
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SERVICES LEGISLATION AMENDMENT (ENERGY ASSISTANCE PAYMENT) BILL 2019

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families and Social Services, the Hon Paul Fletcher MP)
OUTLINE

This Bill will pay a one-off energy assistance payment to recipients of the age pension, disability support pension, carer payment, farm household allowance, parenting payment, AUSTUDY, ABSTUDY Living Allowance, double orphan pension, newstart allowance, partner allowance, sickness allowance, special benefit, widow allowance, widow pension B, wife pension and youth allowance, together with recipients of various veterans’ payments, who are payable and residing in Australia on 2 April 2019.

FINANCIAL IMPACT STATEMENT

The financial impact of the Bill is a cost of around $365 million over the forward estimates.

STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.
NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum


Clause 1 sets out how the new Act is to be cited – that is, as the Social Services Legislation Amendment (Energy Assistance Payment) Act 2019.

Clause 2 provides a table setting out the commencement dates of the various sections in, and Schedules to, the new Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1 – Energy assistance payments

Summary

This Schedule will pay a one-off energy assistance payment (called the ‘2019 one-off energy assistance payment’) to recipients of the age pension, disability support pension, carer payment, parenting payment, AUSTUDY payment, double orphan pension, newstart allowance, partner allowance, sickness allowance, special benefit, farm household allowance, widow allowance, widow pension B, wife pension and youth allowance, together with recipients of various veterans’ payments, who are payable and residing in Australia on 2 April 2019.

Background

Around 5 million recipients of certain benefits listed in the Bill will receive the 2019 one-off energy assistance payment. The one-off payment will also be paid to those persons who have made a claim for payment on or before the test date and subsequently have that claim granted.

The rate of payment will be $75 for singles and $62.50 for each eligible member of a couple and it is anticipated the payment will be received by the majority of recipients by 30 June 2019. People who have made a claim for payment on or before the test date and subsequently have that claim granted, may be paid in 2019-20. The payment will be exempt from taxation and not count as income for social security purposes.

Persons who are paid the 2019 one-off energy assistance payment and who subsequently become ineligible for their underlying income support payment on the test date (for example through appeal, or review) will only have this payment recovered in limited circumstances.

No payment would be made to people not residing in Australia.

The amendments made by this Schedule commence on the day the Act receives Royal Assent.

Explanation of the changes

Part 1 - Social security amendments

Amendments to the Social Security Act

Item 1 inserts a reference to the 2019 one-off energy assistance payment paid under the Veterans’ Entitlements Act, so that the payment will not count as income for social security purposes.

Item 2 inserts new Part 2.6A after Part 2.6, which will provide for qualification for the 2019 one-off energy assistance payment.
New subsection 302(1) provides that a person is qualified for a 2019 one-off energy assistance payment if a benefit mentioned in new subsection 302(2) is payable to the person on 2 April 2019, including because of a claim the person made on or before 2 April 2019, and the person is residing in Australia on that day.

New subsection 302(2) lists the benefits for the purposes of new subsection 302(1). The benefits are the following:

(a) age pension;
(b) disability support pension;
(c) wife pension;
(d) carer payment;
(e) widow B pension;
(f) widow allowance;
(g) parenting payment;
(h) youth allowance;
(i) AUSTUDY payment;
(j) newstart allowance;
(k) sickness allowance;
(l) special benefit;
(m) partner allowance; and
(n) double orphan pension
(o) farm household allowance.

New subsection 302(3) prevents a person receiving more than one payment under the new section regardless of how many times the person qualifies under the section.

New subsection 302(4) prevents a person being paid a payment under this section if the person has been paid a payment under new Part IIIG of the Veterans’ Entitlements Act (inserted by Part 2 of this Schedule).

New section 303 provides how to work out the amount of a person’s 2019 one-off energy assistance payment by reference to a table, having regard to the person’s situation on 2 April 2019. In broad terms, if the person is partnered, they will be paid $62.50. If they are not a member of a couple, or are ordinarily treated as not a member of a couple under the social security law, such as the couple being respite or illness separated, they will be paid $75.

A note to the provision refers the reader to definitions used in the table set out in section 4 of the Social Security Act.

Item 3 inserts a new table item 4G into the table at subsection 1222(2), providing for the raising of debts in respect of one-off energy assistance payment in narrow circumstances set out at item 4 below.

