

2013-2014-2015

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SERVICES LEGISLATION AMENDMENT
(FAIR AND SUSTAINABLE PENSIONS) BILL 2015**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Social Services, the Hon Scott Morrison MP)**

SOCIAL SERVICES LEGISLATION AMENDMENT (FAIR AND SUSTAINABLE PENSIONS) BILL 2015

OUTLINE

This Bill will introduce several 2015 Budget measures improving the fairness and sustainability of the pension system, and reintroduce some measures previously introduced in 2014 Bills that are still before the Senate.

The measures are provided by Schedules to this Bill numbered as set out below:

1. **Defined benefit income streams** – from 1 January 2016, ensure that a fairer proportion of a superannuant's actual defined benefit income is taken into account when applying the social security income test by introducing a 10 per cent cap on the income that can be excluded from the test. The measure will not apply to military superannuation schemes.
2. **Proportional payment of pensions outside Australia** – from 1 January 2017, reduce, from 26 weeks to six weeks, the length of time for which recipients of age pension and a small number of other payments with unlimited portability will generally be paid their basic means-tested rate while outside Australia. After six weeks, payment will be adjusted according to the length of the pensioner's Australian working life residence.
3. **Assets test and concession cards** – from 1 January 2017, rebalance the assets test parameters by increasing the assets test free areas and the taper rate by which a pension is reduced once the free areas are exceeded. Those whose pension is cancelled will automatically be issued with a Commonwealth Seniors Health Card, or a Health Care Card for those under pension age, without the need to meet the usual income requirements. Veterans whose service pension is cancelled under this measure will retain their Veterans' Affairs Gold Card.
4. **Energy supplement replacing seniors supplement** – reintroduce the measure provided by the Social Services and Other Legislation Amendment (Seniors Supplement Cessation) Bill 2014 – cease payment of the seniors supplement for holders of the Commonwealth Seniors Health Card or the Veterans' Affairs Gold Card – with a new start date of 20 June 2015 (meaning the last quarterly payment of seniors supplement would generally be made on 20 June 2015).
5. **Pensioner education supplement** – reintroduce the measure provided by Schedule 4 to the Social Services and Other Legislation Amendment (2014 Budget Measures No. 4) Bill 2014 (the No. 4 Bill) – cease pensioner education supplement – with a new start date of 1 January 2016.
6. **Education entry payment** – reintroduce the measure provided by Schedule 5 to the No. 4 Bill – cease the education entry payment – with a new start date of 1 January 2016.

Financial impact statement

MEASURE	FINANCIAL IMPACT OVER THE FORWARD ESTIMATES (SAVINGS)
1. Defined benefit income streams	\$465.5 million
2. Proportional payment of pensions outside Australia	\$168.4 million
3. Assets test and concession cards	\$2,434.0 million
4. Energy supplement replacing seniors supplement	\$1,057.3 million*
5. Pensioner education supplement	\$252.4 million**
6. Education entry payment	\$64.4 million**

* includes an indicative figure for 2018-19

** financial impact refers to administered funding for affected social security payments only and is not net of implementation funding

STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

The statements of compatibility with human rights appear at the end of this explanatory memorandum.

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NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **2014 Budget Measures No. 6 Act** means the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Act 2014*
- **Farm Household Support Act** means the *Farm Household Support Act 2014*
- **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 and Other Legislation Amendment (Fair and Sustainable Pensions) Act 2015*.

Clause 2 provides a table setting out the commencement dates of the various sections in, and Schedules to, the new Act.

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

Schedule 1 – Defined benefit income streams

Summary

This Schedule ensures that a fairer proportion of a superannuant's actual defined benefit income is taken into account when applying the social security income test. From 1 January 2016, the deductible amount (that is, the amount that can be excluded from the income test) for a defined benefit income stream, excluding military defined benefit schemes, will be capped at a maximum 10 per cent of the gross amount payable to an individual for the year.

This will result in an increase to assessable income, for people with a deductible amount currently greater than 10 per cent, for the purpose of determining the rate of income support the person receives.

Background

A **defined benefit income stream** usually comes from an employer superannuation fund or government employee superannuation scheme. It currently includes military defined benefit income streams.

The payments received from a defined benefit income stream, less the **deductible amount**, are taken into consideration as **ordinary income** when determining whether an individual is eligible for income support payments and, if eligible, the rate of payment.

The deductible amount for a defined benefit income stream is defined in section 9 of the Social Security Act. Currently, the deductible amount is calculated by reference to the tax-free component of the amount payable under the defined benefit income stream, as determined in accordance with the *Income Tax Assessment Act 1997* or the *Income Tax (Transitional Provisions) Act 1997*.

Amendments to the *Income Tax Assessment Act 1997* in 2007 resulted in an increase to the tax-free component for some individuals. This had the effect of increasing the deductible amount for the purpose of the Social Security Act, resulting in individuals becoming entitled to income support payments, or higher rates of income support.

This Schedule improves fairness and equity by introducing a 10 per cent cap on the defined benefit income, as described above.

The amendments made by this Schedule commence on 1 January 2016.

Explanation of the changes

Amendments to the Social Security Act

Item 1 inserts into subsection 9(1) a definition of **military defined benefit income stream**. This definition is particularly relevant to the exclusion of military defined benefit income streams from the 10 per cent cap under new subsections 1099A(2) and 1099D(2) – see items 5 and 7 below.

Item 2 inserts new subsection 9(2) to allow the Secretary to specify, by legislative instrument, a superannuation scheme as a military defined benefit income stream. Schemes so specified would be additional to those already specified in the relevant definition.

Item 3 amends subsection 23(1) to include a signpost to the definition of ***military defined benefit scheme*** in subsection 9(1).

Items 5 and 7 amend sections 1099A and 1099D to cap the deductible amount for defined benefit income streams, excluding military defined benefit income streams. Where the deductible amount for payments made in accordance with a defined benefit income stream for the year exceeds 10 per cent, the deductible amount is taken to be equal to 10 per cent. **Items 4 and 6** are consequential technical amendments relating to this change.

Item 8 amends clause 136 (Transitional definition of ***deductible amount*** (commencing 1 July 2007)) of Schedule 1A to the Social Security Act. This is to ensure the cap, calculated in accordance with section 1099A or 1099D, as amended by this Schedule, applies to all relevant individuals, including those to whom the transitional provision applies.

Item 9 sets out the application of the amendments. The amendments apply in working out a person's ordinary income for 1 January 2016 or any later day, regardless of when the defined benefit income stream was first provided to the person.

Schedule 2 – Proportional payment of pensions outside Australia

Summary

From 1 January 2017, this Schedule reduces from 26 weeks to six weeks the period during which age pension, and a small number of other payments with unlimited portability, can be paid outside Australia at the full (means-tested) rate. After six weeks, payment will be adjusted according to the length of the pensioner's Australian working life residence.

Background

This Schedule affects the rate of pension paid to age pension recipients and a limited number of disability support pension, wife pension and widow B pension recipients who have unlimited portability.

The amendments will reduce from 26 weeks to six weeks the period of absence from Australia after which a pension recipient's payment is proportionalised. After six weeks, payment will be adjusted according to the length of the pensioner's Australian working life residence.

To retain their basic means-tested rate while overseas, a person needs 35 years' working life residence in Australia. Working life residence is calculated based upon the period beginning when the person turns 16 and ending when the person reaches pension age (point 1221-B1 of the Social Security Act). If a person's period of Australian working life residence is less than 35 years, their individual rate of pension after six weeks will be adjusted according to their years of working life residence.

The measure will reinforce and strengthen the residence-based nature of Australia's social security system. After a six-week absence, payment will be based on the length of time a person has resided in Australia during their working life.

The measure does not affect the length of the portability period, which continues to be unlimited. However, the rate received after a six-week absence may change.

The amendments will commence from 1 January 2017, but will only apply to absences starting on or after that date. Pensioners who are overseas on 1 January 2017 will continue to be allowed the full 26-week period of absence before their payment is potentially reduced.

