Social Services Legislation Amendment (Overseas Welfare Recipients Integrity Program) Bill 2019

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Date introduced:  25 July 2019
House: House of Representatives
Portfolio: Social Services
Commencement: Schedule 1, Part 1 on 1 September 2019. Schedule 1, Part 2 on 20 March 2020. All other sections, on Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at August 2019.
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History of the Bill

The Social Services Legislation Amendment (Overseas Welfare Recipients Integrity Program) Bill 2019 (the earlier Bill) was introduced into the House of Representatives on 13 February 2019. The Bill was read a second time but did not progress. The earlier Bill lapsed when the Parliament was prorogued on 11 April 2019.

The present Bill was introduced into the House of Representatives on 25 July 2019 and is in identical terms to the earlier Bill. The only difference is that Part 1 of Schedule 1 of the Bill will commence on 1 September 2019, rather than 1 July 2019, as proposed in the earlier Bill.

A Bills Digest was prepared in respect of the earlier Bill. This Bills Digest largely reproduces the material published in that earlier one.

Purpose of the Bill

The purpose of the Social Services Legislation Amendment (Overseas Welfare Recipients Integrity Program) Bill 2019 (the Bill) is to amend the Social Security Act 1991 and the Social Security (Administration) Act 1999 to introduce an assurance requirement for individuals aged 80 years and over, who are in receipt of particular social security payments and have been continuously absent from Australia for at least two years, to return a proof of life certificate at least once every two years when notified by the Secretary of the Department of Social Services, in order to maintain eligibility for those payments.

Background

The proposed amendments arise out of a budget and welfare integrity measure announced in the 2018–19 Mid-Year Economic and Fiscal Outlook.

According to the Bill’s Explanatory Memorandum, around 96,000 people receive an Australian social security payment while living permanently overseas. Most of these people are receiving the Age Pension. This stems from a decision made in 1973 that introduced ‘indefinite portability’ for many pensions.

As the number of pensioners living overseas grew, an obvious administrative problem emerged. As Liberal Senator Michael Townley expressed the issue in 1977: ‘How on earth … can the Department of Social Security even be sure that a recipient of a pension is still alive if he or she is overseas?’

Maintaining accurate data on deaths

Internationally, it is common for governments to allow individuals to receive pensions while living abroad. In most cases these are pensions made under social insurance schemes where individuals are entitled to payments because they have made contributions while working.

3. J Frydenberg (Treasurer) and M Cormann (Minister for Finance and the Public Service), Mid-year economic and fiscal outlook 2018–19, p. 223.
4. Explanatory Memorandum, Social Services Legislation Amendment (Overseas Welfare Recipients Integrity Program) Bill 2019, p. 3.
5. Department of Social Services (DSS), ‘Portability requirements (taking your payment overseas),’ DSS website.
To avoid making payments to people after they have died, pension agencies need some way to check that recipients are still alive. There are a number of ways to do this. They can rely on the recipient’s family to notify them, they can exchange data on deaths with other countries, and they can send a recipient a form that requires an authorised person to verify their identity and confirm that they are alive. These forms are often known as ‘life certificates’.

One problem with relying on family members to report deaths is the risk of fraud. If a family member has a joint bank account with the recipient or has power or attorney, they may be able to access payments after the recipient’s death. In his second reading speech the Minister for Communications, Cyber Safety and the Arts, Paul Fletcher, raised another possibility—that some family members may mistakenly believe they are entitled to receive payments after the recipient’s death (in some countries spouses and dependents can receive benefits through contributory social insurance schemes).  

A number of countries have reciprocal death reporting agreements. For example, the United States Social Security Administration reports that it has agreements with a number of countries including Australia. The United Kingdom also conducts data-matching using death data from Australia and a number of other countries. According to information provided by the Department of Social Services, Australia is not able to rely on information on deaths provided by overseas governments. In some cases countries that have social security agreements with Australia are not able to share data due to their domestic laws governing confidentiality.

Life certificates are one of the oldest ways to maintain accurate data on deaths. In the past, before it was possible to automatically match pension data with official data on deaths, life certificates were often used by pension schemes for recipients living within the country. The major problem with relying on life certificates is vulnerability to fraud. Administrators need some way to check the accuracy of the information provided on the form.

**Overseas use of life certificates**

As the Explanatory Memorandum notes, a number of countries overseas use life certificates. One example is the United Kingdom. In response to a question in the House of Lords in 2011, Lord Freud explained:

> Under the life certificate programme, we target those pensioners abroad who are aged 80 and over and living in all countries where they are not covered by our data-matching agreements.

