

1993-94-95

ARTHUR ROBINSON & HEDDERWICKS  
LIBRARY

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO. 1) 1995**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

**Amendments to be moved on behalf of the Government**

**(Circulated by authority of the Hon Janice Crosio MP,  
Parliamentary Secretary to the Minister for Social Security,  
representing the Minister for Social Security)**





## SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO. 1) 1995

### OUTLINE AND FINANCIAL IMPACT STATEMENT

These amendments affect the *Social Security Act 1991* (the Principal Act).

#### ***Residence requirements for certain refugees and temporary entrants***

Two technical amendments are necessary to the amendments relating to the residence requirements for certain refugees and temporary entrants made by Schedule 3 to the Bill.

#### (i) Youth training allowance (YTA) and parenting allowance (PgA)

YTA, like the social security benefits other than special benefit, has a newly arrived resident's waiting period (section 101 of the *Student Assistance (Youth Training Allowance) Amendment Act 1994* (the YTA Act) refers). It is from this waiting period that refugees are (or should be) exempt under some of the amendments made by Schedule 3. However, the Schedule 3 amendments apply only to the social security payments and not to YTA as they also should.

Subsection 101(2) of the YTA Act provides that the waiting period imposed by subsection 101(1) does not apply to a person who has a qualifying residence exemption for YTA. The definition of "qualifying residence exemption" should be derived from Part 1.2 of the Principal Act.

The definition of "qualifying residence exemption" is redefined in the Principal Act by item 4 of Schedule 3. However, the definition is expressed to apply only for various social security payments - YTA is not covered. YTA needs to be added to the definition that covers social security benefits other than special benefit (new subsection 7(6)).

Similarly, when PgA starts on 1 July 1995, it will also have a newly arrived resident's waiting period (new section 921 refers) that will use the term "qualifying residence exemption". That defined term as provided by the Bill will apply to various payment types, including a "social security benefit", but to only a portion of PgA. This is because a "social security benefit" will, as from 1 July 1995, include "PgA (other than non-benefit PgA)" whereas that portion of PgA that is non-benefit PgA should also be covered. The refugees exemption from the newly arrived resident's waiting period should apply to *all* of PgA.

#### (ii) Visa class 820

Visa class 820 is one of the five classes specified in new paragraph 7(6C)(a) as giving a person "exempt resident" status, leading to a qualifying residence exemption for special benefit.

Class 820 appears as a class provided by the Migration (1993) Regulations. This class alone of the five specified for this purpose is still valid as a temporary visa class under the Migration (1994) Regulations. Accordingly, the class 820 needs to be covered as a current visa class under new paragraph 7(6C)(c) in a similar way to current visa classes under new paragraph 7(6B)(c) for the other payment types.

### ***Compensation recovery***

The omission is proposed of three subsections from the compensation recovery provisions of the Principal Act. Also, the effect of a particular new subsection relating to parenting allowance is to be preserved in the face of the numerous amendments to the compensation recovery provisions made by Schedule 16 to the Bill. These amendments are minor consequential amendments flowing from some of the amendments made by Schedule 16 to the Bill.

### ***Partner allowance (PA)***

Two minor amendments will be made to the PA provisions.

First, it is expected that, from 1 July 1995, a person who has a "dependent child" will claim parenting allowance (PgA) rather than PA. This amendment will correct an anomaly by omitting subsection 771HA(2), thereby preventing persons under 21 with a "dependent child" from qualifying PA from 1 July 1995.

Secondly, from 1 July 1995, PA will not be payable to a person who has a "dependent child" under 16 because these people are expected to claim PgA. It is possible, however, that a person may share custody of a "dependent child" but not be eligible for PgA. Therefore, a minor technical amendment will be made to subsection 771HA(1) to allow a person to qualify for PA if the person has a "dependent child" under 16, does not qualify for PgA, and would qualify for PA apart from having the "dependent child".

