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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SECURITY AMENDMENT (FLEXIBLE PARTICIPATION
REQUIREMENTS FOR PRINCIPAL CARERS) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment Participation, Senator the
Honourable Mark Arbib)

SOCIAL SECURITY AMENDMENT (FLEXIBLE PARTICIPATION REQUIREMENTS FOR PRINCIPAL CARERS) BILL 2010

OUTLINE

The Social Security Amendment (Flexible Participation Requirements for Principal Carers) Bill delivers on the Government's commitment to improve flexibility for parents of school aged children who are asked to look for part-time work as part of their welfare requirements.

This Bill will deliver changes to exemptions for parents announced as part of the 2009-10 Budget measure 'More Flexible Participation Requirements for Parents'. It responds to the report made to Government by the Participation Review Taskforce, which was asked by Government to investigate ways to make participation requirements more flexible and family friendly for parents. These changes affect parents on Newstart Allowance, Parenting Payment, Youth Allowance or Special Benefit who have school-aged children and must report at least 15 hours a week of approved activities to Centrelink and commence from 1 July 2010.

The Bill extends certain participation exemptions available to parents on income support payments. Currently, parents who are home schooling or distance educating their child can receive an exemption from participation requirements until their youngest child turns sixteen. The Participation Taskforce reported that many parents seek to have this exemption extended until their child finishes high school. This change will enable them to do this.

Similarly, parents with four or more children can claim a large family exemption as long as there are four children aged under 16. At the request of parents through the Participation Taskforce, this change has been extended to include older children still at school. This means that home schooling, distance education and large family exemptions will be extended to parents with school children up to 19 years old.

There are a number of parents on welfare payments who have experienced family and domestic violence. A special exemption has been available to parents in this situation, but only where they have left the relationship. Recognising the complexity of family arrangements, this Bill provides that parents who have experienced domestic violence will no longer have to be subject to family break down to receive the exemption. recognising that many are not ready for the world of work Social Workers are available to these workers through Centrelink. Employment service providers have discretion to refer parents in this situation to complementary services, for example, crisis accommodation.

A new exemption will be introduced to support parents providing kinship care for a child who is a relative, through a care plan prepared or accepted by the State/Territory Government. This will complement the kinship care exemption that is already available under the legislation, where the care is recognised through a court order, including women in Indigenous communities in Australia.

The Bill provides support for job seekers who provide emergency or respite foster care, by providing an extended exemption while they are providing this care and for a period of time afterwards, to support their availability for subsequent placements.

From 1 July 2010, parents will be able to count their study, voluntary work or part-time work – or a combination of these – towards meeting their part-time participation requirements. Changes to activities that parents can undertake to meet their participation requirements including over the long school holidays will be implemented as part of the Budget measure, through a legislative instrument and policy guidance. Parents will also have more flexible reporting methods available to report to Centrelink. Parents will be informed of the changes coming into effect before the 1 July 2010 start date.

FINANCIAL IMPACT

The measure will cost **26.8m** million over 4 years.

2009-10	2010-11	2011-12	2012-13
\$8.6m	\$7.0m	\$5.6m	\$5.6m

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NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the *Social Security Amendment (Flexible Participation Requirements for Principal Carers) Act 2010*.

Clause 2 - Commencement

Provides that the Act commences on 1 July 2010.

Clause 3 - Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

For ease of description, this explanatory memorandum uses the following abbreviation:

‘Social Security Act’ means the *Social Security Act 1991*.

Schedule 1—Amendment of the Social Security Act 1991

Items 1, 2 and 3

These items insert definitions of *main supporter* and *secondary pupil child* into the Social Security Act.

Main supporter is defined in new section 5G. If someone is a secondary pupil child of a person, the person is the main supporter of the secondary pupil child.

However, new subsection 5G(2) further provides that subsections 5(18) to (22) and (24) of the Social Security Act apply for the purposes of determining whether a person is the main supporter of a secondary pupil child in the same way as they apply for the purposes of determining whether a person is the principal carer of a child. Subsections 5(18) to (20D) are about identifying who is the principal carer of a child and subsections 5(21), (22) and (24) provide for when a person can be a principal carer of a child if the child is absent from Australia. These same rules will apply in determining who is the main supporter of a secondary pupil child.

