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Bills Digest
No. 86 2003–04

Social Security Amendment (Further Simplification) Bill 2003

ISSN 1328-8091

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Published by the Department of Parliamentary Services, 2005

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No. 86 2003–04

Social Security Amendment (Further Simplification) Bill
2003

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Social Policy Group
30 June 2004

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Social Security Amendment (Further Simplification) Bill 2003

Date Introduced: 16 October 2003

House: House of Representatives

Portfolio: Family and Community Services

Commencement: Various commencement dates as set out in the Table in **Item 2** of the Bill. Schedule 1, Schedule 2 items 1 - 17, 35, 36 commence on 1 July 2004. Schedule 2 items 18-34 and 37 commence on the day the Act receives Royal Assent.

Purpose

The Bill has several purposes being:

1. To consolidate the current rent assistance (RA) legislative provisions in the *Social Security Act 1991* (SSA). Currently the RA provisions are in various different parts of the SSA and this Bill proposes a consolidation of these separate provisions into one RA provision.
2. To add a selected range of Income supplement payments, paid in addition to income support payments, for example, employment entry payment and telephone allowance, to the list of payments that are recoverable, where a compensation payment is received for the same period.
3. To add the current definition of 'independence' used for youth allowance to the disability support pension program.
4. Other minor technical amendments to the income and assets test definitions in the SSA.

Background

Introduction

This proposal to rationalise the RA provisions in the SSA and the other simplification measures contained within this Bill was announced in the 2003-04 Budget.¹

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Cost/savings

The simplification processes presented in this Bill are estimated to be revenue neutral in 2003-04, and then save \$0.821 million in 2004-05, save \$0.701 million in 2005-06 and save \$0.688 million in 2006-07.²

The overall amount of savings is quite small and probably almost entirely achieved by the compensation measures in **Schedule 2** of the Bill.

Main Provisions

Schedule 1 – rent assistance

There are some six main rate modules currently in the SSA and each contains a RA qualification and rate section. Some module examples are the pension rate module, the youth allowance rate module and the benefit rate modules. This is a legacy of the different pension and allowance payments evolving separately over time and also the RA program itself being steadily expanded over time to various different payment programs. This Bill proposes to replace all these separate and often duplicating RA qualification and rate sections within a new consolidated RA part of the SSA (proposed new **Part 3.7**).

In presenting this Bill, the Minister's second reading speech claimed that there are no losers in this proposed RA legislation consolidation. There are a few minor changes to the existing RA provisions which reflect current Centrelink application of the RA provisions.³

Qualification for rent assistance

The current various different RA provisions in the SSA uses terms to describe what payments otherwise qualify a person to RA and also to define qualifying rent. The Bill consolidates these RA terms into one part of the SSA. These RA terms are defined as follows.

Qualifying government assistance

A qualifying 'social security payment' for RA is defined in **Item 22 of Schedule 1**, ie. new sections 1070D, 1070E, 1070F, 1070G, 10170 and 1070J of the Bill and includes one of the following:

- a pension,⁴
- more than the base rate of Family Tax Benefit if the person has a dependent child,

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- an income support allowance or benefit, if they do not have a dependent child,⁵ and
- are aged over 25, or
- are partnered, or
- are under 25 (under 21 if receive Disability Support Pension) and living permanently or indefinitely apart from parents or guardians.

For RA the person must meet residence requirements. Separately, a person cannot get RA if they receive an Austudy Payment.

Paying qualifying rent

Qualifying rent is defined in **Item 22 of Schedule 1**, in new section 1070C of the Bill as one of the following:

- Rent (other than for public housing) - new sub-section 1070C(c) in **Item 22** of the Bill,
- Service and maintenance fees in a retirement village - new sub-section 1070C(a) in **Item 22** of the Bill,
- Lodging. There are already definitions of board and lodging in the separate rent definitions sections of the SSA that are not altered by this Bill,⁶
- Fees paid to use a site for a caravan or other accommodation which is occupied as the principal home. As for lodging, there are already separate definitions of caravan site fees in the rent definitions sections of the SSA that are not altered by this Bill,⁷ or
- Fees paid to moor a vessel occupied as the principal home. As for lodging, there are already separate definitions of mooring fees in the rent definitions sections of the SSA that are not altered by this Bill.⁸

A person who pays rent directly to State or Territory housing authorities is not eligible for RA.⁹ This is because the rent is already subsidised by government assistance.

