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Bills Digest
No. 43 2003–04

Family and Community Services and Veterans'
Affairs Legislation Amendment (2003 Budget and
Other Measures) Bill 2003

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Family and Community Services and Veterans' Affairs
Legislation Amendment (2003 Budget and Other
Measures) Bill 2003

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Social Policy Group
8 October 2003

Contents

Purpose.	1
Background.	2
Schedule 1 – Excluding payments for National Socialist persecution from income	2
Introduction	2
Cost/Savings.	2
Comment	2
Schedule 2 – Access to information	2
Introduction	2
Costs/savings	3
Pilot programs announced in the 2001-02 Budget	3
Data matching has been in place since the early 1990s.	3
DMP performance.	4
Schedule 3 – Assurances of support	4
Savings/costs	4
Assurance of support.	4
Assuror	5
Assuree	5
AoS bond.	6
Assuror means test	6
Discretionary AoS	7
Payment of special benefit.	7
Substantial change in circumstances for SpB	7
Recoverable amounts under a AoS.	8
Recent changes to Migration legislation - regulations requiring sponsors for visa classes	9
Recent changes to Migration legislation – Contributory Parents Migration Scheme	9

Quotas for visa class applications	9
SpB is a unique payment	10
Origins and purpose of SpB	10
SpB - a unique benefit being paid to those <u>not</u> entitled to any other pension/benefit and paid at the discretion of the Secretary	11
Numbers of AoS cases on SpB	11
ANAO 1999 Audit of SpB	11
Comment	12
Schedule 4 – stopping payment for people absent from Australia without notice	13
Cost/savings	13
Current process where Centrelink becomes aware of a departure overseas	13
Schedule 5 – Comparable foreign payment debt recovery	14
Schedule 6 - reducing portability period	14
Cost/savings	14
Current arrangements	15
DSP absences	18
FTB absences	18
Schedule 7 – Technical corrections	18
Main Provisions	19
Schedule 1 – Excluding payments for National Socialist persecution from income	19
Schedule 2 – Access to information	19
Schedule 3 – Assurances of support	19
Schedule 4 – stopping payment for people absent from Australia without notice	19
Schedule 5 – Comparable foreign payment debt recovery	20
Schedule 6 - reducing portability period	20
Concluding Comments	20
Endnotes	20

Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003

Date Introduced: 18 September 2003

House: House of Representatives

Portfolio: Family and Community Services, Veterans' Affairs and Immigration and Multicultural and Indigenous Affairs

Commencement: Various dates for the different provisions are set out in the Table in **Item 2** of the Bill.

Purpose

This Bill is colloquially referred to as an omnibus Bill, as it contains various unrelated proposed amendments to a number of Commonwealth Acts. The main acts proposed to be modified are the:

Social Security Act 1991 (SSA)

Social Security (Administration) Act 1999 (SSAA)

Family Assistance Act 1999 (FAA)

Family Assistance (Administration) Act 1999 (FAAA)

Migration Act 1958 (MA), and

Veterans' Entitlements Act 1986 (VEA).

Most proposed amendments arise from various initiatives announced in the 2003-04 Budget. The Bill also proposes to make several small non-Budgetary changes.

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Background

As there is no central theme to the amendments proposed by this Bill, a background to each Schedule is presented below.

Schedule 1 – Excluding payments for National Socialist persecution from income

Introduction

The government announced in the 2003-04 Budget, a proposal to exempt from income testing, compensation payments from all countries to Holocaust victims.¹ Currently only compensation payments to Holocaust victims from Germany and Austria are exempt from the income test.

Cost/Savings

The anticipated cost of this proposed legislative change as presented in the Budget papers is \$0.215 million in 2003-04, \$0.102 million in 2004-05, \$0.107 million in 2005-06 and \$0.122 million in 2006-07.² This is a total of \$0.6 million over four years so the cost of this proposal is relatively small, mainly due to there not being many Holocaust victims still alive today.

Comment

This is beneficial legislation and will provide some consistency of treatment under the income tests in the SSA and the VEA for payments to Holocaust victims.

Schedule 2 – Access to information

Introduction

The amendments proposed in this Schedule are in part to restore access for the Child Support Agency (CSA) to financial transaction information held in the AUSTRAC data base. This access was lost when the administration of the CSA was transferred from the Australian Taxation Office to the Department of Family and Community Services with the 1998 administrative changes.

The government announced in the 2003-04 Budget, a proposal to expand the use of data matching to a greater range of data bases.³ The proposal is to expand data matching to data bases not currently used and this requires some amendments to the individual legislation governing the use of the various different data bases. The legislation proposed to be amended is the:

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- Excise Act 1901
- Fringe Benefits Tax Assessment Act 1986
- Product Grants and Benefits Administration Act 2000
- Taxation Administration Act 1953, and
- Financial Transaction Reports Act 1988.

