

Social Services Amendment Act 1979

No. 121 of 1979

An Act to amend the *Social Services Act 1947* and for related purposes.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

1. (1) This Act may be cited as the *Social Services Amendment Act 1979*.¹ Short title,
&c.

(2) The *Social Services Act 1947*² is in this Act referred to as the Principal Act.

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.¹ Commence-
ment

(2) Sections 14 and 16 shall come into operation on a date to be fixed by Proclamation.

(3) Section 19 shall come into operation on 1 November 1979.

(4) Sections 9 and 38 shall come into operation on 2 November 1979.

(5) Sections 22, 23, 24, 27, 29, 30, 31, 32, 33 and 34 shall come into operation on 15 November 1979.

(6) Section 39 shall come into operation on a date to be fixed by Proclamation.

3. Section 6 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “Director” and substituting the following definitions:

“ ‘Deputy Director-General’ means a Deputy Director-General of Social Services;

‘Director’ means a Director of Social Services;

‘Director-General’ means the Director-General of Social Services;” and

(b) by omitting from sub-section (1) the definitions of “the Deputy Director-General” and “the Director-General”.

Interpret-
ation

4. Section 8 of the Principal Act is repealed and the following section substituted:

Deputy Directors-General and Assistant Directors-General “8. There may be Deputy Directors-General of Social Services and Assistant Directors-General of Social Services.”

Directors of Social Services 5. Section 9 of the Principal Act is amended by inserting “, in the Australian Capital Territory and in the Northern Territory” after “State”.

Delegation 6. Section 12 of the Principal Act is amended by omitting from sub-section (1) “the Deputy Director-General” and substituting “a Deputy Director-General”.

Powers as to taking of evidence and production of documents 7. Section 16 of the Principal Act is amended by omitting “the Deputy Director-General” (wherever occurring) and substituting “a Deputy Director-General”.

Absence from Australia 8. Section 20 of the Principal Act is amended by omitting from sub-section (3) “a Territory” and substituting “an external Territory”.

Variation of maximum rates of age and invalid pensions 9. Section 28A of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “relevant period” and substituting the following definition:

“ ‘relevant period’ means the period of 6 months commencing on 1 May 1980, and each subsequent period of 6 months; ”;

(b) by omitting paragraph (a) of sub-section (5) and substituting the following paragraph:

“(a) is the number, calculated to 3 decimal places, ascertained by dividing—

(i) if the relevant period commences on 1 May—the index number for the last preceding December quarter; or

(ii) if the relevant period commences on 1 November—the index number for the last preceding June quarter,

by the highest index number in respect of a December or June quarter that preceded that quarter, not being a December or June quarter that occurred before the June quarter in the year 1979; or ”; and

(c) by omitting from sub-section (6) “mothers’ ” and substituting “parents’ ”.

10. Section 30A of the Principal Act is amended by omitting paragraph (c) of sub-section (3) and substituting the following paragraph: Supplementary assistance

“(c) in respect of whom a direction is in force under sub-section (1A) of section 32,”.

11. Section 31 of the Principal Act is amended by adding at the end thereof the following sub-section: Wife's pension

“(3) Where—

- (a) a wife is unable to live together with her husband in a matrimonial home by reason that—
 - (i) she or her husband is an inmate of a benevolent home; or
 - (ii) both she and her husband are inmates of a benevolent home or benevolent homes; or
- (b) a wife is unable to live together with her husband in a matrimonial home as a result of the illness or infirmity of either or both of them,

then, for the purposes of sub-section (2), the wife shall be taken not to be living apart from her husband by reason only of the circumstances set out in paragraph (a) or (b), as the case may be.”.

12. Section 32 of the Principal Act is amended by inserting after sub-section (1) the following sub-section: Rate of wife's pension

“(1A) Where the Director-General is satisfied that—

- (a) the living expenses of a wife and her husband are, or are likely to be, greater than they would otherwise be by reason that they are unable, as a result of the illness or infirmity of either or both of them, to live together in a matrimonial home; and
- (b) the inability is likely to continue indefinitely,

he may direct that the annual rate of wife's pension in relation to that wife shall not exceed the annual rate specified in paragraph (a) of sub-section (1A) of section 28.”.

13. Section 33 of the Principal Act is repealed and the following section substituted:

“33. A wife's pension is not payable to a woman—

- (a) who is an inmate of a mental hospital; or
- (b) whose husband is an inmate of a mental hospital.”.

Wife's pension not to be paid in certain circumstances

14. (1) Section 50 of the Principal Act is repealed and the following section substituted:

“50. (1) In this section—

‘age pensioner’ means a person who is in receipt of a pension that is, or includes, an age pension;

Inmates of benevolent homes

- ‘invalid pensioner’ means a person who is in receipt of a pension that is, or includes, an invalid pension;
- ‘pensioner contribution’ means an amount per annum equal to the product of 364 and an amount equal to the amount in force, from time to time, for the purposes of sub-paragraph (iii) of paragraph (b) of sub-section (2) of section 47 of the *National Health Act 1953*, or, if that product is not a multiple of \$2.60, the next lower amount that is such a multiple;
- ‘wife pensioner’ means a person who is in receipt of a pension that is, or includes, a wife’s pension;
- ‘wife’s portion’, in relation to a male pensioner who is a married person and the maximum rate of whose pension is increased by reason of the operation of sub-section (1B) or (1F) of section 28, means the amount per annum by which the amount per annum of his pension is greater than the amount that, but for the operation of those sub-sections, would be the amount per annum of his pension.

