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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (BUDGET AND OTHER MEASURES) BILL 1998

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and Requests for Amendments to be moved on behalf of the Government

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

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SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (BUDGET AND OTHER MEASURES) BILL 1998

OUTLINE AND FINANCIAL IMPACT STATEMENT

The Amendments and Requests for Amendments would deal with four issues:

- the extension of carer payment to carers of profoundly disabled children under 16 years of age; and
- income streams;
- seasonal workers.
- mobility allowance;

Extension of carer payment to carers of profoundly disabled children under 16 years of age

Schedule 1 of the Bill would extend the qualification for carer payment to the carers of profoundly disabled children.

As currently drafted, part of the definition of "profoundly disabled child" requires that the child's disability or condition include 3 or more of 7 listed circumstances. Three of those circumstances are age-related and are as follows:

- the child is at least 3 and has urinary and faecal incontinence day and night;
- the child is at least 2 and cannot stand without support;
- the child is at least 6 months of age and requires personal care on 2 or more occasions between 10 pm and 6 am each day.

Since the introduction of the Bill, extensive consultations have taken place with carer organisations on the impact of the measure. As a result of those consultations it has been decided that these age-related criteria should be extended to include not only a child who is under the age specified in a criterion but also to a child who has the care need specified and who will not reach the relevant developmental milestone by the specified age. For example, in relation to a child standing without support, qualification would be extended to cover children who are under the age of 2 and unable to stand without support <u>and</u> who are expected to be unable to stand without support at the age of 2.

Financial Impact:

(net outlays)

1998-99	$0.032m
1999-00	$0.034m
2000-01	$0.035m

Income streams

Schedule 3 implements a 1997 Budget initiative to change the means testing of income streams for social security and veterans' affairs customers. It will ensure that income streams are classified for means test purposes on the basis of their characteristics, rather than on arbitrary factors such as where an income stream is paid from (eg a superannuation fund or a life office).

The amendments, as introduced, contain a formula specifying the maximum indexation rate allowed under an income stream that qualifies for an assets test exemption.

Amendments are to be made to the expression of the formula so as to prevent the potential for an income stream to be structured with very low payments at the early stages, which allows for income deferral at the expense of social security outlays

It is also proposed to make some technical amendments to ensure that no downward variation in year to year payments could be possible for assets test exempt income streams.

Unless rectified, this could have the effect of allowing a very large payment to be made in the first year, with very small subsequent payments in the remaining years. This would provide a possible loophole for people seeking an assets test exemption for a short period. It might also allow market-linked products, where the purchaser bears the investment risk, to receive an assets test exemption.

Financial Impact: Nil.

Seasonal Workers

Schedule 4 of the Bill, as introduced, would impose preclusion periods on certain high income seasonal, intermittent and contract workers following cessation of the work period.

The purpose of the Amendments are:

- to change the method of calculating the length of the seasonal worker preclusion period. The period will now be reduced by any time during the relevant period when the person supported themself without claiming social security payments. This addresses the harsh result that might otherwise unintentionally resulted for customers who self support themselves between the time when their seasonal work ends and their date of claim for a social security payment; and

- to provide that the new seasonal worker preclusion period provisions do not take into account any periods of seasonal work prior to the commencement of Schedule 4 (that is, 1 July 1998)

Financial Impact:

(program outlays)

1998-99	$0.409m
1999-00	$0.000m
2000-01	$0.000m

Mobility Allowance

Requests for Amendments to the ***Social Security Act 1991*** would be made:

- to ensure that customers participating in independent living and life skills training can qualify for mobility allowance;

- to rectify a long-standing anomaly in the Social Security Act that a person does not have to travel in order to qualify for mobility allowance; and

- to make a technical amendment to the mobility allowance qualification provisions.

Financial Impact:

(net outlays)

1998-99	$3.27m
1999-00	$3.53m
2000-01	$3.79m

NOTES ON AMENDMENTS AND REQUESTS FOR AMENDMENTS

Extension of Carer Payment to Carers of Profoundly Disabled Children Under 16 Years of Age

Schedule 1 of the Bill would extend the qualification for carer payment to the carers of profoundly disabled children.

As currently drafted, part of the definition of "profoundly disabled child" (refer item 3 of Schedule 3) requires that the child's disability or condition include 3 or more of 7 listed circumstances. Three of those circumstances are age-related and are as follows:

- the child is at least 3 and has urinary and faecal incontinence day and night;

- the child is at least 2 and cannot stand without support;

- the child is at least 6 months of age and requires personal care on 2 or more occasions between 10 pm and 6 am each day.

Since the introduction of the Bill, extensive consultations have taken place with carer organisations on the impact of the measure. As a result of those consultations it has been decided that these age-related criteria should be extended to include not only a child who is under the age specified in a criterion but also to a child who has the care need specified and who will not reach the relevant developmental milestone by the specified age. For example, in relation to a child standing without support, qualification would be extended to cover children who are under the age of 2 and unable to stand without support <u>and</u> who are expected to be unable to stand without support at the age of 2.

Requests 2 and 3 give effect to this.

Item 5 of Schedule 1 of the Bill, as introduced, would amend a reference in subparagraph 198(1)(d)(ii). This amendment is not necessary and **Amendment 1** would operate to negate this amendment.