Costs/savings

The Budget papers present total net savings of \$216.92m over four years made up of \$26.504 million in 2003-04, \$59.672 million in 2004-05, \$64.606 million in 2005-06 and \$66.145 million in 2006-07.⁴ Not all of these savings are made up of the savings anticipated from increased access to data bases for data matching. The savings also include an extra 125 000 data matching reviews each year and an increase in the number of asset valuations by 20 000 a year.⁵ A separate savings figure for the proposed expanded data matching is not provided.

Pilot programs announced in the 2001-02 Budget

The government originally announced several Data-matching Program (DMP) pilot programs in the 2001-02 Budget.⁶ This proposal builds on the lessons learnt from the conduct of those DMP pilot programs.

Data matching has been in place since the early 1990s

The DMP was introduced in the 1990-91 Budget under the *Data-matching Program (Assistance and Tax) Act 1990*. Through an automated process which compares and checks data, it brings together information from key Commonwealth agencies to:

- detect instances where people are possibly receiving incorrect or incompatible payments of Commonwealth benefits
- verify with the Australian Taxation Office (ATO) income details disclosed to the agencies which made the income support payments, and
- detect instances of tax evasion.

As originally enacted, the *Data-matching Program (Assistance and Tax) Act 1990* contained a sunset clause which would have taken effect in January 1993, giving the DMP an initial life-span of two years. There was a succession of data-matching reports to the parliament and extensions of the sunset clauses during the 1990s. The purpose of the

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reporting and sunset clauses was to bring the DMP back to the parliament for review and examination. Eventually the sunset clause in the original 1990 act was repealed with the passage of the *Data-matching Program (Assistance and Tax) Amendment Act 1998*. Bills Digest No. 229 1997-98 refers.⁷

DMP performance

In an answer to a question on notice (No. 166) provided on 8 March 1999, the then Minister for Family and Community Services Senator the Hon. Jocelyn Newman detailed that the DMP, which had commenced operations in April 1991, had achieved savings of \$919.3 million up until October 1998.⁸

In the 2001-02 Centrelink Annual Report, it was reported that 36 per cent of all reviews conducted resulted from data matching information.⁹ So the DMP is now a major part in the process of detecting incorrect and fraudulent payments. In the 2001-02 DMP annual report, it was recorded that for the 2001-02 financial year that the cost of running the DMP was \$16.3 million, reaping returns from debts repaid of \$104.2 million, for a net saving of \$87.8 million.¹⁰

Schedule 3 – Assurances of support

The government announced in the 2003-04 Budget proposed changes to the legislative and administrative arrangements for assurances of support (AoS).¹¹ The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) will continue to determine which new migrants are subject to an AoS. However, once the determination is made the AoS will be issued under the *Social Security Act 1991* (SSA) and administered by Centrelink.

Savings/costs

It is estimated the new arrangements will generate a net reduction in expenditure of \$11.6 million over four years made up of \$2.133 million in extra costs for the 2003-04 year, then followed by savings of \$3.940 million in 2004-05, \$4.462 million in 2005-06 and \$4.886 million in 2006-07.¹² These estimated savings are claimed to be realised by tighter administration of the AoS scheme with the legislation contained within the SSA and delivered by Centrelink.¹³ Some savings are also claimed with streamlining of the role of DIMIA in the AoS processes.¹⁴

Assurance of support

Some categories of Australia's migration program require an AoS to be lodged with the Australian Government before an application to migrate can be granted. Without the undertaking of the AoS, the immigrant would not be otherwise able to gain legal entry to

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Australia.¹⁵ The AoS is a legal commitment by a person (not necessarily the sponsor) to support the assuree during their qualifying period for welfare assistance in Australia. This qualifying period for a newly arrived migrant of working age is usually two years. For a newly arrived migrant of age pension age the pension qualifying period is ten years.¹⁶

The AoS is a commitment to the government to repay certain welfare payments paid to migrants during their first two years (or ten years) after arriving in Australia, (or after the grant of the relevant visa, whichever happens later). Under the contributory parent category, it will be during the first ten years after the commencement of the assurance period, (ten years being the qualifying residence period for the age pension). The signing of the AoS enables the welfare costs in the qualifying period for the immigrant to be met by an Australian permanent resident or citizen, rather than by the Australian community.¹⁷

Assuror

Generally, for a person to be accepted as an assuror they should be:

- an Australian citizen, Australian permanent resident or eligible New Zealand citizen over the age of 18
- usually resident in Australia, and
- financially able to support the sponsored/nominated person/s and repay certain welfare payments should they be made to the people covered by the AoS.

