SOCIAL SECURITY AMENDMENT (2007 MEASURES NO.1) BILL 2007

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Workforce Participation the Honourable Sharman Stone MP)
SOCIAL SECURITY AMENDMENT (2007 MEASURES NO.1) BILL 2007

OUTLINE

The Bill contains amendments which extend mobility allowance to a range of people and to support the first phase of the child support reforms which came into effect on 1 July 2006. It also contains a number of minor amendments to ensure that the policy intention of the social security law is upheld.

The aim of the mobility allowance amendments is to extend the standard rate of mobility allowance to people undertaking a vocational rehabilitation program under Part III of the Disability Services Act 1986. Additionally, the higher rate of mobility allowance will be extended to parenting payment recipients and people who are working for at least 15 hours per week on wages set in accordance with the program administered by the Commonwealth, known as the supported wage system. In relation to these amendments, the person will have to continue to satisfy the existing qualification requirements for mobility allowance.

This Bill includes an amendment to ensure youth allowance recipients who cease full-time study notify Centrelink of that cessation before they can qualify for youth allowance through looking for work. The Bill also provides partnered parenting payment recipients who have a partial capacity to work access to certain benefits and concessions similar to those available to people with a partial capacity to work receiving newstart allowance and youth allowance (job seeker).

This Bill allows a person with at least 14 percent care of a child to be eligible for payment at the dependent child maximum basic rate where they are claiming youth allowance, newstart allowance, sickness allowance and mature age allowance (under part 2.12B). This policy measure was designed to balance a component of the child support reforms which lifts the percentage of care for a child required to qualify for a share of family tax benefit from 14 percent to 35 percent.

FINANCIAL IMPACT STATEMENT

The estimated financial impact associated with the proposed Social Security Amendment (2007 Measures No.1) Bill 2007 is approximately $18.2 million, with details for each schedule as follows:

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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the Social Security Amendment (2007 Measures No. 1) Act 2007.

Clause 2 provides a table that sets out the commencement dates of the various sections to the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

For ease of description, this explanatory memorandum uses the following abbreviations:

SUMMARY

The amendments made to the Social Security Act provide that the standard rate of mobility allowance is extended to a person who is undertaking a vocational rehabilitation program (or follow-up program) under Part III of the Disability Services Act 1986. That is, a rehabilitation program that provides a person with assistance to obtain or retain unsupported paid employment. This is subject to meeting the qualification requirements consistent with the current provisions. These include the requirements that, a person must be a handicapped person and who, in the opinion of the Secretary is unable to use public transport without substantial assistance, either permanently or for an extended period and the inability to use public transport without substantial assistance is due to the person’s physical or mental disability.

These amendments also extend the higher rate of mobility allowance to parenting payment recipients who are working at least 15 hours per week for wages at or above the relevant minimum wage or are looking for such work. Additionally, the higher rate of mobility allowance is extended to a person receiving newstart allowance or youth allowance but not undertaking full-time study and who is not a new apprentice, disability support pension or parenting payment and who is working for at least 15 hours per week on wages set in accordance with the program administered by the Commonwealth known as the supported wage system.

The measure relating to youth allowance aims to ensure that a youth allowance recipient who ceases full-time study which they had previously been undertaking, notifies Centrelink of their change in circumstances. This amendment provides that where a person fails to comply with a requirement to notify Centrelink, the person will not be able to satisfy the activity test in paragraph 541(1)(b) until such time as they notify Centrelink of their changed circumstances or Centrelink becomes aware of these changed circumstances.

The Bill includes a measure to extend partnered parenting payment recipients who have a partial capacity to work, access to the pharmaceutical allowance, pensioner education supplement (granted while they were a transitional DSP applicant), pensioner concession card and telephone allowance. The amendments also provide for extended access to telephone allowance and the pensioner concession card when a parenting payment recipient (either partnered or single) ceases payment due to employment income.

The amendments made to the Social Security Act provide that recipients of youth allowance (except full-time students and new apprentices), newstart allowance (single), mature age allowance (single)(Part 2.12B) and sickness allowance (single) are entitled to the dependent child maximum basic rate of payment if they have a child for whom they are providing care for at least 14 percent of a period, where they are legally responsible for the child or are providing the care pursuant to a family law order, parenting plan or registered parenting plan. These new provisions are only to be used where a person would not otherwise meet the existing definition of having a dependent child under subsection 5(2).

