THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND VETERANS’ ENTITLEMENTS AMENDMENT (COMMONWEALTH SENIORS HEALTH CARD) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP)
OUTLINE

This bill implements a 2008 Budget measure relating to the adjusted taxable income test for the Commonwealth seniors health card.

The measure will provide for adjusted taxable income for this purpose to include income from a superannuation stream with a taxed source (gross superannuation) and income salary sacrificed to superannuation.

The measure will ensure that income received by seniors is treated in a similar way, will align with the age pension the treatment of income salary sacrificed to superannuation, and will ensure that the income test is applied to all cardholders consistently.

The change will apply to the Commonwealth seniors health card issued under either the Social Security Act 1991 or the Veterans’ Entitlements Act 1986.

Financial impact statement

Total resourcing – all portfolios:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-09</td>
<td>$12.3 m</td>
</tr>
<tr>
<td>2009-10</td>
<td>- $30.2 m</td>
</tr>
<tr>
<td>2010-11</td>
<td>- $32.3 m</td>
</tr>
<tr>
<td>2011-12</td>
<td>- $34.6 m</td>
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</tbody>
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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Act 2009.

Clause 2 provides a table that sets out the commencement dates of the various provisions in the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

This explanatory memorandum uses the following abbreviations:

- ‘Social Security Act’ means the Social Security Act 1991; and
Schedule 1 – Amendments

Summary

This Schedule implements a 2008 Budget measure relating to the adjusted taxable income test for the Commonwealth seniors health card.

The measure will provide for adjusted taxable income for this purpose to include income from a superannuation stream with a taxed source (gross superannuation) and income salary sacrificed to superannuation.

The measure will ensure that income received by seniors is treated in a similar way, will align with the age pension the treatment of income salary sacrificed to superannuation, and will ensure that the income test is applied to all cardholders consistently.

The change will apply to the Commonwealth seniors health card issued under either the Social Security Act or the Veterans’ Entitlements Act.

The Schedule also ensures that these amendments, and amendments to the same provisions proposed in the Tax Laws Amendment (2009 Measures No. 1) Bill 2009, will be implemented regardless of which bill is enacted first.

Background

The measures proposed by this Schedule were announced in the 2008 Budget and are part of a wider measure to make various tax and transfer programs fairer and better targeted to those in need of government assistance.

The current definition of adjusted taxable income in section 1071 of the Social Security Act and section 118ZZA of the Veterans Entitlements Act does not include income from a superannuation stream with a taxed source (gross superannuation), nor income salary sacrificed to superannuation. The new definition of adjusted taxable income will include income received by claimants that is classified in the Income Tax Assessment Act as non-assessable and non-exempt income which is not otherwise included in a person’s taxable income.

The main amendments, made by Part 1, commence on 1 July 2009.

The amendments in Part 2 commence on the later of:

- 1 July 2009; or
- the date Schedule 3 to the Amending Tax Act commences.
The amendments in Division 1 of Part 3 commence on 1 July 2009. However, if Schedule 3 to the Amending Tax Act commences on or before 1 July 2009, then the amendments in Division 1 do not commence at all.

The amendments in Division 2 of Part 3 commence immediately before the commencement of Schedule 3 to the Amending Tax Act. However, if that Schedule commences on or before 1 July 2009, then the amendments in Division 2 do not commence at all.

**Explanation of the changes**

**Part 1 – Main amendments**

**Amendments to the Social Security Act**

**Item 1** adds new paragraphs (e) and (f) to point 1071-3 of the Social Security Act to expand the types of income to be included in a person’s adjusted taxable income for a tax year, for the purposes of determining their qualification for the seniors health card.

New paragraph (e) provides that the total amounts of income received by a person that are neither assessable income nor exempt income for that tax year under Subdivision 301-B or section 302-65, 302-70 or 302-80 of the Income Tax Assessment Act are to be included in a person’s adjusted taxable income. Those provisions relate to superannuation benefits that are tax-free.

New paragraph (f) provides that a person’s **reportable superannuation contributions** for that tax year are to be included in their adjusted taxable income.