Explanation of the changes

Amendments to the Social Security Act

Items 2, 3 and 4 amend sections 1220A (Proportionality – age pension rate), 1220B (Proportionality – disability support pension rate for a severely disabled person) and 1221 (Proportionality – wife pension and widow B pension rate for entitled persons). These three sections each substitute a proportionalised rate of pension based upon a person's Australian working life residence after 26 weeks. In each case, the provision is amended to substitute reference to six weeks for the current reference to 26 weeks.

Schedule 2 – Proportional payment of pensions outside Australia

Item 1 makes a consequential amendment to a note at subsection 1214(1), to refer to six weeks instead of 26 weeks.

Item 5 provides that the amendments made by this Schedule apply in relation to periods of absence from Australia starting on or after the commencement of this item.

Schedule 3 – Assets test and concession cards

Summary

From 1 January 2017, this Schedule will rebalance the assets test parameters by increasing the assets test free areas and the taper rate by which a pension is reduced once the free areas are exceeded.

People whose pension is nil on 1 January 2017 as a result of these changes will automatically be issued with a Commonwealth Seniors Health Card, or a Health Care Card for those under pension age, without the need to meet the usual income requirements. Veterans whose service pension is cancelled under this measure will retain their Veterans' Affairs Gold Card.

Background

Assets test

An assets test applies to social security pensions – namely, age pension, disability support pension, wife pension, carer payment, bereavement allowance, widow B pension and certain pensions administered by the Department of Veterans' Affairs. Pension payments are assessed under both income and assets tests, and the test that produces the lower rate will apply to the person.

The pension assets test has a free area for the value of assets (excluding the family home) below which a person's rate of pension is not affected under the assets test by their assets holdings. The value of a person's assets above these free areas currently reduces their pension by \$1.50 per fortnight for each extra \$1,000 in assessable assets over the free area (the assets taper rate).

An assets test also applies to parenting payment and allowances (widow allowance, youth allowance, austudy payment, newstart allowance, sickness allowance, special benefit and partner allowance). These allowances come within the definition of **social security benefit** under the Social Security Act. For these payments, if the value of a person's assets exceeds the assets test free area, then the payment is not payable. There is no assets taper rate for these payments.

Currently, the assets test free areas are:

- \$202,000 for a single homeowner;
- \$286,500 for homeowner couples;
- \$348,500 for non-homeowner singles; and
- \$433,000 for non-homeowner couples.

The changes made by Part 1 of this Schedule increase the free areas to:

- \$250,000 for a single home owner;
- \$375,000 for home owner couples;
- \$450,000 for non-home owner singles; and
- \$575,000 for non-home owner couples.

The 'common allowable' asset test free area that applies where at least one member of an illness-separated couple is residing in a special residence, and they have a different home ownership status, will also be increased to \$237,500.

This Schedule also make amendments to increase the taper rate for pensions so that a person's rate of a pension is reduced by \$3.00 per fortnight (instead of the current \$1.50 per fortnight) for every \$1,000 of assets above the relevant assets test free area.

Indexation of the pension assets test free areas has been paused for three years from 1 July 2017 by the 2014 Budget Measures No. 6 Act. The changes to the assets test made by this Schedule replace the measure that pauses the indexation of the assets test free areas in the 2014 Budget Measures No. 6 Act. Accordingly, amendments are also made to the 2014 Budget Measures No. 6 Act to ensure the assets limits for pensions are not paused.

Concession cards

The seniors health card and health care card are concession cards that may be claimed by a person who is not receiving a social security pension or benefit.

A health care card or seniors health card (for people of pension age) will be automatically issued to those pensioners whose pension rate is nil on 1 January 2017 as a result of the changes to asset thresholds and taper rates in Part 1 of this Schedule. The usual income test applying to such cards will be disregarded for this purpose. Pensioners who are overseas at 1 January 2017 but would otherwise qualify for a card will be automatically issued such a card upon their return, provided they return within 19 weeks of leaving Australia.

Pensioners who are overseas at 1 January 2017 but return to Australia after 19 weeks will also qualify for a card if they have a nil rate of pension on 1 January 2017 as a result of these changes. However, the card will not be automatically issued. They will need to claim the card on their return.

Similar amendments are made to ensure veterans and war widows who lose their service pension or income support supplement as the result of the changes in Part 1 of this Schedule are granted a seniors health card or a health care card, as appropriate to their circumstances. In addition, veterans who lose their service pension under this measure will retain their Veterans' Affairs Gold Card.

Explanation of the changes

Part 1 – Assets test

Division 1 – Main amendments

Amendments to the Social Security Act

Items 1, 3, 9, 13, 17, 23 and 29 increase the assets value limit for parenting payment (single) and social security benefit for a homeowner who is not a member of a couple to \$250,000.

Items 2, 4, 10, 14, 18, 24 and 30 increase the assets value limit for parenting payment (single) and social security benefit for a non-homeowner who is not a member of a couple to \$450,000.

Items 5, 11, 15, 19, 25 and 31 increase the assets value limit for social security benefit for a homeowner who is partnered, where the partner is getting neither a pension nor a benefit, to \$375,000.

Items 6, 12, 16, 20, 26 and 32 increase the assets value limit for social security benefit for a non-homeowner, who is partnered where the partner is getting neither a pension nor a benefit, to \$575,000.

Items 7, 21, 27, 33 and 35 increase the assets value limit for social security benefit for a homeowner who is partnered where the partner is getting a pension or a benefit to \$187,500.

Items 8, 22, 28, 34 and 36 increase the assets value limit for social security benefit for a non-homeowner who is partnered, where the partner is getting a pension or a benefit, to \$287,500.

Items 37, 44 and 51 increase the assets value limit for social security pension (other than parenting payment single) for a homeowner who is not a member of a couple to \$250,000.

Items 38, 45 and 52 increase the assets value limit for social security pension (other than parenting payment single) for a non-homeowner who is not a member of a couple to \$450,000.

Items 39, 41, 46, 48, 53 and 55 increase the assets value limit for a social security pension for a homeowner who is a member of a couple to \$187,500.

Items 40, 42, 47, 49, 54 and 56 increase the assets value limit for a social security pension for a non-homeowner who is a member of a couple to \$287,500.

Point 1064-G4 of the Social Security Act provides for a reduction in a person's rate of pension where the person has assets in excess of their assets value limit. A formula in table G-2 is used to calculate the reduction. There are similar provisions in points 1066-G4 and 1066A-H4. The current effect of these provisions is to reduce a person's rate of a pension by \$1.50 per fortnight for every \$1,000 of assets above the relevant assets test free area. **Items 43, 50 and 57** amend the formulas in these provisions to double the taper rate to produce a reduction of \$3.00 per fortnight for every \$1,000 of assets above the relevant assets test free area.

There is a similar taper rate included in the hardship provisions that apply in relation to the assets test. **Item 58** amends paragraph 1130(3)(d) to double the taper.

Items 59 to 61 increase the asset limits that apply in relation to certain special residents to \$237,500.

Section 1192 of the Social Security Act provides a method for indexing amounts that are subject to CPI indexation. Among other things, the method uses the 'current figure' for the amount to be indexed. Some assets value limits are subject to CPI indexation (while others are adjusted).

Item 62 inserts a number of new provisions after subsection 1192(5B) of the Social Security Act. These new provisions ensure that the 'current figure' used to index the relevant assets value limits on 1 July 2017 is the relevant assets value limit that applied on 1 January 2017 (due to the increases provided for by this Schedule).

Item 63 is an application provision. It ensures the amendments made by items 1 to 61 of this Schedule affect social security payments for days on or after commencement (being 1 January 2017).

Amendments to the Veterans' Entitlements Act

Items 64 to 66 increase the asset limits that apply in relation to certain special residents to \$237,500.

Item 67 amends the taper rate under the hardship provisions for service pension and income support supplement so that a person's rate of a pension or supplement is reduced by \$3.00 per fortnight (instead of the current \$1.50) for every \$1,000 of assets above the relevant assets test free area.

