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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

**SOCIAL SECURITY LEGISLATION AMENDMENT (INCREASED
EMPLOYMENT PARTICIPATION) BILL 2014**

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Assistant Minister for Employment, the
Honourable Luke Hartsuyker MP)**

SOCIAL SECURITY LEGISLATION AMENDMENT (INCREASED EMPLOYMENT PARTICIPATION) BILL 2014

GENERAL OUTLINE

The Bill would amend the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, and the *Income Tax Assessment Act 1997* to enable the implementation of the Job Commitment Bonus and the Relocation Assistance to Take Up a Job programme. These are major initiatives of the Government's broader policy commitment to encourage and increase workforce participation.

The Job Commitment Bonus will provide an incentive to encourage young long-term unemployed Australians to remain off income support payments and increase employment participation among a group which is recording significantly higher rates of unemployment compared to the general population.

Young Australians aged from 18-30 who have been receiving Newstart Allowance or Youth Allowance (other than as an apprentice or a full time student) for a period of at least 12 months will be eligible to receive a tax-free payment of \$2,500 if they remain in gainful work and off income support for a continuous period of at least 12 months. Recipients will also qualify for a further tax-free bonus payment of \$4,000 if they remain in continuous gainful work for an additional 12 months (that is, a continuous period of 24 months in total).

Job seekers will be able to receive the Job Commitment Bonus if they are employed in multiple jobs and do not receive income support during the 12 or 24 months of continuous gainful work.

Job Commitment Bonus payments will be paid by the Department of Human Services.

The Relocation Assistance to Take Up a Job programme will provide financial assistance to long term unemployed job seekers with participation requirements who have been receiving Newstart Allowance, Youth Allowance (other than as an apprentice or a full time student) or Parenting Payment for at least the preceding 12 months, to relocate for the purposes of commencing ongoing employment.

Payments for the Relocation Assistance to Take Up a Job programme will be administered through employment services delivery arrangements which are separate to the social security law.

The programme is demand driven and will provide:

- Up to \$6,000 to support eligible job seekers who relocate to a regional area (either from a metropolitan or another regional area)
- Up to \$3,000 to support eligible job seekers who relocate to a metropolitan area, either from a regional area or, in certain circumstances, another metropolitan area.

Families with dependent children will be provided with up to an extra \$3,000.

The non-payment period for participants who leave their employment without good reason within six months after receiving a payment under the Relocation Assistance to Take Up a Job programme will be 26 weeks under this Bill, rather than the 12 week non-payment period which currently applies to relocation assistance paid under the Move 2 Work programme.

FINANCIAL IMPACT STATEMENT

Job Commitment Bonus

The funding for the Job Commitment Bonus was announced in the Mid-Year Economic and Fiscal Outlook December 2013.

The Job Commitment Bonus will have the following budgetary implications:

Year	Expense (\$ million)
2013-14	1.7
2014-15	7.3
2015-16	32.6
2016-17	57.8
2017-18	57.7
TOTAL:	157.1

The Relocation Assistance to Take Up a Job programme

Funding for the Relocation Assistance to Take Up a Job programme was announced in the Mid-Year Economic and Fiscal Outlook December 2013. The programme includes both Government expenditure to assist job seekers to relocate for employment, as well as the savings achieved through these job seekers remaining in employment and off unemployment benefits.

The Relocation Assistance to Take Up a Job programme will have the following budgetary implications:

Year	Expense (\$ million)
2013-14	0.9
2014-15	-0.6
2015-16	-9.3
2016-17	-15.2
2017-18	-15.6
TOTAL	-39.8

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Social Security Legislation Amendment (Increased Employment Participation) Bill 2014

Clause 1 – Short Title

This clause sets out how the new Act is to be cited, that is, the *Social Security Legislation Amendment (Increased Employment Participation) Act 2014*.

Clause 2 – Commencement

This clause provides that the Act commences on 1 July 2014.

Clause 3 – Schedule(s)

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

Abbreviations used in this explanatory memorandum

SS Act means the *Social Security Act 1991*.

Administration Act means the *Social Security (Administration) Act 1999*.

Schedule 1 Job commitment bonus amendments

Summary

Schedule 1 would insert a new Part 2.16A into the SS Act to introduce a Job Commitment Bonus. The Job Commitment Bonus would provide a bonus to long term unemployed people (on Youth Allowance (other than as an apprentice or full-time student) or Newstart Allowance for more than 12 months) to provide them with more incentive to obtain gainful work (including as an employee, as a self-employed person or otherwise) and keep it for at least 12 months.

Detailed explanation

Part 1 – main amendments

Social Security Act 1991

Item 1

Item 1 would insert a definition of **Job Commitment Bonus** into the general definitions in subsection 23(1) of the SS Act - a bonus under new subsections 861(1) or 861(3).

