

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**SOCIAL SECURITY LEGISLATION AMENDMENT
(NEWLY ARRIVED RESIDENT'S WAITING PERIODS
AND OTHER MEASURES) BILL 1996**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Requests to be moved on behalf of the Government

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

**SOCIAL SECURITY LEGISLATION AMENDMENT
(NEWLY ARRIVED RESIDENT'S WAITING PERIODS
AND OTHER MEASURES) BILL 1996**

OUTLINE AND FINANCIAL IMPACT STATEMENT

These requests affect the *Social Security Act 1991*.

The Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Bill 1996 (the Bill) was introduced into the Senate after passing the House of Representatives on 23 May 1996. The Bill was then referred to the Senate Legal and Constitutional Affairs Committee (the Committee) for consideration.

The Committee reported to the Senate on 10 September 1996. A Majority Report of the Committee made a number of recommendations that would impact on the Bill.

The Government has decided to amend the Bill to take account of those recommendations, namely:

that special needs relatives be exempt from those provisions of the Bill relating to carer pension (Recommendation 3);

that the newly arrived resident's waiting period should not be applied to child disability allowance or double orphan pension (Recommendations 4 and 6);

that "innocent illegals" should be exempt from the operation of the Bill (Recommendation 5);

that the newly arrived resident's waiting period for a person who is granted a permanent visa in Australia after having appealed an initial decision not to grant that visa, should commence from the date of the initial decision (Recommendation 7);

that the Bill be amended so that those provisions relating to the newly arrived resident's waiting period for holders of visa subclass 820 also apply to holders of visa subclass 826 (Recommendation 8); and

that guidelines be set for the exercise of the Secretary's discretion when determining a "family member" for the purposes of the Bill and that these guidelines be a disallowable instrument (Recommendations 9 and 10).

The Bill is also to be amended so as to:

refugees, former refugees and family members of refugees or former refugees, at the time the refugee or former refugee arrived in Australia, will not be subject to a newly arrived resident's waiting period for carer pension;

ensure that Australian citizen children born overseas will not be precluded from the maximum rate of family payment;

take account of the fact that job search allowance was abolished on 20 September 1996; and

make some consequential amendments to commencement and other machinery provisions to take account of the fact that the Bill did not receive passage earlier or that other provisions of the Bill have been amended.

The financial impact of the requests is as follows:

1996-97	\$ negligible
1997-98	\$0.25 m costs
1998-99	\$0.25 m costs

NOTES ON REQUESTS

Amendments to exempt special needs relatives from those provisions of the Bill relating to carer pension (Recommendation 3)

Amendments to give effect to Recommendation 3 are contained in **Request Number 12 (part)**.

Proposed section 201AA provides for a newly arrived resident's waiting period for carer pension.

The amendment made by **Request Number 12 (part)** inserts new subsections 201AA(3) and (4) that provide that a newly arrived resident's waiting period is not to apply to a person who is:

the holder of a subclass 104 visa - Preferential family **and** who is a special needs relative; or

- the holder of a subclass 806 visa - Family **and** who is a special needs relative.

"Special needs relative" is defined in new subsection 201AA(6) as having the same meaning as in the Migration Regulations.

The amendment made by **Request Number 12 (part)** also inserts new subsection 201AA(5) that will provide that a newly arrived resident's waiting period does not apply to a refugee, a former refugee or a family member of a refugee or former refugee, at the time the refugee or former refugee arrived in Australia.

"Refugee" and "family member" are defined in new subsection 201AA(6) as having the same meaning as in subsections 7(6B) and 7(6D), respectively.

Amendments so that the newly arrived resident's waiting period does not apply to child disability allowance or double orphan pension (Recommendations 4 and 6)

Request Number 21 omits proposed Division 13 of Part 1 of Schedule 1 of the Bill. That Division inserted provisions into the *Social Security Act 1991* to provide for a newly arrived resident's waiting period for child disability allowance.

Request Number 22 omits proposed Division 14 of Part 1 of Schedule 1 of the Bill. That Division inserted provisions into the *Social Security Act 1991* to provide for a newly arrived resident's waiting period for double orphan pension.

As a result of the decision not to proceed with a newly arrived resident's waiting period for child disability allowance or double orphan pension, consequential amendments are made by **Request Numbers 9 and 10** so as to remove references to a child disability allowance newly arrived resident's waiting period or a double orphan newly arrived resident's waiting period in certain definitions.

***Amendments to exempt "innocent illegals" from the operation of the Bill
(Recommendation 5)***

Proposed new subsection 7(6AA) provides that a person will have a qualifying residence exemption for a social security benefit (other than a special benefit), a maternity allowance, a mobility allowance, a family payment, a seniors health card or a youth training allowance if the person has been granted a permanent visa, formerly having held a subclass 820 visa or if the person was a family member of a refugee or former refugee at the time that the refugee or former refugee arrived in Australia. A person who has a qualifying residence exemption is not subject to a newly arrived resident's waiting period for these specified payments.

