

Bills Digest
No. 27 2004–05

Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Budget Measures) Bill 2004

Peter Yeend
Social Policy Section
9 August 2004

ISSN 1328-8091

© Copyright Commonwealth of Australia 2004

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

General Distribution Papers (GDP) are prepared for senators and members of the Australian Parliament. While great care is taken to ensure that they are accurate and balanced, papers are written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in papers is provided for use in parliamentary debate and for related parliamentary purposes. The papers are not professional legal opinion. Readers are reminded that GDPs are not official parliamentary or Australian government documents. IRS staff are available to discuss any paper's contents with senators and members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2413.

Information and Research Services publications are available on the ParlInfo database.
On the Internet the Parliamentary Library can be found at: <http://www.aph.gov.au/library/>

Published by Information and Research Services, Parliamentary Library,
Department of Parliamentary Services, 2004.

Contents

| | |
|--|---|
| Background | 1 |
| Schedule 1 – Scholarships | 1 |
| Proposal | 1 |
| Government announces the exemption of scholarships as income. | 1 |
| Estimated cost. | 2 |
| Numbers affected | 2 |
| Current income test rules for scholarships in the SSA and the VEA | 2 |
| Income support payments paid under the SSA and VEA that have an income test | 3 |
| Types of students assisted | 4 |
| Exempting scholarships as income – is it appropriate assistance for low-income students? | 4 |
| What types of courses will benefit from this proposal | 4 |
| Schedule 2 – Carer Allowance (CA). | 5 |
| What is CA? | 5 |
| Proposal announced in the 2004-05 Budget. | 5 |
| Estimated cost. | 5 |
| Numbers affected | 5 |
| Current co-residence rules for CA in the SSA | 5 |
| Origins of CA | 6 |
| The origins and purpose of the CA carer and caree co-residence rules. | 6 |
| Co-residence rules for carer payment removed in the 1990s | 6 |
| Main Provisions | 7 |
| Schedule 1 – Scholarships | 7 |
| Schedule 2 – Carer Allowance | 7 |
| Concluding Comments. | 7 |
| Endnotes. | 8 |

Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Budget Measures) Bill 2004

Date Introduced: 24 June 2004

House: House of Representatives

Portfolio: Family and Community Services and Veterans' Affairs

Commencement: Most of the amendments presented in this Bill are proposed to commence on the date the Bill receives Royal Assent. There are a small number of different commencement dates for a few minor parts of the Bill, as set out in **Clause 2** of the Bill.

To amend both the *Social Security Act 1991* (SSA) and the *Veterans' Entitlements Act 1986* (VEA) to give effect to two government initiatives announced in the 2004-05 Budget – one for students and the other for carers.

Background

Schedule 1 – Scholarships

Proposal

Schedule 1 of the Bill proposes to amend both the SSA and the VEA to exempt all fee waiver and fee pay scholarships as income under the income tests for income support payments.

Government announces the exemption of scholarships as income

The government announced on 17 September 2003 that as a part of the Higher Education Reform Package all scholarships that pay tuition fees on a student's behalf, or waive all, or part of, a student's tuition fee, will no longer be included as income under the SSA or VEA income tests.¹

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.

Estimated cost

The proposal to exempt scholarships as income under the SSA and VEA income tests was presented in the 2004-05 Budget.²

For the income tested income support payments provided under the SSA, the Budget estimates that the cost of this proposal will be \$2.703 million in 2004-05, \$4.979 million in 2005-06, \$7.331 million in 2006-07 and \$8.691 million in 2007-08.³

For the income support payments provided under the VEA, the Budget estimates that the cost of this proposal will be \$0.123 million in 2004-05, \$0.099 million in 2005-06, \$0.114 million in 2006-07 and \$0.129 million in 2007-08.⁴

Numbers affected

In his media release of 17 September 2003, The Minister for Education Science and Technology, the Hon. Brendan Nelson, MP then claimed that about 2,000 scholarships affected by this proposal were provided across the education sector.⁵

It is probable that if this proposal is implemented, and scholarships are exempted as income that there would be an increase in the number of scholarships taken up by students to take advantage of the beneficial treatment.