Item 2

Item 2 would insert a new Part 2.16A (Job Commitment Bonus) into Chapter 2 of the SS Act, which concerns pensions, benefits and allowances. The inclusion of the Job Commitment Bonus in Chapter 2 means that it is a 'social security payment', due to paragraph (e) of the definition of that term in section 23 of the SS Act.

Part 2.16A consists of the following new sections:

- 860 (simplified outline)
- 861 (qualification for Job Commitment Bonus)
- 862 (amount of Job Commitment Bonus)
- 863 (non-receipt of social security payment)

New section 860 is a simplified outline of the Job Commitment Bonus. The outline explains that a \$2,500 bonus may be available to a person aged 18 or over and under 31 who has been receiving Newstart Allowance or certain types of Youth Allowance for at least 12 months and then completes 12 months of continuous gainful work. In addition, if the person completes a further 12 months of continuous gainful work, he or she may be eligible for another bonus of \$4,000. It also explains that gainful work covers work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

New section 861 deals with how a person qualifies for the Job Commitment Bonus.

First Job Commitment Bonus of \$2,500

Under new subsection 861(1), and subject to the rest of section 861, a person will be eligible for the first bonus of \$2,500 as long as he or she satisfies each of the following criteria:

- they are aged 18 or over and under 31 and, for a continuous period of at least 12 months while they were in this age bracket, they received the following (either on its own, or in combination):
 - Newstart Allowance
 - Youth Allowance (other than Youth Allowance received as a full-time student, or as a new apprentice);
- either:
 - after 12 months of the continuous period of receipt of Newstart Allowance and/or Youth Allowance the person starts gainful work in Australia on the day after that period ends; or
 - the person starts gainful work in Australia within 30 days after the 12 month continuous period of receipt of Newstart Allowance and/or Youth Allowance ends;
- the person remains in gainful work continuously for 12 months;
- the person is an Australian resident throughout this period of gainful work.

New subsection 861(2) provides that subsection 861(1) will not apply if the person receives an income support payment in relation to any day in the first work period, i.e. the period of 12 months continuous gainful work.

Second Job Commitment Bonus of \$4,000

Under new subsection 861(3), a person will be eligible for the second bonus of \$4,000 as long as he or she satisfies the following criteria:

- the person is qualified for the first Job Commitment Bonus under subsection 861(1);
- on the day after that first work period ends the person starts and then goes on to complete another continuous period of 12 months of gainful work; and

- the person is an Australian resident throughout this second period of gainful work.

New subsection 861(4) provides that subsection 861(3) will not apply if the person receives an income support payment in relation to any day in the second work period.

New subsections 861(5) and (6) provide that the Employment Secretary may, by legislative instrument under subsection 861(6), prescribe a period which will be deemed not to break a period of continuous gainful work. The instrument may prescribe different periods for different kinds of gainful work as well as different periods for the same kind of gainful work depending on whether it is full-time, part-time, casual work or shiftwork.

For example, it is envisaged that the instrument will provide that periods of paid leave (for example paid annual leave, personal leave, maternity leave or long service leave), and certain periods of unpaid leave do not break the continuity of the work.

Subsection 861(6) also expressly provides that the instrument may prescribe different periods for different kinds of gainful work.

It is appropriate to prescribe such periods in an instrument rather than in the Bill as this will provide some flexibility to take account of any lessons learned during the implementation of the Job Commitment Bonus, and will also avoid unnecessarily adding to the length or complexity of the SS Act. This approach is consistent with the SS Act as a whole, which makes provision for many legislative instruments.

The instrument would be disallowable for the purposes of the *Legislative Instruments Act 2003* and therefore subject to scrutiny by Parliament.

New subsections 861(7) and (8) provide that the Employment Secretary may, by legislative instrument under subsection 861(8), prescribe circumstances where the first bonus and the second bonus will not be available even if subsections 861(1) and (3) would otherwise apply. Subsection 861(8) provides that, without limitation, the circumstances which may be prescribed by the instrument may relate to the kinds of gainful work to which subsections 861(1) and (3) do not apply.

For example, it is envisaged that the Employment Secretary may prescribe receipt of certain Commonwealth payments, (other than income support payments) during a period of continuous gainful work, as being a circumstance where the first bonus and second bonus will not be payable, for example ABSTUDY. The instrument might also prescribe certain circumstances involving abuse of the social security system as it relates to the Job Commitment Bonus.

