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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO. 2) 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

**AMENDMENTS RELATING TO TAX FILE NUMBERS AND
ALLOCATED PENSIONS AND ALLOCATED ANNUITIES**

**(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

The amendments affect the *Social Security Act 1991* (the Principal Act) and the *Social Security Legislation Amendment Act (No 3) 1992* and relate to:

- allocated pensions and allocated annuities; and
- the refusal to apply for a tax file number.

Allocated Pensions and Allocated Annuities

Immediately following the Government's 'Security in Retirement' statement on superannuation in June 1992, the then Minister for Social Security announced changes to the treatment of allocated pensions and allocated annuities under the social security income and assets tests. Amendments to give effect to those changes were enacted by the Parliament in Division 19 of the *Social Security Legislation Amendment Act (No 3) 1992* but have not commenced as their implementation was deferred until the later of 1 October 1993 or the date of report to the Senate by a Senate standing or select committee on the application of Division 19. To date, no report has been made to the Senate.

The amendments to the *Social Security Act 1991* and the *Social Security Legislation Amendment Act (No 3) 1992* provide, from 1 July 1994, for:

- the repeal of the amendments made by Division 19 and its commencement provision; and
- the account balance of allocated pensions and allocated annuities to be subject to the assets test.

These amendments mean that there is no change to the current income test treatment of allocated pensions and allocated annuities. The only changes are to the treatment of allocated pensions and allocated annuities under the assets test.

It is estimated that 300 social security clients would be affected, with annual reductions in outlays of approximately \$0.3m.

Refusal to apply for a tax file number

The Social Security Act Legislation Amendment Bill (No. 2)1994, as introduced, provided for amendments to be made to the tax file number provisions in the Principal Act so as to overcome the decision of the Administrative Appeals Tribunal in *Re Malloch and Secretary, Department of Social Security*. The Tribunal had held that the Principal Act does not prevent payment to a person who does not provide a tax file number to the Department because he or she has no tax file number and has no intention of getting one.

Subsequently, the Privacy Commissioner indicated concern that the amendments did not take account of the voluntary quotation principle that is an integral part of the tax file number scheme. The Privacy Commissioner agreed that the proposed amendments put beyond doubt that receiving a social security payment is conditional on satisfying the tax file number requirement, but requested that it be made clear that the decision as to whether or not an individual applies for a tax file number, in full knowledge of the consequences, rests with the individual.

Further amendments provide for this. There are no financial implications.

NOTES ON AMENDMENTS

Amendments (1) and (12)

Clause 2 of the Social Security Legislation Amendment Bill (No. 2) 1994 sets out the commencement of each provision in the Bill

Amendment (1) provides for the commencement on 1 July 1994 of new Division 10. Division 10 deals with allocated pensions and allocated annuities.

Amendment (12) provides for the insertion of new Division 10 into the Bill to provide for the application of the assets test to allocated pensions and allocated annuities.

New clause 42A inserts definitions of "allocated annuity" and "allocated pension" into section 9 (investment income definitions) of the Principal Act.

New section 9(8) provides that a pension or annuity is an allocated one if either the payment rate or the basis of any variation in the payment rate is not fully defined in the trust deed or in the annuity contract.

New clause 42B amends section 1118 to allow the value of an allocated pension account to be included for the purposes of the assets test.

New clause 42C amends section 1119 to allow the value of an allocated annuity account to be included for the purposes of the assets test.

New clause 42D provides for the omission of subsection 2(13) and the repeal of Division 19 of the *Social Security Legislation Amendment Act (No 3) 1992*.

Division 19 of the *Social Security Legislation Amendment Act (No 3) 1992* gave effect to changes in the income and assets treatment of allocated pensions and allocated annuities that had been announced by the then Minister for Social Security immediately following the Government's 'Security in Retirement' statement on superannuation in June 1992.