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10. Information provided to the Parliamentary Library by Payment Design and Conditionality Branch, Department of Social Services, 5 March 2019.
In December 2013, the UK Government announced that it would increase its activity on life certificates and that this would deliver savings of £45 million over two years. According to reports in The Telegraph, the Department of Work and Pensions would move from requesting life certificates on a random basis to requiring certificates every two years. The requirement only applies to pensioners who live in countries not covered by a data-matching agreement. According to reports in The Telegraph, a number of pensioners complained that the policy was inconvenient and unfair.

**Australian use of life certificates**

The Australian Government has used life certificates in the past. According to a 1990 Auditor-General’s report:

If [International Operations Branch] officers are in any doubt whether a pensioner is still alive they issue a ‘life certificate’ which must be signed by a prominent local official (teacher, post-master etc) who knows the pensioner, and returned to the Department. Alternatively, a review by mail may be carried out. DSS is of the view that regular mail reviews are at least as effective as life certificates.

The report also notes the risk that people will ‘complete falsely a life certificate in respect to a deceased pensioner and continue to convert fraudulently pension cheques received.’

A life certificate form is currently posted on the Department of Human Services website but it is not currently part of a regular compliance process. In the section of the form titled ‘customer responsibilities’, it states: ‘if you fail to return this certificate within six weeks your pension may be stopped.’ It requires an authorised person to verify the identity of a pension recipient.

**Committee consideration**

**Senate Standing Committee for the Selection of Bills**

The Senate Standing Committee for the Selection of Bills determined that the Bill should not be referred to a committee for inquiry.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.

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16. Ibid.
18. Ibid.
19. Information provided to the Parliamentary Library by Payment Design and Conditionality Branch, Department of Social Services, 22 February 2019.
21. Ibid.
Policy position of non-government parties/independents

While not opposing the measure, the Australian Labor Party has questioned the Government’s ability to implement it. In a December 2018 media release Shadow Minister for Families and Social Services, Linda Burney, and Shadow Minister for Human Services, Ed Husic, stated:

The Government’s cuts and outsourcing of Centrelink jobs have taken their toll. There are serious questions about the Government’s ability to competently implement this new proof-of-life requirement.

Ms Burney and Mr Husic added ‘Labor will review the details of this plan carefully.’24

At the time this digest was written, it appeared that no other political party or independent members of parliament had commented on the Bill.

Position of major interest groups

At the time this digest was written, no major interest groups had taken a public position on the measure.

Financial implications

According to the Explanatory Memorandum, the measure will save $221.1 million over the forward estimates.25

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.26

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.27

Key issues and provisions

Schedule 1

Part 1 — General Amendments

Part 1 of Schedule 1 commences on 1 September 2019.

Amendments to the Social Security Act 1991

The Wife (Age) Pension is an income support payment for female partners of people receiving Age or DSP as of June 1995. It is for female partners of age pensioners who do not qualify for Age Pension in their own right. Subsection 146V(1) of the Social Security Act provides that a Wife

26. The Statement of Compatibility with Human Rights can be found at page 11 of the Explanatory Memorandum to the Bill.
Pension cannot be granted to a woman who claimed that payment on or after 30 June 1995, in recognition of women's increased labour force participation. The Wife Pension is normally portable outside Australia, though the amount of payment will change based on certain criteria. To remain qualified for the Wife Pension, a person must be a member of a couple, and have a partner who is receiving Age Pension. Current recipients remain eligible until otherwise disqualified.

However, subsection 146V(1) provides that the limitation on granting the Wife Pension does not apply to the resumption of a cancelled or suspended Wife Pension if, on reconsideration of the cancellation or suspension under section 85 of the Social Security (Administration) Act (the Administration Act), the Secretary of the Department of Social Services determines that the payment was or is payable.

**Item 1** amends subsection 146V(1) to also add a reference to proposed section 85AA of the Administration Act, at item 8 of Schedule 1 to the Bill, which deals with the circumstances under which a person’s social security payment may be resumed following a suspension or cancellation of that payment due to failure to comply with the requirement to provide a proof of life certificate (see below).

Subsection 362A(1) of the Social Security Act provides that Widow B Pension has been phased out since 20 March 1997, and is basically only available to women who were receiving the Pension before this time. Currently, subsection 362A(3) of the Act provides that this does not apply in relation to a determination by the Secretary under section 85 of the Administration Act. As set out above, section 85 of the Administration Act deals with the resumption of payment after cancellation or suspension.

**Item 2** amends subsection 362A(3) inserting a reference to proposed subsection 85AA. This has the effect of enabling the resumption of Widow B pension following a suspension or cancellation of that payment due to failure to comply with the requirement to provide a proof of life certificate.

