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Family and Community Services and Veterans' Affairs Legislation Amendment (Further Assistance for Older Australians) Bill 2001

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Family and Community Services and Veterans' Affairs Legislation Amendment (Further Assistance for Older Australians) Bill 2001

Date Introduced: 22 May 2001

House: House of Representatives

Portfolio: Family and Community Services

Commencement: Generally 1 July 2001. However Schedules 2 and 3 commence on 1 September 2001.

Purpose

To

- amend the *Social Security Act 1991* to protect superannuation investments from income and assets tests for persons between 55 and age pension age.
- amend the *Social Security Act 1991*, *Social Security (Administration) Act 1999* and the *Veterans Entitlements Act 1986* to extend eligibility for telephone allowance to holders of seniors health care cards, and
- amend the *Social Security Act 1991* and *Veterans Entitlements Act 1986* to increase the income test limits for seniors health cards under these Acts.

Background

The Treatment of Superannuation Assets of People aged 55 to age pension Age

It was announced in the 1996-97 Budget that the exemption of superannuation assets from the income and assets tests would be removed for people aged between 55 and pension age who had been in receipt of income support for more than nine months. This measure was one of a large number of savings measures in the social security area announced by the new Government in its first Budget. The *Social Security Legislation Amendment (Further Budget and Other Measures) Bill 1996* included this measure and it took effect from September 1997. The explanatory memorandum to the Bill estimates that the measure will cost $1.33 million in 1996-97; save $92.65 million in 1997-98; and save $67.47 million in 1998-99. An unsuccessful amendment to substantially reduce the impact of this change was supported by the Opposition, the Greens and the Democrats.

The measure included in this Bill effectively reverses the 1997 changes and restores the situation to that which applied under the previous Government. The change is estimated to cost $89.199 million in 2001-02, $88.398 million in 2002-03, $90.131 million in 2003-04 and $91.900 million in 2004-05.

Commonwealth Seniors Health Card

The Commonwealth Seniors Health Card (CSHC) was introduced from July 1994. The card provided access to concessional prescription medicines under the Pharmaceutical Benefits Scheme, free hearing aids and certain free basic dental services. However the dental services ceased to be available from 31 December 1996 and access to the hearing aids was ended in 1997. The card was available to people of age pension age whose income was low enough for them to qualify for the age pension, but who were not eligible for some other reason. The most common reasons were insufficient length of residence and asset holdings which prevented them from satisfying the assets test.

The original purpose of the card was to provide assistance to retired persons who were on low-income. With the income limits the same as for the age pension, the vast majority of retired people issued with a CSHC were those who were asset rich but income poor.

Income test and limits for the CSHC changed from January 1999

From January 1999, the income test for the CSHC was changed to one based on taxable income and also the income limits were substantially increased. Taxable income is adjusted to include:

- foreign income
- certain employer-provided fringe benefits, and
- the value of net rental property losses.

The increased income test limits introduced at this time changed the nature of the CSHC. It ceased to be targeted at low-income retirees and was now available for middle income retirees. These income test changes to the CSHC were achieved by the passage of the *Budget Measures Legislation Amendment (Social Security and Veterans' Entitlements) Bill 1998.*

Set out below are the income limits prior to the January 1999 change, the then new January 1999 limits, the current limits and the limits proposed in this Bill.

Income test limits	**Dec 1998**	**Jan 1999**	**Sept 2000**	**Sept 2001**
Single	$21 460.40	$40 000	$41 000	$50 000
Partnered (combined)	$35 859.20	$67 000	$68 676	$80 000

Telephone Allowance

Concessions for telephone rental were first introduced for pensioners in October 1964. The present Telephone Allowance was introduced in July 1992. It is currently paid as quarterly payment of $17.20 for each single pensioner or pensioner couple. Telephone rental concessions are provided to assist pensioners, who are on limited incomes, to afford telephones so that they may have easy access to family and community services.

This Bill provides for the extension of the allowance to CSHC holders. This change will serve to boost the value of the concessions available to cardholders. The Commonwealth Government has also announced that it will open negotiations with State and Territory Governments with a view to providing some or all of the concessions provided to pensioners to CSHC holders. At present the card only provides concessional pharmaceuticals to holders. As indicated, access to concessional dental care and free hearing aids (available when the card was introduced in 1994) were removed in 1996 and 1997 respectively.

Main Provisions

Schedule 1 – Superannuation Assets

Schedule 1 amends the *Social Security Act 1991* (the SSA) to protect superannuation investments from income and assets tests for persons between 55 and age pension age.[1]

Overview

Part 1.2 of the SSA contains various definitions, including definitions for the purposes of the various income tests used in the SSA (section 8) and for determining financial assets and income streams, which in turn affect 'ordinary income' under the SSA (section 9).