It is envisaged that the instrument will prescribe certain kinds of work which will not attract the Job Commitment Bonus, for example work which:

- does not involve a substantial degree of consistent personal exertion;
- consists of domestic or gardening tasks in relation to the place of residence of the person or a member of their family;
- consists of the management of financial investments in which the person or a member of their family has an interest;
- involves nudity or is in the sex industry, including retail positions;
- contravenes Commonwealth, state or territory legislation;
- is for the purpose of achieving election of the person to public office; or
- is undertaken as part of certain Commonwealth funded programmes, for example the Green Army programme (in relation to certain participants), Work for the Dole, and the New Enterprise Incentive Scheme.

It is appropriate to prescribe such circumstances in an instrument rather than in the Bill as this will provide some flexibility to take account of any lessons learned during the implementation of the Job Commitment Bonus, and will also avoid unnecessarily adding to the length or complexity of the SS Act. This approach is consistent with the SS Act as a whole, which makes provision for many legislative instruments.

The instrument would be disallowable for the purposes of the *Legislative Instruments Act 2003* and therefore subject to scrutiny by Parliament.

New subsection 861(9) provides that in connection with a particular application of new paragraph 861(1)(a) in relation to a person the person cannot qualify for more than one Job Commitment Bonus under new subsection 861(1).

The effect of new subsection 861(9) is illustrated by the following example. Assume a person aged 18 or over and under 31 receives Newstart Allowance for a continuous period of 2 years. Assume the person ceases to receive that allowance and within 7 days of doing so the person commences employment with 2 separate employers. Assume the person completes 12 months continuous employment with both employers, then:

- the person cannot receive more than one Job Commitment Bonus under subsection (1) despite the person completing 12 months continuous employment with both employers.
- the person later ceases employment with both employers and begins to receive Newstart Allowance again.
- the person may qualify for another Job Commitment Bonus under subsection (1) if the person meets the conditions in that subsection again.

New subsection 861(10) provides that in connection with a particular application of new paragraph 861(3)(a) in relation to a person the person cannot qualify for more than one Job Commitment Bonus under new subsection 861(3).

New subsection 861(11) provides that gainful work means work for financial gain or reward, whether as an employee, a self-employed person or otherwise. The reference to 'otherwise' is intended to be for 'catch-all' purposes.

New subsection 861(12) provides that, for the purposes of new section 861, the definition of **Australian resident** in section 7 of the SS Act applies, disregarding subparagraph 7(2)(b)(iii), which relates to special category visa holders.

New section 862 provides that the amount of the first Job Commitment Bonus is \$2,500 and the amount of the second Job Commitment Bonus is \$4,000.

New section 863 applies where a provision of the SS Act, or another Act, provides a benefit (e.g. a pension, payment of supplement) if a person meets certain criteria, one of which is that the person must be receiving a social security payment. In such cases, the person will be deemed not to be receiving a social security payment merely because they have received a Job Commitment Bonus.

Social Security (Administration) Act 1999

Item 3

Under section 13 of the Administration Act, certain types of contact with the Department by or on behalf of a person are deemed to be a claim for a social security payment. Item 3 would add a new subsection 16(6), the effect of which would be to provide that section 13 does not apply in relation to a Job Commitment Bonus. In other words, this would make the bonus exempt from a 'deemed claim' for the purposes of section 13. This will help ensure the efficient administration of the law in relation to the Job Commitment Bonus.

Item 4

Item 4 would insert a new subdivision FD into Division 1 of Part 3 of the Administration Act (time limits for claims for Job Commitment Bonus) comprised of a new section 27D (time limit for a claim). The time limits in new section 27D have been included to help ensure the efficient administration of the law in relation to the Job Commitment Bonus.

New subsection 27D(1) would provide that, subject to new section 27D, a claim for the bonus must be made within an initial period of 90 days (the initial period) after the person is qualified for the bonus.

New subsection 27D(2) would provide that a claim may be lodged after the end of the initial period if the Secretary is satisfied that there are special circumstances applying to the person that prevented the person from making the claim within that period. This would apply as long as, subject to new

subsection 27D(3), the claim is made within 90 days after the end of that period.

New subsection 27D(3) would provide that, if a person qualifies for the first Job Commitment Bonus under new subsection 861(1), a claim for the initial bonus may be made at the same time the person makes a claim for the second Job Commitment Bonus under new subsection 861(3).

Items 5 and 6

Section 37 of the Administration Act deals with how the Secretary is to determine a claim for a social security payment.

Item 5 corrects a minor error in section 37. It would amend subsection 37(1) to add the words “this section and” after the words “Subject to”. This would make it clear that, when granting a claim, the Secretary must consider both section 37 and section 40 of the Administration Act.

Item 6 would insert a new subsection 37(6A), which would provide that the Secretary must determine that a claim for a Job Commitment Bonus is to be granted if the Secretary is satisfied that the claimant is qualified for the bonus.

