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No. 125 2002–03

Family and Community Services Legislation  
Amendment (Disability Reform) Bill (No. 2) 2002  
[No. 2]

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Family and Community Services Legislation Amendment  
(Disability Reform) Bill (No. 2) 2002 [No. 2]

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19 March 2003

# Contents

Purpose . . . . .	1
Background . . . . .	2
Possible double dissolution trigger. . . . .	2
Schedule 1 - Amendments relating to disability support pension . . . . .	2
Original proposal to modify the DSP 30-hour a week rule to a 15-hour a week rule . . .	2
DSP claimants claiming before 1 July 2003 to be 'saved' . . . . .	3
DSP claimants claiming on or after 1 July 2003 to be subject to the proposed 15 hour a week inability to work test . . . . .	3
Main Provisions . . . . .	3
Schedule 1 . . . . .	3
DSP recipients claiming before 1 July 2000 to be 'saved' . . . . .	3
DSP recipient commences work for more than 30 hours a week - 2 year suspension of payment, not cancellation . . . . .	3
Concluding Comments . . . . .	4
Endnotes. . . . .	4

# Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 [No. 2]

**Date Introduced:** 6 March 2003

**House:** House of Representatives

**Portfolio:** Family and Community Services

**Commencement:** There are three Schedules in the Bill. However, within each Schedule, different sections and items have various commencement dates. These commencement dates are set out in detail in the Table in **clause 2** of the Bill.

## Purpose

This Bill follows two previous amending Bills for the Disability Support Pension (DSP) program. The first Bill was introduced to the House of Representatives on 16 May 2002 and was called the *Family and Community Services Legislation Amendment (Disability Reform) Bill 2002*. Bills Digest No. 157 2001-2002 refers.<sup>1</sup> The House of Representatives passed the first Bill on 30 May 2002 and sent a message to the Senate on 20 June 2002, indicating that the Bill was being forwarded for consideration. This original Bill was never introduced to the Senate.

The second Bill was introduced to the House of Representatives on the 27th of June 2002 and was called the *Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002*. Bills Digest No. 3 2002-03 refers.<sup>2</sup> This second Bill was passed by the House of Representatives on 19 September 2002 and after being introduced to the Senate on 23 September 2002, was rejected on 19 November 2002.<sup>3</sup>

The only difference between the first and second DSP Bills was that under the second Bill, DSP recipients granted payments on or before 30 June 2003 would remain under the existing 30 hour a week inability to work test. It would only be those granted DSP from 1 July 2003 onwards that would be exposed to the proposed 15 hour a week inability to work test.

The present Bill is identical in content to the second 2002 Bill and therefore the text of the Bills Digest for that second Bill, ie. Bills Digest No. 3, 2002-03,<sup>4</sup> is repeated below.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Background

For a background on the history and evolution of the DSP program see Bills Digest No. 157, 2001–02.<sup>5</sup> This Bills Digest also provides comment on the proposed change from a 30 hour a week inability to work test to a 15 hour a week inability to work test.

### Possible double dissolution trigger

As stated above, this Bill is identical to proposed legislation introduced into the House of Representatives on 27 June 2002 and defeated in the Senate on 19 November 2002.

As it is now three months since the Senate rejected the Bill as initially presented, a second failure or refusal by the Senate to pass the Bill has the potential to trigger a simultaneous dissolution of both Houses under section 57 of the Constitution.

Section 57 relevantly reads:

If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

The Government may choose not to advise the Governor-General to dissolve both Houses or it may delay its request for a double dissolution. However, the last possible date for the dissolution of both Houses is 11 August 2004. This date is calculated by counting back six months from 11 February 2005—which is the date of expiry of the House of Representatives.<sup>6</sup>

### Schedule 1 - Amendments relating to disability support pension

#### Original proposal to modify the DSP 30-hour a week rule to a 15-hour a week rule

The proposed amendments to the DSP provisions in the SSA presented in this Bill were originally presented in both the first and second Bills presented in 2002. The comments and analysis provided in Bills Digest No. 157, 2001–02<sup>7</sup> in regards to the proposed changes to the DSP, newstart allowance and youth allowance programs also refer to the same amendments presented in the present Bill.

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### **DSP claimants claiming before 1 July 2003 to be 'saved'**

The only differences in the provisions contained within the first 2002 Bill and the two subsequent Bills are in **Item 15 of Schedule 1**, which contains savings provisions for those claiming DSP prior to 1 July 2003. DSP claims made up to and including 30 June 2003 are to be subject to the existing DSP 30-hour a week inability to work test, not the proposed 15-hour a week inability to work test.