## NOTES ON AMENDMENTS

### *Residence requirements for certain refugees and temporary entrants*

#### (i) Youth training allowance (YTA) and parenting allowance (PgA)

**Item 2** makes sure that the definition of "qualifying residence exemption" applies to YTA as well as the social security payments specified. This is done by adding "or a youth training allowance" in the appropriate position in new subsection 7(6).

**Item 5** adds "a non-benefit PgA" to the list of payment types covered by the definition of "qualifying residence exemption" contained in new subsection 7(6). **Item 1** adds a new commencement provision so that this amendment commences on the same date as the PgA newly arrived resident's waiting period (1 July 1995).

#### (ii) Visa class 820

**Item 4** includes visa class 820 in the new provision that covers current visa classes for special benefit. This is done by omitting the proposed new paragraph 7(6C)(c) and substituting a new paragraph to make the necessary inclusion. The structure of the amended paragraph will now be similar to the equivalent paragraph for payments other than special benefit (new paragraph 7(6B)(c)).

(Note that the reference to the visa class 820 under the current Regulations is to subclass 820 because of the current class/subclass structure of the visa categories.)

**Item 6** makes a consequential amendment to new subsection 25A(1). The appropriate reference to the Minister's power to declare temporary visa classes will now be subparagraph 7(6C)(c)(ii) rather than paragraph 7(6C)(c).

In the new subparagraph 7(6C)(c)(ii), the opportunity is taken to correct the reference to the Minister's power from "a determination" to "a declaration" of a temporary visa class. **Item 3** makes a minor equivalent amendment to refer to the Minister's power to *declare* permanent visas for other payment types.

### *Compensation recovery*

**Items 7, 8 and 9** add to the amendments of the compensation recovery provisions made by Schedule 16 to the Bill. Subsections 1164(1), (4) and (4A) will now be omitted by **items 7 and 8** from the Principal Act as a minor consequence of the substantive changes made by Schedule 16.

These subsections will no longer be necessary following the amendments made by Schedule 16. The rules currently contained in them will be covered by the amended subsections 1164(2), (5) and (6) respectively.

**Item 9** preserves the effect of new subsection 1164(5B) (dealing with a particular rule for compensation recovery for parenting allowance) in the form of revised new

subsection 1164(7). This reinsertion is a minor technical necessity in light of some of the other amendments made by Schedule 16.

### ***Partner allowance***

Subsection 771HA(2) of the Principal Act currently allows PA to be paid to any person who has a "dependent child" if the person or the person's partner has not turned 21. This provision is contrary to the amendments made in Schedule 3 to the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994* to prevent PA from being paid to a person who has a "dependent child" or is not over the age of 40 as at 1 July 1995.

It is expected that, from 1 July 1995, a person who has a "dependent child" will claim parenting allowance (PgA) rather than PA.

**Item 11** corrects the anomaly by omitting subsection 771HA(2) thereby preventing persons under 21 with a "dependent child" from claiming PA from 1 July 1995.

Secondly, as a result of the reforms announced in the *White Paper on Employment and Growth*, an amendment was made to the Principal Act to preclude partner allowees with dependent children from qualification for PA. The intention of the amendment was to preclude clients from claiming PA if the client was eligible for PgA.

The problem is that "dependent child" can include a child in respect of whom PgA is not payable. That is, dependent child is defined in subsection 5(2) of the Act so that two people can share the custody of a child and both can be said to have a dependent child.

PgA, however, is payable to only one person in respect of any particular child. It is possible that a person who has partial custody of a child may lose eligibility for PA under paragraph 771HA(1)(f) but will not be eligible for PgA if someone else is already receiving PgA in respect of the child.

**Item 10** omits the requirement that a person not have a "dependent child" under 16 years of age and substitutes a requirement that the person not be qualified for PgA. This will allow a person who has a "dependent child" under 16 but who does not qualify for PgA to qualify for partner allowance provided that the person meets all the other qualification requirements for PA.

D

D

D

D