Item 68 repeals subsections 59C(2A) and (3), and inserts new subsections 59(2A), (2B) and (3) to ensure the 'current figure' used to index the relevant assets value limits on 1 July 2017 is the relevant assets value limit that applied on 1 January 2017 (due to the increases provided for by this Schedule).

Item 69 repeals sections 59H and 59J, and substitutes new section 59H and 59J. These are technical amendments to remove the quotation marks from the terms 'single' and 'partnered'.

Item 70 increases the assets value limit for service pension or income support supplement for a homeowner who is not a member of a couple to \$250,000.

Item 71 increases the assets value limit for service pension or income support supplement for a non-homeowner who is not a member of a couple to \$450,000.

Item 72 increases the assets value limit for service pension or income support supplement for a homeowner who is a member of a couple to \$187,500.

Item 73 increases the assets value limit for service pension or income support supplement for a non-homeowner who is a member of a couple to \$287,500.

Item 74 makes a technical amendment to note 4 in point SCH6-F3 of Schedule 6.

Item 75 amends the formula in point SCH6-F4(1) of Schedule 6 to double the taper rate, producing a reduction of \$3.00 per fortnight for every \$1,000 of assets above the relevant assets test free area.

Item 76 is an application provision. It ensures the amendments made by items 64 to 67 and 70 to 75 of this Schedule affect service pension and income support supplement for days on or after commencement (being 1 January 2017).

Division 2 – Other amendments

Amendments to the 2014 Budget Measures No. 6 Act

Part 2 of Schedule 2 to the 2014 Budget Measures No. 6 Act pauses the indexation of the pension assets free areas for three years from 1 July 2017. **Item 78** removes Part 2 of Schedule 2. **Item 77** makes a consequential amendment to the commencement table of the 2014 Budget Measures No. 6 Act.

Part 2 – Concession cards

Amendments to the Social Security Act

Item 80 inserts **new sections 1061ZJA and 1061ZJB**, which modify the qualification for seniors health card to create a new category of qualification for affected pensioners.

New subsection 1061ZJA(1) provides that, where, immediately before 1 January 2017, a person was receiving a social security pension and the Secretary is satisfied that the rate of that pension is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3, then the remainder of section applies.

New subsection 1061ZJA(2) disregards paragraph 1061ZG(1)(d) (which applies an income test) in determining the qualification of the person under the Social Security Act for a seniors health card at any time on or after 1 January 2017.

New subsection 1061ZJA(3) requires the Secretary to issue a seniors health card under the Social Security Act to the person if the person is qualified for such card on 1 January 2017. A note confirms that the person does not need to make a claim for the card in this situation.

New subsection 1061ZJA(4) similarly requires that, where the person is outside Australia on 1 January 2017, returns within 19 weeks of leaving, and qualifies for a seniors health card under the Social Security Act on the day they return, the Secretary must issue a seniors health card to the person. Notes confirm that the person does not need to make a claim for the card, unless they return after the end of the 19-week period.

New section 1061ZJB provides that, if section 118XA of the Veterans' Entitlements Act applies to the person (which is in similar terms to new subsection 1061ZJA(1) of the Social Security Act), then paragraph 1061ZG(1)(d) is disregarded in determining the qualification of the person under the Social Security Act for a seniors health card at any time on or after 1 January 2017. This will allow a person whose rate of service pension on 1 January 2017 was nil because of the operation of the amendments made by Part 1 of Schedule 3 to qualify for seniors health card, disregarding the income test under the Social Security Act. The person can then choose to claim a card under the Social Security Act or the Veterans' Entitlements Act, according to their preference.

Item 79 is consequential to the insertion of new sections 1061ZJA and 1061ZJB, and makes qualification for a seniors health card under section 1061ZG subject to new section 1061ZJA and 1061ZJB.

Items 81 and 82 substitute new headings for Subdivisions A and B of Division 3 of Part 2A.1, which deal with health care cards. The current headings differentiate between cases where the card is automatically issued, and those where a claim is required. However, after these changes, there will be some automatically issued cards where a claim would otherwise have been required, because an exemption to the income test applies. As a result, the headings will now differentiate based upon whether the income test generally applies. The substituted heading for Subdivision A, which deals with automatic issue health care cards, will become 'Qualification for automatic issue health care card where no health care card income test'. The substituted heading for Subdivision B, which deals with health care cards for which no claim is required, will become 'Qualification for health care card in other circumstances'. Such cards are not 'automatic issue health care cards' for the purposes of the social security law generally.

Item 84 inserts **new sections 1061ZRA and 1061ZRB**, which modify the qualification for health care cards to create a new category of qualification for affected pensioners.

New subsection 1061ZRA(1) provides that, where, immediately before 1 January 2017, a person was receiving a social security pension and the Secretary is satisfied that the rate of that pension is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3, then the remainder of the section applies.

New subsection 1061ZRA(2) disregards paragraphs 1061ZO(2)(d), (3)(e) and (4)(d) (which apply an income test) in determining the qualification of the person under the Social Security Act for a health care card at any time on or after 1 January 2017.

New subsection 1061ZRA(3) requires the Secretary to issue a health care card under the Social Security Act to the person if the person is qualified for such card on 1 January 2017. A note confirms that the person does not need to make a claim for the card in this situation.

New subsection 1061ZRA(4) similarly requires that, where the person is outside Australia on 1 January 2017, returns within 19 weeks of leaving, and qualifies for a health care card under the Social Security Act on the day they return, the Secretary must issue a health care card to the person. Notes confirm that the person does not need to make a claim for the card, unless they return after the end of the 19-week period.

New section 1061ZRB provides that, if section 118XA of the Veterans' Entitlements Act applies to the person (which is in similar terms to new subsection 1061ZJA(1) of the Social Security Act), then paragraphs 1061ZO(2)(d), (3)(e) and (4)(d) are disregarded in determining the qualification of the person under the Social Security Act for a health care card at any time on or after 1 January 2017. This will allow a person whose rate of service pension on 1 January 2017 was nil because of the operation of the amendments made by Part 1 of Schedule 3 to qualify for a health care card disregarding the income test under the Social Security Act.

Amendments to the Social Security Administration Act

Items 85 and 86 qualify the general requirement under section 11 that a person who wishes to be granted a concession card must make a claim for the card. Subsection 11(2) already provides an exception to the claim requirement for a card for which a person is qualified under Division 1 of Part 2A.1 of the Social Security Act or under Subdivision A of Division 3 of that Part (an automatic issue health care card).

Item 86 adds two new subsections to section 11. New subsection 11(3) exempts a seniors health card that the Secretary must issue to a person under new subsection 1061ZJA(3) or (4) of the Social Security Act (inserted by item 80 above) from the requirement that a person must claim the card. New subsection 11(4) exempts a health care card that the Secretary must issue to a person under new subsection 1061ZRA(3) or (4) of the Social Security Act (inserted by item 84 above) from the requirement that a person must claim the card.

Item 85 qualifies section 11 by reference to the two new subsections inserted by item 86.

Items 87 and 88 amend section 37A, which deals with the duration of seniors health cards and health care cards which are claimed, to exclude automatically issued concession cards issued under these new provisions. Section 37A provides that a seniors health card or health care card expires at the end of the period specified in the determination granting the claim for the card. New subsection 37A(1A) (inserted by item 87) provides that subsection 37(1) does not apply to a non-claimed seniors health card issued under subsection 1061ZJA(3) or (4) of the Social Security Act (inserted by item 80 above). New subsection 37A(2A) similarly provides that subsection 37A(2) does not apply to a non-claimed health care card issued under subsection 1061ZRA(3) or (4) of the Social Security Act (inserted by item 84 above).

Items 89, 90 and 91 provide for the form of non-claimed seniors health cards and health care cards. Item 89 amends subsection 240A(3) to exempt a card issued under subsection 1061ZJA(3) or (4) or 1061ZRA(3) or (4) of the Social Security Act from the requirement to specify in such card a day at which the card will expire. The Secretary may approve a form of such cards under subsection 240A(2), including an expiry day for administrative purposes, in the same way this can occur for automatically issued cards such as a pensioner concession card.