An assurance can be provided by a third party who is not the sponsor/nominator. Individual assurers are limited to providing an AoS for no more than two adults. It is possible for two or three people to lodge an AoS for one person (assuree) and each assuror will be jointly and severally liable for any debt incurred by the assuree and recovered by Centrelink.

Potential assurers are assessed to ensure that they are in a financial position to meet the undertaking made in signing the AoS. They are assessed to ensure that they will be able to repay to the Australian Government any recoverable payments paid to the migrant during the first two (or ten) years in Australia. The intention is to protect potential assurers from financial hardship in the event that an AoS debt is recovered. Where it is assessed the assuror might not be able to meet the financial obligation of supporting the assuree and repaying the debt, the AoS is denied.

Assuree

An AoS applies to certain visa classes which require the applicant to be sponsored (or nominated) by an Australian citizen or permanent resident. An AoS is required (or mandatory) for applicants in the following visa categories:

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- Skilled – Australian Sponsored or Skilled – Designated Area Sponsored
- Skilled – Australian Sponsored Overseas Student or Skilled Designated Area Sponsored Overseas Student
- Skilled Australian Sponsored New Zealand Citizen or Skilled Designated Area Sponsored New Zealand Citizen
- parent
- contributory parent
- aged dependent relative
- last remaining sibling or non-dependent child outside Australia
- carer, and
- unmarried orphan relative.

AoS bond

Assurers must lodge a refundable bond of \$3500 for the principal applicant and \$1500 for additional adults on the same application with the Commonwealth Bank of Australia. The bond is both a disincentive to welfare benefit claims and makes funds available for debt recovery purposes if payments are made. The bond is held by the Commonwealth Bank for the two year AoS period and is released by Centrelink at the end of that time, less any amount needed to repay recoverable welfare payments.

The AoS bond under the contributory parent category is \$10 000 for the principal applicant and \$4000 for any additional adult applicants. The bond will be held for 10 years by the Commonwealth Bank and is released by Centrelink at the end of that time.

Assuror means test

The assurer must be able to demonstrate:

- sustained minimum taxable income over the two financial years immediately prior to giving the assurance, as evidenced by Income Tax Assessment Notices issued by the Australian Commissioner of Taxation, and
- evidence of continuing taxable income at or above the minimum income level.

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An assurer is required to have a minimum annual income of \$31 755, evidenced by their income tax assessment notice for the last two years immediately before the AoS is given. This amount is increased by:

- \$2000 for each dependent adult and \$624 for each child in the assurer's family (except the first child which is already covered by the minimum income amount),and
- \$2000 for each adult and \$624 for each child included in the migration application.

Discretionary AoS

In most other visa subclasses, a discretionary AoS may be requested by DIMIA if an applicant is assessed as being at risk of becoming a charge on Australia's welfare system. Acceptance of a discretionary AoS generally requires that the assurer has not been in recent receipt of social security benefits and has an income above the eligibility rate for the Australian Government's low-income Health Care Card (HCC). A bond is not required in discretionary AoS cases.

Payment of special benefit

For a newly arrived resident migrant sponsored into Australia under an AoS, they are to serve the newly arrived resident waiting period of 2 years before they can qualify for an income support payment. For persons over age pension age the qualifying period for the age pension is 10 years. In exceptional circumstances, special benefit (SpB) may be payable inside the 2 or 10 year period but only where there has been a substantial change in circumstances that was not foreseeable.

Substantial change in circumstances for SpB

Sponsored residents must have made every effort to get adequate support from their sponsor before they can qualify for SpB. It is only in cases where there has been some unforeseen and substantial change in circumstances, after the AoS was entered into, that now prevents the sponsor from supporting the newly sponsored migrant, that SpB can be paid.¹⁸ A sponsored resident would have suffered a substantial change in circumstances if their sponsor had:

- died and there is no ongoing financial support provided for the new resident
- started receiving disability support pension or carer payment or a social security benefit, or would receive the benefit but for a waiting or deferment period
- been declared bankrupt or has left Australia permanently or for an indeterminate period that the delegate considers likely to be longer than 3 months. The sponsor did not leave provision for ongoing support for the newly arrived resident

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- become a long-term prisoner, or is confined long-term to a hospital, psychiatric institution or nursing home and is unable to provide support to the newly arrived resident, or
- been notified as a missing person who cannot be located by police.

A sponsored resident would have suffered a substantial change in circumstances if the business where the newly sponsored resident was employed:

- went into receivership
- ceased to operate, or
- their employment was terminated and they could not obtain alternative employment.