**Item 2** inserts a new note 5 at the end of point 1071-3, signposting the definition of reportable superannuation contributions in subsection 10A(2) of the Social Security Act (inserted by **item 7 or 10**).

**Item 3** provides that the additions to the definition of adjusted taxable income made by **item 1** are to apply to claims made on or after, and to grants made before, on or after, the commencement of **item 1**, but are not to affect a person’s qualification for a card before that commencement. Therefore, there will be no adverse retrospective effect on a person from these amendments.

**Amendments to the Veterans’ Entitlements Act**

**Item 4** adds new paragraphs (e) and (f) to point 118ZZA-3 of the Veterans’ Entitlements Act to expand the types of income to be included in a person’s adjusted taxable income for a tax year, for the purposes of determining their qualification for the seniors health card.
New paragraph (e) provides that the total amounts of income received by a person that are neither assessable income nor exempt income for that tax year under Subdivision 301-B or section 302-65, 302-70 or 302-80 of the Income Tax Assessment Act are to be included in a person’s adjusted taxable income. Those provisions relate to superannuation benefits that are tax-free.

New paragraph (f) provides that a person’s reportable superannuation contributions for that tax year are to be included in their adjusted taxable income.

Item 5 inserts a new note 5 at the end of point 118ZZA-3, signposting the definition of reportable superannuation contributions in subsection 5PB(1) of the Veterans’ Entitlements Act (inserted by item 8 or 13).

Item 6 provides that the additions to the definition of adjusted taxable income made by item 4 are to apply to claims made on or after, and to grants made before, on or after, the commencement of item 4, but are not to affect a person’s qualification for a card before that commencement. Therefore, there will be no adverse retrospective effect on a person from these amendments.

Part 2 – Amendments commencing on or after the tax amendments

Amendments to the Social Security Act

Item 7 inserts a definition of reportable superannuation contributions into subsection 10A(2) of the Social Security Act by reference to the definition to be contained in the Income Tax Assessment Act after the commencement of the Amending Tax Act.

Amendments to the Veterans’ Entitlements Act

Item 8 inserts a definition of reportable superannuation contributions into subsection 5PB(1) of the Veterans’ Entitlements Act by reference to the definition to be contained in the Income Tax Assessment Act after the commencement of the Amending Tax Act.

Part 3 – Contingent amendments

Division 1 – Amendments inserting definitions

Amendments to the Social Security Act

Item 9 inserts a definition of reportable employer superannuation contribution into subsection 10A(2) of the Social Security Act by reference to the new section 10AA (inserted by item 11).
**Item 10** inserts a definition of reportable superannuation contributions into subsection 10A(2). The definition is in the same terms as those in the Amending Tax Act and is included in this Schedule to ensure it is inserted into the Social Security Act in the event the Amending Tax Act does not commence before 1 July 2009.

Reportable superannuation contributions are defined as the sum of an individual’s reportable employer superannuation contributions for the tax year and the total amount of personal deductions under Subdivision 290-C of the Income Tax Assessment Act.

The definition of reportable superannuation contributions incorporates the amounts of superannuation payments that individuals may receive in excess of amounts required to be paid under the Superannuation Guarantee Scheme and any amounts ‘salary sacrificed’ into the individual’s superannuation fund.

**Item 11** inserts a new section 10AA into Part 1.2 of the Social Security Act, creating a definition of a reportable employer superannuation contribution. The definition is in the same terms as those in the Amending Tax Act and is included in this item to ensure the definition is inserted into the Social Security Act in the event the Amending Tax Act does not commence before 1 July 2009.

The definition of a reportable employer superannuation contribution, in the new subsection 10AA(1), is an amount contributed by an employer or an associate of the employer, to a superannuation fund or a retirement savings account for the benefit of an individual where either or both of the following apply:

- the individual has or had, or might reasonably be expected to have or have had, the ability to influence the amount;

- the individual has or has had, or might reasonably be expected to have or have had, the capacity to influence the way the amount is contributed so as to reduce their assessable income.