The measure is designed to ensure that the costs incurred by non-resident parents who provide at least 14 percent care of a child are recognised, even where the person
would not otherwise qualify as having a dependent child under subsection 5(2) of the Social Security Act. This legislative amendment therefore only extends to people who have legal responsibility for a child or who are caring for a child under a family law order, parenting plan or registered parenting plan.

In many instances, non-resident parents will qualify as having a dependent child under subsection 5(2) of the Social Security Act. However, this provision makes it clear and provides increased legislative support for providing the dependent child rate of payment (for these four payment types) where a person cares for a child at least 14 percent of the time but may not actually be considered as having a child in his or her care due to this low percentage of care or does not have legal responsibility for the day to day care of a child and may therefore not otherwise qualify as having a dependent child under subsection 5(2) of the Social Security Act.

The Bill also includes amendments to the Social Security Act relating to people over 55 years of age meeting the activity test.
SCHEDULE 1 – MOBILITY ALLOWANCE

EXPLANATION OF CHANGES

Social Security Act 1991

Items 1 and 2 amend section 1035. Item 1 inserts new paragraph 1035(1)(h). This paragraph expands the current eligibility for the standard rate of mobility allowance, specified in subsection 1044(1), to a person who is a handicapped person and an Australian resident who is undertaking a vocational rehabilitation program. The Secretary must also be of the opinion that the person is unable to use public transport without substantial assistance, either permanently or for an extended period and the person’s inability to use public transport is due to the person’s physical or mental disability. Item 2 provides that a vocational rehabilitation program is included at subsection 1035(2) as an activity which will satisfy the travel test in subsection 1035(1).

Item 3 amends subsection 1035(3) to insert a definition of ‘vocational rehabilitation program’. Vocational rehabilitation program means a rehabilitation program (or follow-up program) under Part III of the Disability Services Act 1986 that provides a person with assistance to obtain or retain unsupported paid employment. To avoid doubt, a note is included to provide that a vocational rehabilitation program may include vocational training within the meaning of section 19. This is because the definition of vocational training contained in subsection 1035(3) does not include vocational training undertaken under the Disability Services Act 1986. However, where such vocational training is part of a person’s vocational rehabilitation program, the intention is that a person should be able to access the standard rate of mobility allowance.

Item 4 amends paragraph 1035A(1)(d) to insert a reference to subsections 1035(8) and (9) which are added by Item 11 of this Schedule. The effect of this is that people who fall within those new subsections will be eligible for the higher rate of mobility allowance.

Items 5 to 10 amend subsections 1035A(6) and (7) to provide that these subsections provide the higher rate of mobility allowance, specified in 1044(1A), to parenting payment recipients, who meet the base eligibility criteria for mobility allowance in subsection 1035A(1). The heading to subsection 1035A(6) is also changed from ‘Newstart allowance and youth allowance recipients’ to ‘Newstart allowance, youth allowance or parenting payment recipients’ to reflect that subsections 1035A(6) and (7) will now also apply to parenting payment recipients.

Item 11 inserts new subsections 1035A(8) and (9). New subsection 1035A(8) provides the higher rate of mobility allowance to a person who satisfies the general requirements in subsection 1035A(1) and who is also receiving newstart allowance, youth allowance, disability support pension or parenting payment (the relevant income support payments). The person must also be working for at least 15 hours per week on wages set in accordance with the program administered by the Commonwealth known as the supported wage system and required to travel to and from home for the purpose of performing the work. For the purposes of this section,
the required work in the supported wage system cannot be work performed by the
person in the course of employment that is supported by supported employment
services within the meaning of section 7 of the Disability Services Act 1986. This is
consistent with the introduction of higher rate mobility allowance under Welfare to
Work reforms that focused on increasing the number of people with disability in open
employment.