Item 91 amends section 240C, which deals with the issue of replacement cards upon the expiry of an automatic issue card. It amends paragraphs 240C(1)(a) and (2)(a) to include reference to a card issued under subsection 1061ZJA(3) or (4) or 1061ZRA(3) or (4) of the Social Security Act, to also allow such cards to be automatically reissued if required. Item 90 makes a consequential change to the heading of section 240C to reflect its expanded scope as a result of the amendment made by item 91.

Item 92 provides for the start day for seniors health cards and health care cards, which will be automatically issued to persons at 1 January 2017 or to persons who return to Australia after 1 January 2017 within 19 weeks. Four new subclauses are added to Clause 3 of Schedule 2.

New subclause 3(4) applies when new section 1061ZJA (inserted by item 80 above) applies to a person because the rate of pension they were receiving immediately before 1 January 2017 is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to this Bill. The seniors health card the Secretary must issue to the person under that section has a start day of 1 January 2017.

New subclause 3(5) applies when new section 1061ZJA (inserted by item 80 above) applies to a person because the rate of pension they were receiving immediately before 1 January 2017 is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to this Bill. The seniors health card the Secretary must issue to the person because they return to Australia within 19 weeks of departing prior to 1 January 2017 under that section has a start day of the day the person returns to Australia.

New subclause 3(6) applies when new section 1061ZRA (inserted by item 84 above) applies to a person because the rate of pension they were receiving immediately before 1 January 2017 is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to this Bill. The health care card the Secretary must issue to the person under that section has a start day of 1 January 2017.

New subclause 3(7) applies when new section 1061ZRA (inserted by item 84 above) applies to a person because the rate of pension they were receiving immediately before 1 January 2017 is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to this Bill. The health care card the Secretary must issue to the person because they return to Australia within 19 weeks of departing prior to 1 January 2017 under that section has a start day of the day the person returns to Australia.

Amendments to the Veterans' Entitlements Act

Item 93 makes a technical amendment to paragraph 63D(2)(b) to provide that a seniors health card issued under Part VIIC of the Veterans' Entitlements Act is a 'concession card' for the purposes of section 63D.

Item 94 inserts a new subsection (13) at the end of section 85. The effect of new subsection 85(13) is that, if, on 1 January 2017, a veteran's service pension is nil as a result of this measure, for the purposes of subsection 85(7) or 85(7A), the veteran will be taken to be receiving service pension and retain entitlement to treatment for any condition (Gold Card).

Item 95 is consequential to the insertion of new sections 118XA and 118XB, and makes eligibility for a seniors health card under section 118V subject to new sections 118XA and 118XB.

Item 96 inserts **new sections 118XA and 118XB**, which modify the eligibility for seniors health card to create a new category of eligibility for affected pensioners.

New subsection 118XA(1) provides that the section applies where, immediately before 1 January 2017, a person was receiving a service pension or income support supplement and the Commission is satisfied that the rate of that pension is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3.

New subsection 118XA(2) disregards paragraphs 118V(1)(h), (1A)(f), (2)(h) and (3)(h) (which apply an income test) in determining the eligibility of the person under the Veterans' Entitlements Act for a seniors health card at any time on or after 1 January 2017.

If a person is eligible for a seniors health card under Part VIIC on 1 January 2017, new subsection 118XA(3) requires the Commission to make a determination under section 118ZG to that effect. A note clarifies that the person does not need to make a claim for the card.

New section 118XB provides that, if new section 1061ZJA of the Social Security Act (inserted by item 80 above) applies to the person (which is in similar terms to new subsection 118XA(1) of the Veterans' Entitlements Act), then paragraphs 118V(1)(h), (1A)(f), (2)(h) and (3)(h) are disregarded in determining the eligibility of the person under the Veterans' Entitlements Act for a seniors health card at any time on or after 1 January 2017. This will allow a person whose rate of social security pension on 1 January 2017 was nil because of the operation of the amendments made by Part 1 of Schedule 3 to qualify for a seniors health card disregarding the income test under the Veterans' Entitlements Act. The person can then choose to claim a card under the Social Security Act or the Veterans' Entitlements Act, according to their preference.

Item 97 makes a technical amendment as a consequence of item 93.

Schedule 3 – Assets test and concession cards

Item 98 inserts new subsection (2) at the end of section 118Y. New subsection 118Y(2) provides that a person does not need to make a claim for a seniors health card if a determination made under section 118ZG is in force because of subsection 118XA(3).

Schedule 4 – Energy supplement replacing seniors supplement

Summary

From 20 June 2015, this Schedule will cease payment of the seniors supplement for holders of the Commonwealth Seniors Health Card or the Veterans' Affairs Gold Card.

Background

Under this measure, the seniors supplement will be abolished for holders of the Commonwealth Seniors Health Card. Veterans who hold a Commonwealth Seniors Health Card or Gold Card would also no longer receive the seniors supplement. Holders of the Commonwealth Seniors Health Card will continue to be paid energy supplement. Cardholders will generally receive their last quarterly seniors supplement payment on 20 June 2015.

Under the Social Security Act, qualification for the seniors supplement is currently provided by Part 2.25B. The Veterans' Entitlements Act provisions are in Part VIIAD. The supplement is payable quarterly on a test day, based upon accrued days for which the person qualified for the supplement during the quarter ending on the day before the test day. The seniors supplement test days are 20 March, 20 June, 20 September and 20 December. Qualification is based upon the person being the holder of a Commonwealth Seniors Health Card or being an eligible holder of the Gold Card under the Veterans' Entitlements Act.

Energy supplement is currently added to the rate of seniors supplement. As the result of these amendments, energy supplement under Part 2.25B of the Social Security Act or Part VIIAD of the Veterans' Entitlements Act will become payable to people who are holders of the Commonwealth Seniors Health Card or eligible holders of the Gold Card as a free-standing payment.

The amendments made by this Schedule commence on 20 June 2015, although the amendments will generally only affect payment of the supplement from 20 September 2015, which marks the payment day for the next relevant quarterly instalment period beginning 20 June. No person's interests will be adversely affected because of the apparent retrospective commencement of Schedule 4, noting that a transitional provision will prevent any debts arising if seniors supplement is paid after 20 June 2015 but before passage of the Bill.

Explanation of the changes

Part 1 – Main amendments

Amendments to the Social Security Act

Items 1 to 6 and 8 are consequential to the main measure, and omit references to seniors supplement, substituting reference to energy supplement where appropriate.

Item 7 repeals Part 2.25B, which provides for qualification, payability and rate of seniors supplement. It then substitutes new Part 2.25B, providing for the qualification, payability and rate of energy supplement, which was added to seniors supplement. The new sections of new Part 2.25B mirror the sections and effect of repealed Part 2.25B. However, substituted section 1061UB, providing for the rate of energy supplement in dollar terms, no longer includes provisions rounding the rate generated per instalment to a multiple of \$2.60. This is because an instalment of energy supplement will be rounded by section 54 of the Social Security Administration Act, providing for rounding to the nearest cent, or up to \$1.00 if the amount would otherwise be less than \$1.00.

Amendments to the Social Security Administration Act

Items 9 to 23 substitute reference to energy supplement for the existing references to seniors supplement, to apply provisions previously applying to seniors supplement to energy supplement. Energy supplement is generally payable as a rate component of a range of social security payments, as the result of amendments in the 2014 Budget Measures No. 6 Act. Rules relating to energy supplement under Part 2.25B of the Social Security Act will at times differ from rules relating to energy supplement more generally, because energy supplement under Part 2.25B of the Social Security Act is a free-standing payment. Because of this, it is made clear in some cases that the type of energy supplement to which the provision will apply is energy supplement under Part 2.25B of the Social Security Act.

Item 24 sets out saving and transitional provisions. **Subitem 24(1)** relates to the application of paragraph 916D(3)(c), amended by item 3 above to omit the requirement that a person not have received seniors supplement in order to qualify for an essential medical equipment payment. Qualification for the essential medical equipment payment is based upon a person's circumstances during a past income year. In order to maintain qualification for years after commencement, which will look at a person's circumstances during periods prior to commencement, reference to the energy supplement is taken to include reference to the seniors supplement.

