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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT  
(SENIORS HEALTH CARD AND OTHER MEASURES) BILL 2014**

**EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Social Services, the Hon Kevin Andrews MP)**



# **SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (SENIORS HEALTH CARD AND OTHER MEASURES) BILL 2014**

## **OUTLINE**

### ***Seniors health card***

This Bill will implement the Government's election commitment to index income thresholds for the Commonwealth Seniors Health Card.

Qualification for the seniors health card depends partly on a person satisfying the seniors health card taxable income test. Under that test, the person's adjusted taxable income must not exceed the taxable income limit that applies to the person's family situation. The taxable income limits are not currently indexed. Introducing indexation means more people will satisfy the seniors health card taxable income test and therefore qualify for the seniors health card.

Indexation of the thresholds will occur annually, starting on 20 September 2014, and will be based on movements in the Consumer Price Index.

This measure applies to the seniors health card under either the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*.

### ***Review of decisions***

This Bill will bring provisions of the *Student Assistance Act 1973* relating to the Social Security Appeals Tribunal into line with similar provisions in the social security and related laws.

### ***Machinery of government changes***

The Bill will make minor and technical amendments to several Acts in the social services portfolio to reflect changed public service administrative arrangements.

### ***Aged care amendments***

The aged care legislation and the *Health and Other Services (Compensation) Act 1995* will also be amended to reflect changed public service administrative arrangements, following the machinery of government changes that occurred on 18 September 2013. These amendments include clarifying and expanding the powers of the Secretary to delegate functions and powers under the *Aged Care Act 1997* to specified officers, bodies and other persons.

### ***Definitions and technical corrections***

The Bill makes further minor and technical amendments to the *Social Security Act 1991*, including a restructure of the Part of Act dealing with definitions.

### **Financial impact statement**

It is estimated the seniors health card measure will cost \$95.9 million over the forward estimates period.

There are no financial implications from the other amendments in the Bill.

### **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The statement of compatibility with human rights appears at the end of this explanatory memorandum.

**SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT  
(SENIORS HEALTH CARD AND OTHER MEASURES) BILL 2014**

**NOTES ON CLAUSES**

**Abbreviations used in this explanatory memorandum**

- **Social Security Act** means the *Social Security Act 1991*
- **Social Security Administration Act** means the *Social Security (Administration) Act 1999*
- **Student Assistance Act** means the *Student Assistance Act 1973*

**Clause 1** sets out how the new Act is to be cited – that is, as the *Social Services and Other Legislation Amendment (Seniors Health Card and Other Measures) Act 2014*.

**Clause 2** provides a table that sets out the commencement dates of the various sections in, and Schedules to, the new Act.

**Clause 3** provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

## **Schedule 1 – Seniors health card**

### **Summary**

This Schedule will implement the Government's election commitment to index income thresholds for the Commonwealth Seniors Health Card (CSHC).

Qualification for the CSHC depends partly on a person satisfying the seniors health card taxable income test. Under that test, the person's adjusted taxable income must not exceed the taxable income limit that applies to the person's family situation. The taxable income limits are not currently indexed. Introducing indexation means more people will satisfy the seniors health card taxable income test and therefore qualify for the CSHC.

Indexation of the thresholds will occur annually, starting on 20 September 2014, and will be based on movements in the Consumer Price Index (CPI).

This measure applies to the CSHC under either the Social Security Act or the *Veterans' Entitlements Act 1986* (Veterans' Entitlements Act).

### **Background**

Section 1061ZG of the Social Security Act and section 118V of the Veterans' Entitlements Act set out the qualification conditions for the CSHC. One of these conditions is that the person satisfies the seniors health card taxable income test, which is set out in Part 3.9 of the Social Security Act and Division 8 of Part VIIC of the Veterans' Entitlements Act.

Point 1071-1 in Part 3.9 and point 118ZZA-1 in Division 8 of Part VIIC then provide a method statement outlining the process for working out whether a person satisfies the seniors health card taxable income test. Step 3 involves a comparison between the person's adjusted taxable income and the seniors health card taxable income limit. Point 1071-12 and point 118ZZA-11 contain tables that set out the various income limits, depending on the person's family situation.

The indexation arrangements for the various payments and amounts provided for in the social security law are set out in Part 3.6 of the Social Security Act. For the Veterans' Entitlements Act, the indexation arrangements are set out in Part XII. Under the current rules, the income limits set out in the tables in point 1071-12 and point 118ZZA-11 are not indexed.

The amendments in this Schedule commence on the day after Royal Assent, although the first indexation will occur on 20 September 2014.

**Explanation of the changes**

***Amendments to the Social Security Act***

**Item 1** adds a note to the end of point 1071-12 (which provides the method statement for working out when a person satisfies the seniors health card taxable income test). The note informs the reader that the income amounts in column 3 of the method statement are indexed on 20 September 2014 and each subsequent 20 September, in line with increases in the CPI.

Section 1190 of the Social Security Act contains the indexed and adjusted amounts table. The table describes each amount that is to be indexed or adjusted and provides an abbreviation for the amount and an Act reference. **Item 2** inserts new item 36A into this table, specifying the seniors health care income limit, being all amounts in column 3 of the table in point 1071-12.