Subsection 1035A(9) provides that a person continues to be eligible for the higher rate
of mobility allowance if the person starts to earn income from the work or the
person’s income from work increases such that the relevant income support payment
ceases to be payable because the rate of the payment is nil due to the income, or
increased income the person has been earning from the work. The person will
continue to be eligible for mobility allowance whilst they continue to work for at least
15 hours per week on wages set in accordance with the supported wage system. This
provision also allows a person to continue to receive mobility allowance if they leave
the supported wage system and begin working for at least 15 hours per week at or
above the relevant minimum wage after they leave payment. Additionally, a person
could also move from wages at or above the relevant minimum wage into those set in
accordance with the supported wage system. Again, for the purposes of this section,
the required work cannot be work performed by the person in the course of
employment that is supported by supported employment services within the meaning
of section 7 of the Disability Services Act 1986.

Item 12 inserts subparagraph 1046(2)(b)(vi) which provides that when a person
ceases to undertake a vocational rehabilitation program the mobility allowance
continuation provisions in section 1046 apply to a person who qualifies for mobility
allowance by virtue of the amendments made to section 1035 by Schedule 1 of this
Bill. The effect of this amendment is that a person who ceases to undertake a
vocational rehabilitation program can continue to receive the standard rate mobility
allowance for 12 weeks. If a person ceases to qualify for mobility allowance for
another reason, they will continue to qualify for 2 weeks (subsection 1046(4)).

Item 13 amends paragraph 1046(2A)(b) to include a reference to new subsections (8)
and (9).

Item 14 amends section 1046 to insert new subparagraph 1046(2B)(b)(iia). The main
effect of this provision is that if a person ceases receiving parenting payment because
of the operation of section 500J, 500ZB or 500ZE of the Social Security Act or
section 81 of the Social Security (Administration) Act 1999, the person will not be
able to access the 12 week extended mobility allowance qualification.

Item 15 inserts the definition of vocational rehabilitation program at subsection
1046(6). As above, vocational rehabilitation program means a rehabilitation program
(or follow-up program) under Part III of the Disability Services Act 1986 that provides
a person with assistance to obtain or retain unsupported paid employment. To avoid
doubt, a note is included to provide that a vocational rehabilitation program may
include vocational training within the meaning of section 19.
SCHEDULE 2 – YOUTH ALLOWANCE

EXPLANATION OF CHANGES

Social Security Act 1991

Items 1 and 2 amend section 541 of the Social Security Act. Item 1 makes paragraph 541(1)(b) subject to new subsection (4). Item 2 inserts new subsection (4). This new subsection applies to youth allowance recipients who have been undertaking full-time study under section 541B and who cease undertaking that study. Where a person has failed to comply with a requirement to notify Centrelink that they ceased full-time study, the intention is that a person should not be able to satisfy the activity test through meeting paragraph 541(1)(b) (actively seeking and willing to undertake paid work), until such time as the person does notify Centrelink that they are no longer studying. Youth allowance recipients are advised through notices provided under section 68 of the Administration Act that they should advise Centrelink of such a change in circumstances. Such notices usually require a person to notify of a change of circumstances within 14 days.

The purpose of this new subsection is to ensure that people, who cease satisfying the youth allowance activity test by undertaking full-time study, notify Centrelink of such a change in their circumstances so they can rapidly be engaged with an employment service provider.

Once a youth allowance recipient has notified Centrelink of ceasing his or her study then new subsection (4) will cease to apply. However, this does not mean that a person can then be taken to have satisfied the activity test through ‘actively seeking and willing to undertake work’ retrospectively during the period in which the person had not notified Centrelink of the cessation. The fact that a person cannot satisfy the Secretary that, at a particular time the person is activity seeking and willing to undertake paid work in Australia unless, before that time the person has informed of the cessation or the Department has become aware of the cessation, intends the provision operate in this manner.

A person can only meet the test ‘actively seeking and willing to undertake work test’ after the time the person has notified the Department that his or her study has ceased or the Department has become aware of the cessation.