A sponsored resident would have suffered a substantial change in circumstances if they:

- were a victim of domestic violence and the abuse is substantiated by documentary evidence from police, an apprehended violence order or a medical report. If the person has evidence that they have been granted permanent residence on the basis that DIMIA is satisfied that they are a victim of domestic violence, then no further evidence is required
- find that a confirmed offer of employment, arranged before their arrival in Australia, has been withdrawn after they arrive, or
- were subject to workplace harassment, sufficient for them to leave the employment, and they cannot obtain alternative employment. These claims would need to have been reported to the relevant anti-discrimination body, and the complaint upheld or still being pursued by that body. Payment of SpB should not be granted if the complaint or appeal is not upheld.

Recoverable amounts under a AoS

Where SpB is paid and an AoS is in place, any amounts of SpB paid to the sponsored resident, is a recoverable debt against the assurator. Sub-section 23(1) of the SSA refers.¹⁹ The following welfare payments are recoverable under the AoS scheme:

- Newstart Allowance
- Partner Allowance
- Youth Allowance
- Austudy payment

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- Mature Age Allowance
- Widow Allowance
- Parenting Payment (Partnered)
- Special Benefit, and
- Crisis Payment

Recent changes to Migration legislation - regulations requiring sponsors for visa classes

The government recently introduced legislation covering the sponsorship of migrants with the *Migration Legislation Amendment (Sponsorship Measures) Bill 2003*. Bills Digest No. 177 2002-03 refers.²⁰ The Bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs and it reported on 12 August 2003.²¹ The Bill was passed by the Senate with amendment on 11 September 2002. The Bill provided legislation so that regulations can be made requiring sponsorship for all visas (not just temporary visas) but does not impose standardised undertakings across all types of visas.

Recent changes to Migration legislation – Contributory Parents Migration Scheme

There have been recent changes to the AoS rules for the sponsorship of parents into Australia. The changes occurred with the passage of the *Migration Legislation Amendment (Contributory Parents Migration Scheme) Act 2002*. Bills Digest No. 98 2002-03 refers.²² One of the main changes with the passage of the Bill was the extension of the bond period for parent class applications from 2 to 10 years. This is spelt out in DIMIA Fact Sheet No. 34:

However, the Assurance of Support bond under the contributory parent category is \$10,000 for the principal applicant and \$4,000 for any additional adult applicants. The bond will be held for 10 years by the Commonwealth Bank and is released by Centrelink at the end of that time.²³

Quotas for visa class applications

In the context of the potential payment of SpB and debts being created, it is relevant to note a number of visa classes in the Family Stream are subject to capping. This means that once the number of visas set by the Minister for a visa class for that program year has been reached, no further visas can be granted in that class in that program year. DIMIA Fact Sheet No. 21 – Managing the Migration Program.²⁴ The Parent visa classes are subject to capping and in the 2002-03 Migration Program there are 500 Parent places

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available worldwide. Once all the legal requirements for the grant of a Parent visa are met, applications are placed in a queue for visa grant.

On 1 July 2003, there were about 23 210 people who had lodged applications for Parent visas. Of these, approximately 16 400 were in the queue. The offshore component of this pipeline comprises about 17 140 people while 6070 are in the onshore component. As at 1 July 2003, applicants for a Parent visa subclass 103 with a queue date on or before 30 November 1999 are eligible to be processed for a visa grant in 2003-04. The equivalent queue date for the Aged-Parent visa subclass 804 is 31 October 2000.²⁵

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 legislation 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 a person who is full-time student, or is unemployed, or is incapacitated for work, or is a full-time carer, or is a sole parent etc.

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'.²⁶

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 very 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. This is still the case today with the vast majority of special benefit payments provided under guidelines prescribed by the Secretary. There are a few minor exceptions to this, with the work search activity test requirements for special benefit paid to temporary protection visa holders required to look for work, now contained within

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the SSA. This is as a result of the passage of the *Family and Community Services Legislation Amendment (Special Benefit Activity Test) Act 2002*. Bills Digest No. 46 2002-03 refers.²⁷

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.²⁸ 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.

Numbers of AoS cases on SpB

The latest readily available information on the number of SpB cases is from the Family and Community Services publication *Income Support Customers: a statistical overview 2001*. As at June 2001 there were a total of 12 495 SpB recipients in all categories and of these 5669 (45.5 per cent) were in the category “*not residentially qualified for age pension*”.²⁹ While some of these 5669 would have been granted residency before turning age pension age, the vast majority (probably 90 per cent or more) would have been sponsored under an AoS after having turned age pension age and are awaiting the accumulation of 10 years residency to qualify for the age pension.

The same publication also detailed there were 59 SpB cases being paid under an AoS, being those inside the two year sponsorship period.³⁰ This table was compiled when the AoS sponsorship period was 2 years, even for those of age pension age and before the 10 year sponsorship rules were introduced with the passage of the *Migration Legislation Amendment (Contributory Parents Migration Scheme) Act 2002*.³¹ See *Recent changes to legislation – Contributory Parents Migration Scheme* above.

