

1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SOCIAL SECURITY (DISABILITY AND SICKNESS SUPPORT)

AMENDMENT BILL 1991

REPLACEMENT SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and requests to be moved on behalf
of the Government

(Circulated by authority of the Minister for Social Security,
Senator the Hon Graham Richardson)



**SOCIAL SECURITY (DISABILITY AND SICKNESS
SUPPORT) AMENDMENT BILL 1991**

OUTLINE AND FINANCIAL IMPACT STATEMENT

These amendments and requests affect the Health Insurance Act 1973 and the Social Security Act 1991.

They have negligible financial impact in 1991-92 and will cause a loss of program savings of approximately \$1.0 million in 1992-93.

HEALTH INSURANCE ACT 1973

The amendment to this Act will ensure that a health care card is provided to a child who is the foundation of a person's qualification for child disability allowance regardless of whether the allowance is being paid to that person at any particular time.

SOCIAL SECURITY ACT 1991

The requests and amendments have the following effects on this Act:

- . The amendments to the Act to provide for the disability reform package will commence on 12 November 1991 instead of 1 July 1991 (restrictions on portability of invalid pension) or 1 October 1991 (all other changes).
- . The definition of "medical impairment" will include a sensory impairment.

- . All work against which a person's capacity will be tested for disability support pension and sickness allowance will be work remunerated at award wages or above.
- . Where a person in receipt of sickness allowance has a job still open to which he or she can return then he or she will be taken to be incapacitated for work unless able to return to the job for the usual number of hours each week.
- . A person engaged in a drug or alcohol counselling or rehabilitation program or with an episodic symptomatology will have easier access to a second year's receipt of sickness allowance and easier access to continued payment at the end of 2 years.
- . There will be no power for the Secretary to allow a person to continue to receive sickness allowance beyond 2 years without a fresh initial claim.
- . A person will continue to receive disability support pension or sickness allowance even if he or she refuses a request by the Secretary that the person participate in a rehabilitation or activity program. The penalties to apply from November 1993 will be the subject of consultation and provisions will be brought forward in 1992.
- . A person in receipt of a pension or allowance who fails to respond to a requirement that he or she must contact the Department, attend an interview, complete a questionnaire or attend a medical or similar examination will be suspended from payment rather than cancelled.
- . A person will qualify for mobility allowance by working or training for 8 hours a week rather than 20 hours a week.

- . A person whose incentive allowance is saved by the Bill will be able to regain it if it is lost because he or she takes up work but, within 2 years, returns to an activity which currently qualifies a person for incentive allowance.
- . The Impairment Tables are changed to:
 - provide for a separate table on gynaecological conditions;
 - allow greater account to be taken of subjectively felt pain;
 - allow certain upward rounding of a final impairment rating; and
 - make other minor changes.
- . Sickness allowance coverage will be able to be extended after 52 weeks where:
 - a person's fresh claim is delayed because of his or her incapacity or because of departmental fault; or
 - a person has lodged an undetermined claim for continued sickness allowance or for disability support pension.

NOTES ON AMENDMENTS AND REQUESTS

Amendment relating to Clause 2 of Bill

Amendment (1)

Clause 2 of the Bill provides for the date of commencement of the Act. At present Parts 1 and 2 are to be taken to have commenced on 1 July 1991 and the remainder of the Bill commences on 1 October 1991. This amendment provides for Part 1 to commence on the day of Royal Assent and the remainder of the Bill to commence on 12 November 1991.

Amendment relating to Clause 3 of Bill

Amendment (2)

Clause 3 of the Bill provides for additions to be made to the general definitions in section 23 of the Principal Act.

This amendment inserts an additional definition of "physical impairment" and explains that the term includes sensory impairment.

Amendment relating to clauses 5 to 7 of Bill

Amendment (3)

Clauses 5 and 6 of the Bill insert an additional criterion into section 94 of the Principal Act and a new section 102A which are designed to ensure that a claimant for invalid pension is below pension age but that, once a pension is granted, a person may still qualify even if of pension age.

This amendment removes those amendments because the disability reforms will not commence until 12 November 1991 and the provisions in respect of disability support pension already encompass the principles of clauses 5 and 6.

Clause 7 provides for amendments to qualification criteria for special needs invalid pension to operate from 1 July 1991. These changes are now not necessary because these principles will now apply from no earlier than 12 November 1991. They will not affect invalid pensions which, by that date, will be superseded by special needs disability support pensions.

