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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO. 2) 1994

EXPLANATORY MEMORANDUM

SUPPLEMENTARY MEMORANDUM

**AMENDMENTS RELATING TO ENHANCED
RECIPROCAL OBLIGATIONS**

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

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO. 2) 1994

OUTLINE AND FINANCIAL IMPACT STATEMENT

These amendments give effect, from 4 July 1994, to a measure announced in the Government's White Paper on Industry and Employment to strengthen obligations placed on the unemployed to accept a job or undertake reasonable activities that improve their job prospects.

Under the current rules, if a person fails to comply with the requirements of the activity test, a job search/newstart activity agreement or certain administrative requirements (eg notification obligations), the person cannot be paid job search allowance (JSA) or newstart allowance (NSA) for a deferment (non-payment) period prescribed under the Principal Act. The length of the deferment period for the person's first 'breach' is 2 weeks. The duration of the deferment period increases depending on how many subsequent breaches are committed by the person within a 3 year period. For the second breach, the deferment period is set at 6 weeks plus a further 6 weeks for each subsequent breach within that 3 year period.

With the introduction of the Job Compact and other substantial additional Government assistance that will be made available to the unemployed that intensifies as the length of unemployment increases, it is considered more appropriate to base deferment periods on the length of unemployment as well as the number of previous breaches.

The new approach to deferment periods draws a distinction between activity test breaches and administrative breaches. The breakdown is as follows -

- Activity test breaches
- failure to satisfy the activity test
 - failure to enter a job search/newstart activity agreement
 - failure to comply with a job search/newstart activity agreement
 - unemployment due to voluntary act
 - unemployment due to misconduct
 - refusal to take up job offer

- Administrative breaches
- failure to comply with a requirement to attend an office of the CES etc
 - failure to comply with notification requirements

Although the penalties that attach to administrative breaches will largely remain unaltered, a new non-payment period structure will apply to activity test breaches, based on both the number of previous breaches and duration on unemployment. The following table illustrates this new structure -

Unemployment Duration	First Breach	Subsequent Breaches
0 to less than 12 months	2 weeks	Previous breach plus 6 weeks
12 months to less than 18 months	4 weeks	Previous breach plus 6 weeks
18 months or more	6 weeks	Previous breach plus 6 weeks

If a person has committed both activity test and administrative breaches within the relevant 3 year period, the deferment period applicable to that person will be the sum of activity test and administrative non-payment periods.

The deferment periods currently applicable to persons who are seasonal workers and who move to an area of lower employment prospects will remain unaltered. The amendments will have no impact on these deferment period provisions.

In addition, all deferment periods will start at the expiration of any applicable waiting period or periods.

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

The amendments are expected to have negligible financial impact.

NOTES ON AMENDMENTS

The amendments insert new **Division 8A** and **Schedule 2A** into the Social Security Legislation Amendment Bill (No. 2) 1994. **Clause 2** of the Bill is amended by the insertion of new **subclause (3A)** to provide that the amendments commence on 4 July 1994.

Division 8A, clause 39A provides that the Principal Act is to be amended as set out in **Schedule 2A**.

Schedule 2A amends provisions in the Principal Act relating to deferment periods for job search allowance (JSA) and newstart allowance (NSA).

Items 1, 4 and 6 of **Schedule 2A** make minor changes to the definitions of "JSA automatic deferment provision", "NS allowance automatic deferment provision" and "NS discretionary deferment provision" in subsection 23(1) of the Principal Act to ensure consistency in terminology used in the Principal Act.

Item 2 omits the reference to 'subsection 543(3)' from paragraph (b) of the definition of "JSA automatic deferment provision" in subsection 23(1) of the Principal Act and replaces it with a reference to 'subsection 546C(4)'. This change is necessary because of the relocation of section 543 by **item 23**.

Item 3 omits the reference to 'subsection 543(1)' from paragraph (a) of the definition of "JSA discretionary deferment provision" in subsection 23(1) of the Principal Act and replaces it with a reference to 'subsection 546C(1)'. This change is necessary because of the relocation of section 543 by **item 23**.

Item 5 omits the reference to 'subsection 627(3)' from paragraph (d) of the definition of "NS allowance automatic deferment provision" in subsection 23(1) of the Principal Act and replaces it with a reference to 'subsection 630C(4)'. This change is necessary because of the relocation of section 627 by **item 55**.

