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No. 46 2002–03

Family and Community Services Legislation  
Amendment (Special Benefit Activity Test) Bill  
2002

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(Special Benefit Activity Test) Bill 2002

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14 October 2002

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# Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002

**Date Introduced:** 26 September 2002

**House:** House of Representatives

**Portfolio:** Family and Community Services

**Commencement:** There are various commencement dates for the three Schedules in the Bill and these dates are set out in the Table in **Clause 2** of the Bill. The largest Schedule of the Bill (Schedule 1) commences on 1 January 2003.

## Purpose

To place into the *Social Security Act 1991* (SSA) the activity test and mutual obligation requirements, that currently apply for unemployed jobseekers on newstart allowance (NSA) and youth allowance (YA), so that they will also apply for specified SpB recipients. The SpB recipients who are to be exposed to the activity testing and mutual obligation requirements are those who are holders of a TPV issued for temporary protection, humanitarian or safe haven purposes.

## Background

### SpB is a unique payment

SpB is a unique payment provided under the SSA, as, unlike all other income support payments, much of the conditions for qualification and payment are prescribed in guidelines approved by the Secretary under the SSA. This is unlike all other income support payments provided under the SSA, where the qualification requirements and much of the conditions for payment are set out in the SSA. These qualification requirements set out in the legislation are commonly age, residence, income and asset limits. Individual payments also have other payment specific legislative requirements. Some examples are being a full-time student, unemployed, incapacitated for work, a full-time carer, or a sole parent etc.

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## **Origins and purpose of SpB**

SpB was first introduced along with unemployment benefit and sickness benefit under the *Unemployment and Sickness Benefits Act 1944* and was aimed at persons who could not qualify for those benefits and were also ineligible for age, invalid, widow's or service pensions. It was to be granted '*at the discretion of the Director-General, to a person 'by reason of physical or mental or domestic circumstance, or any other reason, is who unable to earn a sufficient livelihood'*'.<sup>1</sup> On the surface this appears to provide a very wide range of situations that could attract SpB, but in its origins it was agreed that the States would still provide for the unemployable and indigent persons.

This comparatively discretionary nature of the provision of SpB was deliberate. It was aimed at allowing flexibility of provision, recognising the myriad of different and often quite unique circumstances for individuals and small groups in the community, who do not otherwise qualify for one of the mainstream payments under the SSA, but are suffering hardship and in need.

## **SpB - a unique benefit being paid to those not entitled to any other pension/benefit and paid at the discretion of the Secretary**

Since 1944, SpB has been provided in specified types of situations as set out in guidelines prescribed by the Secretary under the SSA. Sub-section 729(1) of the SSA empowers the Secretary to prescribe in guidelines under what circumstances SpB can be paid.<sup>2</sup> SpB does not have other qualification requirements like age, residence, income and asset limits set out in legislation. Rather sub-section 729(1) gives broad powers to the Secretary to prescribe requirements seen as appropriate.

## **Common specified categories of SpB**

The different circumstances in which it is now seen as appropriate to provide SpB have evolved over time. Broadly, SpB has been provided where a person, or class of persons, has been seen as:

- in need of support
- not able to access any other payment
- not being able to provide for themselves
- not being reasonably able to obtain support from any other source, and
- being likely to be in significant hardship without support.

Some of the more common prescribed categories of SpB are set out below. These categories have evolved over time, responding to identified needs of persons in need of support but who cannot otherwise qualify for other payments under the SSA.

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- Claimant in hardship. SpB can be considered if they are:
  - awaiting the determination of a pension/allowance claim where the grant may be delayed
  - waiting for the first payment delivery day, or
  - A newly arrived resident subject to the two year newly arrived resident waiting period and some unforeseen event has resulted in them being unable to support themselves.
- A victim of a natural disaster
- An expectant mother unable to qualify for any other payment and in hardship
- The partner of a person who:
  - is disqualified from NSA or YA owing to involvement in industrial action
  - is imprisoned, on remand or confined in a psychiatric institution
  - chooses not to be employed, or
  - has voluntarily adopted a lifestyle which makes it difficult or impossible for them to provide support.
- A repatriated distressed Australian
- A sponsored resident unable to be supported by their sponsor
- A person not residentially qualified for another payment, eg. an incapacitated person who was disabled prior to arriving in Australia and is yet to serve the 10 year qualifying period for Disability Support Pension
- A carer providing short-term care unable to obtain any other means of support
- Full-time students aged less than 18 who cannot qualify for any other payment
- Full-time student aged under 16 who is also homeless and cannot qualify for any other payment, and
- A dependent child who is a legal Australian resident, but whose parent/guardian is a non-resident.

