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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SERVICES LEGISLATION AMENDMENT
(WORKFORCE INCENTIVE) BILL 2022**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Families and Social Services, Senator the Hon Anne Ruston)**

SOCIAL SERVICES LEGISLATION AMENDMENT (WORKFORCE INCENTIVE) BILL 2022

OUTLINE

This Bill amends the social security law and *Veterans' Entitlements Act 1986* to remove possible disincentives for age pension, disability support pension and veterans' entitlement recipients to engage in paid employment.

The measures in this Bill are not only beneficial over the long term, but are of importance in an economy that is currently impacted by COVID-19. Specifically, the measures in this Bill will remove possible disincentives to workforce participation by pensioners which may assist to provide additional labour supply in areas of the economy impacted by COVID-19 related labour shortages.

Suspension of benefits and entitlements instead of cancellation

The Bill will allow age pensioners and certain veterans' entitlement recipients to have their payment suspended for up to two years, instead of cancelled, if their income, which includes some income from the recipient's own employment, precludes payment. Suspension will also be made available to their partners, and partners of disability support pensioners, where the partner is themselves receiving a social security pension or certain veterans' entitlement. This will enable pensioners and their partners to resume receiving pension more easily if it becomes payable again within two years.

Extended qualification for pensioner concession cards

The Bill will remove a potential disincentive to working by extending the period that age pensioners, disability support pensioners and certain veterans' entitlement recipients can remain qualified for a pensioner concession card. This Bill will allow working pensioners, and their pensioner partners, to retain their pensioner concession card for up to two years.

Financial impact statement

MEASURE	FINANCIAL IMPACT OVER THE FORWARD ESTIMATES
<i>Amendments to increase pension flexibility</i>	\$5.5 million (savings)

- The measures in this Bill are part of a 2021-22 Mid-Year Economic and Fiscal Outlook measure, *Supporting Jobs in the Economic Recovery*, led by the Education, Skills and Employment Portfolio. The legislative component has financial impact as follows: \$5.5 million over the forward estimates from 2021-22.

- This financial impact includes impacts for the Department of Social Services (a saving of \$5.2 million over the forward estimates) and the Department of Veterans' Affairs (a saving of \$0.3 million over the forward estimates).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.

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NOTES ON CLAUSES

Abbreviations and acronyms used in this explanatory memorandum

- **Social Security Act** means the *Social Security Act 1991*;
- **Social Security Administration Act** means the *Social Security (Administration) Act 1999*;
- **Veterans' Entitlements Act** means the *Veterans' Entitlements Act 1986*.

Clause 1 sets out how the new Act is to be cited, that is, as the *Social Services Legislation Amendment (Workforce Incentive) Act 2022*.

Clause 2 provides a table setting out the commencement dates of the various sections in, and Schedules to, the new Act. This table provides that Schedules 1 and 2 commence on the first 1 January, 1 April, 1 July or 1 October that occurs after the day the new Act receives the Royal Assent.

Clause 3 provides that legislation that is specified in a Schedule to this new Act is amended or repealed as set out in that Schedule, and any other item in a Schedule has effect according to its terms.

Schedule 1 – Suspension of benefits and entitlements instead of cancellation

Summary

This Schedule will enable age pensioners and certain veterans' entitlement recipients to have their payment suspended for up to two years, instead of cancelled, if their income, which includes some income from the recipient's own employment, precludes payment. This Schedule also provides for the same suspension period for partners of age pension, disability support pension and certain veterans' entitlement recipients, where the partner is receiving a social security pension or certain veterans' entitlement. The Schedule also makes some minor changes to the existing suspension provisions for disability support pensioners.

Background

Currently, if an age pensioner's total ordinary income exceeds the relevant income limit, they benefit from a 12 week employment nil rate period. This is provided for in subsections 23(4A) and 23(4AA) of the Social Security Act. During this period, a person is still considered to be receiving payment, which allows them to access other payments, supplements and concessions. However, age pension is currently cancelled at the end of this 12 week period.

The new provisions will enable an age pensioner and relevant veterans' entitlement recipient to have their pension suspended for up to two years, instead of cancelled, where the pensioner's income includes some income from work performed by the pensioner. The new provisions also provide for the same suspension period for partners of age pension, disability support pension and some veterans' entitlement recipients, where the partner is themselves receiving age pension, disability support pension or carer payment, or a certain veterans' entitlement, and loses payability for their pension at the same time and for the same reason as the recipient.

The new suspension provisions have a similar effect to the current suspension provisions for disability support pension recipients in sections 96, 97, 97A and 97B of the Social Security Administration Act, which also provide for suspension for up to two years. These provisions currently only apply to partners of disability support pensioners to the extent that the partner is receiving carer payment, and loses qualification at the same time the disability support pensioner loses qualification or payability due to their employment hours or income.

The new suspension provisions will encourage and support age pensioners, disability support pensioners and certain veterans' entitlement recipients looking to re-enter the workforce or increase their work hours, as it will enable them, and their pensioner partner, to resume pension more easily if it becomes payable again within two years. These pensioners will only be required to update their details, including their income and assets information, to receive payment. They will not be required to lodge a new claim.

The new suspension provisions operate separately to the existing 12 week employment nil rate period provisions, and the pensioner concession card amendments in Schedule 2 to this Bill. However, age pensioners and veterans' entitlement recipients, and pensioner partners of age pension, disability support pension and veterans' entitlement recipients, may benefit from both of these measures where each is applicable in the particular circumstances.

Schedule 1 also makes minor additions to the current suspension provisions relating to disability support pensioners, to align with the new suspension provisions and reflect current practice.

Explanation of the changes

Part 1 - Social security amendments

Social Security (Administration) Act 1999

Age pension – suspension instead of cancellation under section 93 or 94

Item 1 inserts new section 95D into the Social Security Administration Act, to provide for the suspension of age pension in certain circumstances, instead of cancellation under section 93 or 94.

Application

New subsection 95D(1) sets out the circumstances in which new section 95D applies. The following requirements must be satisfied, as specified in new paragraphs 95D(1)(a) to (f):

- (a) Age pension must cease to be payable to the person because their pension rate is nil. Section 44 of the Social Security Act provides that age pension is not payable to a person if their rate would be nil.
- (b) The person's age pension rate must be nil due to an event or change of circumstances that has occurred, that has resulted in the person's 'income reduced rate' being nil. This event or change of circumstances is referred to in new section 95D as the 'income-related event', as it is something that affects the application of the income test to the age pensioner, and reduces their income reduced rate to nil.

The term 'income reduced rate' is defined in new subsection 95D(2) as the rate worked out at step 8 of the method statement in point 1064-A1 in Module A of Pension Rate Calculator A in the Social Security Act. This step occurs after the ordinary income test has been applied in step 5, using Module E of that rate calculator. The term 'ordinary income' is defined in subsection 8(1) of the Social Security Act. A person's income reduced rate will be nil under step 8 if their ordinary income exceeds the relevant income limit. If the person

has a partner at the relevant time, their partner's income will also be included in applying the ordinary income test to the person.

The income-related event will not necessarily be a change in the age pensioner's ordinary income or employment income. The income-related event may be, for example, a change in the person's relationship status (such as becoming separated from their partner) or living arrangements (such as ceasing to pay rent and no longer being eligible for rent assistance). Such events may result in a change in the person's income limit, resulting in their income reduced rate reducing to nil, even though their income has not changed.

- (c) The age pensioner must have been given a notice under subsection 68(2) of the Social Security Administration Act, which requires the pensioner to inform the Department about the occurrence of the income-related event within a specified period. This period is referred to as the 'notification period' in new section 95D, and is generally 14 days after the income-related event occurs. In practice, subsection 68(2) notices are given by delegates of the Secretary in Services Australia, and require social security recipients to notify Services Australia of specified events or changes of circumstances within the notification period.
- (d) It must be the case that age pension would have continued to be payable to the person, but for the person's income reduced rate being nil. That is, if age pension ceases to be payable to the person for another reason, such as a change in the person's or their partner's assets, then the new suspension provision in section 95D cannot apply.
- (e) It must be the case that the person's age pension is to be, or has already been, cancelled under section 93 or 94 of the Social Security Administration Act because age pension ceased to be payable due to the income-related event occurring, and reducing their income reduced rate to nil (as specified in new paragraph 95D(1)(b)).

Sections 93 and 94 are automatic cancellation provisions which may apply where a social security payment ceases to be payable to a person because of the occurrence of an event or change of circumstances. Section 93 may apply where the person complies with a subsection 68(2) notice, that is, the person notifies the Department of the occurrence of the income-related event within the notification period. Section 94 may apply where the person does not comply with a subsection 68(2) notice. Which of these circumstances applies will determine which of the new suspension provisions in subsections 95D(3), (4) or (5) applies.