“(2) If an inmate of a benevolent home becomes an age pensioner, an invalid pensioner or a wife pensioner, or if an age pensioner, an invalid pensioner or a wife pensioner becomes an inmate of a benevolent home, his pension shall, so long as he remains an inmate of a benevolent home, be dealt with as follows:

- (a) in the case of a male pensioner referred to in the definition of ‘wife’s portion’ in sub-section (1)—there shall be paid to his wife so much of his pension as does not exceed the wife’s portion in relation to him;
- (b) there shall be paid to the person controlling the benevolent home for the maintenance of the pensioner in the benevolent home so much of his pension, or so much of the remainder of his pension after deducting any wife’s portion, as does not exceed the pensioner contribution in relation to him;
- (c) the balance (if any) of his pension shall be paid to the pensioner.”.

(2) Subject to sub-section (4), where a pensioner was, immediately before the commencement of this section, a pensioner to whom section 50 of the Principal Act applied, that section continues to apply, after the commencement of this section, in relation to that pensioner so long as that pensioner remains an inmate of a benevolent home.

(3) For the purposes of section 50 of the Principal Act in its application in relation to a pensioner by virtue of sub-section (2) of this section—

- (a) the reference in sub-paragraph (1) (a) (i) of that section to the maximum rate of age pension specified in paragraph (a) of sub-section (1A) of section 28 shall be read as a reference to that

maximum rate as in force on the date of commencement of this section;

- (b) the reference in sub-paragraph (1) (a) (ii) of that section to the maximum rate of allowance specified in paragraph (d) of sub-section (3) of section 30A shall be read as a reference to that maximum rate as in force on the date of commencement of this section; and
- (c) the reference in paragraph (1) (aa) of that section to sub-section (1B) or sub-section (1F) of section 28 shall be read as a reference to sub-section (1B) or sub-section (1F), as the case may be, of that section as in force from time to time.

(4) When the application, by virtue of sub-section (2) of this section, of section 50 of the Principal Act in relation to a pensioner results in there being payable to the person controlling the benevolent home for the maintenance of the pensioner in the benevolent home an amount not less than the pensioner contribution, within the meaning of section 50 of the *Social Services Act 1947*, in relation to the pensioner, then—

- (a) section 50 of the *Social Services Act 1947* applies in relation to the pensioner; and
- (b) section 50 of the Principal Act ceases to apply in relation to the pensioner.

15. Section 61 of the Principal Act is amended by omitting from sub-section (3) “a Territory” and substituting “an external Territory”. Absence
from
Australia

16. (1) Section 80 of the Principal Act is repealed and the following section substituted:

“80. (1) In this section, ‘pensioner contribution’ means an amount per annum equal to the product of 364 and an amount equal to the amount in force, from time to time, for the purposes of sub-paragraph (iii) of paragraph (b) of sub-section (2) of section 47 of the *National Health Act 1953*, or, if that product is not a multiple of \$2.60, the next lower amount that is such a multiple. Inmates of
benevolent
homes

“(2) If an inmate of a benevolent home, being a class B widow, becomes a pensioner or if a pensioner, being a class B widow, becomes an inmate of a benevolent home, her pension shall, so long as she remains an inmate of a benevolent home, be dealt with as follows:

- (a) there shall be paid to the person controlling the benevolent home for the maintenance of the pensioner in the benevolent home so much of her pension as does not exceed the pensioner contribution in relation to her;
- (b) the balance (if any) of her pension shall be paid to the pensioner.”.

(2) Subject to sub-section (4), where a pensioner was, immediately before the commencement of this section, a pensioner to whom section

80 of the Principal Act applied, that section continues to apply, after the commencement of this section, in relation to that pensioner so long as that pensioner remains an inmate of a benevolent home.

(3) For the purposes of section 80 of the Principal Act in its application in relation to a pensioner by virtue of sub-section (2) of this section—

- (a) the reference in sub-paragraph (1) (a) (i) of that section to the maximum rate of age pension specified in paragraph (a) of sub-section (1A) of section 28 shall be read as a reference to that maximum rate as in force on the date of commencement of this section; and
- (b) the reference in sub-paragraph (1) (a) (ii) of that section to the rate of the allowance specified in paragraph (a) of sub-section (2A) of section 65A shall be read as a reference to that rate as in force on the date of commencement of this section.

(4) When the application, by virtue of sub-section (2) of this section, of section 80 of the Principal Act in relation to a pensioner results in there being payable to the person controlling the benevolent home for the maintenance of the pensioner in the benevolent home an amount not less than the pensioner contribution, within the meaning of section 80 of the *Social Services Act 1947*, in relation to the pensioner, then—

- (a) section 80 of the *Social Services Act 1947* applies in relation to the pensioner; and
- (b) section 80 of the Principal Act ceases to apply in relation to the pensioner.

Interpretation

17. Section 83AAA of the Principal Act is amended—

- (a) by omitting from the definition of “supporting father” in sub-section (1) “State that, in the opinion of the Director-General, is similar to a benefit provided by the State that is” and substituting “State or the Northern Territory that, in the opinion of the Director-General, is similar to”; and
- (b) by adding at the end of the definition of “supporting mother” in sub-section (1) “or a benefit provided by the Northern Territory that is similar to such an approved benefit”.

Date from which benefit is payable

18. Section 83AAF of the Principal Act is amended by omitting “on behalf of” and substituting “on the part of”.

Prescribed persons

19. Section 83CA of the Principal Act is amended by omitting paragraphs (a), (b), (c) and (d) of sub-section (2) and substituting the following paragraphs:

- “(a) in the case of an unmarried person to whom, or in respect of whom, a sheltered employment allowance is payable under Part VIIA—\$3,536 per annum;

- (b) in the case of a married person to whom, or in respect of whom, such an allowance is payable—\$1,898 per annum;
- (c) in the case of any other unmarried person—\$2,080 per annum; or
- (d) in the case of any other married person—\$1,768 per annum.”.

