



Australian Government
**Department of Employment and
Workplace Relations**

**DEPARTMENT OF EMPLOYMENT AND WORKPLACE
RELATIONS**

**SUBMISSION TO THE SENATE EMPLOYMENT, WORKPLACE
RELATIONS AND EDUCATION LEGISLATION COMMITTEE**

Social Security Amendment (2007 Measures No. 2) Bill 2007

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EXECUTIVE SUMMARY

The Social Security Amendment (2007 Measures No.2) Bill 2007 has four key components. First, it allows for the extension of participation exemptions to principal carers who are relatives but not parents of children. This is an extension of the Welfare to Work reforms which enabled certain principal carers to receive an automatic exemption from participation requirements, and recognises the significant responsibility grandparents and other relatives have when they take on caring responsibilities for a child.

Second, to ensure better efficiency in the administration of transfers between one social security payment and another, amendments to the *Social Security (Administration) Act 1999* provide for restrictions on the time frame within which transfers can be made. In addition, transfers to the closed payments of Mature Age and Partner Allowance will no longer be possible.

Third, the Government intends to clarify and reinforce the role of Job Capacity Assessors, and the Bill provides for Ministerial guidelines to support this commitment, as well as providing for updates to terminology in the *Social Security Act 1991*.

Last, a technical amendment is included, which makes clear that the recovery of a social security debt is not able to be waived due to special circumstances if the debt has arisen due to a person knowingly failing or omitting to comply with the *Social Security (Administration) Act 1999*.

INTRODUCTION

This submission explains the policy behind the Social Security Amendments (2007 Measures No.2) Bill 2007 ('the Bill') as well as providing a description of and the rationale for the amendments.

The Bill contains four measures, addressed separately below.

1: PRINCIPAL CARERS

1.1 Background

The Welfare to Work reforms extended reasonable part-time participation requirements to principal carers of school aged children in recognition that paid work has many benefits for families and children. These arrangements also recognised that some principal carers may at times need to focus fully on their caring responsibilities and included a range of exemptions based on special family circumstances.

One such exemption enables principal carers (including grandparents and other relatives) to receive an automatic exemption from participation requirements if they meet the laws and regulations of their State/territory to provide foster care and they are actively providing foster care in that jurisdiction. That is, for the purposes of Parenting Payment, Youth Allowance (job seeker), Newstart Allowance, and Special Benefit, a person who is a registered and active foster carer must be given an exemption from his or her participation requirements or the activity test (whichever is relevant for the particular payment type). These exemptions can be up to a period of 12 months.

Single recipients of Newstart Allowance and Youth Allowance (job seeker) who have this exemption also access a maximum basic rate of payment equivalent to the Parenting Payment (single) rate.

1.2 Proposed changes and rationale

This amendment would extend the same arrangements to grandparents and other relatives who take on responsibility for the care of a child under a formal arrangement outside State/territory foster care systems. This recognises the significant contribution of grandparents and other relatives who step in, often at short notice and for long periods, to care for a child where parent(s) are unable or unwilling to do so. In many cases, the involvement of family members in these circumstances is an alternative to the child being placed in formal foster care and therefore, it is appropriate to extend consistent arrangements to these family carers.

These amendments provide for an automatic exemption to be granted to those relatives caring for a child under a formal order, such as a parenting order issued or registered under the *Family Law Act 1975*.

There are currently legislative instruments in place which allow for a long-term exemption from participation requirements for principal carers in a similar situation. However, they only allow for relatives to be exempt from participation requirements

on a case by case basis and do not provide for the higher rate of payment to single principal carers receiving Newstart Allowance or Youth Allowance (job seeker) who have an exemption for this reason. Subject to the passage of this legislation, these legislative instruments would be redundant.