Item 7

Item 7 would insert a new category of Job Commitment Bonus into the list of lump sum benefits in the definition of ‘lump sum benefit’ in subsection 47(1) of the Administration Act.

Item 8

Item 8 would insert a new subsection 47BA in Part 3 of the Administration Act. New subsection 47BA provides that, if a person is qualified for a Job Commitment Bonus, the Secretary must pay the bonus to the person as a single lump sum on the earliest day the Secretary thinks reasonably practicable and in such a manner the Secretary thinks appropriate. This is consistent with arrangements in the social security law for similar payments.

Part 2 – Taxation amendments

Income Tax Assessment Act 1997

Item 9

Section 11-15 of the *Income Tax Assessment Act 1997* is a list setting out those types of ordinary or statutory income that are non-assessable income for the purposes of the Income Tax Assessment Act. Item 9 would insert the Job Commitment Bonus into this list.

Items 10 and 11

Division 52 of the Income Tax Assessment Act specifies certain pensions, benefits and allowances that are exempt from income tax. The effect of items 10 and 11 is to amend section 52-10 of the Income Tax Assessment Act to specify that the Job Commitment Bonus will be exempt from income tax.

Item 12

Section 52-40 of the Income Tax Assessment Act is a table listing the provisions of the SS Act under which social security payments are made that are wholly or partly exempt from income tax under Division 52 of the Income Tax Assessment Act. Item 12 would insert the Job Commitment Bonus into this table.

Part 3 – Application provisions

Item 13 is an application provision.

Subitem 13(1) would provide that new paragraph 861(1)(a) applies to a person's receipt of Newstart Allowance or Youth Allowance before, on or after the commencement of subitem 13(1) – in other words before, on or after 1 July 2014.

Subitem 13(2) would provide that new paragraph 861(1)(b) applies to a person's gainful work that starts on or after the commencement of subitem 13(2) – in other words on or after 1 July 2014.

Schedule 2 Relocation assistance amendments

Summary

Where a person has been paid relocation assistance in respect of a job during a period of 6 months before their employment ends because of their own voluntary act or misconduct, a participation payment is not payable to that person for 12 weeks from the date that their employment ends (paragraph 42S(3)(b) of the Administration Act). The amendments would change the duration of this non-payment period from 12 weeks to 26 weeks.

The amendments would also clarify the operation of section 42S for the avoidance of doubt, by making clear that the non-payment period may apply where relocation assistance has been paid for the benefit of the person (as well as to the person themselves), and where it has been paid by or on behalf of the Commonwealth to the person or on behalf of the person to another party.

Detailed explanation

Social Security (Administration) Act 1999

Division 3A of Part 3 of the Administration Act deals with compliance with obligations in relation to participation payments and section 42S deals with unemployment resulting from a voluntary act or from misconduct where relocation assistance has been paid to a person.

Currently, eligible job seekers may receive relocation assistance to assist the participant to relocate to or settle into their new location.

Where a person has been paid relocation assistance in respect of a job during a period of 6 months before their employment ends because of their own voluntary act or misconduct, a participation payment is not payable to that person for 12 weeks from the date that their employment ends (paragraph 42S(3)(b)).

The current Move 2 Work funding is a type of relocation assistance for the purpose of this non-payment period as it is specified in a legislative instrument made under paragraph 42S(3B)(b). The Move 2 Work programme will end on 30 June 2014 and will be replaced by the new Relocation Assistance to Take Up a Job programme. To be eligible for a payment under this programme, a job seeker must be a recipient of Newstart Allowance, a recipient of Youth Allowance (other than as an apprentice or full-time student) or a recipient of parenting payment with participation requirements.

Those who relocate to a regional area (whether from a metropolitan area or another regional area) will receive up to \$6,000.

Those who move to a metropolitan area from a regional area) will receive up to \$3,000. A person would not receive assistance to relocate within a metropolitan region – for instance, from Parramatta to Mosman in the Sydney metropolitan region.

Relocations between capital cities (metropolitan areas) will be limited to cases where the relocation is to a capital city with a lower unemployment rate. For example, as at February 2014 a person could relocate from Hobart to Melbourne as Melbourne has a lower unemployment rate than Hobart.

Families with dependent children will be provided with up to an additional \$3,000.

Item 1

Item 1 would amend paragraph 42S(3)(b) to change the non-payment period of 12 weeks to a period of 26 weeks.

This amendment is to create a strong incentive for job seekers to remain in employment once they have moved and encourage job seekers to make an informed decision before committing to relocate for work. Before relocation assistance is paid to or for the benefit of a person the person is required to sign an agreement relating to the payment, which sets out the effect of section 42S. The current subsection 42S(4) provides that a person's unemployment non-payment period may be ended on the grounds of severe financial hardship if the person is within a class of persons specified in a legislative instrument made under subsection 42S(5) – this will continue to apply.