Amendment relating to Clause 8 of Bill

Amendment (4)

Clause 8 of the Bill provides for new section 791A of the Principal Act which is to ensure that a person claiming special needs invalid pension is under 60 years of age if a woman and under 65 years of age if a man.

Amendment (4) adapts new section 791A so that it will apply to special needs disability support pension as of 12 November 1991 rather than to special needs invalid pension as of 1 July 1991.

Amendments relating to Clause 9 of Bill

Clause 9(1) of the Bill amends section 1212 of the Principal Act so that a person qualifies for special needs invalid pension only if he or she is severely disabled.

Clause 9(2) of the Bill provides for continued application of current rules to a person whose special needs invalid pension was granted before 1 July 1991.

Amendments (5)-(8)

These amendments delay the operation of these amendments to section 1212 so that they commence on 12 November 1991 and apply to special needs disability support pension rather than special needs invalid pension.

Amendments relating to Clause 11 of Bill

Amendments (9)-(14)

Clause 11 of the Bill provides for restrictions on the portability of invalid pensions granted on or after 1 July 1991.

These amendments delay the commencement of new section 1213A, for which clause 11 provides, until 12 November 1991 and they apply the restrictions to disability support pension rather than to invalid pension which, by that date, will no longer exist.

Amendment relating to Clause 12 of Bill

Amendment (15)

Clause 12(b) of the Bill provides for a definition of "in an institution" in new subsection 23(4C) of the Principal Act.

This amendment changes the defined term to "in disability accommodation" so as to delete the emphasis on institutionalisation in the present formulation.

Amendments relating to Clause 13 of Bill

Amendment (16)

This amendment to clause 13 of the Bill is a minor technical amendment required to remedy a drafting error.

Amendment (17)

Clause 13 of the Bill provides for the new Part of the Principal Act on disability support pension. New subsection 94(5) defines "work" for the purpose of testing a person's qualification for disability support pension.

This amendment is to require all work which a person may be expected to do to be remunerated at an award wage rate rather

than at that rate or at a rate considered reasonable, in the opinion of the Secretary, for the work.

Amendment (18)

New section 96 of the Principal Act provides that a person is disqualified for disability support pension if he or she fails to take reasonable steps to comply with a requirement by the Secretary that the person :

- (i) contact a departmental officer; or
- (ii) attend an interview; or
- (iii) complete a questionnaire; or
- (iv) attend a medical or similar examination.

This amendment means that this total disqualification will be limited to a person who has made a claim for, but has not yet been granted, disability support pension. Those currently in receipt of a pension who fail to comply will be covered by the amendment numbers (21) and (22).

Amendment (19)

In new section 96 a note currently follows subsection 96(1). This signposts the provision allowing cancellation of pension. Because of the changes in amendment (18) cancellation or suspension will not be appropriate so this amendment provides for removal of the note.

Amendment (20)

New section 98 lists all situations where a person is not paid a disability pension despite qualifying for the pension. The amendment deletes the reference to section 105 from paragraph 98(1)(a) because the new form of section 105 (amendment (23)) makes its inclusion inappropriate in this paragraph.

Amendment (21)

New section 98 of the Principal Act lists the situations where a disability support pension for which a person qualifies will not be payable. Paragraph 98(1)(g) precludes payment where a person fails to comply with a requirement that he or she must

- (i) receive treatment; or
- (ii) complete a questionnaire; or
- (iii) undertake a program of assistance or a rehabilitation program; or
- (iv) do or apply for certain work.

The amendment deletes references to

- (i) receiving treatment; and
- (ii) undertaking a program of assistance or a rehabilitation program; or
- (iii) doing or applying for work.

In place of these deleted items there is added:

- (i) a requirement to contact an officer; and
- (ii) attend an interview; and
- (iii) attend a medical or similar examination.

These 3 items are borrowed from new section 96 and apply to persons already in receipt of a pension.

Amendment (22)

This amendment changes the reference to section 104 in paragraph 98(1)(g) to a reference to section 105. This is because of the changes in the content of these two sections for which amendment (23) provides.

Amendment (23)

New sections 104 and 105 of the Principal Act provide for non-payment of disability support pension to a person who fails to comply with any of the requirements discussed above in respect of paragraph 98(1)(g) (amendment (21)).

The amendment provides for a new form of section 104 which allows the Secretary to request a person who receives disability support pension to undertake a program of assistance or a rehabilitation program. There will be no penalty for the present for failure to comply with the Secretary's request. However, there will be consultation about penalties to apply from November 1993 and a Bill providing for penalties will be brought forward in 1992.