Schedule 2 – definition of independent

Amend the definition of ‘independent’ for young persons receiving the disability support pension

Items 1, 2 and 3 in Schedule 2 propose to amend the definition of ‘independent’ for disability support pension (DSP) recipients aged 16 to 19, to that which currently applies

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for youth allowance. The second reading speech of the Minister stated there will be a small number of recipients who will gain an increase in their rate of payment as a result of this standardisation of terms.¹⁰

Schedule 2 – Compensation payments

Background – income support and income supplement payments

Income support

The most common form of self-support for those of working age is income from employment, but self-support may also be obtained wholly or partially from other sources. For example, from savings and investments, overseas pensions or other sources such as compensation payments paid for lost earnings.

Both the SSA and the *Veterans' Entitlements Act 1986* (VEA) provide 'income support' payments for persons in need, where they are unable, or cannot be expected to be able to provide for their own support. This may be due to reasons of age, illness/disability, unemployment, caring for another person, being a sole parent and so on. Targeting of 'income support' to those most in need is achieved by using the income and asset tests.

Commonly recognised 'income support' payments are the age pension, the parenting payment – single (commonly known as the sole parent pension) and the newstart allowance (commonly known as the unemployment benefit).

Income supplement

'Income supplement' payments are usually paid in addition to an 'income support' payment for a specific need. For example pensioner education supplement paid to help a pensioner with the extra costs of attending education and to encourage education participation. . Most 'income supplement' payments are paid on condition the person is also receiving an 'income support' payment. There a few 'income supplement' payments that are payable on their own like mobility allowance.

Special rules for the treatment of compensation

The SSA and the VEA contain special rules that deal with entitlement to 'income support' where a person has also received income from compensation payments.¹¹ At present, only 'income support' payments are affected by the special compensation rules in the SSA and the VEA. This Bill proposes to add 'income supplement' payments to the range of payments affected by receipt of workers compensation in the SSA. The Bill does not propose to make like amendments to 'income supplement' payments provided under the VEA.

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Treatment of compensation under the SSA

The special compensation provisions in the SSA are designed to ensure that persons, who are provided with lost wages or earnings by way of compensation, should not at the same time access assistance from government-provided income support. It has been a long-standing view of successive governments that the compensation system has the first responsibility for the provision of income support to those with a compensable illness or injury, not the taxpayer by way of government income support.

Under the SSA compensation rules, if a person has received compensation for lost wages or earnings, this payment may reduce the level or preclude entitlement to government provided income support.

Periodic compensation

Periodic compensation refers to regular payments provided in lieu of wages or earnings, for example weekly, fortnightly or even monthly payments. Periodic compensation payments, being replacement wages, reduces a person's entitlement to government provided income support, paid under the SSA, on a dollar-for-dollar basis. This because the person is being provided with income support by way of replacement wages and therefore this should not be duplicated by government provided income support.

Lump-sum compensation

A compensation payment may take the form of a lump-sum amount. Under the SSA rules, any lump-sum compensation payment is examined to identify if there is a component that has been paid for lost salary or wages. However, in many cases, especially out-of-court awarded cases, there is no ascription as to what part of the lumps-sum is for lost wages.

In court or tribunal awarded lump-sum awards, it is common for a period for which the compensation payment is providing for lost wages or earnings to be described. For example, payment of wages at the rate earned at the date of accident for a period of 52 weeks from the date of accident. Where a court or tribunal ascribes the period and rate for lost wages or earnings, this is usually accepted. This amount within the compensation payment will reduce a person's entitlement to an income support payment over the same period on a dollar-for-dollar basis. This because the person is being provided with income support by way of replacement wages within the compensation award and therefore this should not be duplicated by government provided income support.

No attribution in the compensation lump-sum for lost earnings - SSA formula for lost earnings

As said, in many cases, especially out-of-court awarded cases, there is no ascription as to what part of the lumps-sum is for lost wages. In such cases there is a statutory formula within the SSA to ascribe which part of the lump-sum is to be regarded as lost wages or

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earnings.¹² Under the formula, 50 per cent of the lump-sum is taken as being for lost wages or earnings. The other 50 percent is ascribed for non-economic loss, for example pain and suffering, loss of enjoyment of life.