Item 2

Item 2 would amend the wording of paragraph 42S(3)(b) so as to clarify that for the avoidance of doubt it applies to situations where the relocation assistance has been paid for the benefit of the person in question as well as to that person themselves.

Item 3

Subsection 42S(3B) of the Administration Act provides that, for the purposes of subsection 42S(3), relocation assistance means a payment made by the Commonwealth to a person to assist them to find employment as specified in a legislative instrument made by the Secretary.

Item 3 would amend paragraph 42S(3B)(a) so as to clarify that, for the avoidance of doubt, it captures situations where the relocation assistance has been paid by, or on behalf of, the Commonwealth to the person, or on behalf of the person to another party.

Item 4

Item 4 is an application provision which would provide that the amendment to be made by item 1 of Schedule 2 applies to a person who becomes unemployed on or after the commencement of item 1 (i.e. 1 July 2014), where the relocation assistance was paid on or after that date because of an agreement relating to the payment having been signed by the person on or after that date.

In other words, the amended non-payment period of 26 weeks would apply to assistance under the new Relocation Assistance to Take Up a Job Programme. The 12 week period would still apply to assistance received under the Move 2 Work programme.

Statement of Compatibility with Human Rights

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

Social Security Legislation Amendment (Increased Employment Participation) Bill 2014

Overview of the Bill

The Bill amends the *Social Security Act 1991* and *Social Security (Administration) Act 1999* (the Administration Act) for the purpose of the Job Commitment Bonus and the Relocation Assistance to Take Up a Job measures. The Bill will enhance employment participation and encourage eligible job seekers to take up employment opportunities. The Job Commitment Bonus and the Relocation Assistance to Take Up a Job programme will commence on 1 July 2014.

Job Commitment Bonus

The Bill provides for a Job Commitment Bonus payment that will provide job seekers aged 18-30 years of age who have been receiving Newstart Allowance or Youth Allowance (other than as an apprentice or full time student) for 12 months or more with a \$2,500 payment, if they undertake gainful work and remain off income support for a continuous period of 12 months (the first bonus).

The Job Commitment Bonus will provide a further \$4,000 to eligible job seekers if they remain in a job and do not receive an income support payment for a continuous period of 24 months (the second bonus), for a total payment of \$6,500.

If job seekers later return to receipt of an income support payment and then qualify again for the Job Commitment Bonus, they will be able to receive a further Job Commitment Bonus, i.e. a further \$2,500, or \$2,500 plus an additional \$4,000, depending on whether the further period of work is 12 or 24 months.

Relocation Assistance to Take Up a Job programme

The Bill will also introduce a non-payment period of 26 weeks for which a participation payment is not payable, which will apply to participants in the new Relocation Assistance to Take Up a Job programme. The current non-payment period of 12 weeks will continue to apply to participants in the current Move 2 Work programme.

This programme will be implemented under existing job services arrangements.

Division 3A of Part 3 of the Administration Act deals with compliance with obligations in relation to participation payments such as Newstart Allowance, Youth Allowance (other than as an apprentice or full time student) and Parenting Payment (with participation requirements). Section 42S in that Part deals with unemployment resulting from a voluntary act or from misconduct where relocation assistance has been paid to a person.

Under the current Move 2 Work programme, eligible job seekers may receive relocation assistance to assist them to relocate to or settle into their new location.

Where a person has been paid relocation assistance in respect of a job during a period of 6 months before their employment ends because of their own voluntary act or misconduct, a participation payment is not payable to that person for 12 weeks from the date that their employment ends (current paragraph 42S(3)(b)).

The Move 2 Work funding is a type of relocation assistance for the purpose of this non-payment period as it is specified in a legislative instrument made under paragraph 42S(3B)(b). The Move 2 Work programme will end on 30 June 2014 and will be replaced by the new Relocation Assistance to Take Up a Job Programme (the instrument under paragraph 42S(3B)(b) will be updated to reflect the new Programme).

Relocation Assistance to Take Up a Job will provide financial assistance to long term unemployed job seekers who relocate to take-up ongoing employment. It will commence on 1 July 2014 and will be demand driven.

Those who relocate to a regional area (whether from a metropolitan area or another regional area) will receive up to \$6,000.

Those who move to a metropolitan area from a regional area will receive up to \$3,000. A person would not receive assistance to relocate within a metropolitan region – for instance, from Parramatta to Mosman in the Sydney metropolitan region.