Amendment (23) also provides that non-payment in the nature of suspension or cancellation will now apply in any of the paragraph 98(1)(g) situations. In the current draft of the Bill the failure to take reasonable steps leads to the imposition of non-payment periods. This is no longer the case.

A note following subsection 105(1) signposts section 146 as the section under which suspension or cancellation will occur.

Should a person be suspended and then comply with the requirement, arrears of pension will be paid under subsection 146D(9) of the Principal Act.

The removal of deferment of payments will be reviewed in the next year to ascertain whether they should be inserted into the Principal Act.

Amendment (24)

This amendment to new subparagraph 116(3)(a)(i) is to remedy a drafting error.

Amendments (25) and (29)

New sections 139 and 140 of the Principal Act permit the Secretary to suspend rather than cancel a person's disability support pension where the person loses pension because of commencing work. Should the work cease within 2 years the person's pension can then be restored automatically.

These amendments ensure that the work taken up by the person is paid work for 30 hours or more a week.

Amendment (26)

This amendment to new paragraph 139(1)(b) is to remedy a drafting error.

Amendment (27) and (28)

New subsection 139(4) of the Principal Act determines the basis of payment of pension to a partner of the person whose disability support pension has been suspended. At present subsection 139(4) means that the partner is paid as if not a member of a couple. No income or assets of the suspended pensioner would affect the partner's pension rate.

Amendment (27) is required so that the partner's pension rate will be affected by the suspended pensioner's income and assets. This was always intended.

Amendment (28) provides for a note which signposts that "partnered (partner getting neither pension nor benefit)" is defined in paragraph 4(11)(b) of the Principal Act.

Amendments relating to Clause 15 of Bill

Amendments (30) and (31)

Clause 15 of the Bill provides for new section 664C of the Principal Act regulating payment of an employment entry payment of \$200 to a disability support pensioner who commences employment. Amendment (30) requires that the employment must be remunerated and must be for at least 30 hours a week, or paid at above the "threshold amount". The employment cannot be sheltered employment. Amendment (31) defines the "threshold amount". It is in effect the amount per fortnight that a single newstart allowance recipient can be paid and still qualify for payment of newstart allowance.

Amendments relating to Clause 17 of Bill

Amendment (32)

Clause 17 of the Bill provides for new Part 2.14 of the Principal Act which concerns sickness allowance. New subsection 666(3) helps to define the "work" for which a person must be incapacitated in order to qualify for sickness allowance. It must, among other things, be work for at least 8 hours a week.

The amendment removes this requirement where the person has still a contract of employment during the period when he or she is incapacitated. Such a person will be incapacitated for so long as he or she cannot return to that employment for the weekly number of hours he or she worked before becoming incapacitated.

Amendment (33)

This amendment means that the work for which a person qualified for sickness allowance is to be incapacitated is work paid at award wages or above. This echoes amendment (17).

Amendment (34)

This amendment is to remedy a drafting error.

Amendments (35) and (36)

New subsection 666(4) of the Principal Act precludes a person who has ceased to qualify for sickness allowance at the end of the maximum period from successfully claiming again for 2 years in respect of the same condition unless the condition has worsened.

The amendments expand the situations where a person does not have to wait 2 years before qualifying again for sickness allowance. The additional situations are:

- (i) where a person has a chronically relapsing medical condition and there is chronic relapse; and
- (ii) where the person is undergoing a program of counselling, treatment or therapy for drug or alcohol abuse provided the program is expected to end within 78 weeks and is approved by the Secretary.

Amendment (37)

New section 667A for which amendment (37) provides has the effect of disqualifying certain persons who have lodged a claim for sickness allowance but who have yet to be granted an allowance.

Disqualification occurs where the person fails to take reasonable steps to comply with a requirement by the Secretary that the person contact a departmental officer, or attend an interview, or complete a questionnaire or attend a medical or similar examination.

For a person already in receipt of sickness allowance who fails to conform to a requirement suspension is an option.

Amendments (43) and (44) refer.

Amendment (38)

New section 669 provides for the automatic cessation of a person's qualification for sickness allowance after he or she has received sickness allowance for 52 weeks.

Subsection 669(2) permits the Secretary to accept a fresh claim at the end of 52 weeks provided the incapacity will end within 52 weeks or where the medical condition is different from, or worse than, that suffered by the person when he or she qualified for payment of the allowance.

