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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

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).

Commencement provisions - Schedule 11 (Qualifying age for seniors health card) and Schedule 12 (Income tests and related matters)

This amendment alters the commencement provision for each of these Schedules to the *Social Security Legislation Amendment Bill (No.1) 1995* (the Bill). Each of these Schedules was to have commenced, or been taken to have commenced, on 1 July 1995. The Bill failed to gain passage during the Winter Sittings 1995 which would have allowed Royal Assent to take place around 1 July 1995. Commencement is to be amended to Royal Assent to the Bill to mitigate any effect from the amendments in the Schedules which have some adverse effect on customers.

Compensation recovery

This amendment relates to the Schedule 16 measure that applies the compensation recovery provisions to claimants as well as recipients. The amendment will make sure that, if a person's claim for either disability support pension (DSP) or disability wage supplement (DWS) fails because of the operation of the compensation recovery provisions, if the person applies to the SSAT for review of the compensation preclusion decision and if the person requests the Secretary to assess his or her qualification for the payment concerned, then the Secretary is required to make that qualification assessment if it has not already been made.

Minor technical amendments - partner allowance

Part 2 of Schedule 20 to the Bill includes a number of minor technical amendments to the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994* (the PgA Act) concerning partner allowance. As a result of Government amendments to partner allowance qualification provisions that have been included in the Bill, some of those minor technical amendments are no longer required.

NOTES ON AMENDMENTS

Commencement provisions - Schedule 11 (Qualifying age for seniors health card) and Schedule 12 (Income tests and related matters)

Amendment 1 omits subclause 2(5) from the Bill. This subclause had provided that Schedules 11 and 12 commence, or are taken to have commenced, on 1 July 1995. In the absence of this subclause, the commencement of these Schedules will be governed by subclause 2(1) so that they commence on Royal Assent to the Bill.

This removes any retrospective element to the amendments made by these Schedules. If the Bill had gained passage during the Winter Sittings 1995 as expected, there would have been no, or negligible, retrospective effect since Royal Assent would have been likely to have been given around the specified commencement date for these Schedules of 1 July 1995.

However, passage not having been achieved, the retrospective commencement cannot be allowed to proceed since there are certain elements of the amendments made by Schedules 11 and 12 that are adverse to customers. In the case of Schedule 11, the legislation will deny qualification for a seniors health card to a woman aged less than age pension age (ie, as at 1 July 1995, 60 years and 6 months), whereas this qualification is currently available to a woman of less than that age.

The amendments made by Schedule 12 are to align the income test arrangements for under-18 year old sickness and youth training allowance recipients with those for other social security beneficiaries. The amendments will remove the earnings disregard, introduce a 70% taper, abolish the joint income test and make other consequential amendments. Some of these effects are beneficial but some are adverse to customers. Once again, because of the adverse effects, it is proper that the amendments all take effect on Royal Assent and not with any retrospective effect. Those customers who would otherwise lose out by the beneficial amendments not commencing until Royal Assent are in fact being paid the higher rates under ex gratia arrangements.

Compensation recovery

Schedule 16 to the Bill makes a series of amendments relating to compensation recovery and related matters. One of the measures is to make the compensation recovery provisions apply to claimants as well as recipients. It would allow rejection of a person's claim on the grounds of compensation preclusion without necessarily conducting a qualification assessment. This had caused some concern for those payment types that have a more complicated qualification basis (ie, DSP and DWS). If rejection of a claim for such a payment type were subject to a protracted appeal process, there was a concern that qualification could not necessarily be assumed after the event.

This amendment addresses any concerns that a person in these circumstances might suffer in any way from not necessarily having had a qualification assessment on claim. It will require an assessment to be made of a person's qualification for either DSP or DWS if a compensation preclusion decision has been made in relation to the person, if the person has applied to the SSAT for review of that decision, if the person requests such a qualification assessment and if the assessment has not already been made.

Amendment 2 inserts a new item 59A into Part 1 of Schedule 16 to the Bill. This in turn inserts a new section 1184A into the compensation recovery provisions of the Principal Act to introduce the requirement to assess a person's qualification for either DSP or DWS in the circumstances described above.

Minor technical amendments - partner allowance

Part 2 of Schedule 20 to the Bill includes minor technical amendments to the PgA Act that commenced on 1 July 1995 primarily to take account of legislative changes resulting from the introduction, from 1 January 1995, of youth training allowance.

Items 39 to 41 and 42 to 45 of Schedule 20 make amendments to Schedule 3 to the PgA Act relating to partner allowance to insert references to youth training allowance in paragraph 771HA(1B)(b), subsection 771HA(1B), subparagraph 771NU(1)(c)(ii), paragraph 771NU(1)(e), subsection 771NX(1) and paragraph 75(1)(c) of Schedule 1A to the Principal Act. Item 38 of Schedule 20 amends subsection 771HA(1) of the Principal Act and includes references to youth training allowance in paragraphs (c) and (g) of that subsection.

These amendments were based on the subsection 771HA(2) qualification provision extending qualification for partner allowance to persons below 21 years of age if the person or the person's partner has a dependent child. The above amendments were made to facilitate the payment of partner allowance to a person whose partner is a recipient of youth training allowance.

Government amendments made to the Bill in the House of Representatives omitted subsection 771HA(2) (item 41 of Schedule 20 to the Bill) limiting availability of partner allowance to persons whose partners are at least 21 years old. As youth training allowance is payable to persons who are 18 years old or younger, their partners would not qualify for partner allowance. Therefore, the amendments inserting references to youth training allowance in partner allowance provisions referred to above have become obsolete.

Amendments 3 and 4 amend item 38 of Schedule 20 to the Bill by removing references to youth training allowance in proposed paragraphs 771HA(1)(c) and 771HA(1)(g) of the Principal Act.

Amendments 5 and 6 omit items 39 and 40 and items 42 to 45 of Schedule 20 to the Bill that insert references to youth training allowance in paragraph 771HA(1B)(b), subsection 771HA(1B), subparagraph 771NU(1)(c)(ii), paragraph 771NU(1)(e), subsection 771NX(1) and paragraph 75(1)(c) of Schedule 1A to the Principal Act.