Relocations between capital cities (metropolitan areas) will be limited to cases where the relocation is to a capital city with a lower unemployment rate. For example, as at February 2014 a person could relocate from Hobart to Melbourne as Melbourne has a lower unemployment rate than Hobart.

Families with dependent children will be provided with up to an additional \$3,000.

Job seekers with participation requirements who have been receiving Newstart Allowance, Youth Allowance (other than as an apprentice or full time student), or Parenting Payment for at least the preceding 12 months will be eligible.

Human rights implications

The Bill engages the following human rights:

Right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to social security.

The Job Commitment Bonus and the Relocation Assistance to Take Up a Job programme are designed to encourage eligible job seekers to take up employment opportunities and move off social security payments such as Youth Allowance and Newstart Allowance. The measures will build on existing social security provisions in relation to working age payments, a major purpose of which is to encourage people into employment. The measures also complement employment services programmes which, among other assistance, provide job seekers with reasonable access to computers and other job search facilities as well as assistance with resumes and job interview preparation.

To the extent that the relocation assistance amendments may limit the right to social security, there is a reasonable justification as outlined below.

Right to an adequate standard of living

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living and to the continuous improvement of living conditions. To the extent that the relocation assistance amendments may limit the right to an adequate standard of living, there is a reasonable justification as outlined below.

Right to work

Article 6 of the ICESCR recognises the right to work.

The Job Commitment Bonus made available to young Australians and the relocation assistance to enable job seekers to move to areas with opportunities of ongoing employment encourages recipients to engage with their right to work.

Right to equality and non-discrimination

Article 2 of the ICESCR and article 26 of the International Covenant on Civil and Political Rights (ICCPR), recognise the right to equality and non-discrimination on, among other grounds: race, sex, colour, language, national origin or 'other status'. Age and employment type have been considered to constitute 'other status' for the purposes of articles 2 and 26. To the extent that the Bill may involve differential treatment based on employment type, age, or national origin, such treatment is legitimate.

Job Commitment Bonus

Right to social security

The Job Commitment Bonus is a new social security payment and promotes the right of recipients to social security. Recipients will not be limited or restricted in their future access to social security payments, subject to them meeting the usual eligibility requirements for particular payments.

Right to work

The Job Commitment Bonus is a significant additional incentive for eligible young Australians to engage with their right to work.

Right to non-discrimination due to age

The Job Commitment Bonus is aimed at encouraging young job seekers (aged 18-30) who have been unemployed for 12 months or more to find and keep a job by providing a bonus payment after 12 months of gainful work and a further bonus payment after 24 months of gainful work.

There are situations where there are good reasons for using age-based distinctions to determine eligibility for employment measures. Employment measures are developed to address particular labour market or policy issues which can vary across age groups. Targeting particular age groups allows measures to be designed in the most appropriate way to meet the different needs of different groups in the community.

Parliament has recognised that there may in certain circumstances be valid reasons for differential treatment on the basis of age in connection with employment programmes – see section 41A of the *Age Discrimination Act 2004*.

The Job Commitment Bonus measure is designed to respond to specific Australian labour market concerns. The unemployment rate for young people is approximately twice as large as that for the general population.

There are currently a significant proportion of young people aged 18-30 who have been receiving income support for at least 12 months. Long-term unemployment can have an impact on individuals, families and society. The impacts of long-term unemployment can be especially detrimental to young Australian job seekers, who have less life experience to help them cope with such impacts, and who may have limited experience in the workplace to draw upon.

Poor employment outcomes for young people could mean that they miss opportunities to acquire skills and work experience and this may result in very long-term income support dependency, unemployment or underemployment, poverty and social disconnection.

Mature age job seekers can also face particular labour market problems. The Government is implementing separate measures aimed at addressing those problems, for example an incentives programme to encourage employers to take on job seekers aged 50 or over.

The Job Commitment Bonus will provide an incentive and encourage job seekers aged 18 to 30 to take up employment and stay off income support. The aim of providing increased encouragement to young people to take up employment is legitimate. Having regard to the factors outlined above, the aged-based eligibility criterion is reasonable and objective, and is proportionate to the aims of the Job Commitment Bonus.

Right to non-discrimination due to employment type

The Bill uses the broad concept of 'gainful work' which is defined in the Bill as including 'work for financial gain or reward (whether as an employee, a self-employed person or otherwise)'. The Bill also means that persons are able to meet the 12 or 24 month continuous work requirement through numerous jobs in combination, not only by one job spanning that time. This means that a wide range of work, and a number of different jobs or types of work, can be undertaken in order for a person to qualify for a Job Commitment Bonus.

The Bill makes provision for a legislative instrument to exclude work of a kind prescribed in the instrument from being work which would attract the Job Commitment Bonus.