Generally, amounts that are excluded from 'income' are listed in subsection 8(8). However, there are specific exclusions for various forms of income, such as amounts paid to or on behalf of a person under a 'home equity conversion agreement' (subsections 8(4) and (5)).

A significant exemption relates to superannuation investment returns and income streams. Essentially, these investments are protected from the income test until the investor reaches age pension age or becomes a 'prescribed pre-pension age person'. A 'prescribed pre-pension age person' is a person who has reached 55 and has since then received a social security or veterans payment for 39 weeks (subsection 23(1)). Thus, crudely, long term welfare recipients are penalised under the income test for superannuation investments and income streams.

A similar situation applies in relation to protection from the assets test.

A converse exemption relates to early withdrawal from superannuation investments. Essentially, if a person cashes out their superannuation investment before reaching age pension age, they are exposed to the income test for 12 months in respect of the income that could reasonably be derived from the withdrawn amount. However, if a person cashes out their superannuation investment after becoming a 'prescribed pre-pension age person', they are not exposed to these deeming rules. Thus, crudely, long term welfare recipients are encouraged to rely on superannuation investments and income streams.

The detail of these rules is discussed below:

Current Provisions

Under the SSA 'income' does not include 'returns' (ie capital growth or income)[2] on:

- superannuation funds
- approved deposit funds
- deferred annuities, or
- ATO small superannuation accounts

provided the investor has not:

- reached pension age, or
- started to receive a pension or an annuity out of the fund (subsection 8(7A)).

This exemption does not apply to 'prescribed pre-pension age persons' (subsection 8(7B)).

Also, investments such as those listed above are not 'managed investments' provided the investor has not reached pension age (subsection 9(1C)). As a result, they are not subject to deeming provisions relating to the nominal income from the investment.[3] This exemption does not apply to 'prescribed pre-pension age persons' (subsection 9(1C).

In addition, under the SSA 'assets' generally[4] do not include the value of these investments, except for 'prescribed pre-pension age persons' (subsection 1118A(3)).

Where a superannuation investment is realised but not rolled over into another fund, the amount withdrawn or 'cashed out' is treated as income for SSA purposes. It may also be treated as an asset for SSA purposes, depending on how it is spent or invested. However, if the investment is realised before the person has reached pension age, he or she is deemed for purposes of the income test also to be receiving the 'assessable growth component'[5] of the realised amount as weekly income over the first 12 months (section 1096). He or she will be deemed to be receiving income, regardless of how the amount is spent or invested. These deeming rules do not apply if when the investment is realised the person is a 'prescribed pre-pension age person' (paragraph 1096(aa)).

Originally, the exemption in subsection 8(7A) appeared in the general list of exemptions as paragraph 8(8)(b). Moreover, neither this exemption, nor other exemptions above, were restricted in respect of 'prescribed pre-pension age persons'. These restrictions were introduced by the *Social Security Legislation Amendment (Further Budget and Other Measures) Act 1996*.[6] Effectively, the amendments included undistributed and realised superannuation entitlements within the income and assets tests where the beneficiary was over 55 but under the pension age and had received social security or veterans payments.

Proposed Amendments

The amendments proposed in this Bill undo the 1996 amendments and provide additional protection to persons over 55 in relation to early withdrawal from superannuation funds.

Largely, the amendments remove references to 'prescribed pre-pension age persons' in the relevant sections and exemptions. **Items 14–16** effectively apply the deeming provision in section 1096 to persons under 55. Thus, a person over 55 may withdraw early from a superannuation fund without having the 'assessable growth component' deemed as weekly income for the first 12 months. Moreover, **item 16** clarifies that while these deeming rules apply to persons under 55 they finish in the week during which the person turns 55.

Schedule 2 – Telephone Allowance

Schedule 2 amends the SSA, *Social Security (Administration) Act 1999* SSA (Admin) and the *Veterans Entitlements Act 1986* (VEA) to extend eligibility for telephone allowance to holders of seniors health care cards.

Overview

Both the SSA and VEA deal with telephone allowance and seniors health care cards. Broadly, under the SSA, telephone allowance is available to pensioners and recipients of certain social security payments who are over 60. Broadly, under the VEA, telephone allowance is available to service pensioners, certain members of the defence forces and their families, where the member has been incapacitated or killed, and WWI veterans.

Similarly, both the SSA and VEA provide for seniors health cards. (A person cannot hold a seniors health card under both the SSA and VEA.[7]) The telephone allowance rate is $64 p.a.[8] where the recipient is 'not a member of a couple' and $32 where they are partnered.