Section 1191 of the Social Security Act contains the CPI Indexation table, which lists the amounts that are to be indexed in accordance with the CPI, the indexation day, the reference and base quarters for the amount, and the rounding base. **Item 3** inserts new item 26A into this table. The new item ensures that the seniors health card income limit is indexed on 20 September, on the basis of the June reference quarter, a base quarter that the highest June quarter before reference quarter (but not earlier than the 2013 June quarter), and a rounding base of \$1.00.

**Item 4** inserts new subsection 1192(5B) into the Social Security Act. This new provision ensures the seniors health care income limits are first indexed on 20 September 2014.

***Amendments to the Veterans' Entitlements Act***

**Item 5** adds a new note 4 to the end of point 118ZZA-11 (which provides the method statement for working out when a person satisfies the seniors health card taxable income test). The note informs the reader that the income amounts in column 3 of the method statement are indexed on 20 September 2014 and each subsequent 20 September, in line with increases in the CPI, as set out in new section 198FAA (inserted by item 6).

**Item 6** inserts new section 198FAA. New subsection 198FAA(1) refers to application of the section to the indexation of the dollar amount of the seniors health card limits set out in items 1, 2, 3 and 4 of column 3 in point 118ZZA-11.

New subsection 198FAA(2) sets out the formula to be applied to the dollar amounts mentioned in point 118ZZA-11 for an indexation day on which the indexation factor is greater than one. On any such indexation day, the amount referred to in point 118ZZA-11 is to be replaced with an amount that is worked out by multiplying the dollar amount on the day before the indexation day by the indexation factor for the indexation day.

New subsection 198FAA(3) provides the formula for calculating the ***indexation factor*** for the indexation day referred to in new subsection 198FAA(2).

## Schedule 1 – Seniors health card

The formula determines the indexation factor for the seniors health card income limit for each indexation day, on the basis of the most recent June reference quarter, divided by the highest index number for a base quarter that is the highest June quarter before the reference quarter (but not a quarter earlier than the 2013 June quarter).

New subsection 198FAA(4) requires the indexation factor to be calculated to three decimal places. New subsection 198FAA(4) also requires the indexation factor to be increased by 0.001 if the fourth decimal place of the indexation factor is more than 4.

New subsection 198FAA(5) states that, if an amount worked out under new subsection 198FAA(2) is not a multiple of a dollar, then the amount is to be rounded to the nearest dollar (rounding up in the case of 50 cents).

New subsection 198FAA(6) provides that, for the purposes of new section 198FAA, the indexation day is 20 September 2014 and each 20 September of later years.



## Schedule 2 – Review of decisions

### Summary

This Schedule will bring provisions of the Student Assistance Act relating to the Social Security Appeals Tribunal (SSAT) into line with similar provisions in the social security and related laws.

### Background

The *Social Security and Other Legislation Amendment (Further Budget and Other Measures) Act 2012* made various amendments, to the Social Security Administration Act, the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act), the *Child Support (Registration and Collection) Act 1988* and the *Paid Parental Leave Act 2010*, affecting the operation of the SSAT. However, parallel amendments were not made to the Student Assistance Act. This Schedule amends the Student Assistance Act to bring the provisions affecting the operation of the SSAT into line with the Acts mentioned above.

The Schedule also clarifies a provision in each of the Family Assistance Administration Act, the Social Security Administration Act and the Student Assistance Act to ensure a statement of reasons for an SSAT decision is given to the Administrative Appeals Tribunal (AAT) if there is to be a review of the SSAT's decision.

The amendments in this Schedule commence on the day after Royal Assent.

### Explanation of the changes

#### ***Amendments to the Family Assistance Administration Act and the Social Security Administration Act***

**Item 1** amends subsection 149(2) of the Family Assistance Administration Act.

Current subsection 149(2) provides that, if a person applies to the AAT for review of an SSAT decision, the Secretary is to give to the AAT copies of the statement of reasons prepared by the SSAT under paragraph 141(1)(a) of the Act. However, paragraph 141(1)(a) applies only where the SSAT varies decisions or sets decisions aside. Where the SSAT affirms a decision, the SSAT would give the statement of reasons under subparagraph 141(1A)(c)(ii).

The effect of the proposed amendment is that, if a person applies to the AAT for a review of an SSAT decision, the Secretary is to give the AAT copies of the statement of reasons prepared by the SSAT under either subparagraph 141(1A)(c)(ii) or paragraph 141(1)(a).

In the same way, **item 2** amends subsection 186(2) of the Social Security Administration Act. The effect of the proposed amendment is that, if a person applies to the AAT for a review of an SSAT decision, the Secretary is to give the AAT copies of the statement of reasons prepared by the SSAT under either subparagraph 177(1A)(c)(ii) or paragraph 177 (1)(a).

### ***Amendments to the Student Assistance Act***

**Items 3 to 10, 12 to 15 and 18 to 27** make various minor and technical amendments to Part 9 of the Student Assistance Act, including amendments to reflect the change of title from National Convener to Principal Member.

**Item 11** makes a consequential amendment to subsection 321(3) to refer to new sections 322A and 322B, rather than section 1274 of the Social Security Act, which no longer exists.

**Item 16** inserts new sections 322A, 322B and 322C at the end of Division 2 of Part 9 of the Student Assistance Act.

New section 322A gives the Principal Member of the SSAT the power to dismiss an application for review of a decision under any of the circumstances listed in paragraphs 322A(1)(a) to (e). It also gives the Principal Member the power to reinstate an application that has been dismissed in certain circumstances.