The 50 percent of the lump-sum taken as being for lost wages or earnings is divided by the single pension cut-off figure under the pensions income test (that is currently \$1 266.50 per fortnight), to set a number of weeks for which the sum provides lost earnings. This number of weeks is then taken to have commenced either from the date periodic compensation payments stopped or the day the loss of earnings began, whichever is the later. This is often the date of injury or illness. This period is known as the 'lump-sum preclusion period' for income support payments. It does not apply to the entitlement of the recipient's partner to income support or supplement payments.

The length of the 'lump-sum preclusion period' is largely determined by the size of the lump sum payment, as under the statutory formula, the amount of the lump sum is divided by the single pension cut-off figure, to arrive at a number of weeks for the period. Therefore, the larger the amount of compensation received the longer the 'lump-sum preclusion period'.

These special compensation rules are contained in Part 3.14 of the SSA.

Compensation lump-sums and overpayments of income support

Commonly, compensation awards are made years after the conduct or event that lead to the damages or injury. In the intervening period, the injured person may have been in receipt of government income support and/or income supplement payments. Once the award of compensation has been made, a calculation can be made to determine eligibility for income support. This calculation will determine if there has been an overlapping period of compensation provided income support and government provided income support. An overlapping period may result in an overpayment the recipient will be required to repay.

Currently the recipient will not be required to repay any 'income supplement' payments that have been received in any overlapping period. This is because only 'income support' payments are classed as 'compensation affected payments' in the SSA.¹³ The Bill proposes to amend the SSA so that 'income supplement' payments, paid in addition to 'income support' payments, are also classified as a 'compensation affected payment' and hence may be recovered from compensation. This means if there is a payment for lost wages or earnings by way of compensation, any 'income supplement' payment provided in the overlapping period may be recovered from the individual.

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‘Income supplement’ payments proposed in this Bill to be recoverable from compensation

Item 4 lists the following as ‘income supplement’ payments that are to be recovered where compensation for wages or earnings has been paid:

- advance pharmaceutical allowance
- telephone allowance (other than telephone allowance payable to the holder of a seniors health card)
- employment entry payment
- education entry payment
- pensioner education supplement
- fares allowance, and
- CDEP Scheme Participation Supplement

A brief description of each of these ‘income supplement’ payments is provided below.

Advance pharmaceutical allowance

Pharmaceutical allowance (PhA) is a non-taxable payment of \$5.80 a fortnight for a single and \$2.90 a fortnight for each eligible member of a couple (\$5.80 combined). It is paid in addition to the base rate of pension, allowance or benefit income support payment to assist low income earners with the costs of prescription medicines.

Pension payment recipients can qualify for an advance of PhA of up to seven times the fortnightly rate of PhA, as an advance payment, if they meet all of the following criteria:

- they qualify for PhA,¹⁴
- their ordinary income doesn't exceed \$20.50 per fortnight (Note: If the person is a member of a couple, the amount of the person's ordinary income is worked out by adding the couple's ordinary incomes on a fortnightly basis, and dividing by 2), and
- their expenditure on prescription items must not be less than the PhA received in that entitlement year. For a couple, their combined expenditure, including that for dependent children applies.

Section 1061JC of the SSA allows the payment of advance PhA.¹⁵

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Any regular fortnightly payment of PhA would be recovered as it was paid as part of the rate of the 'income support' payment previously paid. However, any advance of PhA has to be claimed separately and approved and the inclusion of advance PhA in **Item 4** provides for the recovery of advances, where compensation is later received.

Telephone allowance (TA)

A person may qualify for TA if they:

- have a Pensioner Concession Card or a Commonwealth Seniors Health Card,
- have a telephone connected in your own or your partner's name, and
- meet residence requirements.

Sub-section 1061(Q)(1) of the SSA sets out the qualification for TA.¹⁶

TA is a non-taxable payment of \$19.20 paid every three months to assist low income earners with the rental costs of a private telephone.

Employment entry payment (EEP)

Recipients of certain social security income support payments may qualify for an EEP if they are commencing employment or if their income from employment rises above a threshold amount.¹⁷ The qualification rules depend on the type of income support payment being received. An EEP payment is only payable once in every 12 months and is paid to assist low income earners with the extra one-off costs with starting a job and to encourage employment participation.

