



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 47 2002–03

Family and Community Services Legislation
Amendment (Budget Initiatives and Other
Measures) Bill 2002

ISSN 1328-8091

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Published by the Department of the Parliamentary Library, 2002

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Family and Community Services Legislation Amendment
(Budget Initiatives and Other Measures) Bill 2002

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14 October 2002

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Family and Community Services Legislation Amendment (Budget Initiatives and Other Measures) Bill 2002

Date Introduced: 26 September 2002

House: House of Representatives

Portfolio: Family and Community Services

Commencement: Schedules 1 and 2 commence on 1 July 2003 and the remaining provisions on the day on which the Act receives Royal Assent.

Purpose

The Bill proposes to replace the current nominee provisions in the Social Security Law with more comprehensive provisions that cover matters presently dealt with administratively.

The Bill also streamlines the provisions relating to access to Carer Payment for the carers of profoundly disabled children, to allow more people caring for terminally ill children to qualify.

Background

Nominees

In certain situations Social Security payments are paid to someone else on behalf of the person entitled to the payment. This occurs in cases where:

- the entitled person is incapable of managing their own financial affairs
- another person has a power of attorney for them
- they are employed by a Supported Employment Agency (formerly called a sheltered workshop), or
- they are entitled to Youth Allowance as an under 18 year old dependent.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

There are also situations where the payment continues to be paid to the entitled person, but someone else undertakes to deal with their correspondence with Centrelink. In this case the entitled person continues to sign any forms or notifications of changed circumstances.

These nominees are expected to keep records of how the money they receive is spent in case allegations of misuse are made. Nominees handling correspondence must be aware of the implications if Centrelink is not informed of changes of circumstances.

Often nominees are family members acting for elderly, disabled or dependent relatives. In other cases they are corporate bodies such as Supported Employment Agencies, Nursing Homes or drug and alcohol rehabilitation facilities. Sometimes they are people with less direct connection to the entitled person such as a manager of a boarding house. In all cases where incapacity to manage their own affairs is the reason for appointing a nominee, sufficient evidence of the need for a nominee is required. A formal guardianship arrangement may be in place or medical or social worker reports are available.

At present nominee arrangements where payment is made to a nominee are covered by the legislation, but correspondence nominees are not. The proposed changes would provide a more comprehensive set of provisions that distinguish between payment and correspondence nominees set out the duties of nominees and include present administrative practices.

The financial impact of the changes is expected to be negligible according to the Explanatory Memorandum to the Bill.

Profoundly Disabled Children who are Terminally Ill

Eligibility for Carer payment was extended to those caring for profoundly disabled children in July 1998. These children were those who required the most intensive care. A review of the operation of the measure was undertaken drawing on the views of interested community groups and a report was published by the Department of Family and Community Service (F&CS) in December 1999. The *Review of the Measure to Extend Carer Payment Eligibility to Carers of Children with a Profound Disability: Final Report* contained a number of recommendations for change to the measure. The Government response to the report (7 March 2000) accepted some of these recommendations including one relating to terminally ill children. The Report recommended that:

the 'terminally ill' criteria be amended to recognise those children who continue to receive active treatment up to the time of their death and to reduce the intrusiveness of the application process.¹

This recommendation was made because the existing legislation limiting access to carers of terminally ill children who no longer receive active care but receive only palliative care is too restrictive and may prevent payment to carers of some terminally ill children. Also the present requirements are potentially intrusive and traumatic for the child and the family.²

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The financial impact of the changes is expected to be about \$1.3 million per annum according to the Explanatory Memorandum to the Bill.

Main Provisions

Item 9 of Schedule 1 inserts a **new Part 3A** into the *Social Security (Administration) Act 1999* concerning nominees. The terms 'correspondence nominee' and 'payment nominee' are defined (**proposed section 123A**).

Proposed Division 2 includes provisions relating to appointment of nominees by the Secretary, and revocation of appointments where changed circumstances affect the ability of nominees to act as nominees.

Proposed Division 4 sets out the functions and responsibilities of nominees.

Proposed Division 5 protects both the nominee and the principal from liability for the actions of the other. The duties of the nominee towards the principal are also set out.

Item 12 of Schedule 2 inserts a **new Part 8B** into the *A New Tax System (Family Assistance) (Administration) Act 1999* along the same lines as the changes in **Schedule 1**.

Item 3 of Schedule 3 inserts a **new subsection (2A)** after subsection 197(2) of the *Social Security Act 1991*. This provision provides an alternative avenue for the carer of a terminally ill child to qualify for Carer Payment to that provided in subparagraph 197(2)(c)(vi). The issue of palliative or active care is avoided and the life expectancy and care needs of the child are the main considerations.

Concluding Comments

In terms of the proposed amendments to the SSA for nominee arrangements, the Bill is largely formalising into legislation what has been conducted administratively up to now. The proposed amendments to carer payment are beneficial.

Endnotes

- 1 *The Review of the Measure to Extend Carer Payment Eligibility to Carers of Children with a Profound Disability: Final Report*, Department of Family and Community Services, December 1999, p. 3.
- 2 *ibid.*, pp. 10–11.

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