New section 322B provides that an applicant for review may notify the SSAT at any time that the application is discontinued or withdrawn. If the Principal Member has dismissed an application under section 322A, the applicant may also request that the dismissed application be reinstated.

New section 322C replaces existing section 328, which is being repealed by **item 17**. Existing section 328 provides that section 28 of the *Administrative Appeals Tribunal Act 1975* applies. The effect is that an applicant to an AAT proceeding has the right to request that the SSAT provide a statement setting out the reasons for its decision. This will be replaced by new section 322C, which sets out the requirements for the SSAT to notify parties of its decision.

New subsection 322C(1) sets out the requirement on the SSAT to notify parties of its decision where the SSAT affirms the decision on review. It provides that the SSAT must prepare a written statement of the decision, and either give reasons for the decision orally, or give a written statement setting out the reasons, findings on material questions of fact and a reference to the evidence or other material on which the findings were based.

New subsection 322C(2) provides that, if the SSAT did not give a written statement of reasons to a party, the party may make a written request of the SSAT for such a statement, within 14 days after the written statement of decision is given.

## Schedule 2 – Review of decisions

New subsection 322C(4) sets out the requirement on the SSAT to notify parties of its decision where the SSAT varies or sets decisions aside. It provides that the SSAT must give each party a written statement that sets out the decision on review, the reasons, findings on material questions of fact and a reference to the evidence or other material on which the findings were based.

New subsection 322C(5) requires the SSAT to give notice to each party advising them of their further review rights.

New sections 322A, 322B and 322C align the rules in the Student Assistance Act relating to dismissals of applications, withdrawal of applications and the notification of decisions with similar rules in other legislation that confers jurisdiction upon the SSAT – namely, the *Child Support (Registration and Collection) Act 1988*, the Family Assistance Administration Act, the *Paid Parental Leave Act 2010* and the Social Security Administration Act.

**Item 28** provides for how the changes are intended to apply.

Items 11 and 16 (to the extent that the latter inserts new sections 322A and 322B) will apply in relation to an application to the SSAT for review of a decision that is made on or after the commencement of the items.

Item 16 (to the extent that it inserts new section 322C) and items 17 and 18 will apply in relation to a decision of the SSAT that is made on or after commencement of the items.

## Schedule 3 – Machinery of government changes

### Summary

This Schedule will make minor and technical amendments to several Acts in the social services portfolio to reflect changed public service administrative arrangements.

### Background

On 18 September 2013, an Administrative Arrangements Order was made to reflect the new Ministry following the 2013 elections. A further Administrative Arrangements Order was made on 12 December 2013 to clarify the division of responsibilities between Ministers and Departments. As a result, some existing references to Ministers, Secretaries and Departments in various Acts in the social services portfolio are no longer accurate.

Notably, the Minister for Social Services now has responsibility for the Social Security Act and the Social Security Administration Act, except to the extent administered by the Minister for Employment and the Attorney-General. The Minister for Employment now has responsibility for the Social Security Act and the Social Security Administration Act insofar as they relate to participation and activity test requirements and compliance obligations for participation payment recipients.

The Attorney-General continues to have responsibility for the Social Security Act and the Social Security Administration Act insofar as they relate to the Australian Government Disaster Recovery Payment and the Australian Victims of Terrorism Overseas Payment. The amendments in this Schedule do not affect the Attorney-General's responsibilities.

The *Data-matching Program (Assistance and Tax) Act 1990* is also amended to reflect the new portfolio arrangements.

The amendments in this Schedule commence on the day after Royal Assent.

### Explanation of the changes

#### ***Amendments to the Data-matching Program (Assistance and Tax) Act 1990***

**Items 1 to 4** amend the definition of ***assistance agency*** in subsection 3(1), so the definition refers to the current titles of the relevant Departments, and by deleting references to the Health Department, which will no longer participate in data-matching under the Act. The agencies that are now participating in data-matching under the Act are:

- the Education Department;
- the Social Services Department;
- the Veterans' Affairs Department; and

- the Human Services Department.

**Item 5** inserts a definition of **Education Department** in subsection 3(1), meaning the Department that has responsibility for administering the payments known as child care benefit and child care rebate. Likewise, **item 9** inserts a definition of **Social Services Department** and **item 10** inserts a definition of **Veterans' Affairs Department** into subsection 3(1).

Each of these departments is defined by reference to an Act of Parliament, or to a policy area, for which each department has responsibility under the Administrative Arrangements Order.

**Item 6** updates the name of the Social Services Department in the definition of **matching agency** in paragraph 3(1)(a). Likewise, **items 11, 12 and 17** update the name of the Social Services Department in the heading before section 3A, in paragraph 3A(1)(a) and in subsection 4(1).

**Item 7** amends the definition of **personal assistance** in paragraph 3(1)(b) to remove references to agencies no longer responsible for the relevant types of assistance.

**Item 8** repeals paragraphs 3(1)(ca), (da), (db), (dc), (de) and (df) of the definition of personal assistance as those types of assistance are no longer available, and data-matching is no longer conducted in relation to those types of assistance.

**Items 13 to 16** make grammatical amendments within subsection 3A(1).

### **Amendments to the Social Security Act 1991**

**Item 18** amends the definition of **approved program of work for income support payment** in subsection 23(1) by replacing the reference to 'Employment Secretary' with 'Secretary'. Similarly, **items 24 and 25** amend sections 28 and 28A by replacing references to 'Employment Secretary' with 'Secretary'.

