Social Security and Veterans’ Affairs Legislation Amendment Bill (No. 3) 1989

Date Introduced: 5 October 1989
House: House of Representatives
Portfolio: Social Security

Digest of Bill

Purpose
To introduce a new test to determine if recipients of certain benefits are in a de-facto relationship; to provide that unemployment and sickness benefits will not be payable to those who do not provide their tax file number; to introduce a waiting period for unemployment benefits where the recipient moves to an area that reduces their chances of gaining employment; and to tighten the recovery procedure where a person receives both compensation and benefits.

Background
The concept of a de-facto spouse is relevant to many areas of the social security system, such as determining the rate of pension, but is most important in the area of supporting parent benefits. To be eligible for such a benefit, the applicant must be unmarried, which is defined to exclude those with a de-facto spouse. De-facto spouse is defined to be a person of the opposite sex who is living as the spouse of the applicant on a bona fide domestic basis. The determination of whether this is occurring has led to many difficulties, largely based on the vast range of relationships that may exist between people of the opposite sex who co-habit. These may range from a simple sharing of facilities to a relationship that is identical to marriage except that the ceremony has not occurred. Not suprisingly, the question of whether a de-facto relationship exists has been considered in depth by the Department of Social Security, Social Security Appeal Tribunals and the courts. The result of these considerations is that there is no fixed test to determine if a person has a de-facto spouse.

The question has been divided into two, inter-related parts, is the person living as a spouse?, and is there a bona fide domestic relationship? The latter question has generally been the easier to answer, although this depends on the specific case, and usually involves determining if the relationship between the people concerned is communal or domestic. Most problems in this area arise when there are several people living in the same residence, but it cannot be assumed that if there are only two people living in a residence that they co-habit on a domestic basis. As with the other question, an answer to this problem usually involves an examination of the entire circumstances of the relationship.
Determining if a person is another's spouse raises a number of difficulties, principally to do with the range of relationships between people and determining at what point a relationship takes on the necessary character of a spousal relationship. The Appeals Tribunal has laid down a list of matters that may be considered, but it must be noted that the list is not exclusive and varying weight is given to items in differing circumstances. In *Re Tang and Director-General of Social Security (1981) 2 S.S.R. 15*, a number of matters were examined, including:

(i) the relationship having a quality of permanence;
(ii) the living arrangements and sexual activity of the parties having the quality of exclusiveness;
(iii) the pooling of resources;
(iv) the sharing of expenses;
(v) the parties being joint parents of a child;
(vi) the parties holding themselves out as married;
(vii) the parties having a subjective belief that their relationship is like one of man and wife;
(viii) the parties having a sexual relationship;
(ix) the parties indulging in a joint social life;
(x) one party having a legal right to enforce obligations in respect of the other.

However, in the end the matter is not decided by having regard to only these matters. A judge in the Federal Court stated 'What must be looked at is the composite picture. Any attempt to isolate individual factors and to attribute to them relative degrees of materiality or importance involves a denial of common experience and will almost inevitably be productive of error. .... In any particular case, it will be a question of fact and degree, a jury question, whether a relationship between two unrelated persons of the opposite sex meets the statutory test.'

The lack of a purely objective test, which may not be possible, results in many claims that people are living in de facto relationships while receiving the supporting parent benefit. While this is no doubt true to a degree, many of the claims are based on a misunderstanding of the actual relationship. On June 30, 1988, 182,007 people received the supporting parent benefit, an increase of 2908 on the previous year. There were 95,369 new grants of benefit and 90,565 terminations during the year. Of the terminations, 11,810 were due to the person living with a de facto. In Budget Paper No. 1, it is estimated that the supporting parent benefit will cost $2236 million in 1989-90, an increase of 4.9% over the previous year.

While the new test to be introduced by this Bill followed consultation with various interest groups, the final test does not have unanimous support. In particular, the Australian Council of Social Services and the Women's Electoral Lobby have criticised the scheme. Their main criticism is that the legislation will fail to uncover fraudulent claims or clarify the present problems. Concern was
also expressed at the proposal that if it cannot be determined that the person is or is not in a de-facto relationship, the benefit will cease. It is proposed that this measure will come into force on 1 January 1990 and will save $8 million this financial year and $29 million in 1990–91.

One of the controversial aspects of the Australia Card proposal was the requirement that its use would be compulsory. This was overcome with the tax file number, where the result of a failure to produce the number is the withholding of tax at the top marginal rate plus the Medicare levy. While this may ensure that tax is not evaded, the same does not apply to fraudulent claims for unemployment or sickness benefits. While the withholding of tax may reduce the gain from the fraudulent claim, the claimant will still make a gain by receiving that part of the benefit that is not withheld. As part of the 1989 Budget, it was announced that the production of the tax file number would be made compulsory to reduce fraudulent claims. The explanatory memorandum estimates that the measure will result in savings of $32.8 million in 1989–90 and $48.9 million in 1990–91. The proposal will operate from 1 November 1989.

Another revenue saving measure announced in the Budget was the tightening of the work test for unemployment benefits. From 1 November 1989, people moving to an area with higher unemployment than they left, or who otherwise reduce their chances of gaining employment by moving, will be subject to a 12 week waiting period for the benefit. This will not apply when the person moves to be closer to their family. This measure is estimated to save $3.7 million in 1989–90 and $9 million in the next financial year.