ANAO 1999 Audit of SpB

In an Australian National Audit Office (ANAO) audit of SpB report of 22 November 1999 (Audit Report No 20 1999-2000),³² the ANAO reported:

- 41.7 per cent of SpB new claims were incorrectly assessed
- 22.1 per cent of SpB new claims were not full assessed casting doubt on the new claim assessment, and
- a high proportion of assessments failed to meet a range of other requirements under the SSA and the Guide to the SSA.

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At point 2.48 of the ANAO report it was reported there were cases they examined where there was insufficient or conflicting evidence as to whether the customer was a newly arrived resident with an assurance of support from a sponsor, or an insufficient assessment had been made by Centrelink of the sponsor's ability to support the customer.³³

It may be that the government thinks improvements in SpB decision making will follow with the placement of the AoS rules and requirements in legislation, rather than just in guidelines attached to legislation.

Comment

The proposal is to place in the SSA, the SSAA and the MA for the first time all of the rules and regulations for the delivery and administration of the AoS scheme. In terms of the usual rules governing the payment of SpB, the proposal to place all of the rules to govern the delivery of SpB in AoS cases in the SSA, the SSAA and the MA is unique.

Hitherto, the rules governing the delivery of SpB paid under an AoS have not been contained within legislation, rather in guidelines under the MA and in guidelines attached to the SSA. As explained by the Explanatory Memorandum, the purpose of placing in legislation all the rules to govern the provision of SpB is to "*improve the operation of the AoS scheme*".

One of the flaws or Achilles heel of the current arrangements is that DIMIA does not have to wear the consequences of its decision making in the AoS scheme. Currently, if DIMIA allows a person in as a newly arrived sponsored migrant under an AoS, and then the assessor is later unable to meet their AoS obligations and provide for the assuree during the sponsorship period, it is Centrelink who receives the claim for assistance and then has to make a determination if SpB should be provided and has to recover any debt created. These proposed changed arrangements of placing the scheme rules in legislation do not alter that fundamental flaw in the process. It will still be DIMIA who takes and assesses claims under an AoS and Centrelink who will pick up the pieces where the sponsor cannot honour their commitment. The enforcement of sponsorship agreements and the chasing of debts arising from SpB payments will become even more of an issue now that the sponsorship/debt enforcement period for parent migration is now 10 years not 2 years.

In a Ministerial Statement of 3 December 2002, titled *Managing Migration*,³⁴ the then Minister for Immigration and Multicultural and Indigenous Affairs, the Hon. Mr Philip Ruddock, MP highlighted:

Australia has been built on settlement from other countries. In many ways this has determined the very nature of contemporary Australian society:

The six million migrants who have come to Australia since World War II represent 150 different nationalities, 200 different languages and practice more than 70 religions.

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Australia is one of only a few countries in the world that have operated a planned immigration program for over 50 years, and which has an ongoing humanitarian program which provides for 12,000 new places a year.

Our immigration policies are underpinned by the following essential core values:

First, migrant selection is strictly non-discriminatory as far as matters such as race, religion, colour or ethnicity are concerned.

Secondly, Australians can be reunited in Australia with their non-Australian partners or dependent children, and in time those persons can become Australian citizens.

These comments highlight the need for an AoS type program under long-standing and current migration program. Whether the proposed arrangements to place much more rigour into the administration and delivery of the AoS program, by placing the requirements into legislation and in particular the SSA will be sufficient remains to be seen. There is still the fundamental problem of DIMIA assessing and approving AoS claims and Centrelink picking up the pieces by providing SpB and pursuing debts after the assessor fails to honour their commitments under an AoS.

Schedule 4 – stopping payment for people absent from Australia without notice

The government announced in the 2003-04 Budget a proposal to place in legislation the power to immediately suspend or cancel payment where Centrelink becomes aware a person has departed Australia without notifying Centrelink.³⁵

Cost/savings

It is anticipated this change will realise savings of \$9 million over four years and cost an extra \$5.8 million in administrative costs. These savings and administrative costs as presented in the Budget papers are included with the proposals to cancel payments to those suspected of being involved in terrorist activities overseas and to recover debts arising from the receipt of a foreign income lump sum from both members of a partnered couple.³⁶

Current process where Centrelink becomes aware of a departure overseas

Currently, an income support recipient paid under the SSA or a recipient of Family Tax Benefit (FTB) paid under the *Family Assistance Act 1999* (FAA) must notify Centrelink of an intention to leave Australia for overseas. For SSA payments sections 67 and 68 of the SSAA refers.³⁷ For FTB, section 25 of the *Family Assistance Administration Act 1999* (FAAA) refers.³⁸ Because of the temporary portability rules allowing payment for temporary absences up to 26 weeks, currently where Centrelink becomes aware a person has left Australia, and the recipient did not notify Centrelink prior to departure, the

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legislation does not empower a suspension or cancellation of payment unless Centrelink is aware there has been a change in circumstance meaning the person is no longer qualified.