As the approval of programs of work and programs of assistance falls within the responsibilities of both the Employment Department and the Social Services Department, the Secretary for either department may exercise the powers under sections 28 and 28A of the Social Security Act. Either Secretary may make a declaration and sign an instrument under S28 and S28A, but there must be formal administrative agreement between the departments before the declaration is made.

**Item 26** is a transitional provision, ensuring that approvals made under old section 28 or 28A continue to have effect following commencement of these amendments as if the approvals were made under new section 28 or 28A.

**Item 19** amends the definition of **Employment Department**. It is intended that, even if the name of the Employment Department is changed in the future, the department being referred is the department that is administered by the Minister administering the *Fair Entitlements Guarantee Act 2012* according to the Administrative Arrangements Orders applicable at any given time.

**Item 20** makes a grammatical amendment to the definition of **Employment Secretary** in subsection 23(1).

**Items 21 and 22** repeal the definitions of **Health Department** and **Health Secretary**. These two definitions are no longer necessary as the Secretary for the Health Department no longer exercises any powers or functions under the Social Security Act.

**Item 23** repeals subparagraph 23(1)(b)(ii) of the definition of **Secretary**. This subparagraph is no longer necessary because the review of decisions under the Student Assistance Act is provided for under Part 9 of the Student Assistance Act itself, rather than under Division 4 of Part 4 of the Social Security Administration Act.

**Item 27** repeals subparagraph 94(1)(c)(ii) and substitutes a new subparagraph. New subparagraph 94(1)(c)(ii) provides that one of the qualification criteria for disability support pension is that the Secretary is satisfied that the person is participating in the program administered by the Commonwealth known as the supported wage system. This amendment is necessary because the supported wage system is now administered by the Social Services Department, and not the Health Department, as currently reflected in the subparagraph. Accordingly, existing references to the Health Secretary and the Health Department are now deleted.

**Items 28 and 29** amend sub-subparagraph 1035(1)(d)(ii)(C) and subparagraph 1046(2B)(b)(iii) (relating to mobility allowance) by replacing the reference to the ‘Secretary of the Employment Department’ with ‘the Secretary’.

**Item 30** is a transitional provision, ensuring that nominations of service providers in force under sub-subparagraph 1035(1)(d)(ii)(C) and subparagraph 1046(2B)(b)(iii) continue to have effect after commencement as if the nominations were given under new sub-subparagraph 1035(1)(d)(ii)(C) and subparagraph 1046(2B)(b)(iii).

**Items 31 and 32** amend paragraph 1061ZZGE(1)(b) and subsection 1061ZZGH(3) (relating to assurances of support), by referring to the Minister administering the *Migration Act 1958*.

**Item 33** repeals the note after subsection 1228(2) (relating to overpayments), as the reference to the Employment Department is now out of date and the note is unnecessary.

### ***Amendments to the Social Security Administration Act***

**Item 34** repeals paragraph 129(4)(e) (relating to internal review), as the Health Secretary no longer has any decision-making power under the social security law.

**Item 35** amends paragraph 144(e) (relating to review by the Social Security Appeals Tribunal) by replacing the reference to the ‘Employment Secretary’ with the ‘Secretary’. As the matters under paragraph 144(e) are no longer solely the responsibility of the Employment Secretary, it is intended that the Administrative Arrangements Order would aid in the interpretation of who is the relevant Secretary, or who are the relevant Secretaries, who may exercise a power or function in a given situation.

### Schedule 3 – Machinery of government changes

**Item 36** also amends paragraph 144(e) by replacing the reference to ‘unemployment payment’ with ‘income support payment’, as programs of work are now also relevant to other income support payments.

**Item 37** repeals subsection 234(5) (relating to delegation) because the Health Secretary no longer has any powers or functions under the Act. It also repeals subsection 234(6), which refers to the Employment Secretary’s powers of delegation under section 28 of the Act. This subsection is unnecessary given subsection 234(1), which refers to the Secretary’s powers of delegation more broadly.

## Schedule 4 – Aged care amendments

### Summary

This Schedule will amend the aged care legislation and the *Health and Other Services (Compensation) Act 1995* to reflect changed public service administrative arrangements, following the machinery of government changes that occurred on 18 September 2013. These amendments include clarifying and expanding the powers of the Secretary to delegate functions and powers under the *Aged Care Act 1997* to specified officers, bodies and other persons.

### Background

These changes principally arise from the creation of the new portfolio of Social Services. The matters dealt with by the Department of Social Services include income security and support policies and programmes for the aged, together with services for older people, including their carers. The legislation administered by the Minister includes the Aged Care Act as well as substantial portions of the Social Security Act and Social Security Administration Act. As these Acts have been historically administered by separate Ministers and departments, some amendments are required to ensure these Acts operate appropriately when administered by the same Minister and department.

Similarly, amendments are required to the *Health and Other Services (Compensation) Act 1995* because of the separation of the former Health and Ageing portfolio.

This Schedule will implement various amendments to Acts relating to aged care, which contain references to a specific Minister, department or Secretary of a department that are no longer correct or create administrative difficulties as a result of the making of new Administrative Arrangements Order on 18 September 2013.

These amendments are made to the following Acts:

- *Aged Care Act 1997*;
- *Aged Care (Transitional Provisions) Act 1997*;
- *Health and Other Services (Compensation) Act 1995*; and
- Social Security Administration Act.

The amendments in this Schedule commence at various times largely related to the commencement of other amending legislation affecting the principal provisions being amended here.