- (f) At the time age pension ceases to be payable to the person, the person's ordinary income, which is used to work out their income reduced rate, must include at least some income for remunerative work undertaken by the person themselves. This work must be performed by the age pensioner in Australia, and must be as an employee in an employer/employee relationship. This

reflects the intention to address workforce shortages arising for employers in Australia.

New subsection 95D(2) defines the term 'income reduced rate' for the purposes of new subsection 95D(1). This is defined by reference to the age pension rate calculator in the Social Security Act. 'Income reduced rate' is specified as the age pension rate worked out at step 8 of the method statement in point 1064-A1 in Module A of Pension Rate Calculator A. Step 8 provides that the income reduction must be taken away from the maximum payment rate, and the result is referred to as the 'income reduced rate'.

Suspension determination – event notified within notification period

New subsection 95D(3) may apply to suspend where the age pensioner notifies the Department of the income-related event within the notification period, in accordance with a requirement given under a subsection 68(2) notice, but the person's age pension has not yet been cancelled under section 93. This will occur where Services Australia actions the person's notification of the income-related event before the automatic cancellation has applied under section 93. In these circumstances, and where all the criteria in new subsection 95D(1) are met, new subsection 95D(3) provides a discretion for the Secretary to determine that the automatic cancellation under section 93 does not apply to the person's age pension, and instead, that age pension is suspended for two years.

The two-year suspension period under new subsection 95D(3) commences with effect from the day age pension would have ceased to be payable to the person, if section 93 had been applied. This may be the end of the instalment period in which the income-related event occurred, or the end of the notification period relating to the income-related event. Which is the case will depend on the timing of when the suspension determination is to be made.

New subsection 95D(4) may apply to suspend where the age pensioner notifies the Department of the income-related event within the notification period, in accordance with a requirement given under a subsection 68(2) notice, and the person's age pension has already been automatically cancelled under section 93. In addition, for new subsection 95D(4) to apply, the person's ordinary income must become of such an amount that would not preclude the person from receiving age pension, within two years after the cancellation. This may occur if, for example, the age pensioner reduces their hours of work and their ordinary income reduces to a level that is under the relevant income limit, and age pension becomes payable to them again.

Where all these circumstances are met, as well as all the criteria in new subsection 95D(1), new subsection 95D(4) provides a discretion for the Secretary to determine that the person is to be treated as if the automatic cancellation under section 93 had not occurred, and instead, that age pension is suspended for two years. The two-year suspension period commences with effect from the day that age pension ceased to be payable under section 93. In effect, it is intended that a person will be deemed to have had their age pension suspended rather than

cancelled, and the suspension will effectively replace the cancellation from the same day.

Suspension determination – event not notified within notification period

People who experience a notifiable event or change of circumstances which results in their social security payment ceasing to be payable due to their ordinary income, but who do not comply with a notice under subsection 68(2) of the Social Security Administration Act to inform Services Australia of this event or change, will usually have their payment cancelled by force of section 94. New subsection 95D(5) contemplates that in some cases, while not necessarily attempting to avoid their obligation to comply with a requirement to notify Services Australia of an event or change of circumstances, a person may not do so. It is recognised that older Australians re-entering the workforce, or increasing their hours of work, may face new challenges and should not necessarily lose the benefit of suspension. New subsection 95D(5) removes a disincentive to age pensioners willing to work by providing reassurance they will be able to return to age pension within two years and 14 days, without having to lodge a new claim.

Age pension may be suspended under new subsection 95D(5) where all of the following requirements are met, as set out in new paragraphs 95D(5)(a) to (d):

- (a) The age pensioner did not notify the Department of the income-related event within the notification period, as had been required by a notice given to them under subsection 68(2) of the Social Security Administration Act.
- (b) The person's age pension must have been automatically cancelled under section 94, because the pension ceased to be payable to the pensioner due to the income-related event occurring, and reducing their income reduced rate to nil (as referred to in new paragraphs 95D(1)(b) and (e)).
- (c) The Department must have later found out about the income-related event, but after the notification period. This may occur by the age pensioner later advising the Department of the income-related event, or by another means, such as the Department receiving employment income information about the age pensioner directly from the Australian Taxation Office.
- (d) The person's ordinary income must become of such an amount that would not preclude the person from receiving age pension, within two years and 14 days after the cancellation. For example, age pension may become payable to the person again if their ordinary income reduces because they have ceased work.

Where all these circumstances are met, as well as all the criteria in new subsection 95D(1), new subsection 95D(5) provides a discretion for the Secretary to determine that the person is to be treated as if the automatic cancellation under section 94 had not occurred, and instead, that age pension is suspended for two years and 14 days.

The reference to ‘two years and 14 days’ reflects the maximum amount of time that age pensioners can have their payment suspended. For example, a person may notify Services Australia of changes to their income just outside the 14 day notification period, and may then be suspended for up to two years and 14 days from the date their payment ceased to be payable. This ensures that a person who did not comply with the notification period does not have the benefit of a longer suspension time than a person who did comply with their obligations by advising Services Australia within the notification period.

The suspension period commences with effect from the day that age pension ceased to be payable under section 94. In effect, it is intended that a person will be deemed to have had their age pension suspended rather than cancelled, and the suspension will effectively replace the cancellation from the same day. This means the suspension will be backdated for up to two years and 14 days, to when the income-related event occurred (as referred to in paragraph 95D(1)(b)). The suspension period will not commence from the day Services Australia becomes aware of the income-related event.

Residency requirement

New subsection 95D(6) provides that the Secretary must not make a determination under new subsection 95D(3), (4) or (5) unless the Secretary is satisfied that the age pensioner is residing in Australia, at the time the determination is being made. This requirement is to reflect the intention to address workforce shortages in Australia by encouraging age pensioners to reside and take up work in Australia. Whether an age pensioner is residing in Australia is determined having regard to the factors specified in subsection 7(3) of the Social Security Act.

Resumption of age pension after suspension

New subsection 95D(7) provides for a person’s age pension to be resumed after it has been suspended under new subsection 95D(3), (4) or (5). If the Secretary reconsiders the decision to suspend a person’s age pension during the suspension period, and is satisfied that the person did not receive age pension that was payable to them, or is not receiving age pension that is payable to them, the Secretary is to determine that age pension was or is again payable to the person, as applicable. This may occur if circumstances change and age pension becomes payable to the person again, for example, if the person ceases work and their ordinary income reduces to below the relevant income limit. The effect of this resumption is to provide reassurance for age pensioners who take up work, or increase their hours of work, that should their income reduce, they can be returned to age pension (provided age pension is otherwise payable to them).

New subsection 95D(8) provides that a reconsideration, as referred to in paragraph 95D(7)(b), may be either following the person applying for review of the decision under section 129 of the Social Security Administration Act, or on the Secretary’s own initiative. The latter type of reconsideration occurs under section 126 of the Social Security Administration Act, where the Secretary is satisfied that there is sufficient reason to review the decision.

New subsection 95D(9) provides for the date of effect of a resumption decision made under new subsection 95D(7), that age pension was or is payable to the person. Such a determination will take effect on either the day on which the person applied for review of the suspension decision under section 129, or in any other case, on the day on which the Secretary begins their review of the suspension decision. If this day is prior to the day on which the resumption determination is made by the Secretary under new subsection 95D(7), then the person will receive arrears of age pension back to that day.

Cancellation of age pension after period of suspension

New subsection 95D(10) provides for cancellation of age pension after the suspension period ends. If age pension has been suspended under new subsection 95D(3) or 95D(4), and the suspension continues for the full suspension period of two years, then at the end of this period, the determination granting age pension is revoked, by force of new subsection 95D(10). Similarly, if age pension has been suspended under new subsection 95D(5), and the suspension continues for the full suspension period of two years and 14 days, then at the end of this period, the determination granting age pension is revoked, by force of new subsection 95D(10). This results in the person's age pension being cancelled. This means that the person would need to lodge a new claim for consideration, in the event they wish to test their eligibility for age pension again.

Disability support pension – amendments to existing suspension provisions

Item 2 amends paragraphs 96(1)(d) and 96(3)(d) to clarify the commencement of a suspension period for a disability support pensioner made under subsection 96(1) or 96(3) respectively, as this is not currently expressed in these provisions. The suspension will take effect from the day the disability support pension would otherwise have ceased to be payable to the pensioner under section 93. This may be the end of the instalment period in which the event or change of circumstances occurred, or the end of the relevant notification period.