Item 7 omits the reference to 'subsection 627(1)' from paragraph (a) of the definition of "NS discretionary deferment provision" in subsection 23(1) of the Principal Act and replaces it with a reference to 'subsection 630C(1)'. This change is necessary because of the relocation of section 627 by **item 55**.

Subsection 23(1) of the Principal Act is also amended by the insertion, by **item 8**, of definitions of "activity test deferment period" and "administrative breach deferment period".

"Activity test deferment period" is defined as a period worked out under section 546A relating to breaches covered by Subdivision E of Division 1 of Part 2.11 for JSA or a period worked out under section 630A relating to breaches covered by Subdivision E of Division 1 of Part 2.12 for NSA. This includes any deferment period that applied or commenced to apply before 4 July 1994 as a result of the application of an automatic deferment provision.

"Administrative breach deferment period" is defined as a period worked out under section 547A relating to breaches covered by Subdivision F of Division 1 of Part 2.11 for JSA or a period worked out under section 631A relating to breaches covered by Subdivision F of Division 1 of Part 2.12 for NSA. This period does not include any deferment period that applied or commenced to apply before 4 July 1994 as a result of the application of an automatic deferment provision.

Items 9 and 10 omit references in subsection 526(1) to 'section 543' and replace them with 'section 546C'. These changes are necessary because of the relocation of section 543 by **item 23**.

Item 11 amends the heading at the beginning of Subdivision E of Division 1 of Part 2.11. The new heading reads "Subdivision E - Situations where allowance not payable (activity test breaches).

Section 542 of the Principal Act provides for the imposition of a deferment period if a person fails to satisfy the activity test. **Items 12 to 14** amend section 542 by -

- providing that a breach of the activity test attracts an 'activity test deferment period',
- omitting subsections 542(3), (4), (5) and (6) that currently outline the rules concerning duration and commencement of the deferment period, and
- inserting a note that directs the reader to section 546A that outlines the new rules concerning the length of an activity test deferment period and section 546B that deals with commencement of the activity test deferment period.

Items 15, 16 and 17 make similar amendments to section 542A of the Principal Act that applies where a person fails to enter into a job search activity agreement.

Items 18, 19 and 20 make similar amendments to section 542B of the Principal Act that applies where a person fails to comply with the terms of a job search activity agreement.

Items 24, 25 and 26 make similar amendments to section 544 of the Principal Act that applies where a person's unemployment is due to a voluntary act.

Items 27, 28 and 29 make similar amendments to section 545 of the Principal Act that applies where a person's unemployment is due to misconduct.

Items 30, 31 and 32 make similar amendments to section 546 of the Principal Act that applies where a person refuses a job offer.

Section 543 of the Principal Act provides for the imposition of a deferment period if a person fails to attend an office of, or contact, the Department or the CES or fails to give information to the Secretary when required. **Items 21 to 23** amend this provision by -

- providing that a failure to attend an office of, or contact, the Department or the CES or a failure to give information to the Secretary when required attracts an 'administrative breach deferment period',

- omitting subsections 543(5), (6), (7) and (8) that currently outline the rules concerning duration and commencement of the deferment period,

- renumbering the provision as new section 546C and relocating it into Subdivision F of Division 1 of Part 2.11 that outlines the new deferment rules that apply to administrative breaches, and

- inserting a note that directs the reader to section 547A that outlines the new rules concerning the length of an administrative breach deferment period and section 547B that deals with commencement of the administrative breach deferment period.

These amendments have the effect of locating in Subdivision E, Division 1 of Part 2.11 all breaches related to the activity test that may attract an activity test deferment period. The provisions relating to activity test breaches are summarised below -

- Activity test breaches - failure to satisfy the activity test (see section 542 of the Act)
- failure to enter a job search activity agreement (section 542A)
 - failure to comply with a job search activity agreement (section 542B)
 - unemployment due to voluntary act (section 544)
 - unemployment due to misconduct (section 545)
 - refusal to take up job offer (section 546)

Item 33 inserts new sections 546A and 546B into the Principal Act. New section 546A outlines how to work out the duration of the activity test deferment period while new section 546B specifies from when that deferment period commences.

New subsections 546A(1) and (2) specify the duration of the activity test deferment period where one or more automatic deferment provision under Subdivision E of Division 1 of Part 2.11 apply to a person within a 3 year period.

The following table illustrates the duration of the activity test deferment period where a person commits one or more activity test breaches within a 3 year period.