Current income test rules for scholarships in the SSA and the VEA

The SSA does not carry specific sections stating that scholarships are 'income' for income support payments paid under the SSA. Rather, the SSA has a general all encompassing definition of 'income' then lists specific exemptions.⁶ Subsection 8(1) of the SSA basically says everything is 'income', unless it is listed as an exemption in sub-sections (4), (5) or (8) of section 8 in the SSA.

The VEA in its definition of income and listed exemptions is constructed very much the same as the SSA. In the VEA income is generically defined in section 5H.⁷

So at present, scholarships are caught by the income tests in the SSA and the VEA as they are considered an income amount earned, derived or received and are not specifically listed as an exemption.

To change this, **Schedule 1** of the Bill proposes to add scholarships as a listed income exemption in section 8 of the SSA and also in the income exemption section in 5H of the VEA.

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.

Income support payments paid under the SSA and VEA that have an income test

Almost all income support payments provided under both the SSA and the VEA have an income test. The only exception is the age pension, service pension, disability support pension (DSP) and the invalidity service pension paid to persons who meet the 'blind' criteria.

While almost all income support payments paid under the SSA have an income test and will therefore be affected by the change, the ones most likely affected by this proposal are those paid to those of working age, as they are the more likely to be studying and receiving a scholarship. The income tested income support payments provided under the SSA are:

- Youth allowance
- Parenting payment – partnered
- Parenting payment – single
- DSP
- Wife pension (age and DSP)
- Widow B pension
- Newstart allowance
- Austudy payment
- ABSTUDY Scheme
- Partner allowance
- Sickness allowance
- Special benefit
- Age pension
- Mature age allowance
- Special benefit

The income tested income support payments provided under the VEA are:

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.

- Service pension
- Partner service pension
- Income support supplement
- Invalidity service pension

Types of students assisted

This proposal only refers to the income tests applied under income support payments provided under the SSA and the VEA. It could be argued that students who otherwise qualify for income support payments are by definition on low incomes, as they have satisfied the income and asset tests. Therefore, exempting scholarships as income is benefiting low-income students.

Exempting scholarships as income – is it appropriate assistance for low-income students?

At present, scholarships received by students (fee waiver or fee paid) are regarded as income as they are virtually the equivalent of income received. As section 8 of the SSA defines – income refers to any monies or valuable consideration earned derived or received.⁸ Where any student receives income from other sources, for example from employment or bank interest, it is regarded as income under the income test. The proposed exemption of scholarships as income from the income test does give scholarship students on income support an advantage over other students on an income support payment. Purely from the perspective of providing income support in an equitable way to like groups of recipients, the exemption of scholarships as income is difficult to justify.

What types of courses will benefit from this proposal

The Bill proposes to exempt as income scholarships provided in the form of fee waiver amounts or fees payable to the Commonwealth as a result of a person's enrolment in:

- A secondary or tertiary course under section 5D of the *Student Assistance Act 1973* (SAA);
- A Masters or Doctoral degree accredited as a higher education course; and
- A course of vocational education as defined in section 19 of the SSA.

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.

Schedule 2 – Carer Allowance (CA)

What is CA?

CA (adult) is income supplement and paid to help carers to care for adults with a disability at home. CA (adult) replaces the former Domiciliary Nursing Care Benefit (DNCB). CA (adult) may be paid on top of carer payment (commonly known as the carer pension) or other income support payments.

The rate of CA (adult and child) as at August 2004 is \$90.10 per fortnight and is income test and tax free.

There is also CA (child) which is paid at the same rate to help parents or carers to care for children with a disability at home. It replaced the former Child Disability Allowance (CDA) program.