With data matching between DIMIA and Centrelink now identifying payment recipients who depart Australia, it is now far more common for Centrelink to be come aware a person has departed overseas, even though they have not informed Centrelink prior to departure. This proposal will empower Centrelink to suspend payments pending the return of the recipient from overseas and allow a review of entitlement during the absence, up to the maximum allowable period, currently 26 weeks.

This proposal should be read in conjunction with the proposal to reduce the temporary portability period from 26 weeks to 13 weeks contained in **Schedule 6**.

Schedule 5 – Comparable foreign payment debt recovery

This proposal was announced in the 2003-04 Budget along with the proposal in **Schedule 4**.³⁹ Currently, only where a lump sum arrears payment is received from a country with which Australia has a social security agreement can the payment be treated as income and a debt raised and recovered for the past period for which a payment under the SSA has already been paid.

This proposed amendment to the SSA will mean all lump sum arrears payments received from all overseas countries, both agreement and non-agreement countries, will be treated the same. The proposed changes appear to be very similar to the changes contained in the *Family and Community Services Legislation Amendment (Further Simplification of International Payments) Act 2002*. Bills Digest No. 96 2001-02 refers.⁴⁰ That Act contained amendments to the SSA to standardise the recovery of arrears from foreign countries.

Schedule 6 - reducing portability period

The government announced in the 2003-04 Budget a proposal to halve the period of temporary payment outside Australia for most pensions and allowances from 26 down to 13 weeks.⁴¹ It is not proposed to alter the current arrangements for age pension, wife pension or widow B pension.

This proposal should be read in conjunction with the proposal in **Schedule 4** - stopping payment for people absent from Australia without notice.

Cost/savings

The Budget papers estimate this proposal will realise savings of \$15.3 million over four years in social welfare payments. The administrative costs are anticipated to be \$11.2 million over four years. The costs/savings are estimated to be made up of an extra cost of

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\$3.096 million in 2003-04, followed by savings of \$0.055 million in 2004-05, \$3.497 million in 2005-06 and \$3.664 million in 2006-07.⁴²

The extra administrative costs arise from the greater number of cases that will need to be dealt with being absent from 13 or more weeks as opposed to those absent for 26 or more weeks.

Current arrangements

For most income support payments provided under the SSA, payment can be made for temporary absences overseas for up to 26 weeks. Notable exceptions are newstart allowance, sickness allowance, special benefit and youth allowance to an unemployed jobseeker which are generally not payable where the recipient is outside Australia, except in rare prescribed circumstances. The current portability of payments is set out in section 1217 of the SSA - see table below.

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Portability of social security payments

Item	Payment	Person	Absence	Maximum portability period
1	Age pension	All persons	Any absence	Unlimited period
2	Disability support pension	Severely disabled person	Any absence	Unlimited period
3	Disability support pension	Person other than severely disabled person	Any absence	26 weeks
4	Wife pension	Entitled person	Any absence	Unlimited period
5	Wife pension	Person other than entitled person	Any absence	26 weeks
6	Carer payment	All persons	Any temporary absence	26 weeks
7	Bereavement allowance	All persons	Any absence	Unlimited period
8	Widow B pension	Entitled person	Any absence	Unlimited period
9	Widow B pension	Person other than entitled person	Any absence	26 weeks
10	Widow allowance	All persons	Any temporary absence	26 weeks
11	Parenting payment	All persons	Any temporary absence	26 weeks
12	Youth allowance	Person other than person undertaking full-time study	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	26 weeks
13	Youth allowance	Person undertaking full-time study	Any temporary absence	26 weeks (but see also section 1218)
14	Austudy payment	All persons	Any temporary absence	26 weeks (but see also section 1218)

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Item	Payment	Person	Absence	Maximum portability period
15	Newstart allowance	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	26 weeks
16	Mature age allowance and mature age partner allowance under Part 2.12A	All persons	Any temporary absence	26 weeks
17	Mature age allowance under Part 2.12B	All persons	Any temporary absence	26 weeks
18	Sickness allowance	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	26 weeks
19	Special benefit	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	26 weeks
20	Partner allowance	All persons	Any temporary absence	26 weeks
21	Carer allowance	All persons	Any temporary absence	26 weeks
22	Mobility allowance	All persons	Any temporary absence	26 weeks
23	Telephone allowance	All persons	Any temporary absence	26 weeks

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DSP absences

There are provisions presented in this proposal to allow the discretionary payment of disability support pension (DSP) for periods longer than 13 weeks in special circumstances. This would be on a case-by-case basis where the DSP recipient:

- is severely disabled
- is terminally ill
- the absence is or will be permanent, and
- the purpose of the absence is to:
 - be near a near family member, or
 - to return to the person's country of origin.