20. Section 94 of the Principal Act is amended—

- (a) by inserting in the definition of “institution” in sub-section (1) “or the Northern Territory” after “State” (wherever occurring); and
- (b) by inserting in sub-section (3) “or the Northern Territory” after “State” (wherever occurring).

Interpretation

21. Section 98 of the Principal Act is amended by omitting from paragraph (c) “the Director in the State in which the claimant resides or as prescribed” and substituting “a Director”.

Claims

22. Section 102 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “from the commencement of the next endowment period after the date” and substituting “from and including the date”;
- (b) by omitting from sub-section (2) “the commencement of the next endowment period after that date” and substituting “and including that date”;
- (c) by omitting from sub-section (3) “from the commencement of the next endowment period after the date” and substituting “from and including the date”; and
- (d) by omitting from sub-section (3) “the commencement of the next endowment period after that date” and substituting “and including that date”.

Date from which endowment payable

23. Section 103 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

Endowment to cease in certain circumstances

“(2) Where—

- (a) an endowment ceases to be payable to a person, other than an institution, by reason of an event specified in paragraph (a) or (b) of sub-section (1); or
- (b) an endowment ceases to be payable to an institution by reason of an event specified in any of the paragraphs of sub-section (1),

the endowment ceases to be payable on the day on which the event occurs.

“(2A) Where an endowment ceases to be payable to a person, other than an institution, by reason of an event specified in a paragraph, other than paragraph (a) or (b), of sub-section (1), the endowment ceases to be payable from the end of the endowment period during which that event occurs.”.

24. After section 103 of the Principal Act the following section is inserted:

Daily rate of endowment

“103A. (1) Subject to sub-section (2), where, by virtue of the operation of section 102 or 103, a period in respect of which endowment is payable in respect of a child is, or includes, a period (in this sub-section referred to as ‘the relevant period’) that is part only of an endowment period, the rate of endowment payable in respect of the relevant period is a daily rate calculated by dividing by 365 the product of 12 and the amount of the monthly rate of endowment specified in respect of the child in sub-section (2) or (3), as the case may be, of section 95.

“(2) Where the amount of a daily rate of an endowment that would, but for this sub-section, be payable under sub-section (1) includes an amount of less than one cent (in this sub-section referred to as ‘the relevant amount’) that first-mentioned amount shall be increased or decreased to the nearest cent, except where the relevant amount is 0.5 cent, in which case that first-mentioned amount shall be increased by 0.5 cent.”

Payment of endowment during temporary absence from Australia

25. Section 104 of the Principal Act is amended by inserting in paragraph (a) of sub-section (1) “or the Northern Territory” after “State” (wherever occurring).

Interpretation

26. Section 105A of the Principal Act is amended by inserting before the definition of “child” in sub-section (1) the following definition:

“‘adopted child’ means a child adopted under the law of any place (whether in or out of Australia) relating to the adoption of children, and ‘adoptive parent’ has a corresponding meaning;”

Application of Part VI

27. Section 105D of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) In the application of section 103A by virtue of sub-section (1)—
 (a) the reference in that section to section 102 or 103 shall be read as a reference to section 105B or 105F; and
 (b) the reference in that section to sub-section (2) or (3) of section 95 shall be read as a reference to section 105C.”

Notification of change of circumstances

28. Section 105E of the Principal Act is amended by omitting “the Director” and substituting “a Director”.

Interpretation

29. Section 105H of the Principal Act is amended by omitting paragraph (b) of sub-section (2).

30. (1) After section 105K of the Principal Act the following section is inserted:

“105KA. (1) Where—

- (a) a child is, or has been, absent from his home; and
- (b) the Director-General is satisfied that—
 - (i) where that absence has ceased—the period of the absence was of a temporary nature; or
 - (ii) in any other case—the period during which the child has been, and is expected to be, so absent is of a temporary nature,

Temporary
absences
from home

the Director-General may direct that the entitlement of a person to handicapped child’s allowance in respect of that child for that period of absence is not to be affected by—

- (c) the fact that the child was, or is, absent from his home;
- (d) the fact that the child was not, or is not, receiving from the person concerned the required care and attention; and
- (e) where during that absence the child has been, or is, an inmate of an institution to which endowment in respect of the child was, or is, or, but for section 95A or 95B, would have been, or would be, payable—the fact that the endowment was, or is, or would have been, or would be, so payable.

“(2) Sub-section (1) does not apply in relation to a period during which a child is, or has been, an inmate of an institution if, by reason of his being, or having been, such an inmate, a benefit is, or was, payable in relation to the child in respect of that period under Part VA of the *National Health Act 1953* or under Part VII of the *Handicapped Persons Assistance Act 1974*.

“(3) Where a direction under sub-section (1) relates to a child who was absent from his home when the direction was given, the Director-General, by a further direction, may, having regard to any change of circumstance or for any other reason, revoke the direction as from the date specified in the further direction.

“(4) Where a further direction under sub-section (3) is given having regard to a change of circumstance, the date specified in the further direction may be a date earlier than the date on which the further direction is given.”

(2) Where a period of absence of a child from his home commenced before, and ends after, the date of commencement of this section, the section set out in sub-section (1) applies in relation to only so much of that period as is after the commencement of this section.