On 3 March 2007 Andrew commenced a full-time degree course at University. He met the youth allowance activity test by undertaking full-time study under section 541B. He otherwise qualified for and was payable youth allowance. Andrew was advised that if there was a change in his circumstances that he was required to notify Centrelink within 14 days. On 14 March 2008, Andrew dropped out of his university course. He did not notify Centrelink that he stopped his full-time study. On 30 June 2008 Centrelink did an enrolment check on the university that Andrew attended and discovered Andrew had ceased studying. Centrelink contacted Andrew and advised him that if he was to remain on youth allowance he was required to attend an appointment with a Job Network Member to discuss his activity requirements as a job seeker.
Centrelink raise a debt for the period from the time Andrew failed to comply with the requirement to notify Centrelink until 30 June 2008 as Andrew was not satisfying the activity test and therefore did not qualify for youth allowance. Andrew claims that since he had dropped out of university he had been looking for at least 3 jobs a week. As Andrew had not notified Centrelink of ceasing his study and Centrelink only became aware of this on 30 June 2008, Andrew cannot satisfy the activity test through indicating he was actively seeking and willing to undertake paid work in Australia at any time between the time he failed to notify of ceasing study 30 June 2008. This is in spite of his claims he was looking for work during this period.

This measure will ensure that people finishing full-time studies will maximise their chances of obtaining employment by rapidly obtaining employment focused assistance from Centrelink and Employment Service Providers. This measure will ensure the equity of treatment of job seekers receiving youth allowance in that all recipients will undertake job seeking efforts at an acceptable and appropriate level in order to remain eligible for the allowance.

Item 3 provides the application provision for Items 1 and 2. The amendments will apply, to a person who is given a notice under section 68 of the Administration Act that has the effect of requiring the person to inform the Department if the person ceases undertaking full-time study (i.e. a change of circumstances) before, on or after the commencement of the (being the later of 1 January 2008 and Royal Assent) and that person ceases undertaking full-time study after the commencement of the Schedule.
SCHEDULE 3 – PARENTING PAYMENT RECIPIENTS HAVING A PARTIAL CAPACITY TO WORK

EXPLANATION OF CHANGES

Social Security Act 1991

Items 1 and 2 make amendments to the pensioner education supplement provisions at section 1061PJ. Item 1 inserts new paragraph (dc) at subsection 1061PJ(2). This new paragraph provides that subject to new subsection (2D), a person receiving benefit PP (partnered) will be receiving a payment attracting a pensioner education supplement. Item 2 sets out new subsection (2D). This new subsection applies to a person if the person has a partial capacity to work and was a transitional DSP applicant. Partial capacity to work is defined at section 16B of the Social Security Act and ‘transitional DSP applicant’ is defined at subsection 23(1). Broadly, a person is a transitional DSP applicant if the person claimed disability support pension between 11 May 2005 and 30 June 2006 and has been required to undertake a review of their capacity to work.

If, on or after 1 July 2006, and immediately before a person first qualified for parenting payment, a person was a transitional DSP applicant and the person was either

- receiving disability support pension and ceased, as a result of the person’s first review of his or her work capacity undertaken after 1 July 2006, to receive disability support pension because he or she no longer had a continuing inability to work; or
- receiving youth allowance in respect of which subsection (2A) applied; or
- receiving newstart allowance in respect of which subsection (2B) applied;

and since the time the person ceased to receive one of the above payments, has been qualified for parenting payment and been a member of a couple (therefore receiving benefit PP (partnered)) and a pensioner education supplement in relation to the particular course of study that they were studying when leaving disability support pension, then the person will be able to receive a pensioner education supplement.

The effect of these provisions is that a person who was a transitional DSP applicant (and who doesn’t qualify for disability support pension as the result of the person’s first review after 1 July 2006) and who has a partial capacity to work can move from:

- disability support pension to benefit PP (partnered); or
- disability support pension to youth allowance (see subsection 1061PJ(2A)) to newstart allowance (see subsection 1061PJ(2B)) to benefit PP (partnered); or
- disability support pension to newstart allowance (see subsection 1061PJ(2B)) to benefit PP (partnered);

and receive a pensioner education supplement for the course they were undertaking when they cease to qualify for disability support pension. The reference to ‘first’ being qualified for parenting payment in new paragraph 1061PJ(2D)(b) in conjunction with the requirement to have been a member of a couple means that a person who receives pension PP (single) at any time after the person ceased to qualify for...
disability support pension cannot access a pensioner education supplement under new subsection 1061PJ(2D). Pension PP (single) recipients currently have access to a pensioner education supplement while on that payment.

**Item 3** adds in a reference to ‘benefit PP (partnered)’ at subparagraph 1061PZG(1)(b)(ia). The effect of this is that benefit PP (partnered) recipients who can access a pensioner education supplement under new subsection (2D), will have access to the fortnightly rate provided by subsection 1061PZG(2).