By way of examples, it is envisaged that the instrument will exclude work which:

- does not involve a substantial degree of consistent personal exertion;
- consists of domestic or gardening tasks in relation to the place of residence of the person or a member of their family;
- consists of the management of financial investments in which the person or a member of their family has an interest;
- involves nudity or is in the sex industry, including retail positions;
- contravenes Commonwealth, state or territory legislation;
- is for the purpose of achieving election of the person to public office; or
- is undertaken as part of certain Commonwealth funded programmes, for example the Green Army programme (in relation to certain participants), Work for the Dole, and the New Enterprise Incentive Scheme.

This would be consistent with the intention of the Job Commitment Bonus to encourage young people to develop a real commitment to improving their employment skills and to gaining experience in the workplace. As such, the differential treatment of particular types of work would be for a legitimate aim, based on reasonable and objective criteria, and would be proportionate to the aims of the Job Commitment Bonus.

To the extent that this instrument would exclude types of work, the justifications for doing so will be further explained in the statement of compatibility with human rights which will accompany it. This instrument is also disallowable and subject to scrutiny by Parliament.

Right to non-discrimination due to national origin

The Bill provides that a person must be an Australian resident throughout the period of work on which they rely to claim the Job Commitment Bonus. The Bill provides that, for this purpose, Australian resident has its usual meaning in the social security law (i.e. a person who resides in Australia and who is an Australian citizen, the holder of a permanent visa, or the holder of a protected special category visa (SCV)), except that the Bill would exclude protected SCV holders from being eligible for the Job Commitment Bonus.

The only people who are protected SCV holders are a certain subset of New Zealand citizens.¹ Protected SCV holders normally qualify as Australian residents for the purpose of the social security law and can therefore potentially access the full range of income support payments, provided they satisfy certain rules such as qualification criteria and relevant waiting periods. Other New Zealand citizens are not eligible for Australian income support payments unless they hold a permanent visa or become an Australian citizen.

Therefore the exclusion by the Bill of protected SCV holders from the definition of Australian resident simply means that they will be treated like other New Zealand citizens for the purpose of the Job Commitment Bonus.

Further, protected SCV holders will still be able to access other income support payments, if they meet the usual rules, as noted above. They will also be able to work in Australia due to the 1973 Trans-Tasman Travel Arrangement.

In addition, protected SCV holders could potentially become eligible for the Job Commitment Bonus if they applied for, and were granted Australian citizenship.

A bilateral social security arrangement between Australia and New Zealand was announced on 26 February 2001 and recognises the right of each country to determine access to social security benefits not covered by the agreement, and to set related residence and citizenship rules according to the respective country's national legislative and policy frameworks.

The Job Commitment Bonus measure provides additional incentive to young Australians to enter and remain in gainful work. Its aims are legitimate and, having regard to the factors outlined above, the exclusion of protected SCV

¹ In brief, protected SCV holders are New Zealand citizens who arrived in Australia on a New Zealand passport and were in Australia on 26 February 2001, or were in Australia for 12 months in the two years immediately before this date and later returned to Australia, or who are in certain other similar categories. New Zealand citizens who arrive in Australia after 26 February 2001 need to apply for and be granted an Australian permanent visa in order to potentially be able to access income support payments other than a limited range of payments covered by the bilateral social security arrangement between Australia and New Zealand announced on 26 February 2001.

holders from eligibility is reasonable and based on objective criteria, and is proportionate to the aims of the Job Commitment Bonus.

Relocation Assistance to Take Up a Job

Right to work

The Relocation Assistance to Take Up a Job programme has been designed to create a strong incentive for genuine job seekers to relocate for work and to assist them to do so. It involves significant financial assistance to help job seekers relocate, and thereby to help the labour market to operate more effectively to allow more vacancies to be filled as they arise. The excess labour supply in low growth regions/industries is not sufficiently mobile to fill the emerging opportunities (across all skill levels) in industries/regions experiencing high rates of employment growth. The measure therefore promotes the right to work.

Right to social security and right to an adequate standard of living

The Bill would amend paragraph 42S(3)(b) in the Administration Act to change the non-payment period of 12 weeks to a period of 26 weeks for which a participation payment is not payable.

There may be a small group in relation to which this amendment could limit the right to social security and the right to an adequate standard of living. These are persons who receive relocation assistance in relation to a job and then leave that job due to their misconduct as an employee, or due to a voluntary act by them which was not reasonable, if the person was paid the relocation assistance less than six months before they became unemployed.² This impact would be temporary (up to 26 weeks), and therefore would not have an ongoing effect on a person's access to social security payments. The non-payment period would also continue to apply in a non-discriminatory manner.