### **Holders of prescribed subclass of TPV may be paid SpB**

Under guidelines prescribed by the Secretary, set out below are the holders of TPVs who may be paid SpB, even though they are not Australian residents. These guidelines would

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be agreed between the Secretary under the SSA and the Department of Immigration and Ethnic and Indigenous Affairs:

- Subclass 820 - spouse
- Subclass 826 - interdependent
- Subclass 309 - offshore spouse
- Subclass 310 - offshore interdependent
- Subclass 785 - temporary protection
- Subclass 786 - humanitarian concerns
- Subclass 447 - secondary movement (Offshore Entry), and
- Subclass 451 - secondary movement Relocation

For persons provided with one of these TPVs, SpB and access to family assistance is provided, but they are not entitled to any of the range of special settlement services that are provided for people granted permanent residence under the humanitarian migration program, or persons who 'legally' enter Australia and are subsequently granted permanent protection visas. Under migration law any non-citizen in Australia without a visa is required to be detained until they are either granted a visa (which may be a protection visa), or removed from the country. All persons subsequently granted a TPV are held in detention until granted a TPV.

#### **TPV changes - October 1999**

The government introduced a new class of visa called Temporary Protection Visa (TPV) with the passage of the *Migration Legislation Amendment (Temporary Safe Haven Visas) Act 1999*. Bills Digest No. 162 1998-99 refers.<sup>3</sup> The original Act was mainly aimed at Kosovar refugees but use of the new visa classes (that is TPVs) was later expanded for those persons who were unauthorised arrivals and who were assessed as meeting refugee classification requirements. The new visa classes were centred on persons who had arrived as an unauthorised arrival and were found to be a refugee. The TPV is only provided for three years, in the first instance. This contrasts with refugees who were authorised arrivals who are provided with immediate access to a permanent protection visa.

This change was announced by the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon. Mr Phillip Ruddock, MP in a Media Release dated 13 October 1999 titled *Ruddock Announces Tough New Initiatives*.<sup>4</sup> Department of Immigration and Multicultural and Indigenous Affairs Fact Sheet No. 64 - *Temporary Protection Visas* provides a good summary of the visa changes.<sup>5</sup>

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### **TPV changes - September 2001**

Further changes to the issuing of TPVs came into force from 27 September 2001. Briefly, unauthorised arrivals assessed as meeting refugee classification, who, since leaving their home country, have resided for at least seven days in a country where they could have sought and obtained effective protection, will not be able to access a permanent protection visa. They will continue to have access to a three year TPV. Department of Immigration and Multicultural and Indigenous Affairs Fact Sheet No. 64 - *Temporary Protection Visas* provides a good summary of the visa changes.<sup>6</sup>

### **2000-01 Budget - original announcement of the *Unauthorised Arrivals in Australia Package: reducing the incentives for unauthorised arrivals***

In the 2000-01 Budget, the government announced several measures as a part of the *Unauthorised Arrivals in Australia Package*, aimed at reducing the incentives for unauthorised arrivals.<sup>7</sup> One of the measures announced was that recipients of SpB, who were TPV holders, would be required to meet the activity test and other mutual obligation requirements that apply to other allowance recipients of work-force age.<sup>8</sup>

The stated aims of the measure were to:

- Encourage social and economic participation by treating TPV holders of work-force age in a similar way to Australian nationals of work-force age by requiring them to be self-reliant and to fulfil a mutual obligation to the Australian community, and
- To reinforce community support for the humanitarian immigration program and the treatment of these refugees.<sup>9</sup>

The Budget papers indicated that the original package was scheduled to commence from 1 January 2001.<sup>10</sup>

### **2000-01 Budget - projected costs/savings**

For the special benefit activity testing part of the *Unauthorised Arrivals in Australia Package*, the Budget papers projected costs of \$3.982m in 2000-01, \$0.942m in 2001-02, followed by savings of \$1.900m in 2002-03 and \$2.036m in 2003-04.<sup>11</sup>

### **2001-02 Budget - re-announcement of the *Unauthorised Arrivals in Australia Package: reducing the incentives for unauthorised arrivals***

Notwithstanding the announcement of the *Unauthorised Arrivals in Australia Package* in the 2000-01 Budget, no legislation to amend the SSA was presented to the Parliament before the presentation of the 2001-02 Budget. The 2001-02 Budget saw the re-announcement of the SpB measures in the package.<sup>12</sup> The re-scheduled start date was 1 January 2002.<sup>13</sup>

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### **2001-02 Budget - revised projected costs/savings**

The revised package as presented in the 2001-02 Budget had projected costs of \$2.128m in 2001-02, \$4.581m in 2002-03, \$4.228m in 2003-04 and \$3.797m in 2004-05.<sup>14</sup>