Amendment (38) permits the Secretary to accept a fresh claim in 2 additional cases:

- (i) where the person is undergoing a program of counselling, treatment or therapy for drug or alcohol abuse approved by the Secretary, his or her participation being likely to end within 78 weeks; and
- (ii) where the person has a chronically relapsing medical condition and he or she suffers a relapse.

This request echoes amendment (36).

Amendment (39)

This amendment provides for insertion of a new section 669A covering certain extensions of qualification for sickness allowance beyond 52 weeks despite subsection 669(1).

The first extension (subsection 669A(1)) applies where a person has lodged a fresh claim for sickness allowance by the end of the fiftieth week and the claim has been neither granted nor rejected. The extension is for up to 4 weeks.

The second applies where the person has lodged a claim for disability support pension before the end of the fifty-second week and the claim has been neither granted nor rejected. The extension operates until the Secretary has determined the

claim. This extension would not continue to apply for the duration of any appeal period where the Secretary rejects the claim and the person appeals. Such a person would have to rely on the power of the Secretary to continue payments pending the outcome of appeal provided for in sections 1241 and 1251 of the Principal Act.

The third applies where the person delays lodging his or her fresh claim for sickness allowance after the fifty-second week. Should the person claim by the end of the fifty-sixth week and should the sole or dominant cause of delay be the person's medical condition or an act or omission by a departmental officer the claim is taken as having been made at the end of the fifty-second week. Up to 4 weeks of arrears would then be payable.

A note signposts that continued receipt of sickness allowance requires continued satisfaction of all qualification and payability requirements for sickness allowance.

Amendments (40)-(42)

New section 670 of the Principal Act permits some persons to receive sickness allowance for a time beyond the end of 2 years.

These amendments remove that possibility.

Amendments (43) and (44)

Paragraph 675(1)(j) and subsection 695(1) currently provide for non-payment of sickness allowance where a person fails to take reasonable steps to comply with a requirement that he or she:

- (i) contact a departmental officer; or
- (ii) attend an interview; or
- (iii) undergo a medical examination; or
- (iv) complete a questionnaire; or
- (v) receive treatment; or
- (vi) undertake a rehabilitation program.

These amendments delete items (v) and (vi) above. In addition amendment (43) moves the operative provision into section 696. A recipient of sickness allowance who does not comply with a requirement will face a non-payment period. For the present there will no longer be a structured set of deferment penalties. Instead payment will be suspended and then cancelled if the person continues to refuse. Consultation will take place about penalties which are to apply after November 1993 and a Bill will be brought forward in 1992 for this purpose.

A note following subsection 696(1) signposts section 728J which permits cancellation or suspension.

Should a person be suspended and then comply with the requirement arrears can be paid under subsection 728N(9).

Amendment (44) also provides for new section 695 which permits the Secretary to request a person in receipt of sickness allowance to undertake a rehabilitation program. No adverse consequence follows if the person fails to comply with the Secretary's request. This too will be the subject of consultation with a provision for suitable penalties to be included in the Bill mentioned previously.

Amendments (45)-(48)

These amendments to new subsections 727(1) and (2) and new paragraph 728L(a) are to remedy drafting errors.

Amendment and Requests relating to Clauses 17A, 18, and 18A of Bill

Requests (1) and (2)

Requests (1) and (2) provide for new clauses 17A and 18A in the Bill.

Section 1035 of the Principal Act provides for the qualification criteria in respect of mobility allowance and section 1058 deals with where a person ceases to qualify for mobility allowance. These requests alter those provisions by reducing from 20 to 8 the weekly number of hours during which a person must be engaged in work or training to qualify for mobility allowance.

Amendment (49)

Clause 18(2) provides that the rise in the rate of mobility allowance from \$22 to \$40 a fortnight is to commence on 1991.

This amendment defers this rate increase to 12 November 1991.

Amendments relating to Clause 21 of Bill

Amendments (50)-(52), (70)-(72)

These amendments are to remedy drafting errors.

Amendments (53)-(69), (73)-(79)

These amendments echo amendment (15) and they all alter references to persons living in "an institution" so that they become living in "disability accommodation".

Amendments relating to Clause 22 of Bill

Amendments (80)-(87)

These amendments are to remedy drafting errors.

Amendments relating to Clause 24 of Bill

Amendments (88), (89) and (95)

Clause 24 of the Bill concerns Schedule 1A of the Principal Act which contains all currently applicable savings provisions from amending Acts.

