

1990 - 1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO 4) 1991

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf
of the Government

(Circulated by authority of the Minister for Social Security,
Senator the Hon Graham Richardson)

SOCIAL SECURITY LEGISLATION AMENDMENT
BILL (NO 4) 1991

OUTLINE AND FINANCIAL IMPACT STATEMENT

These amendments affect the Social Security Act 1991 and the Privacy Act 1988.

The financial impact of the amendments to the Social Security Act 1991 in 1991-92 is estimated at \$11.7 million and \$20.0 million in 1992-93.

The amendment to the Privacy Act 1988 has no financial impact.

SOCIAL SECURITY ACT 1991

The amendments have the following effects on this Act:

- . provide for special rules relating to farmers in severe financial hardship who operate farms with a potential for profitability but who cannot access loans or finance from financial institutions or the Rural Adjustment Scheme;
- . clarify the maximum amount of "ordinary income" that a person, whether as an individual or as a member of a couple, can earn, derive or receive each fortnight so as to qualify for an advance pharmaceutical allowance;
- . if an overpayment of family allowance supplement (FAS) arises for a reason related to the amount of the recipient's taxable income, the overpayment would be calculated on a tax year basis (ie on the same basis as that used for the assessment of taxable income); and

- . make a minor technical drafting amendment to renumber a Note.

PRIVACY ACT 1988

The amendment has the following effect on this Act:

- . correct the wording of paragraph 13(ba) so that it reflects the wording as passed by the Parliament (what was assented to was not the wording of the provision as passed by Parliament). The effect of the amendment will be to ensure that acts or practices of agencies which constitute a breach of the guidelines in force under the Data-matching Program (Assistance and Tax) Act 1990 will be interferences with privacy for the purposes of the Privacy Act. Following commencement of this amendment, the Privacy Commissioner will be able to investigate any complaints relating to possible breaches of the data-matching guidelines occurring from the commencement of the Data-matching Program (Assistance and Tax) Act 1990.

NOTES ON AMENDMENTS

SOCIAL SECURITY ACT 1991

Amendments relating to special assistance measures for farmers

Amendments (2) and (8)

These amendments provide for the package of measures embodying special assistance for farmers.

Farmers on farms with a potential for long-term profitability may be in severe financial hardship but may not be eligible for assistance under the Rural Adjustment Scheme. Nor may they have access to loans or further loans from commercial lenders. At the same time they may not qualify for payment of job search allowance (JSA) or newstart allowance (NSA) under the Principal Act. This is because a person's commitment to farm work precludes him or her from being classed as unemployed, a fundamental qualification for JSA or NSA.

Even if the person is unemployed he or she may gain little or nothing by way of JSA or NSA because of the effect of the person's life insurance policy and farm assets on the benefits assets test.

The Government's special assistance to farmers aims to give certain farmers in severe financial hardship access to JSA and NSA subject to a modified, more generous benefits assets test.

Amendment (2) provides for the commencement of this package on 1 December 1991. Operative provisions bring about cessation of the package on 30 November 1993. In 1993 the package will be reviewed to determine whether it should continue beyond 30 November 1993.

Amendment (8) provides for the new rules. These are to appear in the Bill as a new Division 7 of Part 2 dealing with financial hardship farmers.

New Division 7 - Financial hardship farmers

In addition to the formal change of adding in new clause 56A to the index of definitions, the new Division 7 provides for all aspects of the farm package:

- (i) Certification that a person is a financial hardship farmer.
- (ii) Special provisions whereby a financial hardship farmer may qualify for JSA or NSA.
- (iii) Special provisions concerning the commencement date for payments of JSA or NSA to a financial hardship farmer.
- (iv) Special provisions for the operation of the benefits assets test financial hardship provisions in relation to financial hardship farmers.
- (v) Provision for non-reviewability of certain decisions about financial hardship farmers.
- (vi) Provision for conclusion of a Protocol on the operation of the farm package to involve the Secretary to the Department of Social Security and the Secretary to the Department of Primary Industries and Energy.