Items 7 and 9 make the same additions to paragraphs 97(1)(e) and 97(3)(d) respectively, relation to suspension determinations made under those provisions.

Items 3 and 4 amend paragraph 96(3A)(c) and the end of subsection 96(3A) respectively to expressly provide for the possibility that disability support pension may have become payable to a person from a date earlier than the day on which a resumption determination is made. This may not clearly be indicated by the current wording, which may be construed as only applying prospectively. The amendments enable the Secretary to be satisfied that the person did not or is not receiving disability support pension that was or is payable to them, as applicable, and may make a determination to this effect. The date of effect of this resumption determination will be determined in accordance with new subsection 96(3C), inserted by **item 5**.

Items 11 and 12 make the same changes to paragraph 97A(6)(c) and the end of subsection 97A(6) respectively. **Items 14 and 15** also make the same changes to paragraph 97B(5)(c) and the end of subsection 97B(5) respectively.

Item 5 inserts a new subsection 96(3C) to clarify the date on which a resumption determination made under subsection 96(3A), that disability support pension was or is payable to a person, takes effect. New subsection 96(3C) provides that such a determination takes effect on either the day on which the person applied for review of the suspension decision under section 129, or in any other case, on the day on which the Secretary begins their review of the suspension decision. If this day is before the day on which the resumption determination is made, then the person will receive arrears of disability support pension back to that day. This ensures a consistent approach with new subsection 95D(9), relating to resuming age pension.

Items 13 and 16 make the same changes to sections 97A and 97B, by inserting new subsections 97A(8) and 97B(7) respectively.

Item 6 amends subsection 96(6) to clarify the suspension period for a carer payment partner, as this is not currently expressly indicated. That is, where a person's disability support pension is suspended under subsection 96(1) or 96(3), and their partner is receiving carer payment, the suspension of the partner's carer payment will be for the same period as the person's disability support pension. **Items 8 and 10** make the same additions to subsections 97(2) and 97(4) respectively for the same purpose.

Pensioner partners – suspension instead of cancellation under section 93 or 94

Item 17 inserts new section 97C into the Social Security Administration Act, to provide for the suspension (instead of cancellation) of age pension, disability support pension and carer payment received by the partner of an age pension, disability support pension or veterans' entitlement recipient in certain circumstances. To be eligible for suspension, the partner does not need to have employment income, as that requirement will have been satisfied by the age pensioner, disability support pensioner or veterans' entitlement recipient. This provision provides reassurance for age pensioners, disability support pensioners and veterans' entitlement recipients who take up work, or increase their hours of work, that their partner may be able to get back on their pension more easily if circumstances change.

Application

New subsection 97C(1) sets out the circumstances in which new section 97C applies to pensioner partners. The following requirements must be satisfied, as specified in new paragraphs 97C(1)(a) to (e):

- (a) A particular suspension determination must have been made in relation to a person who receiving age pension, disability support pension, or a certain veterans' entitlement payment, and is a member of a couple. Whether a person is a 'member of a couple' is determined in accordance with section 4 of the Social Security Act. The suspension determination must have been

made in respect of the person under one of the following provisions (as set out in new subparagraphs 97C(1)(a)(i) to (iv)):

- (i) new subsection 95D(3), (4) or (5) – on the basis that age pension ceased to be payable to the person;
 - (ii) subsection 96(1), 97(1), 97A(1) or 97A(2) – on the basis that the person ceased to be qualified for disability support pension;
 - (iii) subsection 96(3), 97(3) or 97B(1) – on the basis that disability support pension ceased to be payable to the person; or
 - (iv) new subsection 56ED(3), (4) or (5) of the Veterans' Entitlements Act – on the basis that age service pension, invalidity service pension, income support supplement or veteran payment ceased to be payable to the person.
- (b) The person's partner must have been receiving age pension, disability support pension or carer payment immediately before their suspension (as referred to in new paragraph 97C(1)(a)).
- (c) The partner's age pension, disability support pension or carer payment must have ceased to be payable to the partner because the rate of their pension is nil. For example, this may be due to the person and their partner's combined income exceeding the relevant income limit.
- (d) Further, the partner's loss of payability must occur at both the same time as the person's loss of payability or qualification that gave rise to the suspension of their payment, and due to the same event or change of circumstances which caused the person's loss of payability or qualification. For example, this may be because of an increase in the person's employment income.
- (e) It must be the case that the partner's age pension, disability support pension or carer payment is to be, or must have already been, automatically cancelled under section 93 or 94 due to their loss of payability.

The note following new section 97C provides that new section 56EE of the Veterans' Entitlements Act addresses suspensions when a partner has been receiving service pension, income support supplement or veteran payment under that Act.

Partner suspension determination

New subsection 97C(2) enables the partner's age pension, disability support pension or carer payment to be suspended where the circumstances in new subsection 97C(1) are met. In this case, the Secretary has a discretion to determine that section 93 or 94 does not or had not applied to automatically cancel the partner's pension, and instead decide that the partner's pension is suspended.

Any such suspension will take effect from the day the partner's pension would otherwise have ceased to be payable under section 93 or 94. This means that the partner's suspension period will begin at the end of the instalment period in which the event or change of circumstances occurred, the end of the notification period, or the day on which the event or change of circumstances occurred, as applicable. In situations where section 94 would have otherwise applied, the suspension period will run for two years and 14 days. However, in all other cases (such as where section 93 would otherwise have applied), the suspension period will be two years.

Resumption of partner's pension or payment after suspension

New subsection 97C(3) provides for a partner's age pension, disability support pension or carer payment to be resumed after it has been suspended under new subsection 97C(2). If the Secretary reconsiders the decision to suspend a partner's pension during the suspension period, and is satisfied that the partner did not receive pension that was payable to them, or is not receiving pension that is payable to them, the Secretary is to determine that the pension was or is again payable to the partner, as applicable. This may occur if circumstances change and the partner's pension becomes payable to the partner again, for example, if the person ceases work and the couple's combined ordinary income reduces to below the relevant income limit.

New subsection 97C(4) provides that a reconsideration, as referred to in paragraph 97C(4)(b), may be either following the partner applying for review of the decision under section 129 of the Social Security Administration Act, or on the Secretary's own initiative under section 126 of the Social Security Administration Act.

New subsection 97C(5) provides for the date of effect of a resumption decision made under new subsection 97C(3), that the pension was or is payable to the partner. Such a determination will take effect on either the day on which the partner applied for review of the suspension decision under section 129, or in any other case, on the day on which the Secretary begins their review of the suspension decision. If this day is prior to the day on which the resumption determination is made by the Secretary under new subsection 97C(3), the partner will receive arrears back to that day.

Cancellation of partner's pension or payment after period of suspension

New subsection 97C(6) provides for cancellation of the partner's age pension, disability support pension or carer payment after the suspension period ends. If the pension has been suspended under new subsection 97C(2), and the suspension continues for the full suspension period of either two years or two years and 14 days, as applicable (as specified in subsection 97C(2)), then at the end of this period, the determination granting the pension is revoked, by force of new subsection 97C(6). This results in the partner's pension being cancelled, and the partner would need to lodge a new claim, if they wish to test their eligibility for that pension again.

Partner ceasing to be member of couple

New subsection 97C(7) has been inserted for the avoidance of doubt. Subsection 97C(7) is intended to make it clear that new subsections 97C(3) to (6) continue to apply to a pensioner partner, even if after their age pension, disability support pension or carer payment has been suspended under subsection 97C(2), the partner ceases to be a member of a couple. This may be the case if, for example, the age pension, disability support pension or relevant veterans' entitlement recipient passes away or separates from the pensioner partner. This means that the new provisions will be available to potentially resume the partner's pension (under new subsection 97C(3)), or cancel the partner's pension (under new subsection 97C(6)), where applicable.

Application provisions

Item 18 is the application provision for the amendments in Part 1.

Amendments relating to suspension of age pension

Item 18(1) provides that new section 95D, inserted by **item 1**, applies in situations where age pension ceases to be payable to pensioners on or after Part 1 commences. This is the case regardless of whether age pension first became payable before, on or after the commencement date. In addition, new section 95D applies in situations where age pension ceases to be payable during the 12 weeks ending immediately before Part 1 commences.

This means that the new suspension provisions may be applied to age pensioners who are receiving age pension on or after the commencement date, and then lose payability at some time after the commencement date. Further, age pensioners who are serving a 12 week employment nil rate period on the commencement date, may also benefit from the new suspension provisions.

Amendments relating to suspension of disability support pension

Item 18(2) provides that the amendments to subsections 96(1), (3) and (6), made by **items 2 and 6**, apply to suspension determinations made under those provisions on or after the day Part 1 commences.