### ***Abbreviations used in the explanatory memorandum for this Schedule***

- **Aged Care Act** means the *Aged Care Act 1997*
- **Aged Care Secretary** means the Secretary of the Department administered by the Minister who administers the Aged Care Act



- **Aged Care Transitional Provisions Act** means the *Aged Care (Transitional Provisions) Act 1997*
- **Chief Executive Centrelink** has the same meaning as in the *Human Services (Centrelink) Act 1997*
- **Chief Executive Medicare** has the same meaning as in the *Human Services (Medicare) Act 1993*
- **Social Security Secretary** means the Secretary of the Department administered by the Minister who administers the *Data-matching Program (Assistance and Tax) Act 1990*

### Explanation of the changes

#### ***Amendments to the Aged Care Act***

**Item 1** repeals a note at subsection 44-24(12), which directs the reader to the power of the Secretary to delegate functions under section 96-2 to certain persons. As the power to delegate certain functions under section 44-24 has been amended, the note is no longer correct in referring to those persons and, as a consequence, is to be deleted.

**Item 2** repeals subsection 85-4(2), which prevents the Secretary from reconsidering determinations of a care recipient's total assessable income made by the Social Security Secretary (or his/her delegate).

This addresses the difficulties which have arisen as a result of the Social Security Secretary being the same person as the Aged Care Secretary when reconsidering determinations of a care recipient's total assessable income. Currently, the reconsideration can be either under section 85-4 or 85-5 of the Aged Care Act, or under section 126 of the Social Security Administration Act. However, being the same person, it is not clear which reconsideration route is to be taken. This item addresses this anomaly by closing the parallel pathway, and only allowing reconsideration under the Aged Care Act.

Under subitem 8(1), this amendment will apply only to determinations made under section 44-24 on or after the date of commencement of this item.

**Item 3** repeals subsection 85-5(2), which prevents the Secretary from reconsidering determinations of a care recipient's total assessable income made by the Social Security Secretary (or his/her delegate), following an application made by the care recipient.

As with item 2, this item addresses the difficulties which have arisen from the Social Security Secretary being the same person as the Aged Care Secretary when reconsidering determinations of a care recipient's total assessable income. Currently, the reconsideration can be under either section 85-4 or section 85-5 of the Aged Care Act, or under section 126 of the Social Security Administration Act. However, being the same person, it is not clear which reconsideration route is to be taken. This item addresses this anomaly by closing the parallel pathway.

Under subitem 8(1), this amendment will only apply to determinations made under section 44-24 on and after the date of commencement of this item.

**Item 4** repeals sections 85-6 and 85-7 to reflect changes made in items 2 and 3. Currently, these sections allow for appeals of decisions under section 44-24 (working out a person's total assessable income) in the Aged Care Act to be reviewed under section 126 of the Social Security Administration Act. Given it is unclear which review path should be used with the Social Security Secretary being the same person as the Aged Care Secretary, this item removes the parallel path from the Social Security Administration Act, so that section 44-24 decisions are treated consistently with all other decisions under the Aged Care Act.

**Item 5** is a consequential amendment to the changes made to subsection 96-2 in item 7.

**Item 6** ensures that all officers who may acquire protected information under the Aged Care Act are subject to the offence provisions in section 86-7. This amendment adds the Chief Executive Medicare or departmental employees (within the meaning of the *Human Services (Medicare) Act 1973*). This section makes it an offence for an officer who receives information for the purposes of the Act to record, disclose or use the information for any purpose other than:

- (a) the purpose for which it was acquired; or
- (b) a purpose for which the person to whom the information relates has given written consent.

This offence carries a penalty of two years' imprisonment.

Under subitem 10(2), this amendment will apply in relation to protected information acquired on or after commencement of this item.

**Item 7** repeals section 96-2 (Delegation of Secretary's powers and functions), and substitutes a new section. This section clearly sets out the position of the person to whom powers may be delegated, the powers that may be delegated, and whether the powers can be sub-delegated by the person, in order to facilitate the administration of the Act. At the same time, the new section seeks to simplify the powers being delegated, in line with the Government's deregulation agenda.

The Secretary may now delegate to the Aged Care Pricing Commissioner the functions which the Secretary considers necessary for the Aged Care Pricing Commissioner to perform his or her functions under the Aged Care Act. The office of the Aged Care Pricing Commissioner was created under the *Aged Care (Living Longer Living Better) Act 2013*, and this power to delegate means the Aged Care Pricing Commissioner can be treated similarly to the Chief Executive Officer of the Australian Aged Care Quality Agency.

Other than the addition of the Aged Care Pricing Commissioner, the range of persons to whom the Secretary may delegate powers remains the same. However, delegations to the Social Security Secretary will not currently operate, as the Social Security Secretary is the same person as the Aged Care Secretary, under the current Administrative Arrangements Order. Should future changes be made to the Administrative Arrangements Order to separate these functions, then the delegation power will become operative. If they become operative, then the Secretary will also have the power to delegate his/her powers to reconsider determinations of a care recipient's total assessable income.

Minor changes are made to the powers that may be delegated to these persons. Some of these changes are to make the route leading to the exercise of these powers more visible. In particular, the Secretary may now directly delegate his/her powers under section 44-24 to determine a care recipient's total assessable income to the Chief Executive Centrelink. Previously, these powers were delegated to the Social Security Secretary, who then sub-delegated to these officers. The Secretary may also delegate these powers to the Chief Executive Medicare, and both the Chief Executive Medicare and the Chief Executive Centrelink can be delegated the power to reconsider these decisions.

