
Social Security Legislation Amendment (Increased Employment Participation) Bill 2014

Portfolio: Employment

Introduced: House of Representatives, 27 February 2014

Summary of committee concerns

1.55 The committee seeks further information to determine whether the proposal to extend the non-payment period for social security benefits from 12 weeks to 26 weeks is compatible with the right to social security.

Overview

1.56 This bill proposes to amend the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, and the *Income Tax Assessment Act 1997* to enable the implementation of the Job Commitment Bonus and the 'Relocation Assistance to Take Up a Job' programme.

Job Commitment Bonus

1.57 The Job Commitment Bonus payment will provide job seekers aged 18-30 who have been receiving Newstart Allowance or Youth Allowance (other than as an apprentice or full time student) for 12 months or more with:

- a \$2,500 payment, if they undertake gainful work and remain off income support for a continuous period of 12 months; and
- a further \$4,000 to eligible job seekers if they remain in a job and do not receive an income support payment for a continuous period of 24 months, for a total payment of \$6,500.

1.58 If job seekers later return to receipt of an income support payment and then qualify again for the Job Commitment Bonus, they will be able to receive a further Job Commitment Bonus (that is, a further \$2,500, or \$2,500 plus an additional \$4,000, depending on whether the further period of work is 12 or 24 months).

'Relocation Assistance to Take Up a Job' programme

1.59 The 'Relocation Assistance to Take Up a Job' programme is intended to replace a current scheme that provided relocation assistance to job-seekers, called 'Move 2 Work'. The replacement scheme will come into effect on 1 July 2014 and will provide financial assistance to long term unemployed job seekers with participation requirements who have been receiving Newstart Allowance, Youth Allowance or Parenting Payment for at least the preceding 12 months, to relocate for the purposes of commencing ongoing employment.

1.60 Those who relocate to a regional area (whether from a metropolitan area or another regional area) will receive up to \$6,000. Those who move to a metropolitan area from a regional area will receive up to \$3,000. Relocations between capital

cities (metropolitan areas) will be limited to cases where the relocation is to a capital city with a lower unemployment rate. Families with dependent children will be provided with up to an additional \$3,000.

1.61 The bill also seeks to introduce a non-payment period of 26 weeks for which the relevant income support payment is not payable if the person ends their employment because of their own voluntary act or misconduct within a period of 6 months of the relocation assistance being paid. This requirement will apply to participants in the new 'Relocation Assistance to Take Up a Job' programme. The current non-payment period of 12 weeks will continue to apply to participants in the present 'Move 2 Work' programme.

Compatibility with human rights

Statement of compatibility

1.62 The bill is accompanied by a comprehensive statement of compatibility that identifies that the bill engages a range of rights. The rights discussed include the right to equality and non-discrimination;¹ the right to work;² the right to social security;³ and the right to an adequate standard of living.⁴ The statement concludes that the bill is compatible with human rights.

1.63 The committee commends the Minister for Employment on the quality of the statement of compatibility for this bill. The detailed analysis of the proposed measures demonstrates a careful and thorough understanding of the relevant human rights requirements, and has greatly assisted the committee's scrutiny of the bill.

Committee view on compatibility

1.64 The committee considers that the statement of compatibility adequately addresses most of the issues it raises and provides sufficient justifications for any proposed limitations. In general, sufficient safeguards are provided in the bill and parent legislation to ensure that the relevant powers, in particular those relating to the non-payment of social security benefits, are exercised compatibly with human rights. The committee makes the following comments on three aspects of the bill.

Job Commitment Bonus – key details to be provided in legislative instruments

1.65 The Job Commitment Bonus will be available to eligible individuals who undertake 'gainful work', which is defined as 'work for financial gain or reward

1 Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and article 26 of the International Covenant on Civil and Political Rights (ICCPR).

2 Article 6 of the ICESCR.

3 Article 9 of the ICESCR.

4 Article 11 of the ICESCR.

(whether as an employee, a self-employed person or otherwise)'.⁵ Some of the key matters for implementing the Job Commitment Bonus, however, will be set out in legislative instruments.⁶ This includes provision for a legislative instrument to exclude work of a kind prescribed in the instrument from being work which would attract the Job Commitment Bonus.⁷

1.66 The committee notes that it is unable to reach a definitive view on the compatibility of these measures because key details are not provided in the bill but will be contained in legislative instruments, which have not yet been made. The committee notes that the relevant legislative instruments will be disallowable and subject to the statement of compatibility requirement.