Explanation of these matters follows.

- (i) Certification that a person is a financial hardship farmer

New clause 56C provides, inter alia, for definitions required for certification that a person is a financial hardship farmer on a financial hardship farm.

- . "financial hardship farmer" is a person in respect of whom a certificate under new section 26 of the Principal Act is in force.
- . "RAS authority" is an authority of a State or Territory responsible for the administration of the Rural Adjustment Scheme (RAS) on behalf of the State or Territory.
- . "Rural Adjustment Scheme" is the scheme established and operated by a State or Territory in accordance with clause 9 of the agreement set out in the Schedule to the States and Northern Territory Grants (Rural Adjustment) Act 1988.
- . "Section 26 certificate date" is a day specified in a certificate issued under subsection 26(1).

These definitions become part of the general definitions in section 23 of the Principal Act.

New clause 56D provides for new section 26 of the Principal Act.

New section 26 : Financial hardship farmer - certificate

New subsection 26(1) permits a RAS authority to certify, in writing, that a person is a financial hardship farmer for the period specified in the certificate.

New subsection 26(2) provides that the period specified in the certificate must be for 12 weeks or less commencing on the day nominated. That day may be any day on or after the day on which the person applied for RAS assistance to the RAS authority (new subsection 26(3)). Such application must be made between 1 December 1991 and 30 November 1993 (new subsection 26(4)).

New subsection 26(4) also requires that, in order to be certified a financial hardship farmer, under normal

circumstances the person or person's partner must contribute a significant part of his or her labour and capital to a farm and, under normal circumstances, the farm must provide the person's principal source of income. This rules out hobby farmers and "Pitt Street" or "Collins Street" farmers.

New subsection 26(5) requires that, for a person to be certified as a financial hardship farmer, the RAS authority must be satisfied that:

- . under normal circumstances the person or person's partner contributes a significant part of his or her labour and capital to a farm; and
- . under normal circumstances the farm provides the person's principal source of income; and
- . the person is in severe hardship; and
- . commercial credit cannot be obtained to finance continued farm operations; and
- . Part C RAS assistance is not available in respect of the farm; and
- . the farm is likely to be profitable in the long term; and
- . the person is available for and willing to do full-time paid work.

New subsection 26(6) provides for automatic cessation of a certificate by 1 December 1993.

New subsection 26(7) requires the RAS authority to certify in writing that a person is not a financial hardship farmer where a person has applied for and been refused that status.

New subsection 26(8) defines "farm" for the purpose of section 26 as a farm enterprise.

Notes 1 and 3 to new section 26 signpost the definitions of "RAS authority" and "Rural Adjustment Scheme" in subsection 23(1) of the Principal Act.

Note 2 explains the operation of the RAS.

- (ii) Special provisions whereby a financial hardship farmer may qualify for JSA or NSA

New clauses 56E, 56F, 56G, 56H, 56K, 56L and 56M provide for easier access by a certified financial hardship farmer to JSA and NSA.

New clause 56E amends section 513 of the Principal Act. Section 513 provides for qualification criteria for JSA. A new subsection 513(2) provides for qualification for JSA where a person is a financial hardship farmer. The qualification criteria replicate the usual criteria in subsection 513(1) except that there is no requirement that the person be unemployed.

Notes following new subsection 513(2) replicate those following subsection 513(1) except for note 1 which signposts the rules as to a "financial hardship farmer" in subsection 23(1).

New clause 56K does the same in respect of section 593 which concerns NSA.

New clauses 56F and 56G amend sections 514 and 515 of the Principal Act so as to include references to the relevant paragraph of new subsection 513(2). These are consequential amendments.

New clause 56L does the same in respect of section 594 which concerns NSA.

New clause 56H amends section 520 of the Principal Act which permits the Secretary to excuse a person from registration with the CES, usually a pre-requisite to qualification for JSA. The amendments allow the Secretary to excuse the financial hardship farmer from CES registration during the period from the time when the person applies to the RAS authority for RAS assistance to the time when the person, having been refused RAS assistance, claims JSA.