The new section makes it clear that, where the Secretary delegates his/her powers to the Social Security Secretary, the Chief Executive Medicare or the Chief Executive Centrelink, those powers can be sub-delegated to relevant Officers of the Department.

In line with the Government's deregulation agenda, the Secretary's power to delegate the assessment of a care recipient's assets under section 44-26C has also been simplified and clarified.

**Item 8** ensures that amendments made by items 2, 3 and 4 will apply only to determinations made under section 44-24 on and after the date of commencement of these amendments. Further, the item ensures the amendment made by item 6, in respect of protected information acquired on or after the date of commencement, applies from the commencement of item 6.

#### ***Amendments to the Aged Care Transitional Provisions Act***

**Item 9** repeals a note at subsection 44-24(12), which directs the reader to the power of the Secretary to delegate functions under section 96-2 to certain persons. As the power to delegate certain functions under section 44-24 has been amended, the note is no longer correct in referring to those persons and, as a consequence, is to be deleted.

**Item 10** repeals subsection 85-4(2), which prevents the Secretary from reconsidering determinations of a care recipient's total assessable income made by the Social Security Secretary (or his/her delegate).

This addresses the difficulties which have arisen from the Social Security Secretary being the same person as the Aged Care Secretary when reconsidering determinations of a care recipient's total assessable income. Currently, the reconsideration can be under either section 85-4 or section 85-5 of the Aged Care Act, or under section 126 of the Social Security Administration Act. However, being the same person, it is not clear which reconsideration route is to be taken. This item addresses this anomaly by closing the parallel pathway.

Under item 14, this amendment will apply only to determinations made under section 44-24 on or after the date of commencement of this item.

**Item 11** repeals subsection 85-5(2), which prevents the Secretary from reconsidering determinations of a care recipient's total assessable income made by the Social Security Secretary (or his/her delegate), following an application made by the care recipient.

Similarly to item 10, this addresses the difficulties which have arisen from the Social Security Secretary being the same person as the Aged Care Secretary when reconsidering determinations of a care recipient's total assessable income. Currently, the reconsideration can be under either section 85-4 or section 85-5 of the Aged Care Act, or under section 126 of the Social Security Administration Act. However, being the same person, it is not clear which reconsideration route is to be taken. This item addresses this anomaly by closing the parallel pathway.

Under item 14, this amendment will apply only to determinations made under section 44-24 on and after the date of commencement of this item.

**Item 12** repeals sections 85-6 and 85-7. Currently, these sections allow for appeals of decisions under section 44-24 (working out a person's total assessable income) in the Aged Care Act to be reviewed under section 126 of the Social Security Administration Act. Given it is unclear which review path should be used with the Social Security Secretary being the same person as the Aged Care Secretary, this item removes the parallel path from the Social Security Administration Act, so that section 44-24 decisions are treated consistently with all other decisions under the Aged Care Act.

**Item 13** repeals section 96-2 (Delegation of Secretary's powers and functions), and substitutes a new section. This section clearly sets out the position of the person to whom powers may be delegated, the powers that may be delegated, and whether the powers can be sub-delegated by the person, to facilitate the administration of the Act. At the same time, the new section seeks to simplify the powers being delegated, in line with the Government's deregulation agenda.

The range of persons to whom the Secretary may delegate powers remains the same. However, delegations to the Social Security Secretary will not currently operate, as the Social Security Secretary is the same person as the Aged Care Secretary, under the current Administrative Arrangements Order. Should future changes be made to the Administrative Arrangements Order to separate these functions, then the delegation power will become operative. If they become operative, then the Secretary will also have the power to delegate his/her powers to reconsider determinations of a care recipient's total assessable income.

Minor changes are made to the powers that may be delegated to these persons. Some of these changes are made to make the route leading to the exercise of these powers more visible. In particular, the Secretary may now directly delegate his/her powers under section 44-24 to determine a care recipient's total assessable income to the Chief Executive Centrelink. Previously, these powers were delegated to the Social Security Secretary, who then sub-delegated to these officers. The Secretary may also delegate these powers to the Chief Executive Medicare, and both the Chief Executive Medicare and the Chief Executive Centrelink can be delegated the power to reconsider these decisions.

The new section makes it clear that, where the Secretary delegates his/her powers to the Social Security Secretary, the Chief Executive Medicare or the Chief Executive Centrelink, those powers can be sub-delegated to relevant officers of the Department.

In line with the Government's deregulation agenda, the Secretary's power to delegate the assessment of a care recipient's assets under section 44-8AA or 44-8AB have also been simplified and clarified.

**Item 14** ensures that amendments made by items 10, 11 and 12 will apply only to determinations made under section 44-24 of the Aged Care Transitional Provisions Act on and after the date of commencement of these amendments.

#### ***Amendment to the Health and Other Services (Compensation) Act 1995***

**Item 15** amends paragraph 42(1)(f) so the reference to the Secretary refers to the Aged Care Secretary.

#### ***Amendments to the Social Security Administration Act***

**Item 16** is a technical correction, to remove the word 'or', to reflect changes made to paragraph 126(1)(c) by item 17.

**Item 17** amends subsection 126(1) of the Social Security Administration Act to repeal paragraphs 126(1)(e) and (f), which permit the review by the Secretary of decisions determining the total assessable income of care recipients under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act.

