



Social Security Legislation Amendment Act 1986

No. 33 of 1986

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Social Security Legislation Amendment Act 1986

No. 33 of 1986

An Act relating to welfare benefits and other matters

[Assented to 3 June 1986]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Social Security Legislation Amendment Act 1986*.

Commencement

2. (1) Section 6 and sub-section 39 (2) shall be deemed to have come into operation on 5 September 1985.

(2) Section 8 and sub-sections 9 (2), 32 (1) and 39 (1) shall be deemed to have come into operation on 1 November 1985.

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(3) Sub-section 9 (1) and section 24 shall be deemed to have come into operation on 1 January 1986.

(4) Sub-section 17 (2) shall be deemed to have come into operation on 15 January 1986.

(5) Sub-section 28 (2) and sections 31 and 33 shall come into operation on 1 July 1986.

(6) Sub-section 29 (1) shall be deemed to have come into operation on 1 May 1986.

(7) Sub-section 29 (2) shall come into operation on 1 November 1986.

(8) Sub-sections 29 (3) and 39 (3) shall come into operation immediately after the *Social Security (Poverty Traps Reduction) Act 1985* comes into operation.

(9) Part III shall come into operation on the day on which this Act receives the Royal Assent.

(10) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

PART II—AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Principal Act

3. The *Social Security Act 1947*¹ is in this Part referred to as the Principal Act.

Interpretation

4. Section 6 of the Principal Act is amended by omitting “means” from the definition of “dependent child” in sub-section (1) and substituting “, means”.

Secrecy

5. Section 17 of the Principal Act is amended by omitting sub-section (6) and substituting the following sub-section:

“(6) In this section, ‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions.”

Rate of remote area allowance

6. Section 17D of the Principal Act is amended by omitting from paragraph (2) (b) “paragraph (b) of the definition of ‘married person’” and substituting “paragraph (d) of the definition of ‘unmarried person’”.

Calculation of income in respect of children

7. Section 29 of the Principal Act is amended—

- (a) by inserting “or a payment in the nature of family allowance” after “*Tuberculosis Act 1948*” (wherever occurring); and
- (b) by adding at the end the following sub-section:

“(2) In this section, ‘payment in the nature of family allowance’, in relation to a payment received in respect of a child, means a payment that is similar to a family allowance, being a payment that, by virtue of sub-section 96 (6), prevents a family allowance from being payable in respect of that child.”

Rent assistance

8. Section 30A of the Principal Act is amended by omitting from paragraph (1) (c) “, 32 (2) (b) or 34 (2) (b)” and substituting “or 32 (2) (b)”.

Carer’s pension

9. (1) Section 33 of the Principal Act is amended by omitting from paragraph (2) (a) “4 weeks in any period of 12 months” and substituting “28 days in any calendar year”.

(2) Section 33 of the Principal Act is amended by omitting paragraph (d) of the definition of “relative” in sub-section (3) and substituting the following paragraph:

- “(d) a person who, by virtue of paragraph (a) or (b), has at any time been taken into account as a relative of the first-mentioned person for the purpose of the first-mentioned person becoming qualified to receive a carer’s pension;”.

10. Section 34 of the Principal Act is repealed and the following section is substituted:

Rate of carer’s pension

“34. (1) Subject to sub-sections (2) and (3), the rate of a carer’s pension payable to a person is a rate equal to the rate of age pension that would be payable to the person if the person were—

- (a) qualified to receive an age pension; and
- (b) under the age of 70 years and not permanently blind,

and, for the purposes of the calculation of the rate of the carer’s pension in accordance with section 28, the pension payable to the person shall be deemed to be an age pension.

“(2) Where a carer’s pension is payable to a husband and another carer’s pension is payable to the wife of that husband, for the purpose of calculating the rates of carer’s pension payable to the husband and to the wife, sub-section 28 (3B) shall be disregarded.

“(3) Where a carer’s pension is payable to a husband and an age pension or an invalid pension is payable to the wife of that husband, for the purposes of sub-section 28 (3B), the husband shall be deemed not to be in receipt of an age pension.”.

Qualifications for widow’s pension

11. Section 60 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) For the purposes of this section, a child shall not be taken to be a dependent child of a woman, being a widow, unless—

- (a) the child is a dependent child of the woman; and
- (b) either—
 - (i) the child was born of that woman; or
 - (ii) on the day on which the event as a result of which the woman became a widow occurred, the child was a dependent child of the woman.”.

Calculation of income in respect of children

12. Section 64 of the Principal Act is amended—

- (a) by inserting in paragraph (a) “or a payment in the nature of family allowance” after “*Tuberculosis Act 1948*”; and
- (b) by adding at the end the following sub-section:

“(2) In this section ‘payment in the nature of family allowance’, in relation to a payment received in respect of a child, means a payment that is similar to a family allowance, being a payment that, by virtue of sub-section 96 (6), prevents a family allowance from being payable in respect of that child.”.

Qualifications for benefit

13. Section 83AAC of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) For the purposes of sub-section (1), a child shall not be taken to be a dependent child of a person unless—

- (a) the person is a natural or adoptive parent of the child or has the legal custody of the child; or
- (b) in a case where the person is an unmarried person, having previously not been an unmarried person—the person was maintaining the child immediately before the person became an unmarried person.”.