The legislative changes being proposed are:

- To extend access to automatic exemptions from participation requirements for recipients of Parenting Payment, Newstart Allowance, Youth Allowance (job seeker) and Special Benefit to a principal carer who is a relative (other than a parent) who cares for a child as a result of an order under the *Family Law Act 1975*.
- The insertion into the *Social Security Act 1991* of a definition of ‘family law order’ which mirrors that provided in the family assistance law.
- The insertion into the *Social Security Act 1991* of a definition of ‘relative (other than parent)’ which recognizes, amongst other things, Aboriginal and Torres Strait Islander kinship relationships of a parental nature.
- To extend a higher rate of payment which is equivalent to the Parenting Payment (single) to single principal carers receiving Newstart Allowance or Youth Allowance (job seeker) who obtain an automatic exemption for this reason for the duration of that exemption.

1.3 How will the exemption operate?

To be considered a principal carer under the social security law, a grandparent or other relative carer will need to have at least one dependent child under 16 years of age. The existence of a family law order will often mean that the child in question can be the dependent child of the relative carer. Subject to the proposed amendments, the existence of a family law order will also extend an automatic exemption to the relative, provided that the child is living with the relative in accordance with the terms of that order.

If a relative does not have a family law order, they may still be eligible to receive short-term periods of exemption from any participation requirements on a case by case basis.

2: PAYMENTS TRANSFERS

2.1 Background and objective

Section 12 of the *Social Security (Administration) Act 1999* purportedly permits certain transfers between income support payments. The broad effect of this section is to streamline claims processes in situations where income support recipients become eligible for a more appropriate payment.

In these situations the recipient can be transferred to the more appropriate payment without the need for the recipient to fill in a separate claim form. Therefore, this

section generates significant administrative savings. However, while the provision is used as a transfer provision, there is some doubt as to how it currently operates.

The section is currently used to transfer a recipient from one working age payment to another type of working age payment (for example, Newstart Allowance to Disability Support Pension), and was intended to operate prospectively. In making such a transfer, the section does not limit the time when this transfer can occur. That is, a decision maker could provide that the transfer is to occur at the date of the decision or alternatively, at a time in the past. Therefore, if the payment rate of the new payment type is greater than the payment rate of the old payment type and the decision maker is of the view that the transfer is to occur at some time in the past, the effect of such a decision is that the recipient could receive an arrears payment.

The section does not place any restriction on the date any possible retrospective transfer could occur. Flowing on from this, there is no limit to the quantum of arrears payment that could be paid to the recipient. In contrast, other provisions of the social security law generally limit the quantum of arrears payments to the equivalent of 13 weeks payment.¹ Therefore, the quantum of arrears payments which is allowed under section 12 does not align with similar provisions contained elsewhere in the *Social Security (Administration) Act 1999*.

In addition to the possible arrears payment, the retrospective transfer from one working age payment to another working age payment could also be made to a working age payment that is a closed² or a grandfathered payment. The Welfare to Work changes introduced new participation requirements for certain payment types. Therefore, the potential transfer of a recipient from a payment which has participation requirements to a closed payment type which does not have participation requirements undermines the effect and intention of the Welfare to Work measures.

2.2 Proposed changes and rationale

The legislative changes being proposed are:

- Currently, section 12 requires that a transfer under another section of the legislation take place in order for section 12 to operate. The proposed amendment removes this requirement, clarifying that section 12 will operate so that a claim is taken to be made without the need for a separate claim form. Once a claim is deemed to have been made under section 12, it will be processed in line with standard assessment arrangements and, if the claim is successful, the recipient will be granted access to the payment. The result of the operation of the proposed amended section 12 is the effective transfer of the recipient to the new payment.
- The proposed amendment ensures that section 12 is correctly applied and limited to 13 weeks, the extent to which a payments transfer can be made to apply retrospectively.

¹ See sections 108 – 114 of the *Social Security (Administration) Act 1999*.

² A payment for which no new claims can be accepted.

- Significantly, section 15 of the *Social Security (Administration) Act 1999* will continue to provide an avenue for recipients to be effectively transferred to a correct payment in cases where they have lodged an actual claim for an incorrect or inappropriate claim. In these cases where a person makes an incorrect or inappropriate claim for a payment and subsequently makes a claim for the correct payment and the Secretary considers it reasonable for section 15 to be applied, the person is taken to have made a claim for the latter payment on the day they made a claim for the incorrect payment.