### **TPV holders eligible for SpB - how many are there and are any working?**

In an answer to a question by Senator Andrew Bartlett taken on notice by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) it was detailed DIMIA did not possess statistics on the number of TPV holders engaged in employment. DIMIA also detailed that there had been 8 441 TPVs issued to 14 June 2002 and of these Centrelink data shows 4 741 principle applicants were receiving SpB. The remaining 3 700 are either dependants of another applicant, have gained employment or are supporting themselves through other means.<sup>15</sup>

### **Presentation of legislation in September 2002 for a May 2001-02 Budget measure - why the delay?**

This Bill proposes that the SpB measures, that were re-announced in the 2001-02 Budget, are to commence from 1 January 2003. One question that is not addressed in either the second reading speech or in the Explanatory Memorandum attached to the Bill, is the long delay in presenting the Bill. The probable answer to this is the detailed and complex arrangements necessary for the involvement of non-legal resident TPV holders in all of the activities and programs they could be potentially exposed to under activity testing and mutual obligation. This ranges across looking for work, attending a training program, undertaking work search activities prescribed by a contracted Job Network employment placement provider, undertaking paid work experience, participating in a Work for the Dole program, undertaking part or full-time work etc.

Whilst many of these activities present no problems for legal residents in receipt of NSA or YA, the involvement of TPV holders, who are not legal residents, would have required some investigation and examination to ensure there were no legal problems and issues. Many of these activities are directly or indirectly government funded and/or authorised and the engagement on non-legal residents would have been problematic.

Clearly, it is the government's intention to expose this group of non-resident TPV holders to as full a range of activity testing and mutual obligation requirements as possible. This potentially means a very wide range of activities, especially in terms of activities and actions that a Job Network employment placement provider may ask a jobseeker to undertake.

### **SpB payment requirements in legislation**

**Schedule 1** of the Bill runs to some 41 Items and appears to be an extensive piece of legislation for what is likely to be a small group affected. The length of **Schedule 1** is explained by the fact that many of the items mirror the provisions already contained within

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the SSA used for the application of jobseeker activity testing, mutual obligation requirements, breaches and penalties for unemployed jobseekers on NSA and YA.

It is interesting to note that for the first time, a significant amount of detail about the payment conditions attached to the provision of SpB is being placed into the SSA. This is unprecedented. It is probable that the reason for this is, is to ensure the same rigour that applies under these arrangements for NSA and YA recipients, will apply to the SpB recipients.

Whenever adverse decisions can be made in respect of the provision of income support payments, it is far more secure and less open to challenge or variance by courts/tribunals, if the decision is supported by specific legislation, rather than in guidelines attached to legislation. Certainly, guidelines attached to legislation do have the benefits of greater flexibility as they do not need to be examined and passed by the Parliament and are therefore far more readily varied and kept up-to-date. Contrasting with this, where the provision of payments is supported by legislation examined and passed by the Parliament, then this has far more weight and security in terms of application and is far less at risk of challenge or variance by courts/tribunals.

### **Activity testing is currently applied for SpB**

It is not unprecedented for work search activity testing to be applied to certain types of SpB recipients. Generally speaking, SpB recipients who are currently required to look for work are those of working age capable of working. Common examples are those paid SpB under an Assurance of Support, newly arrived residents in the 104 week waiting period for NSA or YA. The activity test requirements are basically the same as for NSA and YA recipients but there are no financial penalties for failing the activity test, as applies with the 6 month payment reduction periods for NSA and YA. However, the Secretary does have the power to cancel SpB in cases where the specified activity testing requirements are not met. All of the SpB work search activity test requirements are set out in the Guide to Social Security Law not in the SSA.<sup>16</sup>

## **Main Provisions**

### Schedule 1

**Item 16** provides for the continuance of activity agreements across the transfer from SpB to YA. The transfer from SpB to YA could only occur after the person has been granted legal permanent residence.

**Item 18** mirrors **Item 16** but applies for transfers from SpB to NSA and the same comments apply.

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**Items 19 and 20** alter the basic qualification section in the SSA that applies for SpB to add for temporary visa holders of certain classes (that is, temporary protection, humanitarian and safe haven), that they have to satisfy extra qualification requirements. Items 19 and 20 further add that other conditions need to be met for the additional qualification requirements to apply. These additional requirements are the ones that also commonly apply to newstart and youth allowance, for example.

**Items 19 and 20** further stipulate that these extra qualification requirements apply only for those claiming SpB on or after 1 January 2003, or, where being paid SpB before that date, are still being paid SpB and reach work-force age after 1 January 2003.

**Items 22 to 25** insert the activity test requirements and penalties for the designated TPV holders and mirrors the activity test provisions already in the SSA for NSA and YA.

**Item 27** provides the additional \$20.80 per fortnight participation supplement also provided to NSA and YA recipients.