31. After section 105L of the Principal Act the following section is inserted:

“105LA. (1) Subject to sub-section (2), where, by virtue of the operation of section 105K or sub-section (2) of section 105QB, a period in respect of which a handicapped child’s allowance is payable in respect

Daily rate of
allowance

of a child is, or includes, a period (in this sub-section referred to as ‘the relevant period’) that is part only of an endowment period, the rate of handicapped child’s allowance payable in respect of the relevant period is a daily rate calculated by dividing by 365 the product of 12 and the amount of the monthly rate of allowance specified in, or determined under, section 105L in respect of the child.

“(2) Where the amount of a daily rate of a handicapped child’s allowance that would, but for this sub-section, be payable under sub-section (1) includes an amount of less than one cent (in this sub-section referred to as ‘the relevant amount’) that first-mentioned amount shall be increased or decreased to the nearest cent, except where the relevant amount is 0.5 cent, in which case that first-mentioned amount shall be increased by 0.5 cent.”

32. Section 105M of the Principal Act is repealed and the following section substituted:

Deduction
for period in
institution

“105M. Where, on any day or days during an endowment period—

- (a) a child in respect of whom a handicapped child’s allowance is payable is an inmate of an institution; and
- (b) by reason of his being such an inmate, a benefit is payable in relation to that child in respect of that day or those days under Part VA of the *National Health Act 1953* or under Part VII of the *Handicapped Persons Assistance Act 1974*,

there shall be deducted from the allowance payable in respect of that endowment period an amount in respect of that day, or of each of those days, equal to the amount of the daily rate of handicapped child’s allowance that would be applicable in respect of the child under section 105LA if that day or those days were the relevant period for the purposes of that section.”

Cessation of
handicapped
child’s
allowance
granted
under section
105J

33. Section 105Q of the Principal Act is amended—

- (a) by inserting in sub-section (1A) “(other than paragraph (a) or (b))” after “Sub-section (1)”; and
- (b) by omitting from sub-section (2) “Where” and substituting “Subject to section 105QB, where”.

34. After section 105QA of the Principal Act the following section is inserted:

Cessation of
handicapped
child’s
allowance by
reason of
cessation of
custody, care
and control,
&c.

“105QB. (1) Subject to sub-section (3), a handicapped child’s allowance payable to a person in respect of a child ceases to be payable if—

- (a) the person ceases to have the custody, care and control of the child; or
- (b) the child, being a child in the custody, care and control of a person, becomes an inmate of an institution.

“(2) Where a handicapped child’s allowance ceases to be payable to a person by reason of an event specified in sub-section (1), the allowance ceases to be payable on the day on which the event occurred.

“(3) Sub-section (1) does not apply in relation to a child by reason only that the child becomes an inmate of an institution if he becomes, or became, such an inmate during a period in respect of which a direction under sub-section (1) of section 105KA with respect to the child is in force.”.

35. Section 107 of the Principal Act is repealed and the following section substituted:

“107. (1) Subject to this Part, a person (not being a person in receipt of a pension under Part III or IV or a service pension under the *Repatriation Act 1920*) is qualified to receive an unemployment benefit in respect of a period (in this section referred to as the ‘relevant period’) if, and only if—

Unemploy-
ment
benefits

- (a) the person had attained the age of 16 years before the commencement of the relevant period and, being a man, had not attained the age of 65 years, or, being a woman, had not attained the age of 60 years, before the end of the relevant period;
- (b) the person resided in Australia throughout the relevant period and on the date on which he lodged his claim for the benefit and—
 - (i) had resided in Australia for a period of not less than 12 months immediately preceding that date; or
 - (ii) satisfies the Director-General that he is likely to remain permanently in Australia; and
- (c) the person satisfies the Director-General that—
 - (i) throughout the relevant period he was unemployed and was capable of undertaking, and was willing to undertake, paid work that, in the opinion of the Director-General, was suitable to be undertaken by the person; and
 - (ii) he had taken, during the relevant period, reasonable steps to obtain such work.

“(2) Where, by reason of section 119, an unemployment benefit is payable only after the expiration of a particular period (in this subsection referred to as the ‘waiting period’), then, for the purposes of the application of sub-section (1) of this section in relation to a relevant period that immediately followed the waiting period, that sub-section has effect as if—

- (a) the reference to the commencement of the relevant period in paragraph (a) of that sub-section were a reference to the commencement of the waiting period; and
- (b) the references to the relevant period in paragraphs (b) and (c) of that sub-section were references to the period constituted by the aggregate of the waiting period and the relevant period.

“(3) The Director-General may, in his discretion, treat a person as having been unemployed throughout a particular period for the purposes of sub-paragraph (i) of paragraph (c) of sub-section (1) notwithstanding that the person undertook paid work during the whole or a part of that period if the Director-General is of the opinion that, taking into account the nature and duration of the work and any other matters relating to the work that he considers relevant, the work should be disregarded.

“(4) A person is not qualified to receive an unemployment benefit in respect of a period unless—

- (a) the person satisfies the Director-General that the person’s unemployment during that period was not due to the person being, or having been, engaged in industrial action; and
- (b) the Director-General is satisfied—
 - (i) that the person’s unemployment during that period was not due to another person or other persons being, or having been, engaged in industrial action; or
 - (ii) if the Director-General is satisfied that the person’s unemployment during that period was due to another person or other persons being, or having been, engaged in industrial action—that the first-mentioned person was not, during that period, a member of a trade union of which the other person was a member, or of which any one or more of the other persons was or were a member or members, during that period.

“(5) Sub-section (4) does not disqualify a person from receiving unemployment benefit in respect of a period occurring after the cessation of the relevant industrial action.

“(6) If the Director-General has determined in pursuance of section 132 that an instalment of an unemployment benefit in respect of a period is to be paid to a person before the expiration of that period, the person is qualified to receive that benefit in respect of that period if the person satisfies the Director-General that the person may reasonably be expected to fulfil the requirements of the proceeding provisions of this section in respect of that period.