**Item 4** repeals the note and inserts a new note to include the reference to new subsection 1061PJ(2D).

**Item 5** provides benefit PP (partnered) recipients who have a partial capacity to work and who are telephone subscribers with the telephone allowance.

**Item 6** inserts a reference to ‘parenting payment’ at paragraph 1061Q(3D)(b). The effect of this is that any parenting payment recipient (either single or partnered) who has a partial capacity to work will be able to access telephone allowance for 12 months if the person ceases to receive payment due to the person or person’s partner’s income. Currently, pension PP (single) recipients can access telephone allowance while on that payment.

**Item 7** inserts new subsection 1061ZD(2D). This provides that a person is qualified for a pensioner concession card if the person is receiving benefit PP (partnered) and the person has a partial capacity to work and the person is not qualified under subsection 1061ZD(2) for a pensioner concession card.

**Item 8** amend subsections 1061ZA(3) and (4) with the effect that a person can only access a pensioner concession card under new subsection (2D) when the person is in Australia and is an Australian resident or is receiving a benefit under the operation of the international agreement between Australia and New Zealand.

**Item 9** amends section 1061ZD so that person is not entitled to a pensioner concession card under that section when the person qualifies under new subsection 1061ZA(2D).

**Items 10 and 11** amend section 1061ZEA to provide extended access for 12 weeks to a pensioner concession card to people who were qualified under subsection 1061ZD(2D) and who leave payment due to the person’s or the person’s partner’s employment income. To access this, a person who leaves benefit PP (partnered) must still qualify for parenting payment except for the requirement to have a PP child.

**Items 12 to 16** make amendments so parenting payment recipients (both single and partnered) who have a partial capacity to work and who cease payment as a result of an increase in the person’s ordinary income can have extended access to a pensioner concession card for 52 weeks following cessation of payment.

**Item 17** makes an amendment so that person on benefit PP (partnered) who has access to a pensioner concession card also does not access a health care card.
Item 18 and 19 amend point 1068B-E1 to provide pharmaceutical allowance to benefit PP (partnered) recipients.

Item 20 inserts a new note to point to the definition of ‘partial capacity to work’ at section 16B.

Item 21 provides the application provision for all of the amendments made by Schedule 3. The amendments will commence from the later of 1 January 2008 and Royal Assent and only apply in relation to a person who made a claim for parenting payment after 1 July 2006 that was granted on or after that date.
SCHEDULE 4 – AMENDMENTS RELATING TO DEPENDENT CHILDREN

EXPLANATION OF CHANGES

Social Security Act 1991

**Items 1 to 3** amend subsection 23(1) to insert definitions of ‘family law order’, ‘parenting plan’ and ‘registered parenting plan’. These definitions are relevant to the new subparagraphs 1067G-B3AA(b)(ii) and 1068-B1B(a)(ii).

The definition of ‘family law order’ is the same as provided for by subsection 3(1) of the *A New Tax System (Family Assistance) Act 1999*. A ‘family law order’ encompasses parenting orders and family violence orders under the *Family Law Act 1975*, and State child orders and overseas child orders registered under the *Family Law Act 1975*.

The definitions of ‘parenting plan’ and ‘registered parenting plan’ adopt the meanings of those terms given by the *Family Law Act 1975*.

**Items 4 and 5** amend the youth allowance rate calculator and Benefit Rate Calculator B to provide that certain children will be treated as dependent children of a person for the purpose of calculating that person’s maximum basic rate in respect of youth allowance, newstart allowance, mature age allowance (under part 2.12B) and sickness allowance. The amendments in respect of youth allowance do not apply to new apprentices or persons undertaking full-time study. The amendments in respect of newstart allowance, mature age allowance (under part 2.12B) and sickness allowance only apply to people who are not a member of couple (paragraph 1068-B1B(d)). Currently, people on those payments who are a member of a couple who have a dependent child receive the same rate as people who do not have a dependent child.

The effect of the new points 1067G-B3AA and 1068-B1B is limited to deeming certain children to be dependent children for the purposes of calculating a person’s maximum basic rate in respect of the four relevant allowances. The amendments do not affect the definition of dependent child contained in subsections 5(2) to 5(9), or the application of the term dependent child in any other provisions of the Social Security Act.