**Amendments to the Social Security Act (Administration) Act 1999**

**How the measure will work**

**People affected by this measure**

This measure targets recipients of certain social security payments who are aged 80 and over and have been continuously absent from Australia throughout the previous two years. It affects recipients of:

• Age Pension
• Carer Payment
• Disability Support Pension
• Widow B Pension and
• Wife Pension.\(^{28}\)

\(^{28}\) Proposed subsection 63(2AA).
Proof of life to be required at least once every two years

Proposed paragraph 63(2AB)(a) provides that the Secretary may notify a person captured by the abovementioned criteria that they are required to provide a proof of life certificate within the 13-week period from when the notice is given to them. The requirement for a certificate to be provided does not apply if the person enters Australia within the 13-week period (proposed paragraph 63(2AB)(b)).

Proposed subsection 63(2AC) imposes a requirement on the Secretary to give notice at least once every two years, to a person captured by the criteria in proposed subsection 63(2AA), requiring them to provide a proof of life certificate.

According to the Minister’s second reading speech, around 25,000 pensioners will be required to provide proof of life. 29

Proof of life certificate

Social security payment recipients will be required to provide proof of life using a form approved by the Secretary.

Proposed section 63A sets out the minimum requirements for a proof of life certificate, including a requirement for it to be in a form approved by the Secretary. 30

The proof of life certificate must include a statement that the person is alive and this statement must be signed and dated by the person or, under certain circumstances, another person. The certificate must also include a statement by an ‘authorised certifier’ that the authorised certifier:

• has sighted the person while in their physical presence
• has verified the person’s identity using a method set out in the approved form and
• is satisfied that the person is alive.

The authorised certifier must sign and date their statement.

The Bill does not stipulate who will be an authorised certifier for the purpose of this measure, although the Explanatory Memorandum to the Bill suggests that authorised certifiers may include ‘a judge or magistrate of a law court, a medical doctor who is registered or licensed to practice in that country, or an Australian official at an embassy, consulate or high commission’. 32 The Secretary will determine the class of person by making a legislative instrument.

Failure to provide a proof of life certificate

Subsection 64(1) of the Administration Act provides that a social security payment is not payable to a person who has not complied with a reasonable requirement imposed by the Secretary under subsection 63(2) or (4) of that Act. Those provisions allow the Secretary to require a person to attend or contact the Department, provide relevant information, or undergo a medical, psychiatric or psychological examination. As set out above, item 3 of Schedule 1 to the Bill will insert

30. Proposed paragraph 63A(1)(c).
31. Proposed subsections 63A(8) and (9) provide that an ‘authorised certifier’ is a person included in a class of persons specified in a determination by the Secretary.
proposed subsections 63(2AA) to (2AC) to allow the Secretary to require a person to provide a proof of life certificate. Item 6 of Schedule 1 to the Bill proposes to amend subsection 64(1) so that a social security payment will also not be payable to a person who has not complied with a reasonable requirement imposed by the Secretary under subsection 63(2AB) to provide a proof of life certificate. Subsection 80(1) of the Administration Act obliges the Secretary to cancel or suspend a payment that is not payable.

Accordingly, if a recipient fails to provide a proof of life certificate within 13 weeks (or does not enter Australia within that period), their payment will be suspended. If, after a further 13 weeks, they do not provide a proof of life certificate (or do not enter Australia), their payment will be cancelled.

**Resumption of payment after suspension or cancellation**

If a recipient’s payment is suspended or cancelled they can have it restored by submitting a current proof of life certificate or by entering Australia. Their payments will resume and they will receive back pay for the period it was suspended or cancelled.  

**Risk of inconvenience and hardship**

There is a risk that some recipients will have their payments suspended because the proof of life certificate form fails to reach them or because they are unable to complete it. This could happen if a recipient had changed their address and not notified Centrelink or because they were incapacitated. The temporary loss of payments could cause hardship.

Some recipients may find it difficult or inconvenient to meet the proof of life requirements. A similar UK scheme led to complaints. According to a report in *The Telegraph*, a pensioner living in Canada spent more than a week’s worth of her pension in order to meet the requirements. This included long distance phone calls to the UK Department of Work and Pensions.  

The Bill limits the negative impact on recipients by targeting the measure to recipients who are aged 80 and over.

**Risk of fraud**

In implementing the measure there may be a trade-off between limiting inconvenience to recipients and limiting the risk of fraud. Much of this will depend on who is included as an authorised certifier. This is not set out in the Bill but will be determined by the Secretary through a legislative instrument.

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33. Proposed subsection 85AA(1) deals with the resumption of payment after suspension. Proposed subsection 85AA(2) deals with the resumption of payment after cancellation.

34. Harper and Roberts, ‘*Frozen pensioners*’, op. cit.