The relationship between compensation payments and social security payments is important to prevent double payment to the person. The usual situation is that a person is made unfit for work and while seeking compensation receives a benefit, for example the sickness benefit. If the claim is successful, the compensation will cover the period during which the person was on benefits and compensation does not take the payment of benefits into account in situations where the benefits are recoverable, such as under the Social Security Act 1947 (the Principal Act). The difficulties arise in actually recovering the benefit payments, particularly when the person has been paid both the benefit and the compensation. Currently, the Secretary may notify those liable to make the compensation that there is an intention to recover part or all of the compensation and no payments are to be made until the amount due has been satisfied. However, while it may be a criminal offence for the payment to be made, there is no provision for the recovery of the amount paid from the person liable to make the payment. It is this situation that the Bill aims to rectify. It is estimated that this measure, which will have effect from 1 January 1990, will save $2.5 million in 1989–90 and $6.4 million in 1990–91.
Main Provisions

De-Facto Relationships

The amendments to the Principle Act relating to this area are contained in clauses 24, 25 and 28 of the Bill. Clause 24 will substitute a new definition of de-facto spouse into the Principal Act. The new definition removes the concepts of a spouse-like relationship and the need to be in a bona fides domestic relationship. Substituted is the concept that the Secretary must be satisfied that there is a marriage-like relationship formed having regard to the matters contained in proposed section 3A.

Proposed section 3A deals with marriage-like relationships. In forming an opinion as to whether this exists, the Secretary is to have regard to all the circumstances of the relationship, and a number of matters to which the Secretary is to have particular regard are listed. These include financial aspects, the nature of the household, social aspects of the relationship, any sexual relationship and the nature of the people's commitment to each other.

Clause 28 will insert a new section 43A into the Principal Act which deals with the obligation to provide information on domestic circumstances for those in receipt of, or applying for, the supporting parent benefit. The section will apply where two unmarried people of the opposite sex have shared a residence for at least eight weeks and any of the following apply:

- their child shares the residence;
- they are joint owners of the residence;
- they hold a joint lease of at least ten years;
- they have joint assets of more than $4000 or liabilities of over $1000;
- they have been married to each other at any time;
- they have shared another residence at any time;
- they are legally married and claim to be sharing the residence while living separately.

Where the proposed section applies, the Secretary may require a person receiving, or claiming for, a supporting parent benefit to supply information regarding the relationship and any other matter relevant to determine if there is a de-facto relationship. If the information is not supplied within 14 days, the pension will be suspended, and if not supplied within a further 14 days, cancelled. Once the information is supplied, the Secretary is to determine if there is a marriage-like relationship. The Secretary is not to determine that there is no such relationship unless, having regard to the matters listed in proposed section 3A, the evidence supports the conclusion that there is no such relationship (i.e. if the evidence is equivocal, the Secretary is to determine that there is such a relationship). It will be an offence to knowingly or recklessly supply false or misleading information. Where the Secretary is satisfied that there is no such relationship, that all information has been supplied and that there has been no change in circumstances, the decision is not
to be reviewed for 12 weeks after the making of the decision. The provision will commence from 1 January 1990.

Unemployment Benefits

Section 116 of the Principal Act will be amended to provide that the unemployment benefit will not be payable for a day when a person reduces their prospects of gaining employment by moving without sufficient reason. This is defined to be where the move is to live with or near a family member who has an established residence in the area (clause 36). Similarly, section 126 of the Principle Act will be amended so that when this occurs, the person will cease to be eligible for the benefit for 12 weeks. The amendments will apply from 1 November 1989.

Currently, education leavers must wait 13 weeks to receive the unemployment benefit if they are single, have no dependants and are unmarried (in other cases the period is six weeks). Where the person was on benefits immediately before commencing study, the benefit was paid continuously after the waiting period mentioned above and the claim is lodged within four weeks of commencing the study, the extended waiting period will not apply and the standard four week waiting period will. These amendments will apply from 1 January 1990. Education leavers currently have four weeks after ceasing education to register and if they register during this period they are taken to have registered on leaving education. This will be removed by clause 40 and they will be taken to have registered on the latter of the last day of their course and the actual day they register. This will apply from 1 October 1989.

Proposed section 138A will allow the Secretary to request a persons tax file number. Unemployment and sickness benefits will not be payable to a person who has not: provided their tax file number, given authorisation for the Secretary to find out the number or lodged an application for a number. This will apply from 13 November 1989 (proposed section 125A which will be inserted into t

Compensation

Clause 44 will amend section 154 of the Principal Act to make bodies liable to pay compensation that have received a notice of the intention to claim part or all of the compensation to repay benefits, will be liable to the Commonwealth for the recoverable amount (i.e the amount specified in the notice or such lesser amount as the Secretary determines. This will apply from 1 January 1990.
Family Allowance Supplement

Section 74B of the Principal Act deals with reductions in the rate of family allowance supplement where there is an increase or decrease in taxable income. In relation to a decrease, the provision will only apply if the income is at least 25% down on that in the previous year. This will be amended so that a fall in income to below the threshold level may also lead to a review. The threshold level is based on the number of dependants. This will apply from 1 December 1989. Proposed section 74BA will allow adjustments where there has been a reassessment of taxable income.

Child Support

Clause 6 will insert a new section 163A into the Child Support (Assessment) Act 1989. The proposed section will exempt from State, Territory and Commonwealth duties and charges instruments executed under an order or agreement made under the Act.

References


For further information, if required, contact the Education and Welfare Group.

17 October 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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