Item 18(3) provides that the amendments to subsection 96(3A), made by **items 3 and 4**, apply to suspension determinations made under subsection 96(1) or (3) before, on or after the day Part 1 commences. **Items 18(6) and 18(8)** contain the same application provisions for the amendments to subsections 97A(6) and 97B(5) respectively, inserted by **items 11 and 12**, and **items 14 and 15**, in relation to suspension determinations made under subsections 97A(1) or (2) and 97B(1) respectively.

Item 18(4) provides that new subsection 96(3C), which is inserted by **item 5**, applies to resumption determinations made under subsection 96(3A) on or after the day Part 1 commences. **Items 18(7) and 18(9)** contain the same application provisions for new subsections 97A(8) and 97B(7) respectively, inserted by **items 13 and 16**, in

relation to resumption determinations made under subsections 97A(6) and 97B(5) respectively.

Item 18(5) provides that the amendments to subsections 97(1), (2), (3) and (4), made by **items 7, 8, 9 and 10** respectively, apply to suspension determinations made under those provisions on or after the day Part 1 commences.

Amendments relating to suspension of partner's pensions

Item 18(10) provides that new section 97C, which is inserted by **item 17**, applies in situations where the partner's age pension, disability support pension or carer payment ceases to be payable on or after Part 1 commences. This is the case regardless of whether the pension first became payable before, on or after the commencement date. In addition, new section 97C applies in situations where the partner's pension ceases to be payable during the 12 weeks ending immediately before Part 1 commences. This applies to pensioner partners in the same way as **item 18(1)** does in relation to the application of new section 95D to age pensioners.

Part 2 – Veterans' entitlements amendments

Veterans' Entitlements Act 1986

Item 19 repeals the note under subsection 56(2) and replaces it with a new note to provide clarity that in certain circumstances the Commission may decide that the person's pension, supplement or payment is suspended rather than cancelled. It refers to the new sections 56ED and 56EE that will be inserted into the Veterans' Entitlements Act as a result of this amending Act (refer to **item 21**).

Item 20 repeals the note under subsection 56A(2) and replaces it with a new note to provide clarity that in certain circumstances the Commission may decide that the person's pension, supplement or payment is suspended rather than cancelled. It refers to the new sections 56ED and 56EE that will be inserted into the Veterans' Entitlements Act as a result of this amending Act (refer to **item 21**).

Suspension instead of automatic termination under section 56 or 56A

Item 21 inserts new sections 56ED and 56EE into the Veterans' Entitlements Act, to provide for the suspension of income support payments in certain circumstances instead of cancellation under section 56 or 56A.

New section 56ED - Suspension instead of automatic termination under section 56 or 56A

Persons who experience a specified event or change of circumstances which results in their service pension, income support supplement or veteran payment becoming not payable, are required to comply with a notice under section 54 of the Veterans' Entitlements Act by informing the Department of Veterans' Affairs of this event or change of circumstances within the required notification period, and will usually have their payment terminated by force of section 56 or 56A.

New subsection 56ED gives the Commission discretion to determine that their pension, supplement or payment is suspended rather than cancelled, where termination under section 56 or 56A has occurred, or where termination under section 56 has not occurred.

Application

New subsection 56ED(1) sets out the circumstances in which new section 56ED applies (that is suspension instead of termination under section 56 or 56A applies to the relevant person). The following requirements must be satisfied, as specified in new paragraphs 56ED(1)(a) to (f):

(a) The person must be receiving one of the following income support payments:

- (i) a service pension;
- (ii) an income support supplement; or
- (iii) veteran payment;

and the payment must have ceased to be payable because the rate of their income support payment is nil.

(b) The rate of their income support payment is nil due to an event or change of circumstances which has resulted in the person's income exceeding the relevant income level cut out point. This event or change of circumstances is referred to in new section 56ED as the 'income-related event', as it is something that affects the application of the income test to the income support recipient, and reduces their 'income reduced rate' to nil. New subsection 56ED(2) defines income reduced rate.

The income-related event will not necessarily be limited to a change in the person's ordinary income, adjusted income or employment income. The income-related event may be, for example, a change in the person's relationship status (such as becoming separated from their partner) or living arrangements (such as ceasing to pay rent and no longer being eligible for rent assistance). Such events or changes may result in the person's income level exceeding the relevant cut out point, depending on the particular circumstances.

(c) The person receiving the pension, supplement or payment must have been given a notice issued pursuant to section 54 of the Veterans' Entitlements Act, requiring the person to inform the Department of Veterans' Affairs or a specified officer of the income-related event within a specified period. This period is referred to as the 'notification period'.

(d) It must be the case that the income support payment would have continued to be payable to the person, but for the income-related event which has resulted in the income reduced rate being nil. If the income support payment ceases

to be payable to the person for another reason, such as a change in the assets of the person or their partner, then the new suspension provision in section 56ED will not apply.

- (e) The person's income support payment must have been cancelled or is to be cancelled under section 56 or 56A because it has ceased to be payable as a result of the income-related event, that is because of the occurrence of an event or change of circumstances that results in the person's income reduced rate (see subsection (2)) being nil. Sections 56 and 56A are automatic cancellation provisions which may apply where income support payment ceases to be payable to a person because of the occurrence of an event or change of circumstances and the person is required to notify the Department of that event or change of circumstances under section 54. Section 56 may apply where the person complies with a section 54 notice, that is, the person notifies the Department of the occurrence of the income-related event within the notification period. Section 56A may apply where the person does not comply with a section 54 notice. Which of these circumstances applies will determine which of the new suspension provisions in subsections 56ED(3), (4) or (5) applies.
- (f) At the time the income support payment ceases to be payable to the person, the person's income must include at least some income for remunerative work undertaken by the person themselves. This work must be performed by the person in Australia and must be as an employee in an employer/employee relationship. This reflects the intention to address workforce shortages arising for employers in Australia.

The Commission has a discretion to determine that the automatic cancellation under sections 56 and 56A do not apply to the person's income support payment, and instead, their income support payment is suspended, but only where all the circumstances listed in paragraphs 56ED(1)(a) to (f) are met.

New subsection 56ED(2) defines a person's income reduced rate to be the rate worked out in relation to that income support payment at step 6 of the relevant method statement in Module A of the Rate Calculator. For a service pension the relevant method statement is method statement 1. For income support supplement the relevant method statement is method statement 5. For veteran payment the relevant method statement is method statement 7.

Suspension determination—event notified within notification period

New subsection 56ED(3) may apply in the situation where all the circumstances in paragraphs 56ED(1)(a) to (f) are met, the person has complied with the notification requirements of the section 54 notice but the person's income support payment has not been cancelled under section 56. In these circumstances new subsection 56ED(3) provides the Commission with a discretion to determine that the automatic cancellation does not apply to the applicable pension, supplement or payment and instead their applicable pension, supplement or payment is suspended.

New subsection 56ED(4) may apply in the situation where all the circumstances in paragraphs 56ED(1)(a) to (f) are met, the person has complied with the notification requirements under section 54 and the person's income support payment has been cancelled under section 56. In these circumstances new subsection 56ED(4) provides the Commission with a discretion to determine that the person is to be treated as if section 56 had not applied to cancel the person's applicable pension, supplement or payment and instead their pension, supplement or payment is suspended.

Suspension determination – event not notified within notification period

New subsection 56ED(5) provides for the situation where all the circumstances in paragraphs 56ED(1)(a) to (f) are met, however, the person has not complied with the notification requirements under section 54 and the person's income support payment has been cancelled under section 56A. It provides that if the Department becomes aware of the income-related event the Commission has a discretion to determine that the person is to be treated as if the automatic cancellation had not applied to cancel the applicable pension, supplement or payment and instead their applicable pension, supplement or payment is suspended.

Rules for suspension determinations

New subsection 56ED(6) provides that the Commission may not make a determination under subsection 56ED(3), (4) or (5) suspending rather than terminating the relevant pension, supplement or payment unless it is satisfied that the person is residing in Australia at the time of the determination. This requirement is to reflect the intention to address workforce shortages in Australia by encouraging persons in receipt of the relevant pension, supplement or payment to reside in and take up work in Australia. Whether a person is residing in Australia is determined having regard to the factors specified in subsection 5G(1A) of the Veterans' Entitlements Act.

New subsection 56ED(7) provides that if the Commission does make a determination under subsection 56ED(3), (4) or (5) the suspension will take effect from the day the relevant pension, supplement or payment would have been cancelled under section 56 or 56A. This may be the end of the notification period in which the event or change of circumstances occurs, or the date of the event or change of circumstances. Which is the case will depend on the timing of when the person notifies of the event or change of circumstances.