Subitem 24(2) maintains the operation of former Part 2.25B of the Social Security Act and section 48B of the Social Security Administration Act in relation to seniors supplement for instalment periods ending before the commencement of these measures.

Subitem 24(3) provides for an election, in force prior to commencement of these amendments and referred to in subparagraph 1061UA(2)(a)(i) of the Social Security Act, to remain in force. This means that, where a seniors health cardholder had elected not to be covered by former Part 2.25B and not receive seniors supplement, that election will continue to apply to energy supplement without requiring further action on the part of the card holder.

Amendments to the Veterans' Entitlements Act

Items 25 to 32 are incidental to the main change substituting or omitting current references to seniors supplement with references to energy supplement.

Items 33 to 46 amend, repeal and replace various provisions of Part VIIAD, which provides for qualification, payability and rate of seniors supplement. The revised Part VIIAD provides for the qualification, payability and rate of energy supplement which was added to seniors supplement.

However, substituted section 118PB, providing for the rate of energy supplement, no longer includes provisions rounding the rate generated to a multiple of \$2.60. This is because an instalment of energy supplement will be rounded by section 58A of the Veterans' Entitlements Act, providing for rounding to the nearest cent.

Item 47 makes consequential amendments to subsections 122A(1A) and (1C) to replace references to seniors supplement with references to energy supplement.

Item 48 makes saving and transitional arrangements for these amendments. **Subitem 48(1)** provides that, despite the amendments to Part VIIAD of the Veterans' Entitlements Act, the provisions remain in force in relation to an instalment period ending before the amended provisions commenced. This will mean that any seniors supplement in relation to the quarters prior to the quarter commencing 20 June 2015 which have not been paid remain payable despite the amendments.

Subitem 48(2) provides for an election, in force prior to commencement of these amendments and referred to in subparagraph 118PA(2)(a)(i) of the Veterans' Entitlements Act, to remain in force. This means that where a cardholder had elected not to be covered under Part VIIAD and not receive seniors supplement, that election will continue to apply to energy supplement without requiring further action on the part of the cardholder.

Part 2 – Consequential amendments

Amendments to the Income Tax Assessment Act 1997

Items 49 to 52 make consequential amendments to sections 52-10, 52-40, 52-65 and 52-75 of the *Income Tax Assessment Act 1997* to replace references to seniors supplement payable under Part 2.25B of the Social Security Act or Part VIIAD of the Veterans' Entitlements Act with references to payment of energy supplement under the new Parts.

Item 53 is a saving provision applicable to the amendments to sections 52-10 and 52-65 of the *Income Tax Assessment Act 1997*. It provides that payments of seniors supplement made before, on or after the commencement of the amendments will continue to be tax exempt for the purposes of the *Income Tax Assessment Act 1997*.

Amendments to the Military Rehabilitation and Compensation Act 2004

Items 54 and 55 make consequential amendments to repeal and substitute paragraphs 222(5)(d) and 246(4)(d) of the *Military Rehabilitation and Compensation Act 2004* to replace references to payment of seniors supplement under Part 2.25B of the Social Security Act and Part VIIAD of the Veterans' Entitlements Act with references to payments of energy supplement under the new Parts.

Part 3 – Transitional provisions

Item 56 inserts a transitional provision, which provides that, if a person has been paid seniors supplement in relation to a day on or after 20 June and before 20 September 2015, then the amendments made by this Schedule do not apply in relation to the person and that day. This ensures that any person who is paid seniors supplement prior to passage of the Schedule in relation to a day that is 20 June or later (that is, within the quarter ending the day before 20 September) remains qualified for the amount, such that no debt of the amount paid is raised. It also ensures the person does not qualify for energy supplement in respect of the days for which they have already been paid seniors supplement.

Schedule 5 – Pensioner education supplement

Summary

This Schedule ceases pensioner education supplement from 1 January 2016.

Background

In broad terms, the pensioner education supplement assists students with the ongoing costs of full-time or part-time study. This Schedule repeals provisions that provide for pensioner education supplement, and makes related consequential changes.

The Government remains committed to providing incentives for income support recipients to improve their employment prospects through study or training. More appropriate channels of Government-funded study and training assistance for income support recipients are available through employment services providers and the HECS-HELP, FEE HELP and VET FEE HELP tuition loan programmes.

Explanation of the changes

Part 1 – Main amendments

Amendments to the Social Security Act

Part 2.24A of the Social Security Act provides for the payment of pensioner education supplement. **Item 17** repeals Part 2.24A.

Consequential amendments are made as set out below.

Item 1 omits ‘a pensioner education supplement,’ from subsection 7(6).

Item 2 repeals subparagraph (l)(v) of the definition of ***compensation affected payment*** in subsection 17(1).

Item 3 omits ‘or supplement,’ from paragraph (l) of the definition of ***compensation affected payment*** in subsection 17(1).

Item 4 repeals and substitutes paragraph (m) of the definition of ***compensation affected payment*** in subsection 17(1) to reflect the repeal of subparagraph 1061ZAAA(1)(b)(iv) by item 19.

Item 5 repeals the note at the end of the definition of ***approved course of education or study*** in subsection 19AB(2).

Item 6 repeals and substitutes the definition of ***independent*** in subsection 23(1).

Item 7 repeals paragraph (cb) of the definition of ***newly arrived resident’s waiting period*** in subsection 23(1).

Item 8 omits ‘, a double orphan pension or a pensioner education supplement’, and substitutes ‘or a double orphan pension’ in paragraph (a) of the definition of **payday** in subsection 23(1).

Item 9 omits the word ‘, supplement’ from paragraph (a) of the definition of **payday** in subsection 23(1).

Item 10 repeals paragraph 23(4AA)(c).

Item 11 omits ‘paragraph 1061PB(1)(b)’, and substitutes ‘subsection 541B(5)’, in paragraphs 23(10F)(c) and (d).

Item 12 repeals section 119.

Item 13 repeals subsection 503AA(1).

Item 14 omits ‘(2)’ from subsection 503AA(2). This is consequential to item 13.

Item 15 omits ‘, 569A(b) or 1061PB(1)(b)’, and substitutes ‘or 569A(b)’ in subparagraph 569H(7)(g)(iii).

Item 16 repeals subsection 1049(1).

Item 18 adds ‘and’ to the end of subparagraph 1061ZAAA(1)(b)(iii). This is consequential to item 19.

Item 19 repeals subparagraph 1061ZAAA(1)(b)(iv).

Item 20 omits ‘, a mobility allowance or a pensioner education supplement’, and substitutes ‘or a mobility allowance’, in section 1158.

Amendments to the Social Security Administration Act

Item 21 omits ‘allowance; or’, and substitutes ‘allowance.’, in paragraph (i) of the definition of **supplementary payment** in subsection 15(5). This is consequential to item 22.

Item 22 repeals paragraph (j) of the definition of **supplementary payment** in subsection 15(5).

Item 23 repeals subsection 50(3).

Item 24 repeals paragraph 52(1)(h).

Item 25 omits ‘, austudy payment or pensioner education supplement’, and substitutes ‘or austudy payment’, wherever occurring in paragraphs 55(4A)(a) and (b).

Items 26 and 27 repeal paragraphs (i) and (o) of the definition of **category I welfare payment** and paragraphs (d) and (i) of the definition of **category Q welfare payment** respectively in section 123TC.

Item 28 repeals paragraph (i) of the definition of **social security periodic payment** in subclause 1(1) of Schedule 1.

Item 29 repeals clauses 30 to 32 of Schedule 2.

Part 2 – Other amendments

Consequential amendments are also made to the Acts set out below.

Amendments to the Family Assistance Act

Item 30 omits the reference to paragraph 17(1)(c) in subparagraph 14(1A)(b)(i). This is consequential to item 31.

Item 31 repeals paragraph 17(1)(c).