### **DSP claimants claiming on or after 1 July 2003 to be subject to the proposed 15 hour a week inability to work test**

The proposed 15-hour a week inability to work test is to be applied only to DSP claims made on or after 1 July 2003.

## **Main Provisions**

### Schedule 1

#### **DSP recipients claiming before 1 July 2000 to be 'saved'**

The only new item in this Bill (and in the second 2002 Bill) compared to the *Family and Community Services Legislation Amendment (Disability Reform) Bill 2002* is **Item 15 of Schedule 1**. **Item 15** proposes to insert savings provision for DSP claims lodged up to and including 30 June 2003. Even where a claim has been lodged on 30 June 2003, and qualification is determined after 1 July 2003, the pre-July 2003 30-hour rule applies.

Under the **Item 15** savings provisions, where there is a break in qualification, and the person subsequently re-claims DSP, then the post-July 2003 15-hour a week rule applies. This may act as a significant disincentive for DSP recipients to give up their DSP for fear of not being able to get back on the payment under the post-July 2003 conditions (ie. the 15 hour a week test). The main situations in which these concerns might arise are for those attempting to increase their working hours beyond 15 hours a week - see below.

#### **DSP recipient commences work for more than 30 hours a week - 2 year suspension of payment, not cancellation**

Currently, where a DSP recipient commences to work more than 30 hours a week, there is provision within the *Social Security (Administration) Act 1999* (SSAA) to suspend payments for up to two years. Sections 96 and 97 of the SSAA refer.<sup>8</sup> The origins of these provisions are to encourage DSP recipients to make attempts to increase their work capacity and activity, without undue fear of losing easy re-access to their DSP, if the increased work activity fails to be sustained. These same provisions are retained in **Item 15** for the pre-July 2003 DSP recipients in this Bill. This means for those measured against the 30 hour a week test, they will continue to be measured against this test, where

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DSP is suspended for up to two years as they are attempting to work or undertake work activities.

## Concluding Comments

This Bill is the same as the second 2002 DSP modification Bill. Compared to the first DSP reform Bill it simply proposes to 'save' existing DSP recipients to the 30-hour a week inability to work test instead of also exposing them to the new proposed 15 hours a week inability to work test, to be introduced from 1 July 2003. This means there will be far less 'losers' under this modified proposal.

It also means the total savings anticipated for the application of the 15-hour a week rule to the DSP qualification rules will not be realised and what savings are achieved will be further into the future.

## Endnotes

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- 1 [Bills Digest No. 157, 2001–02. Family and Community Services Legislation Amendment \(Disability Reform\) Bill 2002.](#)
- 2 [Bills Digest No. 3, 2002–03. Family and Community Services Legislation Amendment \(Disability Reform\) Bill \(No. 2\) 2002.](#)
- 3 Senate *Hansard*, 19 November 2002, pages 6775–6776.
- 4 Bills Digest No. 3, 2002–03, op. cit.
- 5 Bills Digest No. 157, 2001–02, op. cit.
- 6 See: Rob Lundie, 'Timetable for the Next Commonwealth Election', Department of The Parliamentary Library [Research Note, No. 37, 2001-02](#), May 2002.
- 7 *ibid.*
- 8 **Disability support pension-suspension instead of cancellation in some cases**  
96.(1) If:
  - (a) a person ceases to be qualified for disability support pension because the person obtains paid work that is for at least 30 hours per week; and
  - (b) the person has, within the notification period referred to in section 93, informed the Secretary that the person has obtained that work;the Secretary may determine:
  - (c) that section 93 does not apply to the person's disability support pension; and
  - (d) that the person's disability support pension is to be suspended.

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**Disability support pension-suspension taken to have been under section 96**

97.(1) If:

- (a) a person ceases to be qualified for disability support pension because the person obtains paid work that is for at least 30 hours per week; and
- (b) disability support pension ceases to be payable to the person under [section 93](#); and
- (c) within the period of 2 years after the pension ceases to be payable, the person ceases to do work of the kind referred to in paragraph (a);

the Secretary may determine that the person is to be treated as if:

- (d) [section 93](#) had not applied to the person's disability support pension; and
- (e) the disability support pension had been suspended under [section 96](#).

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