Social Security Amendment (Flexible Participation Requirements for Principal Carers) Bill 2010

No. , 2010

(Employment and Workplace Relations)

A Bill for an Act to amend the social security law, and for related purposes
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A Bill for an Act to amend the social security law, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Social Security Amendment (Flexible Participation Requirements for Principal Carers) Act 2010.

2 Commencement

This Act commences on 1 July 2010.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule.

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concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendment of the Social Security Act 1991

1 Subsection 5(1)
Insert:

main supporter of a secondary pupil child has the meaning given by section 5G.

2 Subsection 5(1)
Insert:

secondary pupil child has the meaning given by section 5F.

3 After section 5E
Insert:

5F Secondary pupil child

A person is a secondary pupil child of another person at a time in a financial year if:

(a) at the time, the person:
   (i) has turned 16 but has not turned 19; and
   (ii) has not completed the final year of secondary school or an equivalent level of education; and
   (iii) is undertaking secondary education or a course of study or instruction that is determined under section 5D of the Student Assistance Act 1973 to be a secondary course; and
   (b) the person’s income in the financial year will not be more than $6,403; and
   (c) at the time, the person:
      (i) lives with the other person; and
      (ii) is wholly or substantially dependent on the other person; and
   (d) if the person is a member of a couple, the other person is not the person’s partner; and
   (e) the other person is claiming or receiving any of the following at the time:

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(i) parenting payment;
(ii) youth allowance;
(iii) newstart allowance;
(iv) special benefit.

Note: The amount in paragraph (b) is indexed annually in line with CPI increases (see sections 1191 to 1194).

5G Main supporter of secondary pupil child

(1) If someone is a secondary pupil child of a person, the person is the main supporter of the secondary pupil child, subject to subsection (2).

(2) Subsections 5(18) to (22) (inclusive) and subsection 5(24) 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.

4 Paragraph 502C(2)(a)

Repeal the paragraph, substitute:
(a) the person was subjected to domestic violence in the 26 weeks before the making of the determination; or

5 Paragraph 502C(5)(b)

Omit “in connection with the particular cessation referred to in subparagraph (2)(a)(i)”, substitute “in relation to the person on or after 1 July 2010”.

6 Subsection 502D(3A)

Repeal the subsection, substitute:

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
(a) the person is the principal carer of a child; and
(b) the person is one or both of the following:

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(i) the principal carer of one or more other children;
(ii) the main supporter of one or more secondary pupil children; and
(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For principal carer see subsections 5(15) to (24).
Note 2: For main supporter see section 5G.
Note 3: For secondary pupil child see section 5F.

(3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
(a) the person is the main supporter of one or more secondary pupil children; and
(b) the person is a home educator or distance educator of one or more of those children.

Note 1: For main supporter see section 5G.
Note 2: For secondary pupil child see section 5F.
Note 3: For home educator see section 5C.
Note 4: For distance educator see section 5D.

(3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
(a) the person is the principal carer of one or more children; and
(b) the person is a relative (other than a parent) of a child (the kin child); and
(c) there is a document that:
   (i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and
   (ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and
(d) the person is acting in accordance with the document.

Note 1: For principal carer see subsections 5(15) to (24).
Note 2: For relative (other than a parent) see section 5E.

7 Subparagraphs 542F(2)(a)(ii), (iii) and (iv)

Repeal the subparagraphs, substitute:
(ii) was subjected to domestic violence in the 26 weeks before the making of the determination; or

8 Paragraph 542F(5)(b)
Omit “in connection with the particular cessation referred to in subparagraph (2)(a)(ii)”, substitute “in relation to the person on or after 1 July 2010”.

9 Subsection 542FA(3A)
Repeal the subsection, substitute:

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
(a) the person is the principal carer of a child; and
(b) the person is one or both of the following:
(i) the principal carer of one or more other children;
(ii) the main supporter of one or more secondary pupil children; and
(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For principal carer see subsections 5(15) to (24).
Note 2: For main supporter see section 5G.
Note 3: For secondary pupil child see section 5F.

(3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:
(a) is not the principal carer of one or more children; and
(b) is a registered and active foster carer; and
(c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

Note 1: For principal carer see subsections 5(15) to (24).
Note 2: For registered and active foster carer see section 5B.

(3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:
(a) is the main supporter of one or more secondary pupil children; and
(b) is a home educator or distance educator of one or more of those children.

Note 1: For main supporter see section 5G.

Note 2: For secondary pupil child see section 5F.

Note 3: For home educator see section 5C.

Note 4: For distance educator see section 5D.

(3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of one or more children; and

(b) the person is a relative (other than a parent) of a child (the kin child); and

(c) there is a document that:

(i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and

(ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and

(d) the person is acting in accordance with the document.

Note 1: For principal carer see subsections 5(15) to (24).

Note 2: For relative (other than a parent) see section 5E.

10 Subsection 542FA(6)

After “this section”, insert “, except subsection (3B),”.