Item 4 inserts new section 1223ABH to provide for the raising of debts in respect of the 2019 one-off energy assistance payment. If, after a one-off energy assistance payment under new Part 2.6A is paid to a person, a determination relating to the
underlying pension in relation to the person insofar as it relates to 2 April 2019 is changed, revoked, set aside or superseded by another determination, and the decision was made for the reason that the person knowingly made a false or misleading statement, or knowingly provided false information, such that had the change occurred before 2 April 2019 the 2019 one-off energy assistance payment would not have been paid, the amount of the 2019 one-off energy assistance payment is a debt due to the Commonwealth by the person. A debt for a 2019 one-off energy assistance payment will not arise under any other provisions of Part 5 of the Social Security Act.

Amendments to the Social Security Administration Act

**Item 5** inserts new section 12AD after section 12AC, providing that a claim is not required for a 2019 one-off energy assistance payment.

**Item 6** inserts new paragraph (gf) into subsection 47(1) to include a 2019 one-off energy assistance payment as a lump sum benefit.

**Item 7** then inserts new section 47AD to provide for the payment in a single lump sum of a 2019 one-off energy assistance payment to a person who is qualified for such payment on the earliest practicable date for the payment to be made, and in such manner as the Secretary considers appropriate.
**Part 2 – Veterans’ entitlements amendments**

**Item 8** amends paragraph 5H(8) to insert new paragraph (zzak) which refers to a 2019 one-off energy assistance payment made under new Part IIIG.

The payments and amounts listed under subsection 5H(8) are excluded for the purposes of the income test under the Veterans’ Entitlements Act.

**Item 9** inserts a new Part IIIG into the Veterans’ Entitlements Act after Part IIIF.

New Part IIIG provides for the payment of the 2019 one-off energy assistance payment to persons who are eligible for the payment on 2 April 2019.

New section 67E sets out the criteria for persons who will be eligible for a 2019 one-off energy assistance payment because they are in receipt of a payment under the Veterans’ Entitlements Act.

Subsection 67E(1) provides that a person will be eligible for a one-off energy assistance payment if service pension or income support supplement is payable or will be payable to the person on 2 April 2019 because of a claim made on or before that day and the person is residing in Australia on that day.

Subsection 67E(2) includes a table which sets out the amount of the one-off energy assistance payment that will be payable to a person who is eligible for the payment under subsection 67E(1).

For a single person or a member of an illness separated or respite care couple in receipt of service pension or income support the payment is $75.

For each eligible member of a couple the payment will be $62.50.

Subsection 67E(3) provides that a person will be eligible for a one-off energy assistance payment if a disability pension is payable to the person under Part II or Part IV of the Veterans’ Entitlements Act on 2 April 2019 and the person is residing in Australia on that day.

Subsection 67E(4) provides that a person will be eligible for a one-off energy assistance payment if a war widow/ widowers pension is payable to the person under Part II or Part IV of the Veterans’ Entitlements Act on 2 April 2019 and the person is residing in Australia on that day.

Subsection 67E(5) provides that, for the purposes of subsections 67E(3) and (4), a pension will be regarded as being payable under Parts II and IV even if the rate of pension is a nil rate because the pension has been fully offset under provisions located in Divisions 4, 5 and 5A of Part II or under section 74.
Divisions 4, 5 and 5A or Part II contain provisions which provide for the offsetting against payments of disability and war widow/ widower pensions under Part II of lump sum and periodic payments of compensation that have been paid to the person under the Defence-Related Claims Act, by State and foreign governments and by another person or organisation.

Section 74 provides for the offsetting against payments of disability and war widow/ widower pensions of lump sum and periodic payments of compensation that have been paid to the person under the Defence-Related Claims Act, by State and foreign governments and by another person or organisation.

Subsection 67E(6) provides that the amount of the one-off energy assistance payment that will be payable to a person who is eligible for the payment under subsections 67E(3) and (4) will be $75. Persons eligible for the payment under subsections 67E(3) and (4) will receive the same payment amount if they are a single person or a member of a couple.

For persons who may be eligible under both subsection 67E(1) and either of subsections 67E(3) and (4) or new sections 67F and 67G, only one payment will be made and the amount of the one-off energy assistance payment will be $75 as determined under subsection 67E(6), subsection 67F(6) or subsection 67G(2).

New section 67F sets out the criteria for persons who will be eligible for a one-off energy assistance payment because they are in receipt of a payment under the Military Rehabilitation and Compensation Act.

Subsection 67F(1) provides that a person will be eligible for a one-off energy assistance payment if one of the conditions that is set out in subsection 67F(2) is met for 2 April 2019 and the person is residing in Australia on that day.