Secondary pupil child is defined in new section 5F. A person is a secondary pupil child of another person at a particular time if the person:

- is 16 to 18 years old (ie has not yet turned 19); and
- has not completed the final year of secondary school or an equivalent level of education; and
- is undertaking secondary education or a course of study determined to be a secondary course under section 5D of the *Student Assistance Act 1973*; and
- has income of less than \$6 403 in the financial year; and
- lives with the other person and is wholly or substantially dependent on the person; and
- the other person is claiming or receiving either parenting payment, youth allowance, newstart allowance or special benefit.

The definition will also prevent a person from being a secondary pupil child of another person where the person is the partner of the other person.

Items 4 and 5

Participation requirements exemption for Domestic Violence

Section 502C of the Social Security Act provides an exemption from the participation requirements for a person in receipt of Parenting Payment in certain circumstances where domestic violence has occurred. Currently paragraph 502C(2)(a) provides that the Secretary may make a determination to give a person an exemption under section 502C if the Secretary is satisfied that: the person ceased to be a member of a couple within 26 weeks before the determination, the person was subject to domestic violence in the period of 26 weeks and has not again become a member of a couple.

The amendment contained in this item will amend the criteria in paragraph 502C(2)(a) to provide that the Secretary may make a determination to give a person an exemption under section 502C if the Secretary is satisfied that the person was subjected to domestic violence in the 26 weeks before making the determination. This removes the requirement contained in paragraph 502C(2)(a) that a person must have ceased to be a member of a couple and has not again become a member of a couple.

The period of the exemption is found in subsections 502C(3) to (5). Currently, subsection 502C(3) provides the period of the determination as the lesser of the period the Secretary considers to be appropriate or 16 weeks. However, subsection 502C(5) provides that if the determination is the first determination in relation to when a person ceases to be a member of a couple, the period must be 16 weeks.

Item 5 amends paragraph 502C(5)(b) with the effect that if the determination is the first determination in relation to the person on or after 1 July 2010, the exemption period must be for a period of 16 weeks. This means that if a person has had a determination under section 502C prior to 1 July 2010, the person is still entitled to a further exemption under this section for a period of 16 weeks on or after 1 July 2010.

The extended exemption will provide support to parents in domestic violence situations regardless of whether they have left the relationship.

Item 6

Section 502D of the Social Security Act provides an exemption from the participation requirements for a person in receipt of Parenting Payment in certain circumstances. This item will extend a number of the exemptions currently contained in this section where a person is the main supporter of a secondary pupil child.

Participation requirements exemption for carers of 4 or more children

Subsection 502D(3A) includes an exemption where the Secretary is satisfied the person is the principal carer of 4 or more children. This item amends this subsection to extend it to the situation where a person is the principal carer or main supporter of 4 or more children. To qualify for this exemption a person must be the principal carer of at least one of the 4 or more children. That is, a person will not get a participation exemption under this subsection where they are the main supporter of 4 or more children and are not a principal carer of at least one other child. Under the existing large family exemption a parent would no longer be eligible for the exemption once their oldest child turns 16 (if the parent no longer had 4 children under 16 years of age). The extended exemption recognises that the caring responsibilities of parents with large families do not cease once the oldest child turns 16 years of age.

Principal carer is defined in subsections 5(15) to (24) of the Social Security Act.

Home and distance educator exemptions

Paragraphs 502D(3)(b) and (c) of the Social Security Act provide an exemption to a person who is receiving Parenting Payment where the Secretary is satisfied the person is the principal carer of one or more children, and:

- the person is a home educator of that child, or one or more of those children; or
 - the person is a distance educator of that child, or one or more of those children.
- These exemptions are maintained.

New subsection 502D(3B) will extend the participation exemptions contained in paragraphs 502D(3)(b) and (c) to a person who is the main supporter of one or more secondary pupil children.

New subsection 502D(3B) will provide that where a person is the main supporter of one or more secondary pupil children and the person is a home educator or distance educator of one or more of those children, the Secretary must make a determination under section 502D to give that person a participation exemption. *Home educator* is defined in section 5C and *distance educator* is defined in section 5D.

The extended exemption supports parents who meet the requirements for registration in their State or Territory and provide home or distance education to an older child/ren.