These 3 amendments change the date on which payment of invalid pension, rehabilitation allowance, incentive allowance, sheltered employment allowance, sickness benefit and special needs invalid pension are saved for people in receipt of these payments at the commencement of the disability reforms.

Instead of the savings taking effect on 1 October 1991 they will now operate from 12 November 1991.

Amendments (90) and (94)

These amendments are to remedy drafting errors.

Amendment (91)

Clause 36 of Schedule 1A of the Principal Act provides for a saving provision for recipients of incentive allowance. At present a person who has an entitlement to incentive allowance immediately before 12 November can continue to receive that payment until qualification ceases. Qualification cannot later be revived.

Amendment (91) permits revival of qualification for incentive allowance where qualification ceased because the recipient commences work provided the recipient's work ceases within 2 years and he or she resumes an activity which would have provided qualification for incentive allowance before 12 November 1991.

Amendments (92) and (93)

These amendments make technical changes to subclauses 36(2) and 36(3) of Schedule 1A. These are consequential on the change in amendment (91).

Amendment (96)

Clause 38 of Schedule 1A of the Principal Act provides for saving those in receipt of sickness benefit immediately before 12 November 1991.

This amendment alters subclause 38(2) so that the maximum allowance period for saved sickness beneficiaries will not automatically be 13 weeks. Where a person's medical certificate providing sickness benefit coverage provided before 12 November 1991 expires before 12 February 1992 that expiry date is to be also the end of the maximum allowance period for a sickness allowance acquired through clause 38.

Amendment relating to Clause 28 of Bill

Amendment (97)

Clause 28 of the Bill provides for supply of health care cards to children who attract payment of child disability allowance to a person.

This amendment widens new subsection 4CA(2) of the Health Insurance Act so that the child has only to qualify a person for child disability allowance in order to justify the child holding a health care card. It will not be relevant that the person is not being paid the allowance.

Amendments relating to Schedule 1 of Bill

Amendments (98) and (99)

These amendments alter the consequential amendments in Schedule 1 of the Bill to accommodate the additional definition of "physical impairment" and a new location for the definition of "Impairment Tables".

Amendment (100)

Section 665 of the Principal Act deals with claims made by persons for an employment entry payment.

This amendment consequentially amends section 665 so that:

- . a person who loses disability support pension on commencing work or receiving income from employment above the threshold amount will also have to lodge a claim in order to be paid; and
- . the person has up to 28 days from commencing that employment (ie any paid employment for 30 hours a week or more, or employment remunerated at a rate above the threshold amount) in which to lodge a claim.

Amendment (101)

Replacement section 773 of the Principal Act for which Schedule 1 of the Bill provides deals with the qualification criteria for special needs disability support pension.

Amendment (101) deletes new subsections 773(2) and 773(3), the gist of which will appear in new section 788 (see amendment (102)).

This echoes similar changes affecting disability support pension. These changes will allow the Secretary to suspend rather than cancel payments to a person who fails to comply with certain requirements imposed by the Secretary.

Amendment (102)

This amendment provides for new section 788 of the Principal Act. The new section will allow the Secretary to require a person who has claimed or is receiving special needs disability support pension to contact a departmental officer, or attend an interview, or complete a questionnaire, or attend a medical or similar examination. Should the person not take reasonable steps to comply the claim may not be granted or payment may be suspended or cancelled.

Amendments (103) and (105)

The proposed consequential amendments to section 791A and subsection 1212(4) in Schedule 1 of the Bill are now not needed and so these amendments provide for their deletion. Amendments (4)-(7) above now make relevant provision.

Amendment (104)

This amendment is to remedy a drafting error.

Amendment (106)

The proposed amendments to section 1308 of the Principal Act which appear in Schedule 1 of the Bill are unnecessary because section 1308 was recently repealed. This amendment removes the proposed amendments.

Amendments and requests relating to Schedule 2 of Bill

Amendments (107)-(111) and requests (3)-(5)

Schedule 2 of the Bill provides for insertion of new Schedule 1B of the Principal Act in the form of Impairment Tables for assessment of qualification for disability support pension.

Amendments (107) and (109) stress the need to look at an impairment as it affects a person's capacity to function rather than emphasising abstract diagnosis.

Amendment (108) provides increased ambit to take account of subjectively experienced pain.

Request (3) and amendment (111) deal with upward rounding of total impairment ratings.

Requests (4)-(5) and amendment (110) provide for a more detailed treatment of gynaecological conditions in the Impairment Tables.