Subsection 67F(2) sets out, for the purposes of subsection 67F(1), the conditions that need to be met to satisfy that requirement. As stated in subsection 67F(1), one or both of the following conditions must be met:

- weekly compensation for permanent impairment is payable to the person under Part 2 of Chapter 4 of the Military Rehabilitation and Compensation Act for 2 April 2019;
- weekly compensation for permanent impairment would have been payable under Part 2 of Chapter 4 for that day if it had not been offset under paragraph 398(3)(b) of the Military Rehabilitation and Compensation Act or subsection 13(4) of the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (as described below);
- prior to 2 April 2019, the person had received lump sum compensation for permanent impairment under Part 2 of Chapter 4 of the Military Rehabilitation and Compensation Act.
Subsection 67F(3) provides that a person is eligible for a one-off energy assistance payment if Special Rate Disability Pension is payable to the person under the Military Rehabilitation and Compensation Act for 2 April 2019 or would have been payable for that day if it had not been offset under section 204 or paragraph 398(3)(b) of the Military Rehabilitation and Compensation Act (as described under the heading ‘Offsetting provisions’) and the person is residing in Australia on that day.

Subsection 67F(4) provides that a person will be eligible for a one-off energy assistance payment if either or both of the conditions that are set out in subsection 67F(5) is met for 2 April 2019 and the person is residing in Australia on that day.

Subsection 67F(5) sets out, for the purposes of subsection 67F(4), the conditions that need to be met to satisfy that requirement. As stated in subsection 67F(4), one or both of the following conditions must be met:

- weekly compensation as a wholly dependent partner is payable to the person under Division 2 of Part 2 of Chapter 5 of the Military Rehabilitation and Compensation Act for 2 April 2019;
- weekly compensation as a wholly dependent partner would have been payable to the person under Division 2 of Part 2 of Chapter 5 for that day if it had not been offset under paragraph 398(3)(b) of the Military Rehabilitation and Compensation Act (as described below);
- before to 2 April 2019, the person had received lump sum compensation as a wholly dependent partner under Division 2 of Part 2 of Chapter 5 of the Military Rehabilitation and Compensation Act and before that date the person had not been precluded under subsection 388(6) of the Military Rehabilitation and Compensation Act from being eligible for any further compensation under the Military Rehabilitation and Compensation Act following the recovery of damages for the death of the person’s partner from the Commonwealth.

Subsections 67F(2), (3) and (5) all refer to the circumstances where compensation payable under the Military Rehabilitation and Compensation Act is to be regarded as being payable to the person even though the payment rate is nil due to the operation of one of the offsetting provisions that is described below. The purpose and effect of those offsetting provisions is described below.

Offsetting provisions

Section 204 of the Military Rehabilitation and Compensation Act

Section 204 provides for the offsets that may be made against payments of the Special Rate Disability Pension.

The first offset that is made against the Special Rate Disability Pension is for permanent impairment payments made under Part 2 of Chapter 4.
If a permanent impairment payment is being made as a periodic payment, the Special Rate Disability Pension is offset by the periodic payment dollar for dollar. If all or part of the payment has been taken as a lump sum, the Special Rate Disability Pension is offset dollar for dollar by all or part of the total amount of the periodic payment that the person would be receiving, had the lump sum not been chosen.

The second offset is that of Commonwealth superannuation pensions or lump sums received.

**Paragraph 398(3)(b) of the Military Rehabilitation and Compensation Act**

Paragraph 398(3)(b) is applicable when damages have been awarded as a result of claim against a third party in the circumstances where the Military Rehabilitation and Compensation Commission has taken over or made a claim on the plaintiff’s behalf. In those circumstances any damages awarded or agreed upon, less any compensation which has already paid to the plaintiff under the Military Rehabilitation and Compensation Act and any costs of making the claim, are to be paid to the Commonwealth.

The balance of the damages remaining after the deductions have been made is to be paid to the plaintiff. Paragraph 398(3)(b) provides that the plaintiff will not be entitled to any further compensation under the Military Rehabilitation and Compensation Act until the amount of compensation that would have been payable equals the amount of damages that have been paid to the plaintiff.

**Subsection 13(4) of the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004**

Section 13 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* is applicable in the circumstances where a person with a condition accepted under the Veterans’ Entitlements Act or the Defence-Related Claims Act has lodged a claim for permanent impairment compensation under the Military Rehabilitation and Compensation Act.

Subsection 13(4) provides that the *Guide to Determining Impairment and Compensation* (as made under section 67 of the Military Rehabilitation and Compensation Act) may contain the method for calculating the amount of permanent impairment compensation payable under the Military Rehabilitation and Compensation Act in those cases where an injury or disease has been accepted under the Veterans’ Entitlements Act and/or the Defence-Related Claims Act before the permanent impairment claim has been made under the Military Rehabilitation and Compensation Act. It also provides that the *Guide to Determining Impairment and Compensation* may also include a method for offsetting payments made to the person under the Veterans’ Entitlements Act or the Defence-Related Claims Act in respect of the condition.