3: JOB CAPACITY ASSESSMENTS

3.1 Background

In September 2002, the Australian Government introduced the Australians Working Together budget initiative. The 'Better Assessment and Early Intervention' measure of the Australians Working Together initiative provided for a greater focus on the assessment of work capacity and the identification of early interventions, with a view to maximising the social and economic participation of people who are ill, injured or have a disability. This included making better use of a range of internal and external assessors to advise Centrelink of a person's work capacity and involved interaction with customers to determine their capacity for work or participation, rather than just accepting a customer's medical certificate or doctor's report.

Following on from this, the Government introduced Job Capacity Assessments as part of the Welfare to Work reforms. These reforms are intended to assist people to work to their capacity.

3.2 Objectives and operation of Job Capacity Assessments

A Job Capacity Assessment is not about diagnosis or prognosis of a person's medical condition. Rather, its focus is drawing on the information provided by treating doctors and specialists when making assessments and applying the assessor's specialised knowledge and experience in identifying barriers to employment, interventions, available programmes, and suitable occupations to determine a person's impairment rating and work capacity.

The Better Assessment model in place prior to 1 July 2006 streamed a person to a particular type of assessor depending on the person's primary impairment. Job Capacity Assessments have improved on work capacity assessments as it is now recognised that streaming to an assessor qualified only in a particular field may not provide a complete and comprehensive assessment of a person's capacity. Job Capacity Assessments provide a comprehensive assessment which is necessary to fully determine a person's work capacity.

Job capacity assessors are uniquely placed to determine a person's work capacity and have had specialised training in all aspects of conducting assessments of a person's work capacity. Organisations contracted to undertake Job Capacity Assessments employ a range of allied health professionals. When undertaking an assessment, an individual job capacity assessor can consult with other health professionals within

their organisation. Job Capacity Assessors also have the opportunity to refer people for specialist assessments if this is required.

Job capacity assessors are aware of the full range of Government interventions and employment assistance programmes.

Further surety of the quality of Job Capacity Assessment is provided by the quality assurance framework, overseen by the Department of Human Services. This framework ensures that continuous improvements in quality are achieved by seeking internal, external and independent assurance; by providing contract management and guidance, and through analysis of performance information.

3.3 Proposed changes to the *Social Security Act 1991*

The legislative changes being proposed are:

- To make provision for Ministerial guidelines regarding the determination of a person's capacity to work. Review processes will have to conform to the guidelines in any determination in relation to a person's current or continuing inability to work, impairment ratings, partial capacity to work and incapacity exemptions. The guidelines will take effect from 1 January 2008, unless disallowed before that date.
- Recognition of the role that Job Capacity Assessors have played since the introduction of Welfare to Work on 1 July 2006, by the removal of outdated references to "medical officers" in the impairment tables in Schedule 1B of the *Social Security Act 1991*. This change does not remove the requirement for Job Capacity Assessors to take into account advice from medical practitioners but acknowledges the fact the application of the impairment tables and recommendations in relation to continuing inability to work are carried out by Job Capacity Assessors. The critical diagnostic role will still rest with medical practitioners.

The review processes under the social security law include Centrelink Authorised Review Officers, the Social Security Appeals Tribunal and the Administrative Appeals Tribunal.

3.4 Rationale for proposed changes

The proposed amendments support the Government's 2007 Budget measure to reinforce the role of Job Capacity Assessments, and its commitment under Welfare to Work, to holistic assessments of job seekers' participation and barriers and work capacity. The Guidelines will ensure appropriate and consistent reviews of income support decisions.

The Ministerial guidelines will ensure greater clarity regarding the role of Job Capacity Assessment Providers in assessing work capacity and informing income support decisions. At present, the role of Job Capacity Assessors is not included in the legislation. The guidelines will require that review processes access expert assessments of work capacity, when determining appeals of income support decisions.