“(7) In this section—

‘industrial action’ means—

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, a result of which is a restriction or limitation on, or a delay in, the performance of the work;
- (b) a ban, limitation or restriction on the performance of work or on acceptance of, or offering for, work; or
- (c) a failure or refusal by a person to attend for work or a failure or refusal to perform any work at all by a person who attends for work,

but does not include the performance of work in a manner, the adoption of a practice, a ban, limitation or restriction, or a failure or refusal, that is authorized by the employer of the person concerned;

‘trade union’ includes any organization or association of employees (whether corporate or unincorporate) that exists or is carried on for the purpose, or for purposes that include the purpose, of furthering the interests of its members in relation to their employment;

‘unemployment’, in relation to a person, includes—

- (a) unemployment of the person arising by reason of a person or persons being, or having been, engaged in industrial action;
- (b) unemployment of the person resulting from the termination of his employment; and
- (c) the person being, or having been, stood down or suspended from his employment or work.

“(8) For the purposes of this section—

- (a) conduct is capable of constituting industrial action notwithstanding that the conduct relates to part only of the duties that persons are required to perform in the course of their employment;
- (b) a reference to industrial action shall be read as including a reference to a course of conduct consisting of a series of industrial actions; and
- (c) if a trade union is divided into branches (whether or not the branches are themselves trade unions), the persons who are members of the respective branches shall all be deemed to be members of the first-mentioned trade union.”

Sickness
benefits**36. Section 108 of the Principal Act is amended—**

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) Subject to this Part, a person (not being a person in receipt of a pension under Part III or IV, or an allowance under Part VIIA, or a service pension under the *Repatriation Act 1920*) is qualified to receive a sickness benefit in respect of a period (in this sub-section referred to as the ‘relevant period’) if, and only if—

- (a) the person had attained the age of 16 years before the commencement of the relevant period and, being a man, had not attained the age of 65 years, or, being a woman, had not attained the age of 60 years, before the end of the relevant period;
- (b) the person resided in Australia throughout the relevant period and on the date on which he lodged his claim for benefit and—
- (i) had resided in Australia for a period of not less than 12 months immediately preceding that date; or
- (ii) satisfies the Director-General that he is likely to remain permanently in Australia; and
- (c) the person satisfies the Director-General that, throughout the relevant period, he was incapacitated for work by reason of sickness or accident (being an incapacity of a temporary nature) and that he has thereby suffered a loss of salary, wages or other income.

“(1A) Where, by reason of section 119, a sickness benefit is payable only after the expiration of a particular period (in this sub-section referred to as the ‘waiting period’), then, for the purposes of the application of sub-section (1) of this section in relation to a relevant period that immediately followed the waiting period, that sub-section has effect as if—

- (a) the reference to the commencement of the relevant period in paragraph (a) of that sub-section were a reference to the commencement of the waiting period; and
- (b) the references to the relevant period in paragraphs (b) and (c) of that sub-section were references to the period constituted by the aggregate of the waiting period and the relevant period.

“(1B) A person is not qualified to receive a sickness benefit in respect of a period of incapacity if the Director-General is satisfied that the incapacity was brought about with a view to obtaining a sickness benefit.

“(1C) If the Director-General has determined in pursuance of section 132 that an instalment of a sickness benefit in respect

of a period is to be paid to a person before the expiration of that period, the person is qualified to receive that benefit in respect of that period if the person satisfies the Director-General that the person may reasonably be expected to fulfil the requirements of the preceding provisions of this section in respect of that period.”; and

- (b) by omitting from sub-section (2) “the last preceding sub-section” and substituting “sub-section (1)”.

37. Section 112 of the Principal Act is amended by inserting after sub-section (6) the following sub-section:

“(6A) Where—

- (a) an unemployment benefit or sickness benefit is payable to a married person in respect of a period; and
- (b) sub-section (4) of section 107 operates to disqualify the spouse of that person from receiving an unemployment benefit in respect of that period or would so operate if the spouse were otherwise qualified to receive an unemployment benefit in respect of that period,

this section applies in relation to the first-mentioned person in relation to that period as if the first-mentioned person were an unmarried person.”.

Rate of unemployment and sickness benefit

38. Section 112AA of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “relevant period” and substituting the following definition:

“‘relevant period’ means the period of 6 months commencing on 1 May 1980, and each subsequent period of 6 months;”;

- (b) by omitting paragraph (a) of sub-section (5) and substituting the following paragraph:

“(a) is the number, calculated to 3 decimal places, ascertained by dividing—

- (i) if the relevant period commences on 1 May—the index number for the last preceding December quarter; or
- (ii) if the relevant period commences on 1 November—the index number for the last preceding June quarter,

by the highest index number in respect of a December or June quarter that preceded that quarter, not being a December or June quarter that occurred before the June quarter in the year 1979; or”.

Variation of unemployment and sickness benefits

39. (1) Section 115 of the Principal Act is repealed and the following Division substituted:

“Division 3A—Payment by way of Compensation in relation to Sickness Benefit

Interpretation

“115. (1) In this Division, ‘sickness benefit’ includes a supplementary allowance.

“(2) In this Division—

- (a) a reference to a payment by way of compensation shall be read as a reference to—
 - (i) a payment by way of damages;
 - (ii) a payment under a scheme of insurance or compensation provided for by a law of a State or Territory, including a payment under a contract entered into in pursuance of such a scheme;
 - (iii) a payment, whether with or without admission of liability, in settlement of a claim for damages or of a claim under a scheme referred to in sub-paragraph (ii); or
 - (iv) any other payment that, in the opinion of the Director-General, is a payment in the nature of compensation or damages, other than a payment for which the person who has received, is receiving or is qualified or entitled to receive the payment has made contributions; and
- (b) a reference to a receipt by a person of a payment by way of compensation shall be read as including a reference to the receipt by another person, on behalf of, or at the direction of, that first-mentioned person, of a payment by way of compensation.