However it is appropriate to consider the justifications for the amendment. There are reasonable justifications as now outlined.

The purpose of the measure would be frustrated if job seekers do not remain in employment once they have moved. The measure therefore encourages job seekers to make an informed decision before committing to relocate for work. A lesser non-payment period would increase the likelihood of job seekers not only making ill-considered decisions to relocate, but relocating purely to take illegitimate advantage of financial assistance from the Commonwealth without a genuine intention of remaining in the job for which they purportedly relocated.

² See section 42S.

The increased non-payment period is a necessary disincentive to maintain the integrity of the social security system, and to ensure finite resources are equitably allocated to genuine job seekers, to assist those genuine job seekers to realise their right to work.

The increase to the non-payment period more closely aligns the value of social security entitlements for such a period with the amount of relocation assistance that can be received, particularly taking into account the increased amount of assistance which the new Relocation Assistance to Take Up a Job programme involves. The financial impact of the 26 week non-payment period is marginally less than the full relocation assistance that can be received by eligible recipients with dependent children.

The measure has been designed to reduce the likelihood of a person becoming subject to a non-payment period and to ensure that the non-payment period is not applied without good reason. Section 42S means that the non-payment period cannot apply where programme participants genuinely cannot continue in a job through no fault of their own, or have reasonable grounds for leaving the job for which they received relocation assistance.

The Guide to Social Security Law, which is intended by the department to be taken into account in relation to decisions under the social security law, states in section 1.1.U.55 that in deciding whether a person has reasonable grounds for leaving their job, the delegate should consider, on a case-by-case basis, all relevant issues presented, including any claims of sexual harassment, bullying or unsafe work conditions, any unlawful activity by an employer, as well as the job seeker's personal circumstances.

Before relocation assistance is paid to, or for the benefit of, a person the person is required to sign an agreement relating to the payment, which sets out the effect of section 42S, so that the person will be aware of the potential for a non-payment period to apply. Also, under their deeds with the Commonwealth, employment services providers must ensure that the potential employment is suitable for the job seeker given their individual circumstances.

Further, affected persons will still have the benefit of the usual operation of existing hardship waiver provisions, so that the non-payment period will not prevent a person from accessing essentials, for example basic levels of health care, housing, or sanitation. In particular, the current subsection 42S(4) provides that a person's unemployment non-payment period may be ended on the grounds of severe financial hardship if the person is within a class of persons specified in a legislative instrument made under subsection 42S(5)³ (the Ending Unemployment Non-Payment Periods instrument) – this will continue to apply.

³ See the *Social Security (Administration) Act 1999 – Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) (DEEWR) Specification 2009 (No. 1)*.

The classes of persons specified in the Ending Unemployment Non-Payment Periods instrument include those with significant family and caring responsibilities including those with a dependent child; who have an illness, impairment or condition and who cannot afford necessary treatment after meeting essential expenses; who have a mental or psychological impairment or condition; or who do not have safe, secure, and adequate housing, or who are using emergency accommodation or a refuge. The instrument provides that a person does not have safe, secure and adequate housing if their housing would be likely to threaten their health or safety, if their housing lacks reasonable personal amenities, or if the person does not have a reasonable expectation of being able to remain in the housing.

The explanatory statement for the Ending Unemployment Non-Payment Periods instrument states that the instrument was made after consultation with a range of organisations including, among others, the Australian Council of Social Services, the National Welfare Rights Network, the National Employment Services Association, Homelessness Australia and the Commonwealth Ombudsman.

A person who has a non-payment period imposed on them, or who is subject to a decision not to end their non-payment period, will be able to seek internal review of those decisions by the Department of Human Services. If not satisfied with the outcome of the internal review, the person will be able to appeal to the Social Security Appeals Tribunal (SSAT) and if not satisfied with the SSAT's decision will be able to appeal to the Administrative Appeals Tribunal (AAT). If not satisfied with the outcome the person would be able to appeal, on questions of law, to the Federal Court of Australia and subsequently to the High Court of Australia.

The Bill would make a small number of other minor amendments regarding the operation of section 42S in connection with relocation assistance. These amendments are to clarify the operation of the law for the avoidance of doubt only, and are not intended to affect the law's operation. Accordingly these amendments do not raise additional human rights issues.

It is reasonable that an individual, not in severe financial hardship, should not be able to immediately or within six months turn to the social security system where they have left a job for which they received relocation assistance voluntarily without good reason, or as a result of misconduct, less than six months after they received the relocation assistance. The increase in the non-payment period will not have an unreasonable impact on human rights.

Conclusion

The Bill is compatible with human rights because it generally advances human rights. To the extent that it may have an adverse impact on human rights, the impact is reasonable and for legitimate reasons.