Participation requirements exemption for Kinship care

New subsection 502D(3C) will provide a new participation exemption for kinship care. This is in addition to the existing family law order exemption in paragraph 502D(3)(d). The Secretary must make a determination to grant a person a participation exemption under section 502D where the person is the principal carer of one or more children and the person is a relative (other than a parent) of a child (the kin child) and is living with and caring for the kin child as prescribed by a document that is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children. The term *relative (other than a parent)* is defined in section 5E of the Social Security Act. The person caring for the kin child must be acting in accordance with the document in order to receive the participation exemption.

The amendments supports parents who provide kinship care through care plans by State and Territory authorities, for example kinship care arrangements by relatives in Indigenous communities.

Items 7, 8, 14, 15, 17 and 21

Activity test exemption for domestic violence

Similarly to item 6 as it applies to a principal carer who is in receipt of Parenting Payment, these amendments relax the criteria around when the Secretary may make a determination to exempt a person who is in receipt of Youth Allowance, Newstart Allowance or Special Benefit from the activity test as a result of domestic violence.

Currently, paragraphs 542F(2)(a), 602B(2)(a) and 731DA(2)(a) of the Social Security Act provide that the Secretary may make a determination giving a person who is in receipt of Youth Allowance, Newstart Allowance or Special Benefit an exemption from their respective activity test where domestic violence has occurred. Currently,

for a determination to be made to exempt a person in receipt of one of the above mentioned payments from the activity test, the Secretary must be satisfied that the person:

- is the principal carer of one or more children; and
- has ceased to be a member of a couple in the period of 26 weeks before the determination; and
- the person was subjected to domestic violence in that 26 week period; and
- has not again become a member of a couple.

These criteria are being relaxed to allow the Secretary to make a determination exempting a person from the activity test where the person is a principal carer and was subjected to domestic violence in the 26 weeks prior to the determination being made. This amendment relaxes the previous exemption for domestic violence for a principal carer by removing the requirements that the person ceased to be a member of a couple and has not again become a member of a couple. The period of an exemption under these provisions will be the same as those made to subsection 502C(5) by item 5 above. That is, the period of the first determination in relation to a person on or after 1 July 2010 must be for a period of 16 weeks.

The period of the exemption is found in subsections 502C(3) to (5). Currently, subsection 502C(3) provides the period of the determination as the lesser of the period the Secretary considers to be appropriate or 16 weeks. However, subsection 502C(5) provides that if the determination is the first determination in relation to when a person ceases to be a member of a couple, the period must be 16 weeks.

Item 5 amends paragraph 502C(5)(b) with the effect that if the determination is the first determination in relation to the person on or after 1 July 2010, the exemption period must be for a period of 16 weeks. This means that if a person has had a determination under section 502C prior to 1 July 2010, the person is still entitled to a further exemption under this section for a period of 16 weeks on or after 1 July 2010.

Items 7 and 8 make the amendments in relation to Youth Allowance by amending subsections 542F(2) and 542F(5)(b), items 13 and 14 make the amendments in relation to Newstart Allowance by amending subsections 602B(2) and 602B(5) and items 19 and 20 make the amendments in relation to Special Benefit by amending subsections 731DA(2) and 731DA(5).

Items 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24

The Social Security Act requires the Secretary to make a determination to exempt certain principal carers who are in receipt of Youth Allowance, Newstart Allowance or Special Benefit from the activity test in certain circumstances. This includes the situation where the principal carer parent is:

- the principal carer of 4 or more children; or
- the principal carer is a registered and active foster carer; or
- the principal carer is a home educator of that child, or one or more of those children; or

- the principal carer is a distance educator of that child, or one or more of those children.

The amendments contained in these items extend these activity test exemptions as explained below, including to provide some exemptions where a person is the main supporter of a secondary pupil child. These items also create a new activity test exemption for a principal carer who is a kinship carer and a new exemption for a person who is providing emergency or respite foster care.

The provisions of the Social Security Act which provide the above exemptions for each of the three income support payments are mirrored in relation to each payment.

Activity test exemptions for carers of 4 or more children

Subsections 542FA(3A), 602C(3A) and 731DB(3A) of the Social Security Act provide that the Secretary must make a determination to exempt a principal carer who is in receipt of Youth Allowance, Newstart Allowance or Special Benefit, respectively, from the activity test where the person is the principal carer of 4 or more children. These provisions are being amended to extend this activity test exemption to a person who is in receipt of Youth Allowance, Newstart Allowance or Special Benefit and who is the principal carer of a child and is the principal carer or main supporter of at least three other children.

