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8 May 2002

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Date Introduced: 14 March 2002

House: House of Representatives

Portfolio: Family and Community Services

Commencement: 1 July 2002

Purpose

The Bill proposes to reform the provisions of the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* that relate to the gifting of assets by recipients of income support.

Background

Provisions to prevent people from depriving themselves of property or income in order to obtain a pension, date back to the *Invalid and Old-age Pensions Act 1909*. Initially the sanction was disqualification from receipt of a pension altogether. This situation applied until the introduction in 1976 of an income only means test. Under the new provisions where a person deprived themselves of income in order to qualify for a pension or for a higher rate of pension, the disposed of income continued to be deemed as income for the purposes of the income test.

The present approach to the disposal of income or assets dates back to the introduction of the Assets Test in 1985. Disposal of assets without adequate return was allowed to the value of $2000 per annum for a single person or $4000 for a couple. Disposal above these values resulted in the excess being assessable under the asset test. The assessed value of disposed assets was reduced by 10 per cent each year.

In 1991 these provisions were modified so that up to $10 000 could be disposed of each year without sanction. Amounts above $10 000 were deemed to earn 10 per cent interest for five years. The value of disposed of assets above the limit continued to be included in the calculation of the value of a person's assets for the purposes of the assets test. This change coincided with the introduction of the policy of deeming a minimum rate of return on cash and deposits in financial institutions. Minister Howe provided the rationale for these changes in his second reading speech:

> In order to limit avoidance of the social security and veterans' affairs assets tests by the disposal of property for either nominal or no consideration, the Bill will provide that income will be deemed to have been received from deprived assets at a minimum rate of 10 per cent a year. However, to mitigate the impact of this measure where the disposition is relatively minor, the annual gifting limit will be significantly increased to $10,000 for both single persons and married couples.[1]

The Howard Government has already attempted to modify these 1991 changes. In 1999 the Social Security Amendment (Disposal of Assets) Bill 1999 contained provisions that would have reduced the $10 000 limit to $5000.[2] The Government argued that the $10 000 limit had “become a favourite tool for many financial planners who exploit it to increase the income support entitlement of their customers”.[3] The Bill was referred to the Senate Community Affairs Legislation Committee for consideration. Welfare groups defended the $10 000 limit because it provided scope for the gifting of money to family members in financial difficulties.[4] The Bill was defeated in the Senate by the ALP and the Australian Democrats.

The Bill presently before the Parliament offers a different approach to addressing the issues of concern to the Government. It retains the $10 000 limit, but adds a further limit of $25 000 over a rolling five year period. This change is intended to reduce the scope for pensioners to use regular gifts to increase the rate of payment they receive.

The Bill also introduces the use of financial years for the purposes of the gifting limits. At present a pension year is used which begins and ends on the anniversary of the day each person commenced receiving a payment.

Main Provisions

Schedule 1 deals with amendments to the *Social Security Act 1991*.

Item 3 inserts a definition of income year to ensure that it corresponds to a financial year.

Items 9-18 amend provisions relating to Carer Payment where the situation is complicated by the existence of a special income and assets test applied to recipients of care.

Items 19-25 amend the main gifting provisions in the Act to implement the new $25 000 limit.

Items 26-28 amend provisions relating to Youth Allowance where the situation is complicated by the operation of the “Family Actual Means Test”.

Schedule 2 deals with amendments to the *Veterans' Entitlements Act 1986*.

Item 19 inserts the major new provisions that relate to the disposal of assets and the new $25 000 limit.

Endnotes

1 Hon. B Howe MP. House of Representatives *Hansard*, 23 August 1990, p. 1493.

2 A Digest for the 1999 Bill is available at: http://www.aph.gov.au/library/pubs/bd/1999-2000/2000bd025.htm

3 Hon. W Truss MP, House of Representatives *Hansard*, 30 June 1999, p. 6105.

4 See Senate Community Affairs Legislation Committee, Consideration of legislation Referred to the Committee: Social Security Amendment (Disposal of Assets) Bill 1999, November 1999.