3.5 Operation of the proposed guidelines

The amendments make provision for Ministerial guidelines regarding the determination of a person's capacity to work. The guidelines will set out a Job Capacity Assessment process for reviews of decisions under social security law. This process will have to be followed only if a person has had a JCA in respect of a decision under the social security law.

The Job Capacity Assessment process will:

- Require additional medical evidence presented to Authorised Review Officer, Social Security Appeals Tribunal or Administrative Appeals Tribunal reviews to be sent back to the original Job Capacity Assessment Provider for further consideration. This will ensure providers have the opportunity to assess work capacity based on all available medical evidence. As now, there will be no limit on the number of times a customer can present additional medical evidence.
- Require Authorised Review Officers, Social Security Appeals Tribunal and Administrative Appeals Tribunal decision makers to seek a Job Capacity Assessment from a different provider if they do not agree with the original provider's recommendations. This 'second opinion' will be independent of the original opinion, and will take into account all available medical evidence.
- The Government believes a 'second opinion' Job Capacity Assessment will be sufficient to enable review processes to consider fully a customer's work capacity. Authorised Review Officers, Social Security Appeals Tribunals and Administrative Appeals Tribunals will continue to have discretion to make income support decisions, once they have examined the two independent Job Capacity Assessment reports.

3.6 Impairment Tables

Currently, subsection 94(1) of the *Social Security Act 1991* provides, among other things, to qualify for Disability Support Pension, a person must have a physical, intellectual or psychiatric impairment which attracts 20 points under the Impairment Tables.

The Introduction to the Impairment Tables at paragraph 1 provides that they 'represent an empirically agreed set of criteria for assessing the severity of functional limitations for work related tasks and do not take into account the broader impact of functional impairment in a societal sense'.

While the diagnosis and prognosis of a person's condition including whether or not such impairment or condition has been fully documented, treated and stabilised is a function which is appropriately undertaken by doctors, the impact of such conditions on a person's work functionality is a role which Job Capacity Assessors are best placed to undertake.

However, the Impairment Tables retain outdated references to medical officers and medical assessments. It is understood that these references were included in the Impairment Tables when all functional work assessments were undertaken by Government employed medical officers.

4: TECHNICAL AMENDMENT: SPECIAL CIRCUMSTANCES AND DEBT RECOVERY WAIVER

4.1 Background

Section 1237AAD of the *Social Security Act 1991* currently allows for the Secretary to waive the recovery of debts when there are special circumstances that make it desirable for this occur. It was intended that a debt be disqualified for consideration of waiver of recovery if it arose either wholly or partly due to:

- a) the customer making a false statement or representation; or
- b) the customer failing or omitting to comply with their payment obligations.

However, this section does not contain any reference to the *Social Security (Administration) Act 1999*. When the *Social Security (Administration) Act 1999* was introduced, most customer obligations (such as notification of changes to circumstances and requirements to attend appointments) were moved from the *Social Security Act 1991* to the new *Social Security (Administration) Act 1999*. However, section 1237AAD was not amended to account for this change.

It appears that it was an oversight not to amend section 1237AAD to include reference to the *Social Security (Administration) Act 1999*. This omission was recently noted in a case before the Administrative Appeals Tribunal.

4.2 Proposed changes and rationale

This is a technical amendment to subparagraph 1237AAD (a) (ii) of the *Social Security Act 1991*, to clarify that recovery of a debt can not be waived for special circumstances when a person has knowingly failed or omitted to comply with a provision of the *Social Security (Administration) Act 1999*.

The legislative changes being proposed are:

- To amend paragraph 1237AAD (a) (ii) of the *Social Security Act 1991* so that it applies when a person failed or omitted to comply with the *Social Security (Administration) Act 1999*, by including a reference to the *Social Security (Administration) Act 1999* in subparagraph 1237AAD(a)(ii).

Including a reference to all relevant obligations within the provision makes the rules clearer for Centrelink staff, tribunals, customers and their advocates.

The retrospective commencement date reflects the fact that there is no practical change to the existing rules.