Subsection 67F(6) provides that the amount of the one-off energy assistance payment that will be payable to a person who is eligible for the payment under section 67F will be $75.
New section 67G sets out the criteria to be met for persons who will be eligible for a 2019 one-off energy assistance payment because they have received a payment of compensation under the Defence-Related Claims Act.

Subsection 67G(1) provides that a person will be eligible for a one-off energy assistance payment if:

- at any time the person received compensation under section 24 of the Defence-Related Claims Act; and
- the payment was made because of a claim the person made on or before 2 April 2019; and
- the person is residing in Australia on 2 April 2019.

Subsection 67G(2) provides that the amount of the one-off energy assistance payment that will be payable to a person who is eligible for the payment under section 67G will be $75.

New section 67H is a multiple payment exclusion provision.

Subsection 67H(1) provides that a person will receive only one one-off energy assistance payment despite that person being eligible for more than one payment under new Part III G.

Subsection 67H(2) provides that a person will not be eligible to receive a one-off energy assistance payment if the payment has been paid to the person under new Part 2.6A of the Social Security Act (inserted by Part 1 of this Schedule).

New section 67J provides that a person will not be required to make a claim for the one-off energy assistance payment.

New section 67K provides that, where a person is eligible for one-off energy assistance payment, the Repatriation Commission must make the payment in a single lump sum on the earliest date that is reasonably practical and in the manner the Repatriation Commission considers to be appropriate.
Part 3 - Taxation amendments

Amendments to the Income Tax Assessment Act

**Items 10 to 11** amend sections 52-10 and 52-40 to insert a reference to the 2019 one-off energy assistance payment under the Social Security Act. These amendments provide that such a payment is exempt from income tax.

**Items 12 to 13** amend sections 52-65 and 52-75 to insert a reference to the 2019 one-off energy assistance payment under the Veterans’ Entitlement Act. These amendments provide that such a payment is exempt from income tax.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011

SOCIAL SERVICES LEGISLATION AMENDMENT (ENERGY ASSISTANCE PAYMENT) BILL 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

This Bill creates a new one-off Energy Assistance Payment. This new payment will be made to recipients of the Age Pension, Disability Support Pension, Carer Payment, Parenting Payment, AUSTUDY payment, ABSTUDY Living Allowance, Double Orphan Pension, Newstart Allowance, Farm Household Allowance, Partner Allowance, Sickness Allowance, Special Benefit, Widow Allowance, Widow Pension B, Wife Pension and Youth Allowance, together with recipients of various veterans’ payments. Recipients must be payable and residing in Australia on 2 April 2019 (the test date).

Those people who have made a claim for payment on or before the test date and subsequently have that claim granted, will also be paid the one-off payment.

No payment would be made to persons who do not reside in Australia, or people who are not in receipt of payment including those who are suspended on the test date (which may include people who are in gaol on the test date). Those whose payments are subsequently restored to a period covering 2 April 2019 will receive the payment.

The rate of payment would be $75 for singles and $62.50 for each eligible member of a couple and it is intended would be received by the majority of recipients by 30 June 2019. People who have made a claim for payment on or before the test date and subsequently have that claim granted, with the result that the underlying payment is payable to them on 2 April 2019, will likely be paid in 2019-20. The payment will be tax exempt and not count as income.

**Human rights implications**

Schedule 1 of this Bill engages the following human rights:

- The right of everyone to social security in Article 9, and the right of everyone to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and the continuous improvement of living conditions in Article 11 of the International Covenant on Economic, Social and Cultural Rights; and

**The right of everyone to social security and an adequate standard of living**

The objective of creating a new one-off Energy Assistance Payment promotes Article 9 and 11 providing further payment to assist in achieving an adequate standard of living. The pursuit of this objective also promotes human rights by supporting the Convention on the Rights of Persons with Disabilities.

**The rights of the child**

This one-off Energy Assistance Payment promotes Article 26 by enhancing the rights of the child to social security, as the payment will be made to a group of recipients with children, including recipients of Parenting Payment. The one-off payment is targeted at more vulnerable groups of recipients and has a flow on effect to the children of recipients by increasing the support for families.

**Conclusion**

This Bill is compatible with human rights because it promotes the protection of human rights for some of the most vulnerable groups in society.

[Circulated by the authority of the Minister for Families and Social Services, the Hon Paul Fletcher MP]