Cancellation of pension, supplement or payment after 2 years

New subsection 56ED(8) provides that in the event that the Commission has suspended the person's pension, supplement or payment and the suspension has continued in effect throughout the period of two years from the date of effect of the determination then, at the end of that two year period the suspension ends and the applicable pension, supplement or payment is cancelled. For the income support payment to be cancelled under this subsection the person must not have become entitled to receive the income support payment during the two years from the date of effect of the determination. Following cancellation, the person would need to lodge a

new claim for consideration, in the event they wish to test their eligibility for an income support payment again. The note under new subsection 56ED(8) provides that if the Commission is satisfied that the applicable pension, supplement or payment is payable to that person during the two year period the Commission may end the suspension as provided by section 56F.

New section 56EE - Suspension instead of automatic termination under section 56A or 56A - partners

New section 56EE provides for the situation where a partner of a recipient of a pension, supplement or payment who receives the benefit of this measure either under social security law or under the Veterans' Entitlements Act (eligible recipient) may also be eligible for the benefit of this measure. To be eligible the partner of an eligible recipient does not need to have employment income as that requirement will have been satisfied by the eligible recipient. This is to provide reassurance for income support recipients who take up work, or increase their hours of work, that their partner may be able to reinstate their applicable pension, supplement or payment more easily if circumstances change.

Application

New subsection 56EE(1) sets out the circumstances in which new section 56EE applies. To be eligible for the benefits all the requirements in new paragraphs 56EE(1)(a) to (e) must be met.

New paragraph 56EE(1)(a) provides that a suspension determination must have been made in relation to a person who is receiving a pension, supplement or payment under the Veterans' Entitlements Act, or age pension or disability support pension, and is also a member of a couple. The suspension determination must have been made in respect of the person who is a member of a couple under one of the following provisions:

- (i) new subsection 56ED(3), (4) or (5) suspending the person's service pension, income support supplement or veteran payment because the pension, supplement or payment ceased to be payable to the person;
- (ii) new subsection 95D(3), (4) or (5) of the Social Security Administration Act on the basis that age pension ceased to be payable to the person;
- (iii) subsection 96(1), 97(1), 97A(1) or 97A(2) of the Social Security Administration Act on the basis that the person ceased to be qualified for disability support pension; or
- (iv) subsection 96(3), 97(3) or 97B(1) of the Social Security Administration Act on the basis that disability support pension ceased to be payable to the person.

New paragraph 56EE(1)(b) provides that for the partner of an eligible person to be entitled to the benefit of this measure under the Veterans' Entitlements Act the

partner must have been receiving an income support payment under the Veterans' Entitlements Act immediately prior to the determination in relation to the eligible person.

New paragraph 56EE(1)(c) provides that for a partner to be entitled to the benefit of this measure their income support payment must have ceased to be payable because the rate of their income support payment is nil. For example, this may be due to the person and their partner's combined income exceeding the relevant income limit.

New paragraph 56EE(1)(d) provides that for a partner to be entitled to the benefit of this measure their income support payment must have ceased to be payable at the same time as the eligible person's income support payment ceased to be payable. Further their income support payment must have ceased to be payable as a result of the occurrence of the same event or change of circumstances that resulted in the eligible person's income support payment ceasing to be payable. For example, this may be because of an increase in the person's employment income.

Partner suspension determination

Where the circumstances in subsection 56EE(1) are met new subsection 56EE(2) provides the Commission with a discretion to determine that sections 56 and 56A do not apply to the partner's applicable pension, supplement or payment, and instead, their pension, supplement or payment is suspended.

New subsection 56EE(3) limits the discretion that the Commission is provided in subsection 56EE(2) so that the discretion does not apply in the situation where the suspension determination referred to in paragraph 56EE(1)(a) suspended the eligible person's partner service pension and the partner was receiving either income support supplement or veteran payment.

When suspension determinations take effect

New subsection 56EE(4) provides that if the Commission does make a determination under subsection 56EE(2) the suspension will take effect from the day the applicable pension, supplement or payment would be cancelled under section 56 or 56A. This may be the end of the notification period in which the event or change of circumstances occurs, or the date of the event or change. Which is the case will depend on the timing of when the person notifies the event or change.

Cancellation of partner's pension, supplement or payment after 2 years

New subsection 56EE(5) provides that in the event that the Commission has suspended the partner's income support payment and the suspension has continued in effect throughout the period of two years from the date of effect of the determination then, at the end of that two year period the suspension ends and the applicable pension, supplement or payment is cancelled. For the income support

payment to be cancelled under this subsection the partner must not have become entitled to receive the income support payment during the two years from the date of effect of the determination. Following cancellation, the partner would need to lodge a new claim for consideration, in the event they wish to test their eligibility for a pension, supplement or payment again. The note under new subsection 56EE(5) provides that if the Commission is satisfied that the income support payment is payable to that partner during the two year period the Commission may end the suspension as provided by section 56F.

Partner ceasing to be member of couple

New subsection 56EE(6) clarifies that the suspension for a period of two years, and cancellation at the end of two years, as provided by subsection 56EE(5) continues to apply even in the situation where the partner ceases to be in a relationship with the eligible person.

Item 22 amends paragraph 56F(a) so that the section allowing the Commission to end a suspension of an applicable pension, supplement or payment now includes the new provisions allowing for suspension inserted by this amending Act.

Item 23 repeals paragraph 56M(2)(b) and replaces it with a new paragraph which provides that the pension, supplement or payment is not payable during a period which ends either when a suspension ends as a result of a determination by the Commission under sections 56F or 56L or if the suspension ends after two years as provided by subsections 56ED(8) or 56EE(5).

Item 24 inserts a new paragraph into section 57 which deals with review of decisions. This new paragraph 57(2)(ba) ensures that any decision by the Commission either to make or to refuse to make a determination under new sections 56ED and 56EE are reviewable.

Application Provision

Item 25 is an application provision relating to the amendments in Part 2. It provides that sections 56ED and 56EE of the Veterans' Entitlements Act apply in relation to service pension, income support supplement or veteran payment ceasing to be payable on or after the commencement of this Part. It provides that it will apply to the applicable pension, supplement or payment whether or not they first became payable before, on or after the commencement of this Part. In addition, the Part also applies to an applicable pension, supplement or payment which ceases to be payable during the period of 12 weeks ending immediately before the commencement of this Part.

Schedule 2 – Extended qualification for pensioner concession cards

Summary

This Schedule will provide that working age pensioners, disability support pensioners and certain veterans' entitlement recipients, and their pensioner partners, can retain their pensioner concession card for up to two years after their payment ceases.

Background

This Schedule is intended to remove a potential disincentive to working by extending and aligning the period that age pensioners, disability support pensioners and certain veterans' entitlement recipients can remain qualified for a pensioner concession card, to two years. These amendments also provide the same benefit to partners of age pensioners, disability support pensioners and veterans' entitlement recipients, where the partner is themselves receiving a social security pension or veterans' entitlement.

Currently, age pensioners have their pensioner concession card cancelled 12 weeks after their pension ceases to be payable due to their level of income. Disability support pensioners currently have their pensioner concession card cancelled 52 weeks after they lose eligibility for the pension due to their employment hours or ordinary income from employment. These amendments recognise the value pensioners place on their pensioner concession cards, and that older Australians often have additional medical needs, even if they are able to work.

These amendments operate separately to the current provisions relating to 12 week employment nil rate periods, two year suspensions for age pensioners and pensioner partners in Schedule 1 to this Bill, and the existing two year suspensions for disability support pensioners in the Social Security Administration Act. However, pensioners and their pensioner partners may benefit from some or all of these measures, as they are each applicable in the particular circumstances.

Explanation of the changes

Part 1 – Former recipients of age pensions

Social Security Act 1991

Extended qualification rule – former recipient of age pension and partner

Item 1 inserts a new section 1061ZCA into the Social Security Act to extend pensioner concession card qualification for age pensioners and their pensioner partners.

Qualification

New subsection 1061ZCA(1) provides that subject to new subsections 1061ZCA(8) and (9), a person is qualified for a pensioner concession card for two years beginning on the day on which section 1061ZCA starts to apply to the person. This may be a former age pension recipient and their pensioner partner.

Former recipient of age pension with employment income

New subsection 1061ZCA(2) applies to extend an age pensioner's pensioner concession card. This provides that subject to new subsection 1061ZCA(6), section 1061ZCA applies if the requirements in paragraphs 1061ZCA(2)(a) to (e) are met. These requirements are:

- (a) The person must have been receiving age pension.
- (b) Age pension must have ceased to be payable to the person because their rate is nil.
- (c) The person's nil pension rate must be due to an event or change of circumstances that has occurred, and that has resulted in the person's 'income reduced rate' (as defined in new subsection 1061ZCA(3)) being nil.