Unemployment Duration	First Breach	Subsequent Breaches
0 to less than 12 months	2 weeks	Previous breach plus 6 weeks
12 months to less than 18 months	4 weeks	Previous breach plus 6 weeks
18 months or more	6 weeks	Previous breach plus 6 weeks

New subsection 546A(6) indicates that a person's unemployment duration means the period during which the person has been continuously receiving JSA.

New subsection 546A(7) allows a person to cease to receive JSA for up to 6 weeks (eg, where the person undertakes short term full-time employment) and still be taken to be continuously receiving JSA for the purposes of subsection 546A(6).

New subsection 546A(8) provides that a person's unemployment duration includes a deferment period (period of non-payment) that arises as a result of the application of an automatic deferment provision or a discretionary deferment provision (as defined in subsection 23(1) of the Principal Act). Therefore, if a person ceases to receive JSA because of the imposition of a deferment period, that period counts for the purposes of determining the person's unemployment duration.

Examples of how these new provisions will apply after 4 July 1994 to new clients or clients without a breach prior to 4 July 1994 are as follows -

Situation - 2 activity test breaches within 3 year period (unemployment duration - 8 months)

Deferment - 2 weeks (first breach) + 6 weeks (2nd breach) = 8 weeks

Situation - 1 activity test breach (unemployment duration - 14 months)

Deferment - 4 weeks

Situation - 3 activity test breaches within 3 year period (unemployment duration - 21 months)

Deferment - 6 weeks (1st breach) + 6 weeks (2nd breach) + 6 weeks (3rd breach) = 18 weeks

New subsection 546A(3) takes account of the situation where a person has a combination of activity test and administrative breach deferment periods that occur after the commencement of these amendments (4 July 1994) and commits an activity test breach under Subdivision E of Division 1 of Part 2.11. In this situation, the person's activity test deferment period for activity test breaches is worked out in accordance with new subsection 546A(1) and (2). To the resultant period is added a period worked out by reference to new section 547A in respect of each administrative breach.

If a person has only committed one administrative breach, the activity test deferment period is increased by 2 weeks. If the person has committed two administrative breaches, the activity test deferment period is increased by 2 weeks (1st breach) + 4 weeks (2nd breach) = 6 weeks. For three administrative breaches, the activity test deferment period is increased by 2 weeks (1st breach) + 4 weeks (2nd breach) + 6 weeks (3rd breach) = 12 weeks.

Again, only breaches that occur 3 years prior to the current breach are taken into account for the purposes of working out the person's activity test deferment period.

Examples of how this provision works are as follows -

Unemployment period less than 12 months

Situation - Activity test breach (current breach) and 2 prior admin breaches
Deferment - 2 weeks + (2 weeks + 4 weeks) = 8 weeks

Situation - Activity test breach (current breach) and 1 prior admin breach and 1 prior activity test breach (40 months ago when previously on JSA)
Deferment - 2 weeks for 1 activity test breach + 2 weeks for admin breach = 4 weeks

Unemployment Period 12-18 Months

Situation - Activity test breach (current breach) and 2 prior admin breaches and 1 prior activity test breach
Deferment - 4 weeks + 6 weeks for activity test breaches + (2 weeks + 6 weeks for admin breaches) = 18 weeks.

Situation - Activity test breach (current breach) and prior activity test breach
Deferment - 4 weeks + 6 weeks = 10 weeks

Unemployment Period more than 18 months

Situation - Activity test breach (current breach) and 2 prior activity test breaches and 1 prior admin breach
Deferment - 6 weeks + 6 weeks + 6 weeks for activity test breaches + 2 weeks for admin breach = 20 weeks

There will be JSA and NSA clients are subject to an activity test deferment period after 4 July 1994 and have been subject to one or more automatic deferment provisions (under the old rules) that occurred before 4 July 1994 but within 3 years prior to the current activity test breach. Any breaches occurring before 4 July 1994 and arising as a result of the application of an automatic deferment provision are taken to be activity test breaches for the purposes of determining the duration of an activity test deferment period. This is provided for in the definition of "activity test deferment period" inserted by **item 8**.

The result is that the 'first' activity test breach occurring after 4 July 1994 will attract a deferment period of 6 weeks (normally applicable to subsequent activity test breaches). This is because the deferment period arising as a result of the application of an automatic deferment provision that occurred before 4 July 1994 is taken to be the person's first activity test breach for the purposes of working out the activity test deferment period.

If two automatic deferment provisions applied to the person before 4 July 1994 followed by an activity test breach, the activity test breach is taken to be the person's 3rd activity test breach for the purposes of working out the activity test deferment period.