Under the SSA, the card is available to low income self-funded retirees. A person qualifies for the card if s/he is not in receipt of a pension but is of age pension age, and is receiving income below the pension cut-off limit. Moreover, the SSA requires that a holder must be in Australia, must not be in receipt of a social security payment or service pension and must satisfy the 'seniors health card taxable income test'.[9] The income limit for the card is described in the following table which is reproduced from point 1071-12 of the SSA:

Seniors Health Card Taxable Income Limit Table

Column 1 Item	**Column 2** Person's family situation	**Column 3** Amount per year	**Column 4** Additional dependent child Amount per year
1	Not member of couple	$41 000	$639.60
2	Partnered	$34 338	$639.60
3	Member of illness separated couple	$37 615	$639.60
4	Member of respite care couple	$41 000	$639.60
5	Partnered (partner in gaol)	$41 000	$639.60

Under the VEA, the card is available to low income self-funded veterans. A veteran qualifies for the card if s/he has rendered qualifying service and has reached 'pension age'.[10] The card is also available to pension age partners[11] and partners who are eligible for certain forms of assistance under the VEA.[12] The VEA also requires that a holder must be in Australia, must not be in receipt of a social security or service pension and must satisfy the seniors health card income test.[13] The limits are the basically same as under the SSA.[14]

Proposed Amendments

Items 1–6 amend the SSA to extend telephone allowance to holders of seniors health cards and to allow portability where the holder is outside Australia for less than 26 weeks.

Item 7 amends the SSA (Admin) to adjust the 'telephone allowance payday' definition to account for the fact that recipients may not be paid by social security payments. Currently, paydays are tied to instalments of social security payments. The amendment permits 'telephone allowance paydays' for seniors card holders to be tied to ordinary business days.

Items 8–10 amend the VEA for a similar purpose. **Item 10** amends the provision dealing with telephone allowance rates to achieve a similar result as under the SSA.

Schedule 3 – Income Limits for Seniors Health Card

Schedule 3 increases the income test limits for seniors health card under the SSA and VEA. The following table is reproduced from **proposed point 1071-12**

Seniors Health Card Taxable Income Limit Table

Column 1 Item	Column 2 Person's family situation	Column 3 Amount per year	Column 4 Additional dependent child Amount per year
1	Not member of couple	$50 000	$639.60
2	Partnered	$40,000	$639.60
3	Member of illness separated couple	$50 000	$639.60
4	Member of respite care couple	$50 000	$639.60
5	Partnered (partner in gaol)	$50 000	$639.60

The proposed new limits are basically the same under the VEA.

It is worth noting that whereas most persons benefit from a 21% increase in the income limit, persons who are a member of an illness separated couple benefit by 32.9% while persons who are partnered benefit by only 16.5%.

Endnotes

1 'Pension age' is 65 for men and between 60 and 65 for women, depending upon the persons' date of birth: subsections 23(5A)-(5D).

2 A return is 'any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment': subsection 9(1).

3 The following explanation of 'deeming' was given in Social Security Legislation Amendment (Further Budget and Other Measures) Bill 1996, *Bills Digest* No. 52 1996–97 at http://www.aph.gov.au/library/pubs/bd/1996-97/97bd052.htm: 'In relation to investment income, the Principal Act deems that a return will be at a certain level, depending on the nature and timing of the investment … The basic principal is that if a person receives an investment return, the relevant amount of the return will be deemed to have been received even if there is no actual income received by the investor, in this case a member of a superannuation fund or like body (eg. an approved deposit fund)'

4 The value of these investments may be included in relation to disposal of assets, particularly for the purposes of Carer Payment, and in relation the pension loans scheme: subsection 1118A(2).

5 That is, 'so much (if any) of the return as is attributable to the assessable period', or the period in which the person is receiving a social security payment or service pension listed in subsection 9(1).

6 No 83, 1996.

7 *Veterans Entitlement Act 1986*, section 118X.

8 Department of Family and Community Services, 'Telephone Allowance – Current Rates' in *Guide to the Social Security Law* at http://www.facs.gov.au/guide/ssguide/51760.htm [05/06/01] (current as at 3 July 2000). The same rate(s) are payable under the VEA (basically identical rates were used when the provisions were introduced and both sets of provisions are subject to the same CPI adjustment).

9 Subsection 1061ZA(1).

10 *Veterans Entitlement Act 1986*, subsection 118V(1). 'Pension age' is 60 for men and between 55 and 60 for women, depending upon the persons' date of birth: section 5QA.

11 Subsection 118V(2).

12 Subsection 118V(3).

13 Subsection 118V(1).

14 See the table in *Veterans Entitlement Act 1986*, section 118ZAA.