Amendment to the Farm Household Support Act

Item 32 repeals paragraph 94(i).

Amendments to the Income Tax Assessment Act 1997

Item 33 repeals item 22A.1 in the table contained in section 52-10.

Item 34 repeals item 22A in the table contained in section 52-40.

Part 3 – Application and saving provisions

Subitem 35(1) provides that, despite the amendments to the definition of **compensation affected payment** in subsection 17(1) of the Social Security Act made by Part 1 of this Schedule, Parts 3.6A and 3.14 of the Social Security Act continue to apply as if those amendments had not been made.

Subitem 35(2) provides that, despite the amendments made by items 12, 13, 14 and 16 of this Schedule, sections 119, 503AA and 1049 of the Social Security Act, as in force immediately before the commencement of this item, will continue to apply on and after the commencement of the items in relation to working out whether an approved program of work supplement or language, literacy and numeracy supplement are payable in respect of a fortnight beginning before that commencement.

Subitem 35(3) provides that, despite the amendment made by item 17 of this Schedule, Part 2.24A of the Social Security Act, as in force immediately before the commencement of this item, will continue to apply on and after the commencement in relation to days occurring before the commencement.

Subitem 35(4) provides that, despite the amendments made by items 18 and 19 of this Schedule, paragraph 1061ZAAA(1)(b) of the Social Security Act, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a relevant period that began before that commencement.

Subitem 35(5) provides that, despite the amendment made by item 20 of this Schedule, section 1158 of the Social Security Act, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to days occurring before that commencement.

Subitem 35(6) provides that, despite the amendments made by items 23 and 25 of this Schedule, subsections 50(3) and 55(4A) of the Social Security Administration Act, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to the payment of fares allowance on or after that commencement, to the extent that payment of fares allowance is being made because of the receipt of pensioner education supplement.

Subitem 35(7) provides that, despite the amendment made by item 24 of this Schedule, paragraph 52(1)(h) of the Social Security Administration Act, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to the payment of pensioner education supplement on or after that commencement.

Subitem 35(8) provides that, despite the amendments made by items 26 and 27 of this Schedule to paragraphs (i) and (o) of the definition of **category I welfare payment** and paragraphs (d) and (i) of the definition of **category Q welfare payment** in the Social Security Administration Act, Part 3B of that Act continues to apply as if those amendments had not been made.

Subitem 35(9) provides that, despite the amendments made by items 30 and 31 of this Schedule, subparagraph 14(1A)(b)(i) and paragraph 17(1)(c) of the Family Assistance Act, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to working out whether an individual satisfies the work/training/study test or has recognised study commitments before, on or after that commencement.

Subitem 35(10) provides that, despite the amendment made by item 33 of this Schedule, item 22A.1 of the table in section 52-10 of the *Income Tax Assessment Act 1997*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a payment of pensioner education supplement before, on or after that commencement.

Schedule 6 – Education entry payment

Summary

This Schedule ceases the education entry payment from 1 January 2016.

Background

In broad terms, the education entry payment assists with education expenses, and is paid once a year to eligible recipients. This Schedule repeals provisions that provide for education entry payment, and makes related consequential changes.

The Government remains committed to providing incentives for income support recipients to improve their employment prospects through study or training. More appropriate channels of Government-funded study and training assistance for income support recipients are available through employment services providers and the HECS-HELP, FEE HELP and VET FEE HELP tuition loan programs.

Explanation of the changes

Part 1 – Main amendments

Amendments to the Social Security Act

Part 2.13A of the Social Security Act provides for the payment of education entry payment. **Item 3** repeals Part 2.13A.

Consequential amendments are made as set out below.

Item 1 repeals subparagraph (l)(iv) of the definition of ***compensation affected payment*** in subsection 17(1).

Item 2 omits ‘allowance, payment’, and substitutes ‘allowance,’ in paragraph (l) of the definition of ***compensation affected payment*** in subsection 17(1).

Item 4 repeals table item 7 in subsection 1222(2).

Item 5 omits ‘or an education entry payment supplement’ in paragraph 1223ABAAB(1)(a).

Item 6 omits ‘benefit; and’, and substitutes ‘benefit.’ in paragraph 1223ABAAB(2)(e). This is consequential to item 7.

Item 7 repeals paragraph 1223ABAAB(2)(h).

Item 8 repeals section 1224B.

Amendments to the Social Security Administration Act

The paragraphs set out below refer to the education entry payment. Amendments are made to remove these references.

Item 9 repeals paragraph (c) of the definition of **supplementary payment** in subsection 15(5).

Item 10 repeals paragraph (d) of the definition of **lump sum benefit** in subsection 47(1).

Item 11 repeals paragraph (c) of the definition of **household stimulus payment** in section 123TC.

Amendment to the Veterans' Entitlement Act

Part VIIAA of the *Veterans' Entitlement Act* provides for the payment of education entry payment. **Item 19** repeals Part VIIAA.

Consequential amendments are made as set out below.

Item 12 omits the words 'age; or' and substitutes 'age.' in paragraph (c) of the definition of **compensation affected pension** in subsection 5NB(1).

Item 13 repeals paragraph (f) of the definition of **compensation affected pension** in subsection 5NB(1).

Item 14 omits the words 'pensions, supplements and payments', and substitutes 'pensions and supplements' in subsection 59M(1).

Item 15 omits the word 'supplement;' and substitutes 'supplement.' in paragraph 59M(1)(f). This is consequential to Item 16.

Item 16 repeals paragraph 59M(1)(i).

Item 17 omits the words 'pensions, supplements, allowances and payments', and substitutes 'pensions and supplements' in note 2 to subsection 59M(1).

Item 18 omits the words 'supplement or payment' and substitutes 'or supplement' in subsections 59M(2), (3) and (4).

Part 2 – Other amendments

Consequential amendments are made various Acts, as set out below.

Amendment to the Farm Household Support Act

Item 20 repeals paragraph 94(e).

Amendments to the Income Tax Assessment Act 1936

Item 21 omits 'or education entry payment' in subparagraph 160AAAA(2)(c)(i).

Item 22 omits 'or education entry payment' in subparagraph 160AAAB(2)(c)(i).

Amendments to the Income Tax Assessment Act 1997

Item 23 omits the entry ‘education entry payment supplement under the *Social Security Act 1991*’ in the table item headed ‘social security or like payments’ in section 11-15.

Item 24 omits ‘purposes;’, and substitutes ‘purposes.’ in paragraph 51-35(e). This is consequential to item 25.

Item 25 repeals paragraph 51-35(f).

Item 26 repeals and substitutes section 51-40.

Item 27 repeals paragraph 52-10(1)(za).

Item 28 repeals subsection 52-10(1J).

Item 29 repeals section 55-10.

Amendment to the Taxation Administration Act 1953

Item 30 omits ‘, 55-5 or 55-10’, and substitutes ‘or 55-5’ in paragraph 12-110(1)(c) of Schedule 1.

Part 3 – Application and saving provisions

Subitem 31(1) provides that, despite amendments to the definition of **compensation affected payment** in subsection 17(1) of the Social Security Act made by Part 1 of this Schedule, Parts 3.6A and 3.14 of the Act continue to apply as if the amendments had not been made.

Subitem 31(2) provides that, despite the amendment made by item 3 of this Schedule, Part 2.13A the Social Security Act, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to the 2015 calendar year and earlier calendar years.

Subitem 31(3) provides that, despite amendments made by items 5 to 8 of this Schedule, sections 1223ABAAB and 1224B of the Social Security Act, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to payments of education entry payment supplement or education entry payment made before, on or after that commencement.

Subitem 31(4) provides that, despite the amendments of the definition of **compensation affected pension** in subsection 5NB(1) of the Veterans’ Entitlements Act made by Part 1, Part IIIC of the Veterans’ Entitlements Act continues to apply as if those amendments had not been made.

Subitem 31(5) provides that, despite the amendment made by item 19, Part VIIAA of the *Veterans’ Entitlements Act 1986*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to the calendar year 2015 and earlier calendar years.