#### Schedule 4 – Aged care amendments

This addresses the difficulties which have arisen from the Social Security Secretary being the same person as the Aged Care Secretary when reconsidering determinations of a care recipient's total assessable income. Currently, the reconsideration can be under either section 85-4 or section 85-5 of the Aged Care Act, or under section 126 of the Social Security Administration Act. However, being the same person, it is not clear which reconsideration route is to be taken. This item addresses this anomaly by closing the parallel pathway, and only allowing reconsideration under the Aged Care Act.

These amendments are required to avoid parallel appeal paths under these Acts and the Social Security Administration Act.

Under item 28, these amendments will apply only to decisions under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act made on or after commencement of these amendments.

These amendments will not commence if item 106 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*, which repeals paragraph 126(1)(c), commences before Part 1 of this Schedule commences.

**Item 18** repeals subsection 126(1) of the Social Security Administration Act, and substitutes a new subsection 126(1). This removes the ability of the Secretary to review decisions determining the total assessable income of care recipients under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act.

Like item 17, this addresses the difficulties which have arisen from the Social Security Secretary being the same person as the Aged Care Secretary when reconsidering determinations of a care recipient's total assessable income. Currently, the reconsideration can be under either section 85-4 or section 85-5 of the Aged Care Act, or under section 126 of the Social Security Administration Act. However, being the same person, it is not clear which reconsideration route is to be taken. This item addresses this anomaly by closing the parallel pathway.

These amendments are required to avoid parallel appeal paths under these Acts and the Social Security Administration Act.

Under item 28, this amendment will apply only to decisions under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act made on or after commencement of these amendments.

The amendment will commence only if item 106 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*, which repeals paragraph 126(1)(c), commences before Part 1 of this Schedule commences.

**Item 19** is a technical correction, to remove the word 'or', to reflect changes made to paragraph 129(1) by item 20.

**Item 20** repeals paragraphs 129(1)(e) and (f), which, following an application by a person affected, permit the review by the Secretary of decisions determining the total assessable income of care recipients under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act. These amendments are required to avoid parallel appeal paths under these Acts and the Social Security Administration Act.

Under item 28, these amendments will apply only to decisions under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act made on or after commencement of these amendments.

These amendments will not commence if item 109 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*, which repeals paragraph 129(1)(c), commences before Part 1 of this Schedule commences.

**Item 21** repeals subsection 129(1) of the Social Security Administration Act, and substitutes a new subsection 129(1). This removes the ability of the Secretary to review decisions determining the total assessable income of care recipients under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act, following an application by a person affected. These amendments are required to avoid parallel appeal paths under these Acts and the Social Security Administration Act.

**Item 22** ensures the amendment made by item 21 applies only to decisions under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act made on or after commencement of the item.

Items 21 and 22 will commence only if item 109 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*, which repeals paragraph 129(1)(c), commences before Part 1 of this Schedule commences.

**Item 23** amends subsection 140(1) of the Social Security Administration Act. The effect of the amendment is as though the subsection finishes after paragraph 140(1)(b) and does not refer to decisions of an officer under the *Farm Household Support Act 1992* (that is, that the former paragraph 140(1)(d) has been repealed).

This amendment commences only if item 112 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*, which repeals paragraph 140(1)(d) of the Social Security Administration Act, commences before Part 1 of this Schedule commences.

**Item 24** also amends subsection 140(1) of the Social Security Administration Act. The effect of the amendment is as though the subsection finishes after paragraph 140(1)(d).

#### Schedule 4 – Aged care amendments

This amendment will not commence if item 112 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*, which repeals paragraph 140(1)(d) of the Social Security Administration Act, commences before Part 1 of this Schedule commences.

**Item 25** amends subsection 140(1) of the Social Security Administration Act to repeal paragraphs 140(1)(f) and (g), which permit review by the Social Security Appeals Tribunal of decisions determining the total assessable income of care recipients under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act.

Under item 28, these amendments will apply only to decisions under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act made on or after commencement of these amendments.

These amendments will commence at the same time as table item 1 (that is, if the Act receives the Royal Assent before 1 July 2014, on 1 July 2014 – or, if the Act receives the Royal Assent after 1 July 2014, then 28 days after the Royal Assent).

**Item 26** amends subsection 178(1) of the Social Security Administration Act by repealing paragraphs 178(1)(b) and (c). This removes the ability of the Administrative Appeals Tribunal to consider a decision by the Secretary under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act under the social security law. These amendments are required to avoid parallel appeal paths under these Acts and the Social Security Administration Act.

Under item 28, these amendments will apply only to decisions under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act made on or after commencement of these amendments.

These amendments will not commence if item 117 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*, which repeals paragraph 178(1)(a), commences before Part 1 of this Schedule commences.

**Item 27** repeals subsection 178(1) of the Social Security Administration Act, and substitutes a new subsection 178(1). This removes the ability of the Administrative Appeals Tribunal to consider a decision by the Secretary under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act under the social security law. These amendments are required to avoid parallel appeal paths under these Acts and the Social Security Administration Act.

Under item 28, these amendments will only apply to decisions under section 44-24 of the Aged Care Act and section 44-24 of the Aged Care Transitional Provisions Act made on or after commencement of these amendments.

This amendment commences only if item 117 of Schedule 2 to the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*, which repeals paragraph 178(1)(a), commences before Part 1 of this Schedule commences.