The relevant event or change of circumstances will not necessarily be a change in the age pensioner's ordinary income or employment income. The event or change may be, for example, a change in the person's relationship status (such as becoming separated from their partner) or living arrangements (such as ceasing to pay rent and no longer being eligible for rent assistance). Such events may result in a change in the person's income limit, resulting in their income reduced rate reducing to nil, even though their income has not changed.

- (d) It must be the case that but for the person's income reduced rate being nil, the person would have continued to be qualified for a pensioner concession card because age pension would have continued to be payable to them.
- (e) At the time age pension ceases to be payable, the person's ordinary income, that is used to work out their income reduced rate, must include income for remunerative work the person themselves has undertaken. This work must have been performed in Australia, and as an employee in an employer/employee relationship. This reflects that the measure is intended to encourage age pensioners to take up paid work, or increase their hours of work.

New subsection 1061ZCA(3) provides that the term 'income reduced rate', as referred to in new subsection 1061ZCA(2), is the rate worked out at step 8 of the method statement in point 1064-A1 in Module A of Pension Rate Calculator A in the Social Security Act. Step 8 occurs after the ordinary income test has been applied in step 5, using Module E of that rate calculator. The term 'ordinary income' is defined

in subsection 8(1) of the Social Security Act. A person's income reduced rate will be nil under step 8 if their ordinary income exceeds the relevant income limit. If the person has a partner at the relevant time, their partner's income will also be included in applying the ordinary income test to the person.

Partner of former recipient of age pension with employment income

New subsection 1061ZCA(4) applies to extend the pensioner concession card of an age pensioner's partner, where the partner themselves has been receiving age pension, disability support pension or carer payment. In this provision, the pensioner partner is referred to as the 'person' and the age pensioner is referred to as the 'partner'. This is different to the drafting of the suspension provisions in Part 1 of Schedule 1 to this Bill.

New subsection 1061ZCA(4) provides that subject to new subsection 1061ZCA(6), section 1061ZCA applies to a person who is a member of a couple (that is, the age pensioner's pensioner partner) if the requirements in paragraphs 1061ZCA(4)(a) to (d) are met. These requirements are:

- (a) The person's partner (that is, the age pensioner) must be qualified for a pensioner concession card in accordance with new subsection 1061ZCA(2), due to age pension ceasing to be payable.
- (b) The person must have been receiving age pension, disability support pension or carer payment immediately before their partner lost their payability for age pension (as referred to in new paragraph 1061ZCA(4)(a)).
- (c) The person's age pension, disability support pension or carer payment must have ceased to be payable to the person because their rate is nil. For example, this may be due to the person and the age pensioner's combined income exceeding the relevant income limit.
- (d) Further, the person's loss of payability must occur at both the same time as the age pensioner's loss of payability, and due to the same event or change of circumstances which caused the age pensioner's loss of payability. For example, this may be because of an increase in the age pensioner's employment income.

Where these requirements are satisfied, the age pensioner's pensioner partner is also able to benefit from the pensioner concession card extension period of two years.

New subsection 1061ZCA(5) has been inserted for the avoidance of doubt. This is intended to make it clear that new subsection 1061ZCA(4) continues to apply to the age pensioner's pensioner partner, even if they are no longer a member of a couple, after their pension has ceased to be payable.

Residency requirement

New subsection 1061ZCA(6) provides that the extended pensioner concession card qualification in section 1061ZCA only applies to a person while they are residing in Australia. This is intended to reflect that age pensioners and their pensioner partners must maintain sufficient connection to Australia to benefit from the extended pensioner concession card qualification. Whether a person is residing in Australia is determined having regard to the factors specified in subsection 7(3) of the Social Security Act.

The note following new subsection 1061ZCA(6) indicates that if the age pensioner or their pensioner partner is temporarily absent from Australia, they will continue to be qualified for a pensioner concession card for up to six weeks, in accordance with Division 4 of Part 2A.1 of the Social Security Act.

New subsection 1061ZCA(7) provides that a former age pension recipient or their pensioner partner may qualify for a pensioner concession card under this provision on a day if they are in Australia on that day, but not residing in Australia, as otherwise required by subsection 1061ZCA(6). In addition, the person must have been receiving age pension, disability support pension or carer payment solely because of the operation of the scheduled international social security agreement between Australia and New Zealand. This agreement is contained in Schedule 3 to the *Social Security (International Agreements) Act 1999*.

Person receiving certain other social security payments

New subsection 1061ZCA(8) provides that a person will not be qualified for a pensioner concession card under section 1061ZCA on any days on which they receive an instalment of a social security pension within the two year period referred to in new subsection 1061ZCA(1).

New subsection 1061ZCA(9) provides that a person will not be qualified for a pensioner concession card under section 1061ZCA on any days on which they receive an instalment of youth allowance (while subsection 1061ZA(2A) applies), jobseeker payment (while subsection 1061ZA(2B) applies) or parenting payment (partnered) (while subsection 1061ZA(2D) applies), within the two year period referred to in new subsection 1061ZCA(1).

These provisions ensure that former recipients of age pension and their pensioner partners can only qualify for a pensioner concession card under one provision.

Consequential amendments

Item 2 is a consequential amendment to subsection 1061ZEA(1) to insert a reference to new section 1061ZCA. This has the effect that the further extended qualification rule relating to loss of payment because of employment income, does not apply where an age pensioner or their pensioner partner is qualified for a pensioner concession card under new section 1061ZCA. This is consistent with the situations where a person is subject to extended pensioner concession card qualification under another provision.

Item 3 is a consequential amendment to subparagraph 1061ZUC(1)(a)(i) to insert a reference to new section 1061ZCA. This has the effect that a former recipient of age pension or their pensioner partner can remain qualified for a pensioner concession card for up to six weeks, while they are temporarily absent from Australia. This aligns the pensioner concession card portability for former age pension recipients and their pensioner partners, who are qualified for a pensioner concession card under new section 1061ZCA, with portability for other persons who are qualified under other pensioner concession card qualification provisions.

Application provision

Item 4 is an application provision relating to the amendments in Part 1. **Item 4** provides that new section 1061ZCA, inserted by **item 1**, applies in situations where age pension, disability support pension or carer payment ceases to be payable to pensioners on or after Part 1 commences. This is the case regardless of whether the pension first became payable before, on or after the commencement date. In addition, new section 1061ZCA applies in situations where the pension ceases to be payable during the 12 weeks ending immediately before Part 1 commences.

This means that the new extended pensioner concession card qualification provisions may be applied to age pensioners and their pensioner partners who are receiving their pension on or after the commencement date, and then lose payability at some time after the commencement date. Further, age pensioners and their pensioner partners who are serving a 12 week employment nil rate period on the commencement date, may also benefit from the new extended qualification provisions.

Part 2 – Former recipients of disability support pensions

Social Security Act 1991

Part 2 amends section 1061ZD to extend pensioner concession card qualification for former disability support pensioners and their pensioner partners, and make other minor changes.

Extended qualification rule – former recipient of disability support pension and partner

Item 5 amends the heading to section 1061ZD to provide for the extension of the provision to partners of former disability support pensioners, by adding the words ‘and partner’ at the end.

Items 6, 8, 9, 11, 12, 14 and 16 insert subsection headings into section 1061ZD, to assist with clarity and readability, and for consistency with new sections 1061ZCA and 1061ZDB.

Qualification

Item 7 amends subsection 1061ZD(1) to extend the pensioner concession card qualification for former disability support pension recipients. Currently, section 1061ZD provides that a former disability support pension person may continue to qualify for a pensioner concession card for up to 52 weeks after they cease to be eligible for the pension due to their employment hours or ordinary income from employment. This item removes the current reference to 52 weeks in subsection 1061ZD(1) and replaces it with a reference to two years. This means that persons previously receiving disability support pension, to whom section 1061ZD applies, can remain qualified for a pensioner concession card for up to two years. This two year period is also aligned with the new extended pensioner concession card qualification for former age pension recipients (and their pensioner partners) in new section 1061ZCA.

Partner of former recipient with employment

Item 10 inserts a new subsection 1061ZD(3A) to apply the pensioner concession card extension to partners of disability support pensioners, where the partner themselves has been receiving age pension, disability support pension or carer payment. In this provision, the pensioner partner is referred to as the 'person' and the disability support pensioner is referred to as the 'partner'.