EEP is paid as a lump sum. Recipients of the following payments may qualify for an EEP:

- newstart allowance
- partner allowance
- mature age allowance
- widow allowance
- widow B pension
- parenting payment PP (single)
- disability support pension

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- carer payment, or
- special benefit, if the customer is a sole parent and not residentially qualified for PP

The current rates of EEP for the relevant payment or benefit are:

- disability support pension - \$312.00
- all other qualifying payments - \$104.00

Education entry payment (EdEP)

Recipients of certain social security payments may qualify for an EdEP if they are enrolled in an approved full-time course of education or if a pensioner education supplement is payable.¹⁸ An EdEP is provided to assist low income earners with the extra one-off costs with starting a course of education and to encourage education participation. An EdEP may be paid each 12 months or each calendar year depending on the type of payment being received if the person is still studying.

EdEP is paid as a lump sum. Recipients of the following payments may qualify for an EdEP:

- newstart allowance
- partner allowance
- mature age allowance
- widow allowance
- widow B pension
- wife pension
- parenting payment - single
- benefit parenting payment - partnered
- disability support pension
- carer payment, or
 - special benefit – (if the person is a sole parent and not residentially qualified for parenting payment – single)

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The current rate of EdEP is \$208.00.

Pensioner education supplement (PES)

PES is provided to assist with the extra on-going costs of studying. A person may qualify for PES if they are receiving one of the following payments from Centrelink:

- parenting payment - single
- disability support pension
- carer payment
- special benefit (as a sole parent)
- widow B pension
- widow allowance, or
- wife pension - if the partner receives a disability support pension

Section 1061PA of the SSA refers.¹⁹

The person must be undertaking approved full-time or part-time study. The part-time study must be at least 25 per cent of a full-time study load and can be approved if a sole parent, carer or you have a substantial disability.

The rate of PES is:

\$62.40 a fortnight if the the person is:

- an approved student with at least a 50 per cent study load; or
- an approved student and also a disability support pensioner.

or

\$31.20 a fortnight if the person is:

- an approved student, other than those listed above, with at least a 25 per cent load; or
- a sole parent or carer and have a study load of at least 25 per cent but less than 50 per cent.

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Fares allowance

Fares allowance is provided to assist students with the travel costs to access study. A person may qualify for fares allowance if they are a tertiary student receiving:

- Youth allowance as a full-time student or if study is the only activity the person is required to fulfil
- Austudy payment as a full-time or concessional study load student, or
- PES as a full-time or concessional study load student.

A person may also be eligible if they are:

- considered dependent, and receive the 'away from home' rate of youth allowance
- a secondary or tertiary student and receive the 'away from home' rate of ABSTUDY Living Allowance, or must attend compulsory course activities away from normal place of residence
- considered independent, are partnered and live away from a partner for study purposes
- a single parent receiving youth allowance, Austudy payment, ABSTUDY or pensioner education supplement and live away from dependent children for study purposes, or
- studying an approved external course at an Australian institution in Australia, and have to travel to the institution for a compulsory residential component of the course.

Sub-section 1061ZAAA(1) of the SSA sets out the qualification for fares allowance.²⁰

The amount of fares allowance paid depends on the number of trips covered. Trips covered are:

- a single journey from permanent home to the tertiary education institution to start study for the year
- one return journey between the institution and permanent home during the year (only if have been receiving youth allowance, Austudy payment, or the pensioner education supplement for six months or more)
- a single journey between the institution and permanent home on completing or discontinuing studies, and
- dependent on level of study if getting ABSTUDY payment.

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If an external studies student, the person is entitled to one return trip for each course enrolled in that requires attendance at the institution for a residential component.

Some students getting ABSTUDY may qualify for additional fares allowance.

Community Development Employment Project (CDEP) Scheme Participant Supplement

The CDEP Participant Supplement (CPS) provides assistance to people in CDEP communities to participate in CDEP activities. CDEP participants are paid wages from CDEP organisations and they may also receive the CPS from Centrelink if they are:

- listed on the CDEP scheme participant schedule
- receiving CDEP scheme wages, and
- qualified for a Centrelink income support payment.

The CDEP CPS is paid at \$20.80 per fortnight, which is the same as the Work for the Dole Scheme participant supplement.

Comment

Schedule 2 of this Bill proposes to add a selection of ‘income supplement’ payments to the range of income support payments recoverable where compensation is received. This is unprecedented as up until now only ‘income support’ payments have been recoverable where there has been a compensation overpayment.