New clause 56M does the same in respect of section 599 which concerns NSA.

- (iii) Special provisions concerning the commencement date for payments of JSA or NSA to a financial hardship farmer

New clause 56J amends section 533 of the Principal Act so as to provide special rules for the date of commencement of payment of JSA to a financial hardship farmer. The financial hardship farmer must do as follows:

- (1) Apply to an RAS authority for assistance under Part C of the RAS; and
- (2) Upon being rejected for RAS Part C assistance lodge a claim for JSA.

If the claim for JSA is granted arrears can be paid to the date of the application for RAS assistance because of the amendments to section 533.

New clause 56N does the same in respect of section 615 which concerns NSA.

(iv) Special provisions for the operation of the benefits assets test financial hardship provisions in relation to financial hardship farmers

The benefits assets test applies to claimants and recipients of JSA and NSA so that JSA or NSA will not be payable to a person who has excess assets. An unrealisable asset can be disregarded where the claimant or recipient is in severe financial hardship. A notional income is deemed on unrealisable assets and is included in the income test. Many farmers in severe financial hardship have excess assets which are either realisable or, if unrealisable, generate a notional income which reduces or cancels the JSA or NSA, if any, payable to the farmer. Sections 1131 and 1132 of the Principal Act provide for these rules.

New clause 56P changes the effect of these rules. First, however, are some definition changes in new clauses 56B and 56C. New clause 56B amends the assets test definitions in section 11 of the Principal Act.

New clause 56B provides for new subsection 11(14) which applies to a financial hardship farmer. This is a new definition which includes as an "unrealisable asset" a life insurance policy on the life of the farmer, or an asset in respect of which a certificate under new section 27 is in force.

New section 27 of the Principal Act is provided for in new clause 56D.

New section 27 : Unrealisable assets of financial
hardship farmer - certificate

New subsection 27(1) permits a RAS authority to certify in writing that, for the specified period, an asset of a financial hardship farmer is an unrealisable asset if the authority is satisfied that the asset is essential to the long-term profitability of the financial hardship farm.

New subsection 27(2) of the Principal Act permits the certified unrealisable assets to include the farm, farm livestock and farm machinery.

New subsections 27(3) and 27(4) provide for the commencement date of the certificate, which can be earlier than the date of issue of the certificate.

New subsection 27(5) requires the RAS authority to certify that, for the purposes of this section, assets are not unrealisable where a person has applied for a certificate under new subsection 27(7) but the application is rejected.

New clause 56C provides for a definition of "life insurance policy" in subsection 23(1) of the Principal Act. The definition of "life policy" from the Life Insurance Act 1945 is incorporated by reference but limited to apply to the life of the financial hardship farmer.

In the same clause a definition of "subsection 11(14) asset" is included. This is an asset that is unrealisable because of its inclusion in subsection 11(14) of the Principal Act.

New clause 56P amends section 1132 of the Principal Act which at present applies one rule to all unrealisable assets for quantifying the notional income to be taken as generated by them. The amendments separate out from the usual run of unrealisable assets those unrealisable assets of a financial hardship farmer covered in new subsection 11(14) of the Principal Act.

New subsection 1132(3A) provides for quantification of the notional income of a financial hardship farmer. The existing rules apply to the general run of unrealisable assets which fall under subsections 11(12) and 11(13). For subsection 11(14) certified assets the notional income taken into account is the lesser of the income amount actually received and the income amount the person could reasonably be expected to obtain from a commercial lease or hiring of those assets.

(v) Provision for non-reviewability of certain decisions
about financial hardship farmers

New clause 56Q provides for amendments to section 1250 of the Principal Act. Section 1250 lists decisions under the Principal Act which are not reviewable by the SSAT. To this list is added matters which are the subject of certification by a RAS authority. This reflects the difficulties involved in subjecting agencies outside the Department of Social Security to the jurisdiction of the Social Security Appeal Tribunal, especially when they are State and Territory agencies.