Proposal announced in the 2004-05 Budget

Schedule 2 of this Bill proposes to amend the SSA to allow a carer in receipt of CA (adult) to not be residing in the same residence as the caree (person being cared for) and still qualify for CA. Currently, the CA qualification requirements in the SSA require the carer to reside in the same residence as the caree.

This proposal was announced in the 2004-05 Budget.⁹ This is to only apply to payment of CA (adult) and does not apply to CA (child).

Estimated cost

The proposal is estimated to cost an extra \$106.9 million over four years made up of \$10.304 million in 2004-05, \$29.644 million in 2005-06, \$32.141 million in 2006-07 and \$34.779 million in 2007-08.¹⁰

Numbers affected

It is estimated this proposal will assist an additional 13,000 carers who are not residing in the same place of residence as their caree.¹¹

Current co-residence rules for CA in the SSA

Sub-section 954(1) of the SSA requires that to qualify for CA the carer and caree (where is a single adult) have to reside together.¹²

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.

Origins of CA

The replacement of the DNCB and CDA programs with the single CA program was announced in the 1998-99 Budget.¹³

The CA (adult) part of CA has its origins in the DNCB program which was income supplement paid to an adult caring for another adult. The basic DNCB requirement was that the caree's care requirements would otherwise qualify them for nursing home admission.

The CA (child) has its origins in the CDA program which had been in existence since 1983 when it had replaced the pre-existing Handicapped Child's Allowance (HCA) program. CDA was also income supplement paid to an adult caring for a child with a disability requiring substantially extra care.

The replacement of DNCB and CDA with CA from 1 July 1999 was achieved with the passage of the *Assistance for Carers Legislation Amendment Act 1999*.¹⁴

The origins and purpose of the CA carer and caree co-residence rules

Both DNCB and CDA had co-residence rules, that is required the carer and caree to be residing in the same residence. The DNCB assistance was provided under the Health legislation and while there was the general requirement of co-residence, there was the discretion for the Secretary to pay where there was not co-residence. This was occasionally used to pay DNCB where the carer and caree were not residing together but the carer was providing the requisite care.

Given the care requirements of DNCB and CDA, the co-residence rule was considered appropriate ensuring that the carer was the primary carer and was in a position to provide the requisite care. When CA replaced DNCB and CDA, the co-residence rules were carried over.

There were a few cases where the carer and caree were not residing in the same residence, but residing so close that the care requirements of CA were otherwise met. For example, where a daughter (carer) lives in one flat of a small block of flats and her mother (caree) lives in another flat in the same block. A proper reading of the co-residence rule would not allow payment of CA, as they are not residing in the same residence. The co-residence rules was also being challenged for other care payments – see below.

Co-residence rules for carer payment removed in the 1990s

Carer payment (CP) (commonly referred to as carer pension), being income support paid to the full-time carer of a caree requiring full-time care, originally had the same co-residence requirements as CA. More recently these co-residence requirements have been

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.

lessened recognising that in a few cases the carer and caree may not reside in the same residence.

The first step towards lessening the co-residence requirements for CP was made in 1991 with the passage of the *Social Security Legislation Amendment Act 1990*.¹⁵ This act allowed the carer and caree to live in an adjacent or nearby residence. The CP co-residence requirement for the carer and caree was removed in 1996 with the passage of the *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995*.¹⁶

Main Provisions

Schedule 1 – Scholarships

Items 1 and 2 propose to insert new subsections 8(8B) and 8(8C) in section 8 of the SSA, being the income definition and income exceptions section. The inclusion of these new subsections in section 8 will exempt scholarships as income under the SSA income test.

Items 3 and 4 propose to insert the like amendments to **Items 1 and 2** into section 5H of the VEA achieving the same result, being scholarships exempted as income under the VEA income test.

Schedule 2 – Carer Allowance

Item 1 proposes to insert a new section 954A into the SSA to set out the basic qualification requirements for CA (adult), where the carer and caree do not share the same residence.

Concluding Comments

Both of the Schedules presented in this Bill provide for beneficial legislation. **Schedule 1** to scholarship students on an income support payment and **Schedule 2** for CA paid to carers of an adult caree.