This is a tightening of the current arrangements where a severely disabled person can be paid DSP for any period overseas.

FTB absences

Under current arrangements, where a FTB recipient or child is absent for more than 26 weeks, only the base rate of FTB-A is payable. This base rate can be payable for up to three years. For absences longer than 26 weeks and up to three years more than minimum rate FTB-A is not payable and FTB-B is not payable at all. For absences of less than 26 weeks, the same rate can be paid as provided in Australia.

The proposed change is to reduce the period beyond which only base rate FTB-A is payable from 26 down to 13 weeks.

In respect of FTB and like payments, this proposal is similar to changes presented with the *Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Bill 1997*. Bills Digest No. 13 1997-98 refers.⁴³ In that Bill, the period of payment overseas for the then family payment (FP) was reduced from 13 down to 8 weeks, but the maximum rate otherwise paid in Australia was payable. Prior to that change only the base rate of FP was payable for up to 13 weeks.

Schedule 7 – Technical corrections

The technical amendment in this Schedule arise from the delayed passage of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003. Bills Digest No. 159 2001-02 refers.⁴⁴

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That act was originally introduced on the 16th of May 2002 but did not receive royal assent until the 24th of April 2003.

Main Provisions

Schedule 1 – Excluding payments for National Socialist persecution from income

Items 1 and 3 insert into the SSA and the *Veterans' Entitlements Act 1986* (VEA) respectively, a blanket exclusion as income amounts paid for National Socialist persecution.

Schedule 2 – Access to information

Proposed **Item 7** is the main provision that restores access for the CSA to information held under the *Financial Transaction Reports Act 1988*.

Schedule 3 – Assurances of support

Item 1 proposes several new sections to be placed in the SSA to define a AoS, who may give an AoS, how to give an AoS and acceptance or rejection of an AoS.

Proposed **section 1061ZZGF** defines when an AoS is in force and proposed **section 1061ZZGG** defines liability to make AoS payments under the SSA.

Proposed **Item 7 in Part 2** defines an AoS debt.

Proposed **Item 14 in Part 2** sets out the rules for the waiver of an AoS debt.

Schedule 4 – stopping payment for people absent from Australia without notice

Item 3 places proposed new sections into the FAAA to empowering the Secretary to vary the rate of FTB payable where it comes to notice either the FTB recipient or the FTB child has left Australia without notification.

Proposed **Items 5 and 6** insert into the SSAA the power for the Secretary to suspend or cancel payment where it comes to notice the recipient has left Australia without notification.

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Schedule 5 – Comparable foreign payment debt recovery

Item 3 proposes to insert a new **section 1228A** into the SSA to provide for a debt to be created where a payment under the SSA has been paid over a period and at a later date the person, or their partner, receive a payment of foreign income for that same period.

Schedule 6 - reducing portability period

Proposed **Items 1 to 5** alter the portability period for FTB from 26 to 13 weeks in the various sections in the FAAA. **Items 7 to 14** alter the portability period for various payments from 26 to 13 weeks in sections in the SSA. **Item 15** inserts a new **section 1218AA** into the SSA to empower the Secretary to discretionally extend payment of DSP beyond 13 weeks where several conditions are met.

Concluding Comments

As referred to in the Purpose and Introduction, there is no central theme to the amendments in this Bill, it being an omnibus Bill, containing various unrelated proposed amendments.

Some Schedules are clearly beneficial, like Schedule I - Excluding payments for National Socialist persecution from income. Other Schedules may not be seen as beneficial, like Schedule 4 - stopping payment for people absent from Australia without notice and Schedule 6 - reducing portability period.

Schedule 3 - assurances of support is an attempt to fix up a long standing problem of AoS not being honoured completely and where debts have been created, these debts not being recovered.

Endnotes

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- 1 Family and Community Services Portfolio Budget Statement - 2003-04 Budget, Budget Related Paper No. 1.8, p. 202.
 - 2 *ibid.*
 - 3 Family and Community Services Portfolio Budget Statement - 2003-04 Budget, *op. cit.*, p. 192.
 - 4 *ibid.*

