income in order to so qualify.

Because of the complex nature of the test, it was found necessary to provide that it be a subjective test vested in the Director-General of Social Security, rather than an objective test which would be difficult to apply.

Clause 5(1)(c) proposes to make special arrangements for those persons who are temporarily incapacitated for work and who were formerly in receipt of invalid pension, sheltered employment allowance or rehabilitation allowance under the Principal Act. That pension and those allowances are related in that they are essentially based upon incapacity for work.

Where such a person ceases to receive invalid pension, sheltered employment allowance or rehabilitation allowance (usually due to ceasing to qualify), he will not be able to show an actual loss of income arising from his incapacity for work. The loss of his pension or allowance would not arise from his incapacity for work.

The clause proposes to insert a new sub-section 108(1AA) in the Principal Act to enable a person to qualify for sickness benefit if he was formerly in receipt of an invalid pension, a sheltered employment allowance or a rehabilitation allowance, and if he meets the conditions of qualification for sickness benefit when that pension or allowance ceases, except for there being an actual loss of income. In addition, the new sub-section 108(1AA) would deem the amount of the pension or allowance previously being paid to be salary, wages or other income for the purposes of section 113 of the Principal Act. Where a wife's pension was also payable, the amount of that pension would be aggregated for this purpose. (Section 113 currently provides for an upper limit upon the amount of sickness benefit payable to a person where the actual loss of income to the person is less than the sickness benefit otherwise payable. See notes to clause 7).

Clause 5(2) is a technical amendment only.

Clause 6 : Supplementary allowance

Under current arrangements, a person in receipt of sickness benefit may be paid a supplementary allowance where the person pays rent or for lodgings. The rate of the allowance is calculated by reference to the amount paid for rent or lodgings and the income of the person. The allowance, payable under section 112A of the Principal Act, does not become payable until the person has been in receipt of sickness benefit for a continuous period of 6 weeks.

This clause proposes to change these arrangements in the case where a person, formerly in receipt of an allowance by way of supplementary assistance (payable to pensioners and supporting parent beneficiaries under the same general conditions as supplementary allowance), an incentive allowance (payable to persons receiving a sheltered employment allowance and, from 1 February 1983, to certain invalid pensioners undertaking training at an activity therapy centre or an adult training centre), or an equivalent amount (payable, from 1 March 1983, to persons in receipt of rehabilitation allowance who were formerly in receipt of supplementary assistance, supplementary allowance or incentive allowance), is qualified for sickness benefit upon ceasing to receive the pension, benefit or allowance which attracted the supplementary assistance, incentive allowance or equivalent amount.

Clause 6(1) proposes to amend section 112A so that a person formerly in receipt of supplementary assistance, incentive allowance or an equivalent amount who receives sickness benefit would not have to wait for 6 weeks before a supplementary allowance may be paid.

The effect of the proposed amendment would be to maintain continuity of payment of the additional amount where the conditions of eligibility for payment are satisfied.

Clause 6(2) is a technical amendment only.

Clause 7 : Limitation of amount payable as sickness benefit

Section 113 of the Principal Act currently provides that the sickness benefit payable to a person shall not exceed the amount of salary, wages or other income that the person has lost by reason of his incapacity.

In consequence of the amendments proposed by clause 5, this clause proposes to re-structure section 113 to make necessary changes.

The new paragraph 113(a) would reflect both the current section 113 and the amendment proposed by clause 5(1)(c) insofar as it relates to section 113.

The new paragraph 113(b) would provide that, where a person qualifies for sickness benefit by virtue of the new sub-paragraph 108(1)(c) (ii) (ie the person would, but for his incapacity for work, have qualified for unemployment benefit), the rate of sickness benefit payable could not exceed the rate of unemployment benefit that would be payable if the person were receiving unemployment benefit.

Clause 8 : Waiting Period

Under paragraph 119(2)(a) of the Principal Act, a person to whom sickness benefit is payable must undergo a 7 day waiting period before the benefit is paid.

Clause 8(1) proposes to insert a new sub-section 119(5) in the Principal Act to modify this position where the person ceases to receive an income-tested pension, benefit or allowance under the Principal Act, a service pension under the Repatriation Act 1920 or an allowance under the Tuberculosis Act 1948.

Paragraph 119(5)(c) would not apply any waiting period in these circumstances if a claim for sickness benefit is lodged within 13 weeks after the cessation of payment of the pension or allowance. In such a case, sickness benefit would be payable from the day after the day that payment of the pension or benefit ceased.

The effect of this amendment is to enable continuity of payment.

Paragraph 119(5)(d) would provide that, where a claim for sickness benefit is lodged more than 13 weeks after the cessation of payment of the pension or allowance, sickness benefit would be payable from the day of lodgment. The Director-General of Social Security would have power, however, to make a retrospective payment if he is satisfied that the claim was lodged late due to the cause of the incapacity or some other sufficient cause.

Clause 8(2) is a technical amendment only.