New subsection 1061ZD(3A) provides that subject to subsection 1061ZD(4), section 1061ZD applies to a person who is a member of a couple (that is, the disability support pensioner's pensioner partner) if the requirements in new paragraphs 1061ZD(3A)(a) to (d) are met. These requirements are:

- (a) The person's partner (that is, the disability support pensioner) must be qualified for a pensioner concession card in accordance with subsection 1061ZD(2), due to the partner ceasing to be qualified for disability support pension, or in accordance with subsection 1061ZD(3), due to disability support pension ceasing to be payable to the partner.
- (b) The person must have been receiving age pension, disability support pension or carer payment immediately before their partner lost their qualification or payability for disability support pension (as referred to in new paragraph 1061ZD(3A)(a) above).
- (c) The person's age pension, disability support pension or carer payment must have ceased to be payable to the person because their rate is nil.
- (d) Further, the person's loss of payability must occur at both the same time as the disability support pensioner's loss of qualification or payability, and due to the same event or change of circumstances which caused the disability support pensioner's loss of qualification or payability.

Where these requirements are satisfied, the disability support pensioner's pensioner partner is also able to benefit from the pensioner concession card extension period of two years.

New subsection 1061ZD(3B) has been inserted for the avoidance of doubt. This is intended to make it clear that new subsection 1061ZD(3A) continues to apply to the disability support pensioner's pensioner partner, even if they are no longer a member of a couple, after their pension has ceased to be payable.

Item 13 makes the same amendments to subsections 1061ZD(5) and (5A) as **item 7**, to ensure consistency with the amended reference to two years in subsection 1061ZD(1).

Residency requirement exception – New Zealand agreement

Item 15 amends paragraph 1061ZD(6)(b) to refer to age pension, disability support pension and carer payment, instead of just disability support pension. This reflects the extension of section 1061ZD to apply to pensioner partners of disability support pensioners, who may be receiving age pension, disability support pension or carer payment due to the operation of the international social security agreement between Australia and New Zealand.

Application provisions

Item 17 contains the application provisions for the amendments in Part 2 of Schedule 2.

Item 17(1) provides that the amendments to subsections 1061ZD(1), (5) and (5A), inserted by **items 7 and 13**, apply to persons who receive disability support pension on or after the commencement day, that is, the day that Part 2 commences. This is the case regardless of whether the person was receiving disability support pension before the commencement, or only started receiving the pension after the commencement.

Item 17(2) provides that the amendments to increase the period of pensioner concession card qualification in section 1061ZD, made by **items 7 and 13**, also apply to former disability support pension recipients where section 1061ZD started applying to them in the 52 weeks before Part 2 commences. However, this will only be the case if, on the day before Part 2 commences, the person has also remained qualified for a pensioner concession card under section 1061ZD, or is qualified under subsection 1061ZA(1), (2A), (2B) or (2D), due to the operation of subsection 1061ZD(5) or 1061ZD(5A).

Item 17(3) provides that new subsections 1061ZD(3A) and (3B), inserted by **item 10**, and the amendments to paragraph 1061ZD(6)(b), made by **item 15**, apply in situations where age pension, disability support pension or carer payment ceases to be payable on or after Part 2 commences. This is the case regardless of whether the pension first became payable before, on or after the commencement date. In addition, these changes apply in situations where the pension ceases to be payable to a pensioner during the 12 weeks ending immediately before Part 2 commences.

Item 17(4) states that in **item 17**, the term ‘commencement day’ means the day that Part 2 commences.

Part 3 – Former recipients of veterans’ entitlements

Veterans’ Entitlements Act 1986

Item 18 inserts a new subsection heading ‘General rule’ into the Veterans’ Entitlements Act before subsection 53A(1) to clarify that subsection 53A(1) is the general rule. Subsections 53A(1A) and (2), and new subsections 53A(3), (4) and (5) extend eligibility for fringe benefits to those persons whose pension or income support supplement payments have ceased to be payable.

Item 19 inserts a new subsection heading ‘Certain persons eligible before 1 January 2017’ before subsection 53A(1A). This clarifies an exception to the general rule which applies to allow some people to remain eligible for fringe benefits.

Item 20 inserts a new subsection heading ‘Certain recipients of invalidity service pension who cease to be permanently incapacitated for work’ before subsection 53A(2) to clarify that this subsection is another exception to the general rule which allows certain persons who are identified in that subsection to remain eligible for fringe benefits.

Item 21 inserts new subsections 53A(3) to (6) into the Veterans’ Entitlements Act after subsection 53A(2).

Former recipients with employment income

New subsection 53A(3) is an exception to the general rule and provides that a person remains eligible for fringe benefits for two years after the day that their income support payment ceased to be payable if the requirements in paragraphs 53A(3)(a) to (e) are met. If all of the requirements are met the person is eligible for fringe benefits for an additional two years after their income support payment ceased to be payable. These requirements are:

- (a) the person has been receiving the service pension or income support supplement under the Veterans’ Entitlements Act;
- (b) the pension or supplement ceases to be payable to the person because the rate is nil;
- (c) the rate of the pension or supplement is nil because of an event or change of circumstances that results in the person’s income reduced rate being nil;
- (d) but for the income reduced rate being nil, the person would have continued to be eligible for fringe benefits because the person would have continued to receive the pension or supplement; and

- (e) at the time of the pension or supplement ceasing to be payable the person's ordinary income includes income for remunerative work the person has performed in Australia as an employee in an employer/employee relationship. This reflects that the measure is intended to encourage income support recipients to take up paid work or increase their hours of work.

New subsection 53A(4) defines a person's income reduced rate as being the rate worked out in the relevant method statement in Module A of the Rate Calculator. For service pension the relevant method statement is method statement 1. For the income support supplement, the relevant method statement is method statement 5.

Partners of certain former recipients with employment

New subsection 53A(5) extends the continued eligibility for fringe benefits to the partners of those persons who are eligible for the extended fringe benefits under subsection 53A(3) (partners of eligible persons).

Paragraph 53A(5)(a) sets out the eligibility requirements for the eligible persons. Some of the eligible persons will be eligible under the Social Security Act but the partner of the eligible person will be entitled to the extended eligibility to fringe benefits under the Veterans' Entitlements Act. The eligible persons must meet one of the qualifying provisions in paragraph 53A(5)(a). These are:

- (i) eligible for fringe benefits under subsection 53A(3) because the person's pension or supplement ceases to be payable to the person;
- (ii) qualified for a pensioner concession card under section 1061ZCA of the Social Security Act because subsection (2) of that section applies to the person as a result of age pension ceasing to be payable to the person;
- (iii) qualified for a pensioner concession card under section 1061ZD of the Social Security Act because subsection (2) of that section applies to the person as a result of the person ceasing to be qualified for disability support pension; or
- (iv) qualified for a pensioner concession card under section 1061ZD of the Social Security Act because subsection (3) of that section applies to the person as a result of disability support pension ceasing to be payable to the person.

Paragraphs 53A(5)(b) to (d) set out the requirements which the eligible person's partner must satisfy to be eligible for the extended eligibility for fringe benefits under section 53A of the Veterans' Entitlements Act. All of these requirements must be met for the eligible person's partner to be entitled to the benefit of this measure. The requirements are:

- (b) The partner must have been receiving service pension or income support supplement immediately before the eligible person lost their qualification or payability for their pension or supplement.

- (c) The partner's service pension or income support supplement must have ceased to be payable to the partner because their rate is nil.
- (d) Further, the partner's loss of payability must occur at both the same time as the eligible person's loss of qualification or payability, and due to the same event or change of circumstances which caused the eligible person's loss of qualification or payability.

Where these requirements are satisfied, the eligible person's partner is also able to benefit from the fringe benefits extension period of two years.

New subsection 53A(6) clarifies that the partner of the eligible person remains entitled to fringe benefits under section 53A of the Veterans' Entitlements Act even if the partner ceased to be a member of the couple after the day the service pension or income support supplement ceased to be payable. For example should the eligible person die the partner would continue to be eligible for fringe benefits under the Veterans' Entitlements Act for the two year period.

Item 22 adds a note at the end of subsection 56(1). This note clarifies that if a person ceases to receive a service pension or income support supplement, the person's eligibility for benefits under Division 12 will generally cease. This confirms the general rule for those persons not entitled to the benefits of this measure.

Item 23 adds a note at the end of subsection 56A(1). This note clarifies that if a person ceases to receive a service pension or income support supplement, the person's eligibility for benefits under Division 12 will generally cease. This confirms the general rule for those persons not entitled to the benefits of this measure.