Subsection 10AA(2) provides that an amount is not a reportable employer contribution to the extent that it is included in the individual’s assessable income for the tax year.

Subsection 10AA(3) provides that the term employer is given the broad definition set out in section 12 of the Superannuation Guarantee (Administration) Act 1992 as if subsection 12(11) had not been enacted.

Subsection 10AA(4) provides that the existence of a dependant, as defined in the Superannuation Industry (Supervision) Act 1993, entitled to receive a payment from the superannuation fund upon the death of the person contributing, should not be considered when determining whether a person has reportable employer superannuation contributions.
Subsection 10AA(5) provides that a term used in section 10AA has the same meaning provided for in the Income Tax Assessment Act.

Amendments to the Veterans’ Entitlements Act

Item 12 inserts a definition of reportable employer superannuation contribution into subsection 5PB(1) of the Veterans Entitlements Act by reference to the new section 5PBA (inserted by item 14).

Item 13 inserts a definition of reportable superannuation contributions into subsection 5PB(1). The definition is in the same terms as those in the Amending Tax Act and is included in this Schedule to ensure it is inserted into the Veterans’ Entitlements Act in the event the Amending Tax Act does not commence before 1 July 2009.

Reportable superannuation contributions are defined as the sum of an individual’s reportable employer superannuation contributions for the tax year and the total amount of personal deductions under Subdivision 290-C of the Income Tax Assessment Act.

The definition of reportable superannuation contributions incorporates the amounts of superannuation payments that individuals may receive in excess of amounts required to be paid under the Superannuation Guarantee Scheme and any amounts ‘salary sacrificed’ into the individual’s superannuation fund.

Item 14 inserts a new section 5PBA into the Veterans’ Entitlements Act, creating a definition of a reportable employer superannuation contribution. The definition is in the same terms as those proposed in the Amending Tax Act and is included in this item to ensure the definition is inserted into the Veterans’ Entitlements Act in the event the Amending Tax Act does not commence before 1 July 2009.

The definition of a reportable employer superannuation contribution, in the new subsection 5PBA(1), is an amount contributed by an employer or an associate of the employer, to a superannuation fund or a retirement savings account for the benefit of an individual where either or both of the following apply:

- the individual has or had, or might reasonably be expected to have or have had, the ability to influence the amount;

- the individual has or has had, or might reasonably be expected to have or have had, the capacity to influence the way the amount is contributed so as to reduce their assessable income.

Subsection 5PBA(2) provides that an amount is not a reportable employer contribution to the extent that it is included in the individual’s assessable income for the tax year.
Subsection 5PBA(3) provides that the term employer is given the broad definition set out in section 12 of the Superannuation Guarantee (Administration) Act 1992 as if subsection 12(11) had not been enacted.

Subsection 5PBA(4) provides that the existence of a dependant, as defined in the Superannuation Industry (Supervision) Act 1993, entitled to receive a payment from the superannuation fund upon the death of the person contributing, should not be considered when determining whether a person has reportable employer superannuation contributions.

Subsection 5PBA(5) provides that a term used in this section has the same meaning provided for in the Income Tax Assessment Act.

Division 2 – Amendments repealing definitions

Amendments to the Social Security Act

Item 15 repeals the definition of reportable employer superannuation contribution inserted by item 9.

Item 16 repeals the definition of reportable superannuation contributions inserted by item 10.

Item 17 repeals new section 10AA, inserted by item 11.

All three items have effect from immediately before the commencement of Schedule 3 to the Amending Tax Act. However, if that Schedule commences on or before 1 July 2009, then the items do not commence at all.

Amendments to the Veterans’ Entitlements Act

Item 18 repeals the definition of reportable employer superannuation contribution inserted by item 12.

Item 19 repeals the definition of reportable superannuation contributions inserted by item 13.

Item 20 repeals new section 5PBA, inserted by item 14.

All three items have effect from immediately before the commencement of Schedule 3 to the Amending Tax Act. However, if that Schedule commences on or before 1 July 2009, then the items do not commence at all.