Receipt by beneficiary of compensation

“115A. (1) Where a person who is, or has been, in receipt of a sickness benefit in respect of an incapacity receives a payment that is, in whole or in part, a payment by way of compensation in respect of that incapacity, being—

- (a) a payment by way of a lump sum;
- (b) a payment that is the first payment, or the first payment after receipt of sickness benefit, forming part of a series of periodical payments; or
- (c) where the person has given a notification under this sub-section of his receipt of a payment forming part of a series of periodical payments—a payment that is the first payment after the giving of that notification that is at a higher rate than the rate of the payment so notified,

the person shall, within 7 days after receipt of that payment, notify a Registrar, in writing, accordingly.

Penalty: \$100.

“(2) Where—

- (a) a person has notified a Registrar under sub-section (1) of the receipt of a payment by way of compensation; or

- (b) the Director-General has otherwise become aware of the receipt by a person of such a payment,

the Director-General may, by notice in writing served on the person, require the person to furnish to the Director-General, in writing, such further information with respect to the payment as is specified in the notice.

“(3) A notice under sub-section (2) shall specify the period within which the requirement in the notice is to be complied with and, if that requirement is not complied with to the satisfaction of the Director-General within that period, the Director-General may suspend payment of the sickness benefit concerned.

“115B. (1) Where the Director-General is of the opinion that a payment (whether a payment forming part of a series of periodical payments or a payment by way of a lump sum) received by a person who is qualified to receive a sickness benefit in respect of an incapacity is a payment that is, in whole or in part, a payment by way of compensation in respect of that incapacity, the Director-General, having regard to the amount of that payment or, in the case of a series of periodical payments, the amounts of those payments (including future payments), or such part of that payment or of those payments as, in the opinion of the Director-General, relates to that incapacity, may— Refusal of claim, &c.

- (a) where a claim by the person for sickness benefit in respect of that incapacity has been received but not determined—refuse to grant that claim or grant that claim but direct that the rate of sickness benefit payable be such rate as is fixed in the direction, not being a rate greater than the rate that would otherwise be payable in accordance with this Part; or
- (b) in any other case—
- (i) cancel the sickness benefit payable to the person in respect of that incapacity; or
 - (ii) direct that the rate of the sickness benefit payable to the person in respect of that incapacity be such rate as is fixed in the direction, not being a rate greater than the rate that would otherwise be payable in accordance with this Part.

“(2) A direction under sub-section (1) may specify a date on which the direction is to cease to operate.

“(3) Where the Director-General is of the opinion that a payment by way of a lump sum received by a person who is, or has been, in receipt of sickness benefit in respect of an incapacity (whether the payment was received before, during or after the close of the period of receipt of sickness benefit) is a payment that is, in whole or in part, a payment by way of compensation in respect of that incapacity, the Director-General may, by notice in writing served by post on the person, direct the person to pay to the Commonwealth an amount specified in the notice, being an amount equal to—

- (a) the whole or a specified part of the amount of the sickness benefit received by the person in respect of that incapacity; or
- (b) the amount of the lump-sum payment or such part of that amount as, in the opinion of the Director-General, relates to that incapacity,

whichever is the lesser amount.

“(4) Where the rate of a sickness benefit is a rate fixed in a direction under sub-section (1) having regard to the receipt of a payment by way of compensation, that payment shall not, for the purposes of section 114, be regarded as income.

Recovery of
sickness
benefit from
person liable
to make a
payment by
way of
compensation

“115C. (1) Where it appears to the Director-General that a person is, or may be, liable to make a payment by way of compensation in respect of the incapacity of another person who is, or was, qualified to receive a sickness benefit in respect of that incapacity, the Director-General may, by notice in writing served by post on the first-mentioned person, inform him that the Director-General, on behalf of the Commonwealth, proposes to, or may wish to, recover from him an amount equal to the whole or some part of the amount of sickness benefit paid to the other person in respect of that incapacity.

“(2) Where a person on whom a notice under sub-section (1) has been served is, or becomes, liable (whether by reason of a judgment of a court or by reason of an agreement in settlement of a claim) to make a payment by way of compensation in respect of the incapacity to which the notice relates, the Director-General, on behalf of the Commonwealth, may, either in that notice or in a subsequent notice served by post on the person, specify the amount that the Director-General, on behalf of the Commonwealth, proposes to recover from him, being an amount not exceeding the sickness benefit paid in respect of that incapacity.

“(3) Where a person who is served with a notice under sub-section (1) (not being a notice that specifies the amount that the Director-General, on behalf of the Commonwealth, proposes to recover from him), is, or becomes, liable (whether by reason of a judgment of a court or by reason of an agreement in settlement of a claim) to make a payment by way of compensation in respect of the incapacity to which the notice relates, the person shall, within 7 days after becoming so liable or after being served with the notice under sub-section (1), whichever last occurs, notify a Registrar, in writing, accordingly.

Penalty: \$100.

“(4) Subject to sub-section (10), a person who is served with a notice under sub-section (1) shall not, after the service of that notice, make any payment that is, in whole or in part, a payment by way of compensation in respect of the incapacity to which the notice relates and, if a

payment being a lump-sum payment, is paid by the person in contravention of this sub-section, the payment, shall, for the purposes of paragraph (c) of sub-section (5) be disregarded in ascertaining the amount of the payment that the person is liable to make.