11 After subsection 542FA(6)

Insert:

(6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:

(a) the period:

(i) starting when the person starts to provide foster care to the child; and

(ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and

(b) 12 months.

12 Subsection 542FA(7)
Omit “Any such period”, substitute “A period determined by the Secretary under this section in relation to the person”.

**13 Subparagraphs 602B(2)(a)(ii), (iii) and (iv)**

Repeal the subparagraphs, substitute:

(ii) was subjected to domestic violence in the 26 weeks before the making of the determination; or

**14 Paragraph 602B(5)(b)**

Omit “in connection with the particular cessation referred to in subparagraph (2)(a)(ii)”, substitute “in relation to the person on or after 1 July 2010”.

**15 Subsection 602C(3A)**

Repeal the subsection, substitute:

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of a child; and

(b) the person is one or both of the following:

(i) the principal carer of one or more other children;

(ii) the main supporter of one or more secondary pupil children; and

(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For principal carer see subsections 5(15) to (24).

Note 2: For main supporter see section 5G.

Note 3: For secondary pupil child see section 5F.

(3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

(a) is not the principal carer of one or more children; and

(b) is a registered and active foster carer; and

(c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

Note 1: For principal carer see subsections 5(15) to (24).

Note 2: For registered and active foster carer see section 5B.
(3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:
(a) is the main supporter of one or more secondary pupil children; and
(b) is a home educator or distance educator of one or more of those children.

Note 1: For main supporter see section 5G.
Note 2: For secondary pupil child see section 5F.
Note 3: For home educator see section 5C.
Note 4: For distance educator see section 5D.

(3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
(a) the person is the principal carer of one or more children; and
(b) the person is a relative (other than a parent) of a child (the kin child); and
(c) there is a document that:
   (i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and
   (ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and
(d) the person is acting in accordance with the document.

Note 1: For principal carer see subsections 5(15) to (24).
Note 2: For relative (other than a parent) see section 5E.

16 Subsection 602C(6)
After “this section”, insert “, except subsection (3B),”.

17 After subsection 602C(6)
Insert:
(6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:
(a) the period:
   (i) starting when the person starts to provide foster care to the child; and
(ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and

(b) 12 months.

18 Subsection 602C(7)
Omit “Any such period”, substitute “A period determined by the Secretary under this section in relation to the person”.

19 Subparagraphs 731DA(2)(a)(ii), (iii) and (iv)
Repeal the subparagraphs, substitute:
(ii) was subjected to domestic violence in the 26 weeks before the making of the determination; or

20 Paragraph 731DA(5)(b)
Omit “in connection with the particular cessation referred to in subparagraph (2)(a)(ii)”, substitute “in relation to the person on or after 1 July 2010”.

21 Subsection 731DB(3A)
Repeal the subsection, substitute:
(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
(a) the person is the principal carer of a child; and
(b) the person is one or both of the following:
(i) the principal carer of one or more other children;
(ii) the main supporter of one or more secondary pupil children; and
(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For principal carer see subsections 5(15) to (24).
Note 2: For main supporter see section 5G.
Note 3: For secondary pupil child see section 5F.

(3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:
(a) is not the principal carer of one or more children; and
(b) is a registered and active foster carer; and
(c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

Note 1: For principal carer see subsections 5(15) to (24).

Note 2: For registered and active foster carer see section 5B.

(3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

(a) is the main supporter of one or more secondary pupil children; and

(b) is a home educator or distance educator of one or more of those children.

Note 1: For main supporter see section 5G.

Note 2: For secondary pupil child see section 5F.

Note 3: For home educator see section 5C.

Note 4: For distance educator see section 5D.

(3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of one or more children; and

(b) the person is a relative (other than a parent) of a child (the kin child); and

(c) there is a document that:

(i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and

(ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and

(d) the person is acting in accordance with the document.

Note 1: For principal carer see subsections 5(15) to (24).

Note 2: For relative (other than a parent) see section 5E.

22 Subsection 731DB(6)

After “this section”, insert “, except subsection (3B).”.

23 After subsection 731DB(6)

Insert:
(6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:

(a) the period:
   (i) starting when the person starts to provide foster care to the child; and
   (ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and

(b) 12 months.

24 Subsection 731DB(7)
Omit “Any such period”, substitute “A period determined by the Secretary under this section in relation to the person”.

25 Section 1190 (table item 40A)
Repeal the item, substitute:

40A. Amount that a young person who has turned 16, but not 22, can earn in a financial year without ceasing to be a student child, dependent child or secondary pupil child

Permissible child earnings limit (child aged 16 to 21 years) [paragraphs 5(1A)(b) and (4)(b) and 5F(b)]

26 Saving provision
The amendments of sections 502C, 502D, 542F, 542FA, 602B, 602C, 731DA and 731DB of the Social Security Act 1991 made by this Schedule do not affect the validity (after the commencement of those amendments) of a determination made under any of those sections before that commencement.