The amendments apply to persons who are providing care for a child under 16 for at least 14 percent of a period. The person must be either legally responsible for the day-to-day care, welfare and development of the child, or there must be a family law order, registered parenting plan or parenting plan in force stating that the child is to live or spend time with the person.

The amendments do not have any effect on whether a person is determined as an independent person and eligible for a maximum basic rate of payment described in section 1067G-B3. A person must be assessed as independent under section 1067A before they are able to qualify for the dependent child maximum basic rate in items 6 and 7 of Table BB.
The new subparagraphs 1067G-B3AA(c)(i) and 1068-B1B(b)(i) provide that the period over which the percentage of care is calculated is generally the instalment period of the recipient. However, subparagraphs 1067G-B3AA(c)(ii) and 1068-B1B(b)(ii) allow the Secretary to determine (in writing) that another period should apply to that person, which under the new subsections 1067G-B3AB and 1068-B1C, must be either 14 or 28 days. Subsections 1067G-B3AC and 1068-B1D are to assist readers in noting that written determinations of a period are not legislative instruments within the meaning of section 5 of the Legislative Instruments Act 2003.

In making a written determination of a period, the Secretary is bound to have regard to any guidelines issued under subsections 1067G-B3AD or 1068-B1E. These guidelines are to be determined by legislative instrument.

The new paragraphs 1067-B3AA(d) and 1068-B1B(c) provide that if a child could not be a dependent child of a person because of subsections 5(3), (6) or (7), the child cannot be treated as a dependent child by the force of the new points 1067G-B3AA and 1068-B1B.

New paragraph 1068-B1B(d) provides that for the purposes of the new point 1068-B1B which applies to a person receiving newstart allowance, mature age allowance under Part 2.12B or sickness allowance under Part 2.12B or sickness allowance the person is not a member of a couple.

Item 6 inserts new subsections 1188C(5A) and (5B) to make it clear that if a newstart allowance recipient is taken to have a dependent child because of the new points 1068-B1B, the recipient is also taken to have a dependent child for the purposes of items 19 of Table A in subsection 1188C(5). Table A sets out the thresholds for working out the reductions in income support payments for the recipients of CDEP Scheme payments.

Item 7 provides for the insertion of subsections 1188C(8) and (9) to make it clear that if a youth allowance recipient is taken to have a dependent child because of the new points 1068-B3AA, the recipient is also taken to have a dependent child for the purposes of item 34 of Table A in subsection 1188C(5). Table A sets out the thresholds for working out the reductions in income support payments for the recipients of CDEP Scheme payments.

New subsections 1188C(5B) and (9) are designed to ensure that the new subsections 1188C(5A) and (8) do not in any way limit the circumstances in which a person has a dependent child for the purposes of items 19 or 34 Table A.

Item 8 provides that the new points 1067-B3AA and 1068-B1B apply to instalment periods that commence after the commencement of the Schedule (being the day after Royal Assent).
SCHEDULE 5 – PARTICPATION REQUIREMENTS AND ACTIVITY TEST

EXPLANATION OF CHANGES

Social Security Act 1991

Items 1 and 2 amend subparagraphs 502A(1)(b)(ii) and 603AA(1)(b)(ii) of the Social Security Act. The policy intention behind subparagraphs 502A(1)(b) and 603AA(1)(b) is that a person aged 55 years or over can satisfy parenting payment participation requirements or the activity test for newstart allowance by engaging in a combination of voluntary work and suitable paid work totalling at least 30 hours per fortnight. Suitable paid work should include self-employment as well as other forms of employment. By referring to paid work ‘for another person’, subparagraphs 502A(1)(b)(ii) and 603AA(1)(b)(ii) exclude self-employment.

Item 3 reflects Items 1 and 2 for the purposes of special benefit and provides for consistency of language used in similar provisions.
SCHEDULE 6 – TECHNICAL AMENDMENTS

EXPLANATION OF CHANGES

*Social Security Act 1991*

**Items 1 and 2** rectify erroneous references to subsection 14(1), instead of 14A(1), in subsections 598(2A) and 676(3A). This is a technical amendment.