Job Commitment Bonus – exclusion of protected SCV holders

1.67 The bill provides that a person must be an Australian resident throughout the period of work on which they rely to claim the Job Commitment Bonus.⁸ An 'Australian resident' is usually defined in social security law to mean a person who resides in Australia and who is an Australian citizen, the holder of a permanent visa, or the holder of a protected special category visa (SCV). Protected SCV holders are New Zealand citizens who meet certain criteria.⁹ Therefore, New Zealand citizens who are protected SCV holders are treated on an equal basis with Australian citizens and permanent residents for the purposes of accessing the full range of social security benefits and programmes.

1.68 The bill, however, proposes to utilise a modified definition of an Australian resident, which would exclude protected SCV holders from being eligible for the Job Commitment Bonus. The statement of compatibility states that excluding protected SCV holders is reasonable and proportionate to attaining the goals of the measure but provides no further information as to why this might be case.

1.69 The committee intends to write to the Minister for Employment to seek clarification as to why it is considered necessary to exclude protected SCV holders from accessing the Job Commitment Bonus, and the basis for considering that their inclusion may jeopardise the goals of the measure.

5 Proposed new section 861(11) of the *Social Security Act 1991*, inserted by item 2, Schedule 1.

6 See proposed new sections 861(6) and (8) of the *Social Security Act 1991*, inserted by item 2, Schedule 1.

7 Proposed new section 861(8) of the *Social Security Act 1991*, inserted by item 2, Schedule 1.

8 Proposed new section 861(12) of the *Social Security Act 1991*, inserted by item 2, Schedule 1.

9 Protected SCV holders are New Zealand citizens who were in Australia on 26 February 2001, or were in Australia for 12 months in the two years immediately before this date and later returned to Australia, or who are in certain other similar categories. New Zealand citizens who arrive in Australia after 26 February 2001 have access to a less extensive range of benefits covered by the bilateral social security arrangement between Australia and New Zealand announced on 26 February 2001.

1.70 The committee notes that it has separately commented on the human rights implications of long-term New Zealand residents of Australia who are not protected SCV holders on several occasions.¹⁰

‘Relocation Assistance to Take Up a Job’ programme – increase of non-payment period from 12 to 26 weeks

1.71 The statement of compatibility suggests that extending the non-payment period for social security benefits under the new programme is justifiable because the new programme will provide for higher levels of assistance compared to the existing programme:

The increase to the non-payment period more closely aligns the value of social security entitlements for such a period with the amount of relocation assistance that can be received, particularly taking into account the increased amount of assistance which the new Relocation Assistance to Take Up a Job programme involves.¹¹

1.72 The statement, however, does not provide any details with regard to the type of assistance that the 'Move 2 Work' programme currently provides or the amount by which the replacement programme will enhance existing levels of assistance. The committee notes that the 'financial impact of the [proposed] 26 week non-payment period is marginally less than the full relocation assistance that can be received by eligible recipients with dependent children'.¹² It is not clear whether individuals without dependents or who do not receive the full relocation assistance may therefore be required to effectively 'repay' (via the prescribed withholding of social security entitlements) a greater amount than they received through the relocation assistance. The committee requires this information to satisfy itself that the proposal to extend the non-payment period from 12 to 26 weeks is not a retrogressive measure, and is consistent with the rights to social security and an adequate standard of living.

1.73 The committee intends to write to the Minister for Employment to seek the following information:

- **The levels of assistance provided under the current 'Move 2 Work' programme, including how the present 12-week non-payment period correlates with the applicable relocation assistance provided to eligible individuals.**
- **Whether for some individuals the proposed 26-week non-payment period may amount to more than the relocation assistance received.**

10 In addition to comments elsewhere in this report, see PJCHR, *Seventh Report of 2013*, 5 June 2013, pp 11-16; and *First Report of the 44th Parliament*, 10 December 2013, pp 189-192.

11 Statement of compatibility, p 25.

12 Statement of compatibility, p 25.