

# Chapter 1

## Background

1.1 On 6 December 2018, the Senate referred the provisions of the Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018 to the Economics Legislation Committee for inquiry and report by 11 February 2019.<sup>1</sup>

1.2 The bill amends the *Social Security Act 1991* (the Social Security Act) and the *Veterans' Entitlements Act 1986* (the Veterans' Entitlement Act) to introduce new means test rules for lifetime retirement income products, expand the Pension Loans Scheme, and increase and expand the Pension Work Bonus.<sup>2</sup>

1.3 The estimated financial cost of this bill to the fiscal balance over the forward estimates is \$258.6 million.<sup>3</sup>

### Conduct of the inquiry

1.4 The committee advertised the inquiry on its website. It also wrote to relevant stakeholders and interested parties inviting submissions by 18 January 2019. The committee received 11 submissions which are listed at Appendix 1.

1.5 The committee did not hold a public hearing for this inquiry.

1.6 The committee thanks all the individuals and organisations that contributed to the inquiry.

### Background

1.7 The bill contains four schedules to introduce the following measures:

- Schedule 1 establishes new means test rules to accommodate the development of new innovative income streams. It also amends the current rules for lifetime income streams to create fairer, more equitable means test outcomes.
- Schedule 2 increases the Work Bonus to \$300 per fortnight and extends the application of the Work Bonus to income earned from remunerative work that involves personal exertion, including self-employment and work undertaken by contractors or consultants.
- Schedule 3 expands the Pensions Loans Scheme to provide more Australians with access to this scheme whether they be of Age Pension age (for social security recipients), income support supplement qualifying age or service pension age (for Veterans' Affairs recipients).

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1 *Journals of the Senate*, No. 137, 6 December 2018, p. 4479.

2 *Explanatory Memorandum*, p. 1.

3 *Explanatory Memorandum*, p. 2.

- Schedule 4 makes technical amendments to simplify the Social Security Act and confirms that income support recipients over the Age Pension age qualify for the employment nil rate period.<sup>4,5</sup>

### *Lifetime income streams*

1.8 The 2016–17 Budget included a commitment to review the social security means test rules for retirement income products in the context of changes to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations). These changes enabled innovative pooled lifetime income stream products to qualify for earnings tax concessions, provided they comply with requirements contained in the SIS Regulations.<sup>6</sup>

1.9 Pooled lifetime income streams are products that pool the funds of multiple people to provide consistent income to surviving members for life. These products are intended to help people use their retirement savings in a way that supports their specific needs and help manage the risk of running out of retirement savings. They also include products that defer making payments for a period of time (for example, until age 85). The changes to the SIS Regulations are designed to allow product providers to innovate and create new pooled lifetime income products for Australians in and approaching retirement.<sup>7</sup>

1.10 The existing means test rules for lifetime income streams were made for simple income stream products, such as lifetime annuities. Continuing to use them for complex products that are expected to emerge as a result of the changes to the SIS Regulations would leave the income support system open to exploitation and could distort people's financial decisions in retirement.<sup>8</sup>

1.11 The new means test rules will apply to all pooled lifetime income products held by social security or Department of Veterans' Affairs income support recipients that are acquired or purchased on or after commencement. Products purchased before commencement will not be affected by the new rules.<sup>9</sup>

1.12 Under the income test, the new means test rules will assess 60 per cent of payments from a pooled lifetime income stream as income. This reflects that part of the payments made by the income stream are a return of a person's initial investment amount, and, therefore, are not income.<sup>10</sup>

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4 *Explanatory Memorandum*, p. 1.

5 The 'employment nil rate period' allows an income support recipient whose social security pension or benefit is not payable because of employment income to immediately return to payment if the work ceases within 12 weeks, provided they still meet all other qualification requirements for the payment. Department of Social Services, *Submission 5*, p. 23.

6 *Explanatory Memorandum*, p. 2.

7 *Explanatory Memorandum*, p. 2.

8 *Explanatory Memorandum*, p. 3.

9 *Explanatory Memorandum*, p. 3.

10 *Explanatory Memorandum*, p. 3.

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1.13 Under the assets test, the new means test rules will generally assess a proportion of the total purchase amount for the pooled lifetime income stream. At the point of purchase, 60 per cent of the purchase amount will be assessed as an asset. This will continue until a certain point in time, known as the 'threshold day', after which 30 per cent of the purchase amount will be assessed.<sup>11</sup>

1.14 As income stream products can be purchased outside the superannuation system, the new means test rules have some additional provisions for products with high surrender values or death benefits. Accordingly, the new means test rules under the assets test will assess the higher of:

- 60 per cent of a product's purchase amount as an asset up until the threshold day, or 30 per cent from that point onwards;
- any current or future surrender value about the limits of the Capital Access Schedule; or
- any current or future death benefit above the limits of the Capital Access Schedule.<sup>12</sup>

### **Work Bonus**

1.15 Social security pensioners of Age Pension age and Department of Veterans' Affairs pension recipients of qualifying age are able to access the Work Bonus. The Work Bonus is an income test concession, and is currently set at \$250 per fortnight. The first \$250 of fortnightly employment income is not counted under the pension income test. Any unused part of the Work Bonus currently accrues to a maximum balance of \$6,500, and is used to exempt future earnings.<sup>13</sup>