“(5) Where—

- (a) a person is served with a notice under sub-section (1);
- (b) an amount is specified in that notice, or in a subsequent notice served on the person under sub-section (2), as the amount that the Director-General, on behalf of the Commonwealth, proposes to recover from the person; and
- (c) the person is liable to make (whether by reason of a judgment of a court or by reason of an agreement in settlement of a claim) a payment by way of a lump sum that, in the opinion of the Director-General, is a payment that is, in whole or in part, a payment by way of compensation in respect of the incapacity to which the notice, or the subsequent notice, relates,

the person is liable to pay to the Commonwealth—

- (d) the amount specified in the notice or in the subsequent notice; or
- (e) an amount equal to the amount of the payment referred to in paragraph (c) or such part of that payment as, in the opinion of the Director-General, relates to that incapacity,

whichever is the lesser amount.

“(6) Where—

- (a) a person is served with a notice under sub-section (1);
- (b) an amount is specified in that notice, or in a subsequent notice served on the person under sub-section (2), as the amount that the Director-General, on behalf of the Commonwealth, proposes to recover from the person; and
- (c) the person is liable to make (whether by reason of a judgment of a court or by reason of an agreement in settlement of a claim) periodical payments that, in the opinion of the Director-General, are payments that are, in whole or in part, payments by way of compensation in respect of the incapacity to which the notice, or the subsequent notice, relates,

the person is liable to pay to the Commonwealth amounts ascertained in accordance with sub-section (7).

“(7) Subject to sub-section (8), the amounts that a person is liable to pay to the Commonwealth under sub-section (6) are amounts equal to—

- (a) the amounts of the periodical payments that the person is required to pay in satisfaction of his liability referred to in paragraph (c) of sub-section (6), as those amounts fall due;
- (b) such part of each of the amounts referred to in paragraph (a) as, in the opinion of the Director-General, relates to the incapacity referred to in paragraph (c) of sub-section (6); or

- (c) such part of each of the amounts referred to in paragraph (a), or of that part of each of those amounts referred to in paragraph (b), as the Director-General specifies,

and, in addition, where the person has paid an amount, or amounts, in contravention of sub-section (4) in settlement of his liability referred to in paragraph (c) of sub-section (6), an amount equal to—

- (d) the amount, or the aggregate of the amounts, so paid; or
 (e) such part of the amount, or amounts, referred to in paragraph (d) as, in the opinion of the Director-General, relates to the incapacity referred to in paragraph (c) of sub-section (6).

“(8) The liability of a person to make payments to the Commonwealth under sub-section (6) ceases when the aggregate of the payments so made equals the amount referred to in paragraph (b) of sub-section (6).

“(9) Payment to the Commonwealth of an amount that a person is liable to pay under sub-section (5) or (6) shall, to the extent of the payment, operate as a discharge to the person as against the person entitled to receive compensation in respect of the incapacity concerned.

“(10) Where, by reason of the payment to the Commonwealth by a person of an amount that the person is liable to pay under sub-section (5) or (6) or for any other reason, the Director-General is satisfied that sub-section (4) should no longer apply in relation to the person in respect of a particular incapacity, the Director-General shall inform the person, in writing, accordingly.

Notice to
insurer

“115D. (1) Where—

- (a) the Director-General has served a notice on a person (in this section referred to as ‘the client’) under sub-section (1) of section 115C; and
 (b) an insurer, under a contract of insurance, is, or may be, liable to indemnify the client, in whole or in part, against the liability, or the possible liability, to make a payment by way of compensation in respect of the incapacity to which the notice relates,

the Director-General may, by notice in writing served by post on the insurer, inform him of the service of the notice on the client.

“(2) A notice served on an insurer under sub-section (1) shall be accompanied by a copy of the relevant notice served on the client.

“(3) Where a notice has been served on an insurer under sub-section (1), the Director-General shall furnish to the insurer a copy of any subsequent notice served on the client concerned under sub-section (2) of section 115C.

“(4) Subject to sub-section (7), an insurer who is served with a notice under sub-section (1) shall not, after the service of that notice,

make any payment that is, in whole or in part, a payment under the contract of insurance with the client concerned in respect of the incapacity to which the notice served on the client under section 115C relates and, if a payment is made by the insurer in contravention of this sub-section, the payment shall, for the purposes of paragraph (d) of sub-section (5), be disregarded in ascertaining the amount that the insurer is liable to pay to the client.

“(5) Where—

- (a) an insurer is served with a notice under sub-section (1); and
- (b) an amount is, or becomes, payable to the Commonwealth by the client concerned under sub-section (5) or (6) of section 115C by reason of the service on the client of a notice under sub-section (1) or (2) of section 115C,

the insurer is liable to pay to the Commonwealth an amount equal to—

- (c) the amount so payable by the client to the Commonwealth; or
- (d) the amount that the insurer is liable to pay to the client to indemnify the client against the liability to make a payment by way of compensation in respect of the incapacity to which the notice served on the client under section 115C relates,

whichever is the lesser amount.

“(6) Payment of an amount that an insurer is liable to pay to the Commonwealth under sub-section (5)—

- (a) shall, to the extent of the payment, operate as a discharge to the insurer as against the client concerned; and
- (b) shall, for the purposes of section 115C, be deemed to be a payment, on behalf of the client, in discharge, either wholly or partly, of the liability of the client under sub-section (5) or (6) of section 115C by reason of the service on the client under section 115C of the notice a copy of which was furnished to the insurer.