The effect of the amendment made by **Request Number 6 (part)** is to add to the categories of persons who have such a qualifying residence exemption, those persons who hold, or who formerly held, a subclass 832 visa - Close ties or a subclass 833 visa - Certain unlawful citizens - refer proposed new paragraphs 7(6AA)(d) and (e). (Subclass 832 and 833 visas are colloquially referred to as "innocent illegals".)

The effect of the amendment made by **Request Number 12 (part)** in inserting new subsection 201AA(2) is to ensure that "innocent illegals" are not subject to a carer pension newly arrived resident's waiting period.

The effect of the amendment made by **Request Number 19** is to ensure that "innocent illegals" are not subject to a special benefit newly arrived resident's waiting period.

Amendment to provide that a newly arrived resident's waiting period for a person who is granted a permanent visa in Australia after having appealed an initial decision not to grant that visa, is to commence from the date of the initial decision (Recommendation 7)

The amendment made by **Request Number 5** gives effect to Recommendation 7.

New subsection 7(4B) will ensure that for the purposes of a newly arrived resident's waiting period, the day on which a permanent visa is granted to a person or the person becomes the holder of a permanent visa is as follows:

if the initial decision made in respect of the permanent visa is a decision to grant the visa, that day;

if the initial decision made in respect of the permanent visa is to not grant the visa but that decision is subsequently set aside (for example, on review), the day on which the initial decision was made not to grant the visa.

Amendments so that those provisions relating to the newly arrived resident's waiting period for holders of visa subclass 820 also apply to holders of visa subclass 826 (Recommendation 8)

Recommendation 8 will be implemented by making a number of amendments to the Bill. Essentially, the amendments ensure that wherever references are made in the Bill to holders or former holders of a subclass 820 visa, mirroring amendments are made to include references to holders or former holders of subclass 826 visas.

In recognition of the fact that new visa classes similar to existing subclass visa 820 and 826 might be introduced in the future, the opportunity is being taken to also include amendments mirroring those that apply for subclass 820 visas for persons who hold or formerly held a visa that is in a class of visas determined by the Minister. This will ensure that social security administration can be as responsive as possible to any changes in migration law.

Amendments to give effect to the preceding paragraphs comprise **Request Numbers 6 (part), 11, 14, 15, 16, 17, 18, 19 and 20.**

Amendments to set guidelines for the exercise of the Secretary's discretion when determining a "family member" for the purposes of the Bill and that these guidelines be a disallowable instrument (Recommendations 9 and 10)

It had always been envisaged that the guidelines would be issued to assist delegates in determining who should be treated as a "family member" for the purposes of proposed new paragraph 7(6D)(c).

Request Number 7 inserts new subsection 7(6E) that provides that the Minister may, by determination in writing, set guidelines for the exercise of the Secretary's power under paragraph 7(6D)(c) and that the guidelines may be revoked or varied.

Request Number 7 also inserts new subsection 7(6F) that provides that the determination made under subsection 7(6E) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Amendments to ensure that Australian citizen children born overseas will not be precluded from the maximum rate of family payment

New point 1069-B6B ensures that certain categories of children will not be limited to attracting the minimum family payment child rate. As currently drafted, the categories comprise:

refugees;

a dependent child of a refugee or a former refugee, at the time the refugee or former refugee arrived in Australia; or

a dependent child of an exempt resident or former exempt resident, at the time the exempt resident or former exempt resident arrived in Australia.

The effect of **Request Number 23** is to add a further category, namely, a child who resides in Australia and is an Australian citizen. This will ensure that, for example, a child who is born in England whilst her Australian parents are overseas, will attract more than the minimum rate of family payment when the child comes to Australia.

Request Number 24 defines the term "Australian citizen".

Amendments to take account of the fact that job search allowance was abolished on 20 September 1996

When the Bill was originally introduced it was anticipated that it would receive the Royal Assent prior to the abolition of job search allowance on 20 September 1996.

As this has not occurred, it is necessary to make a number of amendments to the Bill. The amendments involved comprise **Request Numbers 8, 13 and 25**.

Amendments to make some consequential amendments to commencement and other machinery provisions to take account of the fact that the Bill did not receive passage earlier or that other provisions of the Bill have been amended

Amendments are made (**Request Numbers 1, 2 and 3** refer) to the commencement provision of the Bill, clause 2, to take account of the fact that the Bill did not receive the Royal Assent prior to certain specific dates mentioned in clause 2.

A consequential amendment is also made to clause 3 by **Request Number 4**.



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