1.16 The Work Bonus was set at \$250 in 2011 and has not been increased since. The bill will increase the Work Bonus to \$300 per fortnight and, in line with current arrangements, will not be subject to automatic indexation.<sup>14</sup>

1.17 To improve the consistency and equity of the Work Bonus, it would be extended to all earnings from gainful employment that involves personal exertion. It is not intended that managing personal or family financial or real estate investments, or undertaking domestic duties in relation to a person's own residence would meet this requirement for personal exertion. For example, work undertaken managing an investment portfolio, or renting or leasing out real estate would not be considered gainful work.<sup>15</sup>

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11 *Explanatory Memorandum*, p. 4.

12 The Capital Access Schedule refers to the limits placed on the amount that a person can recover from their pooled lifetime income stream should they withdraw from the product (the surrender value), or should they die (the death benefit). *Explanatory Memorandum*, p. 4.

13 *Explanatory Memorandum*, p. 33.

14 *Explanatory Memorandum*, p. 33.

15 *Explanatory Memorandum*, p. 33 and p. 34.

1.18 It is intended that the Work Bonus would only apply to income that is commensurate to the work performed. For example, if a person received a \$10,000 distribution from a trust, the Work Bonus would only apply to the amount that a person could show that they had performed work commensurate to the amount paid.<sup>16</sup>

1.19 The amendments to the Work Bonus would commence on 1 July 2019.<sup>17</sup>

### ***Pension Loans Scheme***

1.20 The current Pension Loans Scheme (PLS) allows Australians of Age Pension age, income support supplement qualifying age or service pension age, who cannot receive one of these payments because of their income or assets (but not both), to receive a payment. Additionally, people who receive only a part-rate payment can increase the rate of their payment to the maximum rate of the payment by borrowing the difference between their fortnightly part-rate and the maximum rate.<sup>18</sup>

1.21 Amounts borrowed under the PLS become a debt due and payable to the Commonwealth, and is secured by a charge against the person's real property in Australia. The debt is usually recovered from the person once the relevant property is sold or from the person's estate once the person dies.<sup>19</sup>

1.22 The bill would allow people to participate in the PLS even if they are assessed as having a nil rate of payment under both the income and assets tests for the relevant payment. It would also expand the PLS to allow people to participate in the PLS even if they are already receiving the maximum rate of the payment.<sup>20</sup>

1.23 The fortnightly amount that can be borrowed would increase by up to 150 per cent of the maximum fortnightly rate, including supplements, for both new and existing participants in the PLS.<sup>21</sup>

1.24 Existing age-based loan-to-value ratio limits will continue to apply when determining a person's maximum loan amount under the PLS. This will link the amount that PLS participants can borrow to the value of the property or properties they have given as security for their loan.<sup>22</sup>

1.25 The majority of amendments would commence on 1 July 2019 with some consequential amendments commencing on 20 March 2020.<sup>23</sup>

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16 *Explanatory Memorandum*, p. 34.

17 *Explanatory Memorandum*, p. 34.

18 *Explanatory Memorandum*, p. 39.

19 *Explanatory Memorandum*, p. 39.

20 *Explanatory Memorandum*, p. 39.

21 *Explanatory Memorandum*, p. 39.

22 *Explanatory Memorandum*, p. 40.

23 *Explanatory Memorandum*, p. 40.

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### ***Other amendments***

1.26 A recipient whose social security pension or benefit is not payable because of employment income may qualify for an employment income nil rate period. During this period, the recipient is considered to be receiving a social security pension or benefit for certain purposes, including retaining their Health Care Card or Pensioner Concession Card.<sup>24</sup>

1.27 Income support recipients over Age Pension age were given access to the employment nil rate period provisions as part of Pension Reform changes in September 2009. However, this was not reflected at subsection 23(4A) of the *Social Security Act 1991*.<sup>25</sup>

1.28 The bill makes clear that income support recipients over Age Pension age may qualify for the employment income nil rate period. Changes made by the bill are beneficial in nature, and will not adversely impact any individual.<sup>26</sup>

### **Human rights**

1.29 As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, the government has assessed the bill's compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The government considers that the bill is compatible because they improve a person's access to social security.<sup>27</sup>

### **Scrutiny of bills**

1.30 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) commented on the bill in *Scrutiny Digest 15 of 2018*. The Scrutiny committee noted that the bill allows for specific determinations to be made by the Secretary through notifiable instruments. However, notifiable instruments are not subject to tabling, disallowance or sunset requirements imposed on legislative instruments and, as such, there can be no parliamentary scrutiny over a notifiable instrument. The Scrutiny committee requested advice from the Minister as to why it is appropriate to make a number of instruments under the bill notifiable instruments rather than legislative instruments.<sup>28</sup>

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24 *Explanatory Memorandum*, p. 55.

25 *Explanatory Memorandum*, p. 55.

26 *Explanatory Memorandum*, p. 55.

27 *Explanatory Memorandum*, [p. 57].

28 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, pp. 44–45.