Schedule 6 – Education entry payment

Subitem 31(6) provides that, despite the amendments made by items 14 and 15 of this Schedule, paragraphs 160AAAA(2)(c)(i) and 160AAAB(2)(c)(i) of the *Income Tax Assessment Act 1936*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to payments of education entry payment made before, on or after that commencement.

Subitem 31(7) provides that, despite the amendments made by items 25, 26 and 29 of this Schedule, paragraph 51-35(f) and sections 51-40 and 55-10 of the *Income Tax Assessment Act 1997*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to payments of education entry payment made before, on or after that commencement.

Subitem 31(8) provides that, despite the amendment made by item 28 of this Schedule, subsection 52-10(1J) of the *Income Tax Assessment Act 1997*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to payments of education entry payment supplement made before that commencement.

STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

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

SOCIAL SERVICES LEGISLATION AMENDMENT (FAIR AND SUSTAINABLE PENSIONS) BILL 2015

Schedule 1 – Defined benefit income streams

This Schedule 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 Schedule

This Schedule implements a change to Australian Government payments, whereby, from 1 January 2016, the deductible amount for defined benefit income streams, excluding military defined benefit schemes, is capped at a maximum 10 per cent of the gross payments to an individual for the year.

Human rights implications

The Schedule engages the following human rights:

Right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right of everyone to social security.

The Schedule has no effect on the right to social security.

For people with a defined benefit income stream who have a deductible amount greater than 10 per cent, the change increases the amount of assessable income included in the social security income test for certain Australian Government payments.

It gives a fairer assessment of an individual's personal contributions to a defined benefit income streams.

It removes the unintended consequences from changes to the *Income Tax Assessment Act 1997* in 2007, which had the effect of increasing the deductible amount for the purpose of the Social Security Act for some income support recipients, resulting in some individuals becoming entitled to income support payments, or higher rates of income support.

Military defined benefit income streams are excluded from the change in recognition of the unique nature of military service.

Conclusion

The amendments in the Schedule are compatible with human rights because they do not limit access to social security.

Schedule 2 – Proportional payment of pensions outside Australia

This Schedule 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 Schedule

From 1 January 2017, this Schedule reduces from 26 weeks to six weeks the period during which age pension, and a small number of other payments with unlimited portability, can be paid outside Australia at the full (means-tested) rate. After six weeks, payment will be adjusted according to the length of the pensioner's Australian working life residence.

The measure affects the rate of pension paid to age pension recipients and a limited number of disability support pension, wife pension and widow B pension recipients who have unlimited portability.

Human rights implications

This measure has considered the human rights implications, particularly with reference to the right to social security contained within article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). It is concluded that the measure does not place limitations on human rights.

The measure is not stopping a person from receiving a social security payment where they meet domestic eligibility and qualification requirements.

Pensioners, who have been granted indefinite portability, will remain eligible for the pension (both within Australia and overseas). The proposal only affects the length of time before pensioners receive a proportional rate of pension according to their Australian working life residence.

Right to freedom of movement

The measure engages the right to freedom of movement, which is contained in articles 12 and 13 of the *International Covenant on Civil and Political Rights*. Pensioners will remain able to move freely, whether within Australia or overseas.

People who travel after the implementation date of 1 January 2017 will receive their basic means-tested pension for six weeks after leaving Australia. After six weeks absence from Australia, they will receive a proportional rate of pension according to their years of working life residence in Australia.

Any impact on a pensioner's freedom of movement is reasonable and consistent with the policy objectives.

Right to social security

The measure engages the right to social security contained in article 9 of the ICESCR.

Statements of compatibility with human rights

The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs.

The change to the rate of pension a pensioner can receive after being outside Australia for more than six weeks does not affect their ability to access social security within Australia. The measure ensures that social security is appropriately targeted. The measure affects those pension recipients, with indefinite portability of their payment, who would generally have spent part of their working life in another country, from which they should be able to receive a pension for their years of contributions or residence in that country.

Conclusion

These amendments are compatible with human rights. To the extent that they may limit a person's access to social security or freedom of movement, the limitation is reasonable and proportionate.

Schedule 3 – Assets test and concession cards

This Schedule 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 Schedule

This Schedule will change the pension assets test to make it fairer and better targeted, and to help ensure the pension system is sustainable into the future. The changes will:

- increase the assets test free areas to provide additional assistance to pensioners with moderate asset holdings;
- provide an additional increase in the free areas for non-homeowners to ensure fairer treatment for those who have chosen not to, or are not in a position to, purchase their own home and therefore do not benefit from the principal home exemption; and
- better target the pension by increasing the assets test taper (or withdrawal) rate for assets above the new free areas from \$1.50 to \$3.00 per fortnight for each extra \$1,000 in assessable assets. This will reduce support to pensioners with higher levels of assets who have greater capacity to support themselves.

Pensioners who lose pension entitlement on 1 January 2017 as a result of the changes will be automatically issued with a Commonwealth Seniors Health Card, or a Health Care Card (for those under age pension age), without the need to meet the usual income requirements. Veterans whose service pension is cancelled under this measure will retain their Veterans' Affairs Gold Card.

The assets test limits for social security allowance will also increase as a result of the measure, in line with the increase in the pension free areas. Accordingly, from 1 January 2017, people with asset holdings under the new free areas may become eligible for an allowance payment.

Human rights implications

The Schedule engages the following human rights:

Right to social security

The Schedule is consistent with supporting the right to social security.

The effect of the Schedule will be that the pension rate will increase for many part-rate pensioners with moderate assets due to the increases in the assets test free areas, while pensioners with higher levels of assets will be subject to a reduction in their pension payments.

There will also be an increase in the assets test limits for social security allowance payments, such as newstart and sickness allowance, austudy and parenting payment. This will allow more people, with modest levels of assets under the new higher assets test limits, to access assistance.

For pensioners with assets above the assets test free areas, their pension payment will be reduced at a higher rate. However, payments will not be reduced unless a pensioner has substantial levels of assets, in addition to their home. Those affected have the capacity to be more self-reliant, and it is appropriate that they use their assets to support themselves. People with higher levels of assets have the capacity to draw down on those assets to support themselves in retirement. Those most affected by the changes would only have to draw down a maximum of 1.84 per cent of their assets to make up for the loss of their part pension.

Pensioners who will no longer be eligible for any pension as a result of the changes will be automatically eligible for a Commonwealth Seniors Health Card, or Health Care Card (for those under Age Pension age), without the need to meet the usual income requirements. Veterans who would otherwise lose their Gold Card on implementation of this measure will retain their Gold Card.

These changes will have a positive impact on more vulnerable people with lower levels of assets, as well as improving the sustainability of the pension system into the future. Improving the long-term sustainability of the pension system is important to ensure the pension system will continue to provide an adequate level of support to those in need over the long term.

Conclusion

The amendments in the Schedule are compatible with human rights because they do not limit access to social security.

Schedule 4 – Energy supplement replacing seniors supplement

This Schedule 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 Schedule

This Schedule abolishes the seniors supplement for holders of the Commonwealth Seniors Health Card. Veterans who hold a Commonwealth Seniors Health Card or Gold Card will also no longer receive the seniors supplement. Cardholders will continue to be paid the energy supplement. Cardholders will receive their last quarterly seniors supplement payment in June 2015.

The Schedule will commence on 20 June 2015, although it will generally only affect payment of the seniors supplement from 20 September 2015, which marks the payment day for the next relevant quarterly instalment period beginning 20 June. No person's interests will be adversely affected because of the apparent retrospective commencement of the Bill, noting that a transitional provision will prevent any debts arising if seniors supplement is paid after 20 June 2015 but before passage of the Bill.

Human rights implications

Right to social security

This Schedule seeks to maintain the sustainability of the social security system by rebalancing social security support away from those with less financial need towards those with more financial need.

The Schedule engages the right to social security as recognised in article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Eligible seniors will be paid the energy supplement to assist with them with the cost of general living expenses.

The Schedule also engages article 11 of ICESCR, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Holders of a Commonwealth Seniors Health Card are entitled to a range of concessions including concessions on pharmaceuticals and health services.