Income Streams

Schedule 3 of the Bill, as introduced, would implement the 1997 Budget initiative to change the means testing of income streams for social security and veterans' affairs customers. The amendments would ensure that income streams are classified for means test purposes on the basis of their characteristics, rather than on arbitrary factors such as where an income stream is paid from (eg a superannuation fund or a life office).

In order to qualify as an assets test exempt income stream, an income stream must possess a number of characteristics. One of these characteristics is that the amount of payments made under the income stream must be specified in the contract. These payments may only be varied to allow for indexation and certain allowable commutations.

In relation to indexation, new paragraphs 9A(2)(c) and 9B(2)(c) of ***the Social Security Act 1991*** (refer item 35 of Schedule 3) (and corresponding amendments to the ***Veterans' Entitlements Act 1986*** - refer item 75 of Schedule 3) provide that the yearly adjustment is to be capped at the greater of either:

- 5%; or
- the rate of increase in the consumer price index plus 1%.

A formula is included in subparagraph 9A(2)(c)(ii) to work out the allowable adjustment for indexation. However, in the drafting of this formula, a percentage sign was omitted. This only became apparent after the legislation had been tabled.

This apparently minor omission may have a significant impact as there is the potential for an income stream to be structured with very low payments at the early stages, which allows a person to defer income from the income stream and receive social security payments.

Amendments 3, 5, 7 and 9 rectify this.

It is also proposed to make some technical amendments to items 35 and 75 of Schedule 3 to ensure that no downward variation in year to year payments could be possible for assets test exempt income streams.

The income streams legislation is intended to have the effect that, in order to receive an assets test exemption, an income stream can allow year to year variation in payments only to take account of indexation. This intention was set out in a joint press release of the Minister for Social Security and the Treasurer on 26 August 1997, in which it was stated that an assets-test exempt income stream must provide that "the size of the payment be *fixed* with any variation, allowing for indexation, specified in the contract or the fund's governing rules". This rule was embedded in the version of the legislation released for the exposure draft process, with indexation being restricted to CPI rates only.

As a result of responses to the exposure draft of the legislation, it was decided that the allowable indexation should be made more flexible: from CPI only, to *at most the greater of* CPI plus 1% or 5%. This was to take account of current complying income streams that may have indexation rates slightly higher than current CPI.

In redrafting of the legislation to allow for greater flexibility, there was an inadvertent alteration in the wording such that the provisions would allow unlimited downward variation in payments year to year. Unless rectified, this could have the effect of allowing a very large payment to be made in the first year, with very small subsequent payments in the remaining years. This would provide a possible loophole for people seeking an assets test exemption for a short period. It might also allow market-linked products, where the purchaser bears the investment risk, to receive an assets test exemption.

Amendments 2, 4, 6 and 8 rectify this.

Seasonal workers

Schedule 4 of the Bill, as introduced, would impose preclusion periods on certain high income seasonal, intermittent and contract workers following cessation of the work period.

It is proposed to amend item 2 of Schedule 4 of the Bill to change the method of calculating the length of the seasonal worker preclusion period. The period will now be reduced by any time during the relevant period when the person supported themself without claiming social security payments. This addresses the harsh result that might otherwise unintentionally resulted for customers who self support themselves between the time when their seasonal work ends and their date of claim for a social security payment (**Amendments 10 to 19 inclusive**).

It is also proposed to amend Schedule 4 of the Bill so as to provide that the new seasonal worker preclusion period provisions do not take into account any periods of seasonal work prior to the commencement of the Schedule (that is, 1 July 1998) (**Amendment 20**).

Mobility Allowance

Mobility allowance was introduced in 1983 and is paid to people aged 16 or more who are unable to use public transport without substantial assistance because of a disability and who are working, undertaking vocational training or looking for work. An area of difficulty has been the assessment of vocational training.

The ***Social Security Act 1991*** defines vocational training as training that will assist a person to find gainful employment or to carry on a profession, trade or business. Evidence has emerged that a substantial number of recipients of mobility allowance are undertaking activities known as independent living skills or life skills training. This training does not always have a vocational purpose and, in many cases, the participants are too severely disabled ever to be able to work. These activities are nonetheless important to the quality of life of the participants.

It is unclear whether there is legislative authority in the ***Social Security Act 1991*** to enable mobility allowance to be paid to customers who participate in independent living and life skills training. It is possible that if the provisions were interpreted strictly, up to 3,000 customers could have their mobility allowance payments cancelled. This would be far from satisfactory.

Accordingly, it is proposed to amend the definition of "vocational training" in section 19 of the ***Social Security Act 1991*** so as to ensure that customers participating in independent living and life skills training can receive mobility allowance.

Requests 1 and 4 give effect to this.

It is also proposed that the opportunity be taken to rectify a long-standing anomaly in the ***Social Security Act 1991*** that a person does not have to travel in order to qualify for mobility allowance. The inclusion of a provision that a person must travel in order to undertake qualifying activities will ensure payments are not made to people undertaking activities in institutionalised settings where no travel is involved.

Request 4 gives effect to this by amending section 1035 of ***the Social Security Act 1991***(mobility allowance qualification).

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