The extended exemption recognises that the caring responsibilities of parents with large families do not cease once the oldest child turns 16 years of age.

Subsections 542FA(3A), 602C(3A) and 731DB(3A) are amended by items 9, 15 and 21, respectively, to effect this change.

Activity test exemptions for registered and active foster carers

Currently, in order for the Secretary to make a determination to exempt a Youth Allowance, Newstart Allowance or Special benefit recipient from the activity test for being a registered and active foster carer, the recipient must be a principal carer. This exemption is being maintained; however, a new exemption will be inserted into the Social Security Act by these amendments for people who are not the principal carers of one or more children. This exemption will require the Secretary to make a determination to exempt a recipient of Youth Allowance, Newstart Allowance or Special Benefit from the activity test where the person is a registered and active foster carer and is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

The term *registered and active foster carer* is defined in section 5B of the Social Security Act.

Items 9, 15 and 21 insert new subsections 542FA(3B) in relation to Youth Allowance, 602C(3B) in relation to Newstart Allowance and 731DB(3B) in relation to Special Benefit to effect this change.

Where a determination is made to give a registered and active foster carer an activity test exemption under these new provisions, the period of the exemption must be the lesser of:

- (a) the period the person is providing foster care plus an additional 12 weeks, or shorter period determined by the Secretary; or
- (b) 12 months.

Foster carers who are not principal carer parents are unable to access a full exemption from activity test requirements under the Social Security Act. This new exemption will support the availability of registered and active foster carers through an exemption during the care and an additional 12 weeks (or shorter period determined by the Secretary) after the child is no longer in their care, or 12 months, whichever is the lessor.

This amendment is contained in items 10, 11 and 12 in relation to Youth Allowance by inserting subsection 542FA(6A), and consequential amendments to subsections 542FA(6) and 542FA(7) to give effect to this, items 16, 17 and 18 in relation to Newstart Allowance by inserting subsection 602C(6A), and consequential amendments to subsections 602C(6) and 602C(7); and items 22, 23 and 24 in relation to Special Benefit by inserting subsection 731DB(6A) and consequential amendments to subsections 731DB(6) and 731DB(7).

Activity test exemptions for home educators or distance educators

The activity test exemptions for home educators or distance educators also currently require the recipient to be a principal carer in order for the Secretary to make a determination resulting in an exemption. These exemptions are retained. The amendments will extend these exemptions to a person who is in receipt of Youth Allowance, Newstart Allowance or Special Benefit where the person is the main supporter of one or more secondary pupil children and is the home educator or distance educator of one or more of those children. A person does not have to be both a principal carer and a main supporter to receive this exemption.

The extended exemption supports parents who meet the requirements for registration in their State or Territory and provide home or distance education to an older child/ren.

The amendments relating to home educators or distance educators are contained in items 9, 15 and 21 which insert new subsections 542FA(3C) in relation to Youth Allowance, 602C(3C) in relation to Newstart Allowance and 731DB(3C) in relation to Special Benefit.

Activity test exemptions for kinship care

In addition to extending the existing activity test exemptions above, a new activity test exemption for a person who is in receipt of Youth Allowance, Newstart Allowance or Special Benefit will be added by these amendments where the person is providing kinship care. This is also in addition to the existing family law order exemptions. The Secretary must make a determination to grant a person a participation exemption where the person is the principal carer of one or more children and the person is a

relative (other than a parent) of a child (the kin child) and is living with and caring for the kin child as prescribed by a document that is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children. The term *relative (other than a parent)* is defined in section 5E of the Social Security Act. The person caring for the kin child must be acting in accordance with the document in order to receive the participation exemption.

The amendments support kinship care arrangements, for example in Indigenous communities.

The amendments relating to kinship care are contained in items 9, 15 and 21 which insert new subsections 542FA(3D) in relation to Youth Allowance, 602C(3D) in relation to Newstart Allowance and 731DB(3D) in relation to Special Benefit.

Item 25

One of the criterion which must be satisfied for a person to be a secondary pupil child is that the person earns less than \$6,403 in the financial year. This item amends table item 40A in section 1190 to index the maximum amount a person can earn in this definition.

Item 26

This is a savings provisions which provides that the amendments to the provisions under which the Secretary makes a determination to grant either a participation exemption or an activity test exemption do not affect the validity of a determination made under those provisions before the commencement of the amendments.