Item 24 amends note 4 to subsection 56E(1) to clarify that, while the general rule is that when a person's pension is cancelled their benefits under Division 12 are also cancelled, it identifies sections 56ED and 56EE as providing for exceptions to the general rule.

Item 25 amends note 3 to subsection 56EA(2) to clarify that, while the general rule is that when a person's pension is cancelled their benefits under Division 12 are also cancelled, it identifies sections 56ED and 56EE as providing for exceptions to the general rule.

Application provision

Item 26 is an application provision relating to the amendments in Part 3. It provides that subsections 53A(3), (4), (5) and (6) apply in situations where service pension or income support supplement cease to be payable to income support recipients on or after Part 3 commences. This is the case regardless of whether the pension or supplement first became payable before, on or after the commencement date. In addition, subsections 53A(3), (4), (5) and (6) apply in situations where the service pension or income support supplement ceases to be payable during the 12 weeks ending immediately before Part 3 commences.

Part 4 – Certain partners of former recipients of veterans’ entitlements

Social Security Act 1991

Extended qualification rule – partner of former recipient of veterans’ entitlement

Item 27 inserts a new section 1061ZDB into the Social Security Act to extend pensioner concession card qualification for certain partners of former veterans’ entitlement recipients.

Qualification

New subsection 1061ZDB(1) provides that subject to new subsections 1061ZDB(6) and (7), a pensioner partner of a former recipient of a relevant veterans’ entitlement is qualified for a pensioner concession card for two years beginning on the day on which new section 1061ZDB starts to apply to the partner.

Partner of former recipient of veterans’ entitlement with employment income

New subsection 1061ZDB(2) applies to extend a pensioner partner’s pensioner concession card qualification, where the pensioner partner has been receiving age pension, disability support pension or carer payment. In this provision, the pensioner partner is referred to as the ‘person’ and the veterans’ entitlement recipient is referred to as the ‘partner’.

New subsection 1061ZDB(2) provides that subject to new subsection 1061ZDB(4), new section 1061ZDB applies to a person who is a member of a couple (that is, the pensioner partner of a veterans’ entitlement recipient) if the requirements in paragraphs 1061ZDB(2)(a) to (d) are met. These requirements are:

- (a) The person’s partner (that is, the former veterans’ entitlement recipient) must be eligible for fringe benefits in accordance with new subsection 53A(3) of the Veterans’ Entitlements Act, due to service pension or income support supplement ceasing to be payable to the partner.
- (b) The person must have been receiving age pension, disability support pension or carer payment, immediately before the veterans’ entitlement recipient lost their payability for service pension or income support supplement (as referred to in new paragraph 1061ZDB(2)(a) above).
- (c) The person’s age pension, disability support pension or carer payment must have ceased to be payable to the person because their rate is nil.
- (d) Further, the person’s loss of payability must occur at both the same time as the veterans’ entitlement recipient’s loss of payability, and due to the same event or change of circumstances which caused the veterans’ entitlement recipient’s loss of payability.

Where these requirements are satisfied, the pensioner partner of a veterans' entitlement recipient is also able to benefit from the pensioner concession card extension period of two years.

New subsection 1061ZDB(3) has been inserted for the avoidance of doubt. This is intended to make it clear that new subsection 1061ZDB(2) continues to apply to the pensioner partner of a veterans' entitlement recipient, even if the pensioner partner is no longer a member of a couple, after their pension has ceased to be payable.

Residency requirement

New subsection 1061ZDB(4) provides that the extended pensioner concession card qualification in new section 1061ZDB only applies to a person while they are residing in Australia.

The note following new subsection 1061ZDB(4) indicates that if a pensioner partner is temporarily absent from Australia, they will continue to be qualified for a pensioner concession card for up to six weeks, in accordance with Division 4 of Part 2A.1 of the Social Security Act.

New subsection 1061ZBD(5) provides that a person may qualify for a pensioner concession card under this provision on a day if they are in Australia on that day, but not residing in Australia, as otherwise required by new subsection 1061ZBD(4). In addition, the person must have been receiving age pension, disability support pension or carer payment solely because of the operation of the scheduled international social security agreement between Australia and New Zealand.

No double qualification – person receiving certain other social security payments

New subsection 1061ZDB(6) provides that a person will not be qualified for a pensioner concession card under new section 1061ZDB on any days on which they receive an instalment of a social security pension within the two year period referred to in new subsection 1061ZDB(1).

New subsection 1061ZDB(7) provides that a person will not be qualified for a pensioner concession card under section 1061ZDB on any days on which they receive an instalment of youth allowance (while subsection 1061ZA(2A) applies), jobseeker payment (while subsection 1061ZA(2B) applies) or parenting payment (partnered) (while subsection 1061ZA(2D) applies), within the two year period referred to in new subsection 1061ZDB(1).

These provisions ensure that partners of former recipients of veterans' entitlement can only qualify for a pensioner concession card under one provision.

Consequential amendments

Item 28 is a consequential amendment to subsection 1061ZEA(1) to insert a reference to new section 1061ZDB. This has the effect that the further extended qualification rule relating to loss of payment because of employment income, does not apply where a pensioner partner of a veterans' entitlement recipient is qualified for a pensioner concession card under new section 1061ZDB.

Item 29 is a consequential amendment to subparagraph 1061ZUC(1)(a)(i) to insert a reference to new section 1061ZDB. This has the effect that a pensioner partner of a veterans' entitlement recipient can remain qualified for a pensioner concession card for up to six weeks, while they are temporarily absent from Australia.

Application provision

Item 30 is an application provision relating to the amendments in Part 4. **Item 30** provides that new section 1061ZDB, inserted by **item 27**, applies in situations where age pension, disability support pension or carer payment ceases to be payable to pensioner partners on or after Part 4 commences. This is the case regardless of whether the pension first became payable before, on or after the commencement date. In addition, new section 1061ZDB applies in situations where the pension ceases to be payable during the 12 weeks ending immediately before Part 4 commences.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

SOCIAL SERVICES LEGISLATION AMENDMENT (WORKFORCE INCENTIVE) BILL 2022

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

This Bill amends the social security law and *Veterans' Entitlements Act 1986* to remove possible disincentives for age pensioners, disability support pensioners and veterans' entitlement recipients to engage in paid employment.

The Bill will allow age pensioners and certain veterans' entitlement recipients to have their payment suspended for up to two years, instead of cancelled, if their income, which includes some income from the recipient's own employment, precludes payment. Suspension will also be made available to their partners, and partners of disability support pension recipients, where the partner is themselves receiving a social security pension or certain veterans' entitlement. This will enable pensioners and their partners to resume receiving pension more easily if it becomes payable again within two years.

The Bill will remove a potential disincentive to working by extending the period that age pensioners, disability support pensioners and certain veterans' entitlement recipients can remain qualified for a pensioner concession card. This Bill will allow working pensioners, and their pensioner partners, to retain their pensioner concession card for up to two years.

The measures in this Bill are not only beneficial over the long term, but are of importance in an economy that is currently impacted by COVID-19. Specifically, the measures in this Bill will remove possible disincentives to workforce participation by pensioners which may assist to provide additional labour supply in areas of the economy impacted by COVID-19 related labour shortages.

Human rights implications

The amendments contained in this Bill are beneficial and engage the following human rights:

- the right to social security – Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to an adequate standard of living – Article 11 of ICESCR; and

- the right to work – Article 6 of ICESCR.

Article 9 of the ICESCR recognises the right of everyone to social security. The amendments contained in this Bill increase choice for age pensioners and relevant veterans' entitlements recipients, and the pensioner partners of age pensioners, disability support pensioners and relevant veterans' entitlements recipients, by allowing them the flexibility to easily move between periods of work and the pension.

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions. The amendments give Australians, including senior Australians, greater opportunities to improve their standard of living by working, while maintaining their link to the pension and concessions provided by their pensioner concession card for up to two years.

Pensioners who engage in paid employment during their retirement typically have higher incomes and are able to support a higher standard of living than those who do not. They also gain significant non-financial benefits, including stronger social connection, staying mentally active and keeping physically fit.

Article 6 of ICESCR recognises the right of every person to the opportunity to gain a living by work which they freely choose or accept. This Bill supports pensioners, including retired pensioners, to freely choose whether or not they would like to engage in work. Pensioners who would like to re-enter the workforce are able to and those who are already working can increase their hours. This gives age pensioners more choice and flexibility in how they manage their retirement.

Conclusion

This Bill is compatible with human rights as it provides Australians, including senior Australians, with greater pension flexibility to help improve their standard of living.

**[Circulated by the authority of the Minister for Families and Social Services,
Senator the Hon Anne Ruston]**