**Subdivision C** inserts the rate reduction provisions for work search activity test breaches that also apply for NSA and YA recipients. **Subdivision D** inserts the rate reduction provisions for administrative breaches that also apply for NSA and YA recipients.

## Schedule 2

**Schedule 2** of this Bill amends the activity test and mutual obligation provisions set out in **Schedule 1** of the Bill. The reason these amendments are necessary is that the commencement of **Schedule 2** amendments is contingent on the passage of the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002* (the AWT Bill). The AWT Bill is currently before the Parliament and Bills Digest No. 159 2001-02 refers.<sup>17</sup> **Schedule 2** is designed to commence immediately after the commencement of Schedule 5 of the AWT Bill (1 July 2003) and to ensure that activity testing requirements will be consistent for SpB and NSA recipients.

## Schedule 3

**Schedule 3** makes minor legislative housekeeping amendments arising from the passage of the *Youth Allowance Consolidation Act 2000*.

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## Concluding Comments

The feature of this Bill is **Schedule 1**, proposing to place into the SSA provisions to ensure that TPV holders who are unauthorised arrivals have to comply with the work search activity test and mutual obligation requirements of NSA and YA to qualify for SpB.

## Endnotes

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- 1 T. H. Kewley, *Social Security in Australia 1900-72*, 2nd edition, Griffin Press Adelaide, 1972, p. 269.
- 2 PART 2.15-SPECIAL BENEFIT  
*Division 1-Qualification for and payability of special benefit*  
*Subdivision A-Qualification*  
**Qualification for special benefit**  
729.(1) A person is qualified for a special benefit for a period if the Secretary determines, in accordance with subsection (2), that a special benefit should be granted to the person for the period.  
Note: special benefit is a discretionary benefit and is available only to a person who is not able to get any other income support payment (see paragraphs (2)(a) and (b) below).
- 3 [Bills Digest No. 162 1998-99, Migration Legislation Amendment \(Temporary Safe Haven Visas\) Bill 1999.](#)
- 4 [Ruddock Announces Tough New Initiatives, Media Release No. MPS 143/99, The Hon Minister for Immigration and Multicultural and Indigenous Affairs, the Hon. Mr Phillip Ruddock, MP, 13 October 1999.](#)
- 5 [Department of Immigration and Multicultural and Indigenous Affairs Fact Sheet No. 64 - Temporary Protection Visas.](#)
- 6 *ibid.*
- 7 2000-01 Budget, Budget Paper No. 2 - Budget Measures, pp. 132–135.
- 8 2000-01 Budget, Budget Related Paper No. 1.8, Family and Community Services, Portfolio Budget Statements, p. 171.
- 9 *ibid.*
- 10 *ibid.*
- 11 *ibid.*
- 12 2001-01 Budget, Budget Related Paper No. 1.8, Family and Community Services, Portfolio Budget Statements, p. 201.
- 13 *ibid.*

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- 10 *Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002*

14 *ibid.*

15 Examination of Budget Estimates 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio, Additional Information Volume 3, August 2002, Question No. 60, p. 948.

16 **Guide to Social Security Law**

**3.7.5.10 - What is the SpB Activity Test?**

**Summary**

The SpB activity test requires SpB recipients who are capable of looking for work to do so. Requiring 'capable' SpB recipients to meet the SpB activity test means that Centrelink can be sure that they are actively looking for work. The SpB activity test is part of the mutual obligation to the community that all people receiving income support need to fulfil. The SpB activity test recognises that the primary focus for SpB recipients who are capable of working should be finding paid work. It also ensures that SpB recipients are endeavouring to earn a sufficient livelihood and become self supporting.

**Requirements of the SpB activity test**

SpB recipients who are considered capable of looking for and undertaking work must meet the requirements of the SpB activity test by:

- registering as a job seeker with Centrelink and completing a 'Looking for work' form, AND
- accepting referral to and enrolling with at least one Job Network member, AND
- demonstrating that they are actively looking for suitable work by reporting four (4) work efforts a fortnight on an 'Application for payment' form (SU19), one of which must be by way of contact with a Job Network member.

SpB recipients, including those subject to the SpB activity test, are not required to enter into PFWAs, are not compelled to complete a Job Seeker Diary and are not required to complete Employer Contact Certificates. SpB recipients may choose to undertake voluntary work however, they will still be required to meet all requirements of the SpB activity test as well.

**Suitable work opportunities**

As with NSA recipients, SpB recipients should not restrict their job search to their traditional occupations or work that they would prefer to do. They should be seeking and accepting any suitable employment. Customers are not expected to look for or accept unsuitable work.

- 17 [Bills Digest No. 159 2001-02, Family and Community Services Legislation Amendment \(Australians Working Together and other 2001 Budget Measures\) Bill 2002.](#)

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