It could be argued that these ‘income supplement’ payments should be recovered from compensation, as they would not have been otherwise paid had not the ‘income support’ payment originally paid (and being recovered), was also paid. This proposal will increase the amounts recovered from compensation payments.

Concluding Comments

The rationalisation of the RA provisions in **Schedule 1** of the Bill are uncontroversial and according to the second reading speech provided when the Bill was introduced, there are no losers.²¹

Many of the measures contained in **Schedule 2** are also uncontroversial, except for the addition of the ‘income supplement’ payments to the range of compensation affected payments.

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Endnotes

- 1 Family and Community Services Portfolio Budget Statement, Budget Related Paper No. 1.8, p. 204.
- 2 *ibid.*
- 3 Minister for Children and Youth Affairs, the Hon. Larry Anthony, MP, House of Representatives Hansard, 16 October 2003, p. 21622–21623.
- 4 Sub-section 23(1) of the SSA defines a social security pension paid under the SSA.
- 5 Sub-section 23(1) of the SSA defines a social security benefit or allowance paid as income support under the SSA.
- 6 Board and lodging is defined in sub-section 13(1) of the SSA – the rent definitions section.
- 7 Fees for a caravan or caravan site is defined in sub-section 13(1) of the SSA – the rent definitions section.
- 8 Mooring fees is defined in sub-section 13(1) of the SSA – the rent definitions section.
- 9 Sub-section 13(1) of the SSA defines government rent.
- 10 Minister for Children and Youth Affairs, the Hon. Larry Anthony, MP, House of Representatives Hansard, 16 October 2003. *op. cit.*
- 11 Sub-section 17(2) of the SSA defines compensation, for the purposes of the SSA. Compensation may be received in periodic payments or as a lump-sum.
- 12 *Compensation part of a lump sum*

17.(3) Subject to subsection (4), for the purposes of this Act, the compensation part of a lump sum compensation payment is:

(a) 50% of the payment if the following circumstances apply:

(i) the payment is made (either with or without admission of liability) in settlement of a claim that is, in whole or in part, related to a disease, injury or condition; and

(ii) the claim was settled, either by consent judgement being entered in respect of the settlement or otherwise; or

(ab) 50% of the payment if the following circumstances apply:

(i) the payment represents that part of a person's entitlement to periodic compensation payments that the person has chosen to receive in the form of a lump sum; and

(ii) the entitlement to periodic compensation payments arose from the settlement (either with or without admission of liability) of a claim that is, in whole or in part, related to a disease, injury or condition; and

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(iii) the claim was settled, either by consent judgement being entered in respect of the settlement or otherwise; or

(b) if those circumstances do not apply-so much of the payment as is, in the Secretary's opinion, in respect of lost earnings or lost capacity to earn, or both.

13 Compensation recovery definitions

17. (1) In this Act, unless the contrary intention appears:

"**compensation**" has the meaning given by subsection (2);

Note: See also section 1163B.

"**compensation affected payment**" means:

- (aa) an age pension; or
- (a) a disability support pension; or
- (b) a parenting payment; or
- (c) a social security benefit; or
- (e) a disability support wife pension; or
- (f) a carer payment; or
- (g) a special needs disability support pension; or
- (h) a special needs disability support wife pension; or
- (i) mature age allowance; or
- (j) mature age partner allowance; or
- (k) a former payment type;

- 14 There is not a discrete section in the SSA setting out qualification to PhA. Rather PhA is paid as an additional component of a payment set out in the rate module for the host income support payment in the SSA.
- 15 Section 1061JC of the SSA sets out the rate of PhA.
- 16 Sub-section 1061Q.(1) of the SSA sets out the qualification for telephone allowance.
- 17 There are various sections in the SSA setting out qualification to EEP. For example, sub-section 664A.(1) sets out the qualification for EEP where the person is also qualified for parenting payment–single.
- 18 As with EEP, there are various sections in the SSA setting out qualification to EdEP. For example, section 665A of the SSA sets out qualification for EdEP where the person is qualified for parenting payment–single.
- 19 Section 1061PA of the SSA sets out the qualification to pensioner education supplement.
- 20 Section 1061ZAAA.(1) of the SSA set out the qualification for fares allowance.

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- 21 Minister for Children and Youth Affairs, the Hon. Larry Anthony, MP, House of Representatives Hansard, 16 October 2003. op. cit.

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