Conclusion

The Schedule is compatible with human rights because it maintains the right to social security and health. The Schedule is compatible with human rights.

Schedule 5 – Pensioner education supplement

This Schedule 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 Schedule

In broad terms, the Pensioner Education Supplement (PES) assists students with the ongoing costs of full-time or part-time study. This Schedule repeals provisions that provide for PES, and makes related consequential changes.

The Government remains committed to providing incentives for income support recipients to improve their employment prospects through study or training. More appropriate channels of Government-funded study and training assistance for income support recipients are available through employment services providers and the HECS-HELP, FEE HELP and VET FEE HELP tuition loan programmes.

Human rights implications

The Schedule engages the following human rights:

Right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right of everyone to social security.

The amendments in this Schedule remove the PES. PES is an additional fortnightly supplement of \$62.40 for students who are undertaking at least 50 per cent of a full-time study load, or \$31.20 for students with a study load below 50 per cent.

PES is available to certain recipients of social security payments and payments under the *Veterans' Entitlement Act 1986* who are undertaking qualifying study to assist with the ongoing costs associated with study. Qualifying study includes secondary courses, tertiary courses, open learning, Certificate courses, Bachelor degrees, Advanced Certificate courses, Graduate Certificate courses, Graduate Diplomas and Degrees, Master qualifying courses or Approved Masters by coursework programs.

The removal of PES does not limit or affect access to the right to social security. PES is not a primary social security payment to meet the regular cost of living but rather a supplement designed to assist with some of the costs associated with study, paid on top of a recipient's primary payment. An individual's entitlement to primary social security payments, and other benefits, will not be affected by the cessation of PES.

To the extent that the removal of PES reduces a recipient's overall support, this is proportionate to achieving the legitimate objective of ensuring the long-term sustainability of the social security system by improving the Commonwealth's fiscal position and simplifying the structure of the system.

Right to education

Article 13 of the ICESCR recognises the right of everyone to education.

The removal of PES, to a small extent, impacts on an individual's ability to participate in education, particularly if they have a low income. However, its impact on individuals is minor (\$31.20 or \$62.40 per fortnight depending on study load), and it does not affect a person's entitlement to other ongoing payments and programmes designed to support individuals to engage in education. This measure is aimed at achieving the legitimate objective of ensuring the long-term sustainability of the social security system by recognising the broader and more appropriate education supports available.

In addition to student payments, such as Austudy and Youth Allowance (Student), the Australian Government provides other programmes to assist tertiary students with the cost of their fees:

- Students who are enrolling in a Commonwealth Supported Place for a university level qualification (that is, undergraduate level) can access a HECS-HELP loan to pay their student contribution amount. Students accessing this loan are required to pay their debt through the tax system when they earn above the minimum threshold for compulsory repayment.
- Eligible students who are enrolling in a higher-level vocational education and training (VET) qualification are able to access VET FEE-HELP, a loan scheme which assists eligible students, enrolled in diploma-level and above courses at an approved VET provider, to pay their tuition fees.
- FEE-HELP is a loan scheme that assists eligible fee paying students in non-Commonwealth Support Places (for example, post-graduate level courses at university) pay all or part of their tuition fees.
- Eligible students who access any of the above loans can borrow up to the FEE-HELP limit to pay their fees and do not have to repay the loan until their income meets the minimum repayment threshold.

Job seekers registered with an employment services provider may also receive assistance to engage in study or training, including financial assistance, through the Employment Fund. Employment services providers may use the Employment Fund to help job seekers with:

- employment-related training, and associated books and equipment;
- literacy, language or numeracy assistance where places in other government funded programmes are unavailable; or
- pre-vocational or preparatory support such as pre-apprenticeship training or pre-tertiary courses where it is not covered by other Government-funded programme.

Consequently, the removal of PES is reasonable in that access to other payments and support mechanisms to allow individuals to undertake study remains.

Conclusion

The Schedule is compatible with human rights because it does not limit the basic right to social security and any impact on the right to education is balanced with other financial support for students. The measure is a reasonable, proportionate and necessary response to achieve the objective of ensuring the long-term sustainability of the social security system by improving the Commonwealth's fiscal position and simplifying the structure of the system.

Schedule 6 – Education entry payment

This Schedule 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 Schedule

In broad terms, the Education Entry Payment (EdEP) assists with education expenses, and is paid once a year to eligible recipients. This Schedule repeals provisions that provide for EdEP, and makes related consequential changes.

The Government remains committed to providing incentives for income support recipients to improve their employment prospects through study or training. More appropriate channels of Government-funded study and training assistance for income support recipients are available through employment services providers and the HECS-HELP, FEE HELP and VET FEE HELP tuition loan programs.

Human rights implications

The Schedule engages the following human rights:

Right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right of everyone to social security.

The amendments in this Schedule remove the EdEP. EdEP is an additional annual supplement of \$208 paid to recipients of newstart allowance, partner allowance, widow allowance, widow B pension, wife pension, parenting payment (single and partnered), disability support pension, carer payment, special benefit partner service pension and invalidity service pension. EdEP is specifically targeted to assist with the up-front costs of education and training for those who are enrolling or commencing in an approved course of study.

The removal of EdEP does not limit or affect access to the right to social security. EdEP is not an ongoing primary social security payment to meet the regular cost of living but rather a supplement designed to assist individuals meet the up-front costs of education/training on an annual basis, paid on top of a recipient's primary payment. An individual's entitlement to primary social security or Veterans' Affairs payments, and other benefits, will not be affected by the cessation of EdEP.

To the extent that the removal of EdEP reduces a recipient's overall support, this is proportionate to achieving the legitimate objective of ensuring the long-term sustainability of the social security system by improving the Commonwealth's fiscal position and simplifying the structure of the system.

Right to education

Article 13 of the ICESCR recognises the right of everyone to education.

The removal of EdEP, to a small extent, impacts on an individual's ability to participate in education, particularly if they have a low income. However, its impact on individuals is minor (\$208 per annum), and it does not affect a person's entitlement to other ongoing payments or programmes designed to support individuals to engage in education. This measure is aimed at achieving the legitimate objective of ensuring the long-term sustainability of the social security system by recognising the broader and more appropriate education supports available.

In addition to student payments, such as Austudy and Youth Allowance (Student), the Australian Government provides other programmes to assist tertiary students with the cost of their fees:

- Students who are enrolling in a Commonwealth Supported Place for a university level qualification (that is, undergraduate level) can access a HECS-HELP loan to pay their student contribution amount. Students accessing this loan are required to pay their debt through the tax system when they earn above the minimum threshold for compulsory repayment.
- Eligible students who are enrolling in a higher-level vocational education and training (VET) qualification are able to access VET FEE-HELP, a loan scheme which assists eligible students, enrolled in diploma-level and above courses at an approved VET provider, to pay their tuition fees.
- FEE-HELP is a loan scheme that assists eligible fee paying students in non-Commonwealth Support Places (for example, post-graduate level courses at university) pay all or part of their tuition fees.
- Eligible students who access any of the above loans can borrow up to the FEE-HELP limit to pay their fees and do not have to repay the loan until their income meets the minimum repayment threshold.

Job seekers registered with an employment services provider may also receive assistance to engage in study or training, including financial assistance, through the Employment Fund. Employment services providers can use the Employment Fund to job seekers with:

- employment related training, and associated books and equipment;
- literacy, language or numeracy assistance where places in other government-funded programmes are unavailable; or
- pre-vocational or preparatory support such as pre-apprenticeship training or pre-tertiary courses where it is not covered by other government-funded programme.

Consequently, the removal of EdEP is reasonable in that access to other payments and support mechanisms to allow individuals to undertake study remains.

Conclusion

The Schedule is compatible with human rights because it does not limit the basic right to social security any impact on the right to education is balanced with other financial support for students. The measure is a reasonable, proportionate and necessary response to achieve the legitimate objective of ensuring the long-term sustainability of the social security system by improving the Commonwealth's fiscal position and simplifying the structure of the system.