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.

Endnotes

- 1 The Hon. Brendan Nelson, MP, (Minister for Education, Science and Training), *Higher Education Reform Package Enhanced*, Media Release, 17 September 2003, http://www.dest.gov.au/ministers/nelson/sept03/n463_170903.htm
- 2 Department of Family and Community Services, *Our Universities – Exempt Fee-Waiver and Fee-Pay Scholarships from Social Security Income Tests. Our Universities – Exempt Commonwealth Learning Scholarships from Social Security Income Tests*, 2004-05 Budget accompanying information, Canberra, 2004. http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget2004-08_universities_scholarships.htm
- 3 Department of Family and Community Services, *Portfolio Budget Statements 2004-05*, Budget Related Paper No. 1.8, Canberra, 2004 page 91. <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget2004-pbs.htm>
- 4 Department of Veterans' Affairs', *Portfolio Budget Statements 2004-05*, Budget Related Paper No. 1.4B, Canberra, 2004, page 48. <http://www.dva.gov.au/media/publicat/budget/04/index.htm>
- 5 The Hon. Brendan Nelson, MP, (Minister for Education, Science and Training), *Higher Education Reform Package Enhanced*, op. cit.
- 6 8.(1) In this Act, unless the contrary intention appears:

"income", in relation to a person, means:

(a) an income amount earned, derived or received by the person for the person's own use or benefit; or

(b) a periodical payment by way of gift or allowance; or

(c) a periodical benefit by way of gift or allowance;

but does not include an amount that is excluded under subsection (4), (5) or (8).
- 7 5H – (1) In this Act, unless the contrary intention appears:

income, in relation to a person, means:

(a) an income amount earned, derived or received by the person for the person's own use or benefit; or

(b) a periodical payment by way of gift or allowance; or

(c) a periodical benefit by way of gift or allowance;

but does not include an amount that is excluded under subsection (4), (5) or (8).
- 8 *ibid.*

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.

- 9 Senator the Hon. Kay Patterson (Minister for Family and Community Services), *More Support for Carers in \$461 million Budget package*, Media Release, 11 May 2004.
http://www.facs.gov.au/internet/Minister1.nsf/content/budget04a_support_for_carers.htm
- 10 Department of Family and Community Services, *Portfolio Budget Statements 2004-05*, Budget Related Paper No. 1.8, Canberra, 2004, page 58.
<http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget2004-pbs.htm>
- 11 Senator the Hon. Kay Patterson (Minister for Family and Community Services), *More Support for Carers in \$461 million Budget package*, op. cit.
http://www.facs.gov.au/internet/Minister1.nsf/content/budget04a_support_for_carers.htm
- 12 **Qualification for carer allowance-caring for a disabled adult**

954.(1) A person is qualified for carer allowance for a disabled adult (the *care receiver*) if:

 - (a) the care receiver is an Australian resident; and
 - (b) the care receiver is a family member of the person or is a person approved in writing by the Secretary for the purposes of this paragraph; and
 - (c) the care receiver has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 30, being a score calculated on the basis of a professional questionnaire score of at least 12; and
 - (d) because of the disability from which the care receiver is suffering, the care receiver receives care and attention on a daily basis from the person, or the person together with another person, in a private home that is the residence of the person and the care receiver; and
 - (f) the person is an Australian resident.
- 13 *1998-99 Federal Budget Measures*, introduction of carer allowance from 1 July 1999.
<http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget98-whatsnew-g3.htm>
- 14 *Assistance for Carers Legislation Amendment Act 1999*, Bills Digest No. 148 1998-99.
<http://www.aph.gov.au/library/pubs/bd/1998-99/99bd148.htm>
- 15 *Social Security Legislation Amendment Act 1990*. Bills Digest No. TL900 1990.
http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=1248&TABLE=BILLSDGS
- 16 *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995*. Bills Digest No. 61 1995.
http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=3441&TABLE=BILLSDGS

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.