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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**SOCIAL SECURITY (NON-BUDGET MEASURES)
LEGISLATION AMENDMENT BILL 1995**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

**(Circulated by authority of the Hon Janice Crosio MP,
Parliamentary Secretary to the Minister for Social Security,
representing the Minister for Social Security)**

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OUTLINE AND FINANCIAL IMPACT STATEMENT

These amendments affect the *Social Security Act 1991* (the Principal Act).

Sole parent pension

The Principal Act currently allows payment of sole parent pension (SPP) to members of a couple who are living separately and apart from their partners. The amendments made by Division 6 of Part 2 of the amending Bill are intended to make sure that the pension is available only if the separation is permanent or indefinite. It is being clarified that those separated on a strictly temporary basis will not qualify for SPP.

An alternative form of amendment is now proposed to put beyond doubt that the same criteria will be applied in determining whether a marriage-like relationship exists between two people who are not legally married as are applied in determining whether two legally married people are living separately and apart. Each determination is necessary to establish whether or not a person is a "member of a couple" as defined in subsection 4(2) of the Social Security Act. This in turn will determine whether the person qualifies for SPP.

NOTES ON AMENDMENTS

The amendments omit altogether the amendments made by Division 6 (clause 14) of the amending Bill and substitute a new series of amendments to achieve the same policy outcome in another form. The policy objective will now primarily be achieved through amendment to the provisions governing the meaning of "member of a couple".

New clause 14A(a) will omit subparagraph 249(1)(a)(iii). This is currently the SPP qualification criterion that allows a person to qualify if he or she is a member of a couple who is living separately and apart from his or her partner. Advice from the Attorney-General's Department had been that this could allow people to qualify who are separated from their partners on a strictly temporary basis (eg, for work, study or holiday reasons), whereas this has never been the intention for SPP.

With this qualification criterion omitted, a person will now usually qualify for SPP because he or she is not a member of a couple (subparagraph 249(1)(a)(i) refers).

New clause 14(e) inserts a new rule that applies in determining whether or not two people who are not legally married have a marriage-like relationship and therefore are members of a couple. New subsection 4(3A) stipulates that the Secretary must not form the opinion (under subsection 4(3)) that the relationship is marriage-like if the two people are living separately and apart on a permanent or indefinite basis.

This makes it clear that, in the case of permanent or indefinite separation (as judged on the circumstances of each case), a person cannot be a member of a couple. He or she would therefore qualify for SPP under subparagraph 249(1)(a)(i). Conversely, the Secretary would not be prevented, in the case of a strictly temporary separation, from forming the opinion that the relationship remains marriage-like. Accordingly, if the indications are that the relationship is still marriage-like, then the person would still be a member of a couple and would not qualify for SPP.

The remainder of **new clause 14** amends the definition of "member of a couple" in subsection 4(2). The first substantive amendment is made by **new clause 14(b)** to paragraph 4(2)(a) relating to legally married people. This is to make it clear that a legally married person is a member of a couple if he or she is not, in the Secretary's opinion (formed against the criteria laid down in subsection 4(3)), living separately and apart from the other person on a permanent *or indefinite* basis.

This minor alteration is solely to make it clear that the same approach is taken to determining whether two legally married people are living separately and apart as is taken to determining whether two people who are not legally married have a marriage-like relationship.

The second substantive amendment, made by **new clause 14(c)**, is to paragraph 4(2)(b) of the definition of "member of a couple" relating to people who are not legally married. This is to replace one of the existing conditions that lead to satisfaction of the definition with a term that is more meaningful and more in keeping with the drafting of new subsection 4(3A). The existing condition is that the person is living with a person of the opposite sex. The proposed condition is that the person *has a relationship with* a person of the opposite sex. All aspects of the relationship will then be assessed (in particular, those referred to in subsections 4(3) and (3A)) to establish whether the relationship is marriage-like.

All remaining amendments are consequential to the substantive amendments described above. The amendments made by **new clauses 14(a) and (d) and 14A(c)** insert necessary references to new subsection 4(3A).

The amendments made by **new clauses 14A(b) and 14B(2), (3), (4), (5), (6) and (7)** change existing references to the person living with or not living with the other person to references to the person having or not having a relationship with the other person.

The amendments made by **new clause 14B(1)** are to add the words "or indefinite" after "permanent" wherever they are used to describe the basis of a separation for both legally married couples and marriage-like couples.