“(7) Where, by reason of the payment to the Commonwealth by an insurer of an amount that it is liable to pay under sub-section (5) or for any other reason, the Director-General is satisfied that sub-section (4) should no longer apply in relation to the insurer in respect of a particular incapacity, the Director-General shall inform the insurer, in writing, accordingly.

“115E. For the purposes of this Division, the Director-General may disregard the whole or a part of a payment by way of compensation in respect of an incapacity if the Director-General considers that, in the special circumstances of the case, it is appropriate to do so, and he shall disregard the whole or a part of a payment by way of compensation in respect of an incapacity if he is of the opinion that the whole or the part of that payment represents expenses incurred for medical or hospital treatment in connection with the incapacity.

Director-General may disregard payment by way of compensation in whole or in part

Recovery in
court of
competent
jurisdiction

“115F The Commonwealth may recover in a court of competent jurisdiction an amount—

- (a) that a person is required to pay to it in accordance with a direction under sub-section (3) of section 115B;
- (b) that a person is liable to pay to it under sub-section (5) of section 115C;
- (c) that a person is liable to pay to it under sub-section (6) of section 115C; or
- (d) that an insurer is liable to pay to it under sub-section (5) of section 115D,

but the Commonwealth is not entitled to recover amounts payable to it under this Division in respect of the same incapacity that, in the aggregate, exceed the amount of the sickness benefit paid by the Commonwealth in respect of the incapacity.

Evidence

“115G. For the purposes of this Division, a statement in writing purporting to be signed by a person who holds an office specified in sub-section (1) of section 143—

- (a) that a specified person has, on, or as at, a specified date, received a specified amount of sickness benefit in respect of a specified incapacity;
- (b) that no notice under sub-section (1) of section 115A has been received by any Registrar from a specified person in respect of a specified payment by way of compensation;
- (c) that no notice under sub-section (3) of section 115C has been received by any Registrar from a specified person in respect of any liability to make a payment by way of compensation in respect of a specified incapacity of a specified person;
- (d) that the Director-General has not, under sub-section (10) of section 115C, informed a specified person that sub-section (4) of that section no longer applies in relation to that person in respect of a specified incapacity;
- (e) that the Director-General has not, under sub-section (7) of section 115D, informed a specified insurer that sub-section (4) of that section no longer applies in relation to that insurer in respect of a specified incapacity; or
- (f) that no amount, or no amount (other than a specified amount or specified amounts), payable to the Commonwealth under this Division in respect of a specified incapacity has been recovered by the Commonwealth,

shall be received in all courts as *prima facie* evidence of the facts so stated.

Division to
bind Crown

“115H. This Division binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory.”

(2) The Division set out in sub-section (1) applies to, and in relation to, any payments by way of compensation made after the commencement of this section.

(3) Notwithstanding the amendment made by sub-section (1), section 115 of the Principal Act continues to apply to, and in relation to—

- (a) any sickness benefit that was, immediately before the commencement of this section, payable at a reduced rate by virtue of sub-section (1) of that section; and
- (b) any liability of a person to pay an amount to the Director-General under sub-section (4), or in accordance with a notice under sub-section (5) or (6), of that section that accrued before the commencement of this section.

40. Section 119 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1A) “and”; and
- (b) by inserting in sub-section (1A), after paragraph (b), the following word and paragraph:

“; and (c) in respect of any period in respect of which the person satisfies the requirements of paragraph (b), the person was not a person who was disqualified from receiving unemployment benefit by reason of sub-section (4) of section 107.”

Waiting
period

41. Section 120 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) A period of postponement fixed in relation to a person under sub-section (1) in the circumstances set out in paragraph (a), (b) or (c) of that sub-section shall not be less than 6 weeks or more than 12 weeks.”

Postpone-
ment or
cancellation
of
unemploy-
ment benefit
in certain
cases

42. Section 124 of the Principal Act is amended—

- (a) by omitting “The Director-General may” and substituting “Subject to sub-section (2), the Director-General may”; and
- (b) by adding at the end thereof the following sub-section:

“(2) A special benefit is not payable to a person in respect of a period if the person is not qualified to receive an unemployment benefit in respect of that period by reason of sub-section (4) of section 107.”

Special
benefits

43. Section 141 of the Principal Act is amended by omitting “the Deputy Director-General” and substituting “a Deputy Director-General”.

Information
as to
pensioners,
&c.

44. Section 147 of the Principal Act is repealed.

Territories

Application **45.** The amendments made by sections 35, 36, 37, 40 and 42 apply in respect of periods of unemployment, or of incapacity, as the case may be, occurring on or after the day on which this Act receives the Royal Assent.

NOTES

1. Act No. 121, 1979; assented to 29 October 1979.
2. Act No. 26, 1947, as amended. For previous amendments *see* Acts Nos. 38 and 69, 1948; No. 16, 1949; Nos. 6 and 26, 1950; No. 22, 1951; Nos. 41 and 107, 1952; No. 51, 1953; No. 30, 1954; Nos. 15 and 38, 1955; Nos. 67 and 98, 1956; No. 46, 1957; No. 44, 1958; No. 57, 1959; No. 45, 1960; No. 45, 1961; Nos. 1 and 95, 1962; No. 46, 1963; Nos. 3 and 63, 1964; Nos. 57 and 152, 1965; No. 41, 1966; Nos. 10 and 61, 1967; No. 65, 1968; No. 94, 1969; Nos. 2 and 59, 1970; Nos. 16 and 67, 1971; Nos. 1, 14, 53 and 79, 1972; Nos. 1, 26, 48 and 103, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 2, 23 and 91, 1974; Nos. 34, 56, 101 and 110, 1975; Nos. 26, 62 and 111, 1976; No. 159, 1977; and No. 128, 1978.