To this 6 week deferment period is added a further deferment period in respect of each pre-4 July 1994 breaches.

New subsection 546A(4) covers the situation where a person has a current activity test breach and one automatic deferment provision applied to the person before 4 July 1994 within a period of 3 years prior to the current breach. In this situation, a period of 2 weeks is added to the 6 week deferment period applicable to the person for the current activity test breach.

New subsection 546A(5) covers the situation where a person has a current activity test breach and two automatic deferment provisions applied to the person before 4 July 1994 within a period of 3 years prior to the current breach. In this situation, a period of 4 weeks is added to the 2 weeks specified in new subsection 546A(4) in respect of the first automatic deferment provision which is, in turn added to the 6 weeks applicable to the person for the current activity test breach. The activity test deferment period applicable to the person in these circumstances would be 12 weeks.

If a person has a current activity test breach and two or more automatic deferment provisions applied to the person before 4 July 1994 within a period of 3 years prior to the current breach, a period of 6 weeks is added to the 12 weeks worked out in the previous paragraph for each further breach. This additional deferment period is added by applying new paragraph 546A(2)(d).

The person's unemployment duration is not relevant for the purposes of the above calculations.

Some examples are as follows -

- | | |
|-------------|---|
| Situation - | Client has 1 breach before 4 July 1994 followed by activity test breach |
| Deferment - | 6 weeks (activity test breach) + 2 weeks = 8 weeks |
| | |
| Situation - | Client has 2 breaches before 4 July 1994 followed by 2 activity test breaches |
| Deferment - | 6 weeks + 6 weeks (activity test breaches) + 2 weeks for one pre-July breach + 4 weeks for 2nd pre-July breach = 18 weeks |

Situation - Client has 2 breaches before 4 July 1994 followed by 1 activity test breach and 1 admin breach
Deferment - 2 weeks (for the first administrative breach) + 2 weeks + 4 weeks (for pre July breaches under the activity test deferment period rules) + 6 weeks (activity test breach) = 14 weeks

New section 546B provides that the activity test deferment period is to commence on a day determined by the Secretary in writing. This day can be before or after the date of the Secretary's determination. However, if the person is also subject to a waiting period (as defined in subsection 23(1) of the Principal Act and including a liquid assets test waiting period applicable under section 519), the Secretary must not determine a commencement day for the activity test deferment period that occurs before or during the waiting period.

Item 34 inserts a new heading before section 547 of the Principal Act, ie 'Subdivision F - Situations where allowance not payable (administrative breaches)'.

Section 547 of the Principal Act provides for the imposition of a deferment period if a person fails to comply with certain notification requirements. **Items 35 to 37** amend this provision by -

- providing that a failure to comply with those notification requirements attracts an 'administrative breach deferment period',
- omitting subsections 547(3), (4), (5) and (6) that currently outline the rules concerning duration and commencement of the deferment period, and
- inserting a note that directs the reader to section 547A that outlines the new rules concerning the length of an administrative breach deferment period and section 547B that deals with commencement of the administrative breach deferment period.

These amendments, combined with amendments made by **items 21 to 23**, have the effect of locating in Subdivision F, Division 1 of Part 2.11 administrative breaches that may attract an administrative breach deferment period. The provisions relating to administrative breaches are summarised below -

Administrative breaches - failure to comply with a requirement to attend an office of the CES etc (section 546C)
- failure to comply with notification requirements (section 547).

Item 38 inserts new sections 547A and 547B into the Principal Act. New section 547A outlines how to work out the duration of the administrative breach deferment period while new section 547B specifies from when that deferment period commences.

New subsections 547A(1), (2) and (3) specify the duration of the administrative breach deferment period where one or more automatic deferment provision under Subdivision F of Division 1 of Part 2.11 apply to a person within a 3 year period.

If a person commits an administrative breach, the deferment period is 2 weeks. If, in the previous 3 years, the person was subject, on one occasion, to an administrative breach deferment period, then the person's administrative breach deferment period is 6 weeks. If the person was subject to two or more administrative breach deferment periods within the period of 3 years prior to the current breach, then the deferment period is 6 weeks plus 6 weeks for the each subsequent administrative breach.