Subsection 2(13) of the *Social Security Legislation Amendment Act (No 3) 1992* provided for the commencement of Division 19 on the later of 1 October 1993 or the date of report to the Senate by a Senate standing or select committee on the application of Division 19.

Amendments (2) to (11), (13) to (76)

Amendments (2) to (11) address the concern of the Privacy Commissioner that the amendments made to the tax file number provisions by the Social Security Act Legislation Amendment Bill (No. 2)1994, as introduced, to overcome the decision of the Administrative Appeals Tribunal in *Re Malloch and Secretary, Department of Social Security*, did not take account of the voluntary quotation principle that is an integral part of the tax file number scheme.

In summary, Amendments (2) to (11):

- make it clear that the Secretary may request but not compel a person (be they a claimant for, or a recipient of, a social security payment), to provide a tax file number;
- make it clear that the Secretary may request but not compel a person (be they a claimant for, or a recipient of, a social security payment, to provide their partner's tax file number;
- state that a social security payment is not payable if the person has not satisfied the request within 28 days and has not been given an exemption by the Secretary from satisfying the request.

Amendments (2) to (6) that relate to clause 5 of the Bill, are consequential amendments and omit the words "required" and "requirement" in various proposed new sections of the Principal Act and substitute them with "request" or "requested", as appropriate.

Amendment (7) omits the proposed new sections 426 and 427 in clause 5 of the Bill and substitutes proposed new sections 426 and 427.

New subsection 426(1) provides that the Secretary may request but not compel a person claiming a disability wage supplement to provide a written statement of the person's tax file number. The new subsection 426(1) also allows a second option, ie to request but not compel a person who does not have a tax file number to apply for a number and to give a written statement of the number to the Secretary when the number issues.

New subsection 426(2) provides that disability wage supplement is not payable to a claimant of disability wage supplement if, at the end of 28 days after the request has been made, the person fails to satisfy the request and has not been given an exemption by the Secretary from having to satisfy the request.

A Note points out how the request can be satisfied in some cases.

New subsection 427(1) is similar to subsection 426(1) and deals with requests made by the Secretary to the claimant for the claimant to provide a statement of the tax file number of the partner of the claimant.

New subsection 427(2) is similar to subsection 426(2).

Amendment (8) omits the proposed new sections 444 and 445 in clause 5 of the Bill and substitutes proposed new sections 444 and 445.

Proposed new section 444 is similar to new section 426 except that it deals with recipients of disability wage supplement.

Proposed new section 445 is similar to new section 427 except that it deals with the partners of recipients of disability wage supplement.

Amendment (9) omits clause 34 of the Bill and substitutes new clauses 34 and 34A.

Clause 34(a) amends paragraph 46A(1)(a) so as to contemplate that the Secretary may have requested the person under section 51A or 67A to give a written statement of the person's tax file number or to apply for a tax file number and provide a written statement of the number once it issues.

A consequential amendment is made to paragraph 46A(1)(b) by clause 34(b) to substitute the word "requirement" with "request".

The current terminology in paragraph 46A(3)(a) is changed by clause 34(c) so that it better fits the situation where the Secretary has requested a person to apply for a tax file number. The paragraph, as amended, permits a person to declare that they have applied for a tax file number and this will satisfy the requirements of section 46A.

Clause 34(d) adds to the range of options available to the Commissioner of Taxation in telling the Secretary what status the person's application for a tax file number has. The amendment allows the Commissioner to state that no application has in fact been made.

Clause 34A makes consequential amendments to section 46B of the Principal Act - this section deals with the provision of the tax file number of the partner of a person claiming or being paid age pension - by omitting the words "required" and "requirement" and substituting them with "requested" or "request", as appropriate.

Amendments (10) and (11) make similar amendments to **Amendments (7) and (8)**, respectively, in relation to age pension.

Like **Amendments (10) and (11)**, **Amendments (13) to (76)** make similar amendments in respect of the other social security payment types.



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