#### Schedule 4 – Aged care amendments

**Item 28** is a saving provision, which ensures any amendments made to paragraphs 126(1)(e) and (f), 129(1)(e) and (f), 140 (1)(f) and (g) and 178(1)(b) and (c) will apply only to determinations made under section 44-24 of the Aged Care Act and the Aged Care Transitional Provisions Act on and after the date of commencement of these amendments.

## Schedule 5 – Definitions and technical corrections

### Summary

This Schedule makes minor and technical amendments to the Social Security Act, including a restructure of the Part of the Act dealing with definitions.

### Background

Part 1.2 of the Social Security Act contains definitions of terms that are used in the social security law. Each section in Part 1.2 contains a list of definitions relating to a particular subject. For example, sections 4 and 5 contain family relationship definitions, and section 8 contains income test definitions.

Other general definitions are contained in subsection 23(1). Currently, locating the definition of a term requires perusing 51 separate lists of definitions contained in Part 1.2 of the Social Security Act. These amendments will ensure all the terms relevant to more than one area in the Act will now be listed in subsection 23(1).

This Schedule also makes various minor amendments to fix inconsistent formatting and other minor technical errors.

Some of the amendments in this Schedule are affected by amendments made by Part 4 of Schedule 2 to the *Aged Care (Living Longer Living Better) Act 2013*, which commences on 1 July 2014. For simplicity, all amendments in this Schedule will therefore commence on the later of:

- the start of the day of the Royal Assent; and
- immediately after the commencement of Part 4 of Schedule 2 to the *Aged Care (Living Longer Living Better) Act 2013*.

### Explanation of the changes

#### ***Amendments to the Social Security Act 1991***

Part 1 of this Schedule inserts into subsection 23(1) signpost definitions to identify the provision that actually defines the expression. The effect of these signposting amendments is that subsection 23(1) will become a complete entry of all definitions defined under Part 1.2 of the Social Security Act.

There are other terms that are defined only for the purposes of a specific area of the Social Security Act. Signposts to these definitions will not be included in subsection 23(1). For example, definition of terms that are used only in Part 2.26 of the Social Security Act (relating to fares allowance) are listed in section 19A only, and are not included in subsection 23(1).

**Item 1** inserts a general outline, as new section 3B, to explain how the definitions contained in Part 1.2 are structured.

## Schedule 5 – Definitions and technical corrections

**Item 2** replaces the current heading of section 23 ‘General definitions’ with the heading ‘Dictionary’.

**Item 3** inserts into subsection 23(1) signpost definitions of all the terms defined in sections 4 to 22 of the Social Security Act.

**Item 4** repeals subsection 23(19) as the terms *transfer day* and *transferee* are now defined in subsection 23(1).

**Items 5 to 8** insert a note at the beginning of each relevant Part or Chapter, to inform readers where the definitions that are relevant to that Part or Chapter can be found. For example, item 5 inserts a note to tell readers that many of the definitions relevant to the provisions of Part 2.26 of the Social Security Act (relating to fares allowance) are contained in section 19A.

Part 2 of this Schedule contains minor technical amendments, to fix incorrect capitalisation, inconsistent font style, incorrect numbering of notes and incorrect cross-references.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011*

### **SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (SENIORS HEALTH CARD AND OTHER MEASURES) BILL 2014**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### ***Overview of the Bill***

##### Seniors health card

This Bill will implement the Government's election commitment to index income thresholds for the Commonwealth Seniors Health Card.

Qualification for the seniors health card depends partly on a person satisfying the seniors health card taxable income test. Under that test, the person's adjusted taxable income must not exceed the taxable income limit that applies to the person's family situation. The taxable income limits are not currently indexed. Introducing indexation means more people will satisfy the seniors health card taxable income test and therefore qualify for the seniors health card.

Indexation of the thresholds will occur annually, starting on 20 September 2014, and will be based on movements in the Consumer Price Index.

This measure applies to the seniors health card under either the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*.

##### Review of decisions

This Bill will bring provisions of the *Student Assistance Act 1973* relating to the Social Security Appeals Tribunal into line with similar provisions in the social security and related laws.

##### Machinery of government changes

The Bill will make minor and technical amendments to several Acts in the social services portfolio to reflect changed public service administrative arrangements.

##### Aged care amendments

The aged care legislation and the *Health and Other Services (Compensation) Act 1995* will also be amended to reflect changed public service administrative arrangements, following the machinery of government changes that occurred on 18 September 2013. These amendments include clarifying and expanding the powers of the Secretary to delegate functions and powers under the *Aged Care Act 1997* to specified officers, bodies and other persons.

Definitions and technical corrections

The Bill makes further minor and technical amendments to the *Social Security Act 1991*, including a restructure of the Part of Act dealing with definitions.

***Human rights implications***

Right to social security

The Bill engages the right to social security, as recognised in Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The right to social security recognises the right of everyone to social security, including social insurance.

The Bill also engages Article 11 of the ICESCR, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Holders of a senior's health card are entitled to a range of concessions, including concessions on pharmaceutical and health services.

The Bill promotes these rights by increasing the number of people qualifying for a seniors health card.

The minor and technical amendments in the Bill do not have any human rights implications as they are purely of a minor machinery nature.

***Conclusion***

The Bill is compatible with human rights because it promotes the right to social security and health.

**Minister for Social Services, the Hon Kevin Andrews MP**