Examples of how these new provisions will apply after 4 July 1994 to new clients or clients without a breach prior to 4 July 1994 are as follows -

Situation - 2 administrative breaches within 3 year period
Deferment - 2 weeks (first breach) + 4 weeks (2nd breach) = 6 weeks

Situation - 3 administrative breaches within 3 year period
Deferment - 2 weeks (1st breach) + 4 weeks (2nd breach) + 6 weeks (3rd breach)
= 12 weeks

New subsection 547A(4) takes account of the situation where a person has a combination of administrative breach and activity test deferment periods that occur after the commencement of these amendments (4 July 1994) and commits an administrative breach under Subdivision F of Division 1 of Part 2.11. In this situation, the person's administrative breach deferment period for administrative breaches is worked out in accordance with new subsections 547A(1), (2) and (3). To the resultant period is added a period worked out by reference to new section 546A in respect of each activity test breach.

Again, only breaches that occur 3 years prior to the current breach are taken into account for the purposes of working out the person's administrative breach deferment period.

Examples of how this provision works are as follows -

Unemployment period less than 12 months

Situation - Admin breach (current breach) and 2 prior activity test breaches
Deferment - 2 weeks + (2 weeks + 6 weeks for activity test breaches)
= 10 weeks

Situation - Admin breach (current breach) and 1 prior admin breach and 2 prior activity test breaches
Deferment - 2 weeks + 4 weeks for admin breaches + (2 weeks + 6 weeks for activity test breaches) = 14 weeks

Unemployment Period 12-18 Months

Situation - Admin breach (current breach) and 1 prior activity test breach

Deferment - 2 weeks + 4 weeks = 6 weeks

Situation - Admin breach (current breach) and 1 prior admin breach and 1 prior activity test breach

Deferment - 2 weeks + 4 weeks for admin breaches + 4 weeks for activity test breach = 10 weeks.

Unemployment Period more than 18 months

Situation - Admin breach (current breach) and 2 prior activity test breaches

Deferment - 2 weeks + (6 weeks + 6 weeks for activity test breaches) = 14 weeks

New section 547B provides that the administrative breach deferment period is to commence on a day determined by the Secretary in writing. This day can be before or after the date of the Secretary's determination. However, if the person is also subject to a waiting period (as defined in subsection 23(1) of the Principal Act and including a liquid assets test waiting period applicable under section 598), the Secretary must not determine a commencement day for the administrative breach deferment period that occurs before or during the waiting period.

Item 39 inserts a new heading before section 548 of the Principal Act, ie 'Subdivision G - Situations where allowance not payable (other recipient non-compliance)'.

Items 40 to 71 amend deferment provisions applicable to NSA clients who fail to comply with certain activity test and administrative obligations imposed under the Principal Act.

Items 40 to 71 mirror the amendments discussed. The only substantial difference in the treatment of NSA clients in relation to activity test or administrative breaches concerns the meaning of 'unemployment duration' for the purposes of working out the length of an activity test deferment period.

New subsections 630A(6), (7), (8), (9) and (10), inserted by **item 65**, define unemployment duration for the purposes of new section 630A. A reference to unemployment duration means the period during which the person has been continuously receiving NSA or JSA followed by NSA (the latter would occur where a person is registered by the CES as unemployed for a period of more than 12 months). 'Unemployment duration' also includes a deferment period (period of non-payment) that arises as a result of the application of an automatic deferment provision or a discretionary deferment provision (as defined in subsection 23(1) of the Principal Act).

However, if a person is initially receiving JSA and ceases to receive that allowance for a period of less than 13 weeks and at the end of that period starts receiving NSA, then the person is taken to have been continuously in receipt of allowance during that break. Similarly, if a person is receiving NSA and ceases to receive that allowance for a period of less than 13 weeks and at the end of that period resumes receipt of NSA, then the person is taken to have been continuously in receipt of allowance during that break.

Item 72 makes a consequential amendment to subparagraph 729(2)(d)(i) by omitting the reference to 'subsection 543(3) or 627(3)' and substituting 'subsection 546C(4) or 630C(4)'.

Item 73 amends Schedule 1A of the Principal Act (Savings and Transitional Provisions) by inserting new clauses 70 and 71.

New clause 70 deals with the situation where, on 4 July 1994, a JSA or NSA client is subject to an automatic deferment provision and is precluded from payment due to the imposition of a deferment period. In this situation, the deferment period continues until the person ceases to be subject to the automatic deferment provision, without being affected by the new post 4 July provisions.

New clause 71 deals with the situation where the Secretary makes a determination under the old rules (pre 4 July 1994) that an automatic deferment provision is to apply to a person from a specified date on or after 4 July 1994. In this situation, the determination continues in force after 4 July 1994 as if it had been made under new section 546B, 547B, 630B or 631B, except that subsection (2) of those provision is taken not to apply.



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