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- 5 *ibid.*
- 6 Family and Community Services Portfolio Budget Statement - 2001-02 Budget, Budget Related Paper No. 1.8, p. 187–188.
- 7 *Data-matching Program (Assistance and Tax) Amendment Act 1998*. [Bills Digest](#) No. 229, 1997–98.
- 8 Question on Notice: Data Matching Program: Savings.
- 9 Centrelink 2001-02 Annual Report, p. 92.
- 10 Data-matching program 2001-02 Annual Report, p. 19.
- 11 Family and Community Services Portfolio Budget Statement - 2003-04 Budget, Budget Related Paper No. 1.8, p. 196.
- 12 *ibid.*
- 13 *ibid.*
- 14 Immigration and Multicultural and Indigenous Affairs Portfolio Budget Statement – 2003-04 Budget, Budget Related Paper No. 1.12, p. 56–57.
- 15 [Assurance of Support](#), DIMIA Fact Sheet No. 34.
- 16 *ibid.*
- 17 *ibid.*
- 18 Guide to the Administration of the *Social Security Act 1991*, Department of Family and Community Services, Inst No. 3.7.2.20 - Substantial Change in Circumstances for SpB.
- 19 Sub-section 23(1) of the SSA refers:
- "assurance of support debt"** means a debt due and payable by a person to the Commonwealth, or a liability of a person to the Commonwealth, because of the operation of:
- (a) subregulation 165(1) of the Migration (1989) Regulations as in force on or before 19 December 1991; or
 - (b) regulation 164C of the Migration (1989) Regulations as in force after 19 December 1991 and before 1 February 1993; or
 - (c) Part 5 of the Migration (1993) Regulations as in force on or after 1 February 1993;
 - (ca) Division 7 of Part 2 of the Migration (1994) Regulations as in force on or after 1 September 1994;
- in respect of the payment to another person of a [social security payment](#) of a kind mentioned in subregulation 2.38(1) of the Migration Regulations.
- 20 Migration Legislation Amendment (Sponsorship Measures) Bill 2003. [Bills Digest](#) No. 177, 2002–03.

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22 *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003*

- 21 Provisions of the *Migration Legislation Amendment (Sponsorship Measures) Bill 2003*, - [Report of the Legal and Constitutional Affairs Committee, 12 August 2003](#).
- 22 Migration Legislation Amendment (Contributory Parents Migration Scheme) Act 2002. [Bills Digest](#) No. 98, 2002–03.
- 23 DIMIA Fact Sheet No. 34, op. cit.
- 24 *ibid.*
- 25 *ibid.*
- 26 T. H. Kewley, *Social Security in Australia 1900-72*, 2nd edition, Griffin Press Adelaide, 1972, p. 269.
- 27 Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002. [Bills Digest](#) No. 46, 2002–03 refers.

28 **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).

- 29 Income Support Customers: a statistical overview 2001., Department Family and Community Services publication, Occasional paper No.7., p. 48.
- 30 *ibid.*
- 31 Migration Legislation Amendment (Sponsorship Measures) Bill 2003, op. cit.
- 32 [ANAO audit report No. 20 - 1999-2000](#), Audit on Special Benefit.
- 33 *ibid.*
- 34 Managing Migration – Ministerial Statement, 2 December 2002.
- 35 Family and Community Services Portfolio Budget Statement - 2003-04 Budget, op. cit., p. 195.
- 36 *ibid.*
- 37 **67.(1)** [Subsection \(2\)](#) applies to a person if:
- (a) the person has made a claim for a social security payment; and
 - (b) either:
 - (i) the claim has been granted; or
 - (ii) the claim has not been determined.
- 67.(2)** The Secretary may give a person to whom this subsection applies a notice in writing that requires the person to do either or both of the following:

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- (a) inform the Department if:
 - (i) a specified event or change of circumstances occurs; or
 - (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
 - (b) give the Department a statement about a matter that might affect the payment to the person of the social security payment.
- 68.(2)** The Secretary may give a person to whom this subsection applies a notice that requires the person to do either or both of the following:
- (a) inform the Department if:
 - (i) a specified event or change of circumstances occurs; or
 - (ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
 - (b) give the Department a statement about a matter that might affect the payment to the person of the social security payment.
- 38 **25.(1)** If, after a claimant becomes entitled to be paid family tax benefit by instalment:
- (a) anything happens that causes the claimant to cease to be eligible for family tax benefit on the days for which the claimant will become entitled to be paid the benefit under the determination concerned, or to become eligible for a daily rate of family tax benefit that is less than that specified in the determination; or
 - (b) the claimant becomes aware that anything is likely to happen that will have that effect;
- the claimant must, in the manner set out in a written notice given to the claimant under section 25A, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.
- Penalty: Imprisonment for 6 months.
- 39 Family and Community Services Portfolio Budget Statement - 2003-04 Budget, op. cit., p. 195.
- 40 Family and Community Services Legislation Amendment (Further Simplification of International Payments) Bill 2002. [Bills Digest](#) No. 96, 2001-02.
- 41 Family and Community Services Portfolio Budget Statement - 2003-04 Budget, op. cit., p. 197.
- 42 *ibid.*
- 43 Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Bill 1997. [Bills Digest](#) No. 13, 1997-98.
- 44 Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003. [Bills Digest](#) No. 159, 2001-02.

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