The operation of this scheme will be monitored and a review of RAS authority decisions will be introduced as soon as possible when its need becomes clear.

Notes 1 and 2 signpost the definitions of "RAS authority" and "financial hardship farmer" in section 23.

- (vi) Provision for conclusion of a Protocol on the operation of the farm package to involve the Secretary to the Department of Social Security and the Secretary to the Department of Primary Industries and Energy

New clause 56R provides for new section 1298B of the Principal Act.

New section 1298B : The Secretary and the Secretary to the Department of Primary Industries and Energy may agree on administrative arrangements

New section 1298B permits the Secretaries of the two Departments responsible for administration of the package of special assistance for farmers to agree on administrative arrangements to ensure the efficiency of the functions of the RAS authorities.

Amendments relating to advance pharmaceutical allowance - Division 5 of Part 2 of the Bill

Amendments (5) to (7)

Amendment (5) will make it clearer that the maximum amount of "ordinary income" that each person can earn, derive or receive each fortnight so as to qualify for an advance pharmaceutical allowance is \$20.00.

Amendment (6) is a minor drafting amendment.

Amendment (7) provides that for the purpose of the qualifying income test set out in section 1061F, if a person is a member of a couple, then each member's "ordinary income" is worked out by adding each member's fortnightly "ordinary income" and then dividing by 2. (In effect, a couple can have ordinary income of \$40 a fortnight between them.)

Amendments relating to the calculation of Family Allowance
Supplement payments - Schedule 1 to Bill

Amendments (3) and (10)

Amendment (3) provides that Part 4 of Schedule 1 will commence immediately after the commencement of section 57 of the Social Security Legislation Amendment Act (No. 3) 1991. Section 57 of that Act, which provides for the insertion of new subsection 1223(2A) into the Principal Act, will commence on 1 January 1992.

Section 1223 of the Principal Act specifies the circumstances in which an amount paid under that Act is a debt due to, and recoverable by, the Commonwealth.

The effect of new subsection 1223(2A) is to provide that, while payments of family allowance supplement (FAS) are assessed on a calendar year basis, FAS overpayments are to be calculated on a tax year basis (ie on the same basis as that used for the assessment of taxable income). In other words, the earliest time at which an amount of FAS paid to a person during a tax year would be able to be held to be an overpayment (and therefore a debt due to, and recoverable by, the Commonwealth) would be after the end of that tax year.

Amendment (10) amends, in Part 4 of Schedule 1 to this Bill, new subsection 1223(2A) to make it clear that it is to apply only if an overpayment of FAS arises for a reason related to the amount of the recipient's taxable income.

Amendment relating to renumbering of a Note

Amendment (11)

The amendment will have the effect of amending Part 3 of Schedule 2 of the Bill so that the note to be added at the end of subsection 1250(1) will be correctly numbered as Note 3.

PRIVACY ACT 1988

Amendments (1), (4), (9) and (12)

Paragraph 13(ba) of the Privacy Act 1988 was inserted by section 17 of the Data-matching Program (Assistance and Tax) Act 1990 ("the Data-matching Act"). The wording of paragraph 13(ba) as assented to was not the wording of the provision as passed by Parliament. This amendment will correct paragraph 13(ba) so that it will conform with Parliament's intention.

The effect of Amendment (12) will be to ensure that acts or practices of agencies which constitute a breach of the guidelines in force under the Data-matching Act will be interferences with privacy for the purposes of the Privacy Act.

To give effect to Parliament's original intention, the amendment will be made retrospective by Amendment (4). Thus, following commencement of this amendment, the Privacy Commissioner will be able to investigate any complaints relating to possible breaches of the data-matching guidelines occurring from the commencement of the Data-matching Act.

Amendments (1) and (9) are technical drafting amendments consequential upon Amendment (12).