Interpretation

14. Section 94 of the Principal Act is amended by omitting paragraphs (c) and (e) of the definition of “prescribed educational scheme” in sub-section (1).

Family allowance

15. Section 95 of the Principal Act is amended by omitting sub-section (6).

Qualification for family allowance

16. Section 96 of the Principal Act is amended—

(a) by omitting sub-sections (1) to (4) (inclusive) and substituting the following sub-sections:

“(1) A family allowance shall not be granted or paid to a person in respect of a child unless, at the time of the grant or payment, both the person and the child are persons to whom this section applies.

“(2) For the purposes of sub-section (1), a person is a person to whom this section applies if the person is in Australia and is—

- (a) an Australian citizen;
- (b) a person who has been granted, or who is included in, an entry permit under the *Migration Act 1958*, being an entry permit that is in force, other than an entry permit that is a temporary entry permit within the meaning of that Act;
- (c) a person who has been granted, or who is included in, a temporary entry permit under the *Migration Act 1958*, being a temporary entry permit that is in force, and who has been in Australia for the previous 12 months; or
- (d) a person to whom Division 1 of Part II of the *Migration Act 1958* does not apply by virtue of the operation of sub-section 8 (1) of that Act, being a person—
 - (i) who has been in Australia for the previous 12 months; or
 - (ii) who the Secretary is satisfied is likely to remain permanently in Australia.

“(3) For the purposes of sub-section (1), where a person—

- (a) being a person who resides in Australia, is absent from Australia; or
- (b) is a spouse of a person referred to in paragraph (a), and that person has a dependent child or dependent children, that person and that dependent child, or those dependent children shall, subject to sub-section (6), be deemed to be persons to whom this section applies.”.

(b) by omitting from sub-section (5) “Where” and “paragraph (1) (b) does not apply to the claim for family allowance” and substituting “For the purposes of sub-section (1), where” and “the child shall, subject to sub-section (6), be deemed to be a person to whom this section applies” respectively; and

(c) by omitting sub-section (6) and substituting the following sub-section:

“(6) Where a person has a dependent child and—

- (a) the person is outside Australia; or
- (b) the Secretary has made a decision under sub-section (5) in relation to the dependent child,

the dependent child (in this sub-section referred to as ‘the excluded child’) of the person shall be deemed not to be a person to whom this section applies during any period for which a payment that is similar to a family allowance has been, or is being, made by a foreign country to the person in respect of the excluded child, but, where a family allowance would, but for this sub-section, be payable in respect of the excluded child, a family allowance payable to the person in respect of any other dependent child of the person is, subject to section 103B, payable at the rate that would be applicable if a family allowance were payable in respect of the excluded child.”.

Family allowance not payable in respect of certain student children over the age of 18 years

17. (1) Section 98 of the Principal Act is amended by omitting paragraph (2) (b) and substituting the following paragraph:

“(b) the person, or the spouse of the person, who would, but for sub-section (1), be receiving a family allowance in respect of the child would not, if the person or spouse, not being in receipt of a family income supplement, were to lodge a claim for a family income supplement, be precluded, by the operation of sub-section 86 (3), from receiving a family income supplement;”.

(2) Section 98 of the Principal Act is amended by omitting from paragraph (2) (c) “the scheme administered by the Commonwealth known as the Secondary Allowances Scheme or”.

Date from which family allowance payable

18. Section 102 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) Where—

- (a) a family allowance is granted to a person because the person has a dependent child in respect of whom a family allowance was, immediately before the child became a dependent child of the person, payable; and
- (b) the Secretary determines in writing that, in the special circumstances of the case, a family allowance should be payable to the person in respect of the child from and including the day on which the child became a dependent child of the person,

the family allowance is payable from and including that day.”.

Family allowance to cease in certain circumstances

19. Section 103 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “sections 6B and 104” and substituting “section 6B”;

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- (b) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) the child ceases to be a dependent child of the person;”;

- (c) by omitting paragraphs (1) (d), (e), (f), (g), (h) and (i) and substituting the following word and paragraph:

“; or (d) the person to whom the family allowance was granted, or the child in respect of whom the family allowance was granted, ceases, for the purposes of sub-section 96 (1), to be a person to whom section 96 applies.”; and

- (d) by omitting sub-sections (2), (2A), (3) and (4) and substituting the following sub-sections:

“(2) Subject to sub-sections (3) and (4), where a family allowance ceases to be payable to a person by reason of an event specified in sub-section (1), the family allowance ceases to be payable from the end of the family allowance period during which that event occurs.

“(3) Where—

- (a) a family allowance granted in respect of a child ceases to be payable to a person by reason of the child ceasing to be a dependent child of the person; and
(b) sub-section 102 (2) becomes applicable in respect of a family allowance granted to another person in respect of the same child,

the family allowance ceases to be payable on the day on which the child ceases to be a dependent child of the first-mentioned person.

“(4) Where a family allowance ceases to be payable to a person by reason of an event specified in paragraph (1) (b), the family allowance ceases to be payable on the day on which the event occurs.

“(5) Where a family allowance ceases to be payable to an institution by reason of an event specified in sub-section (1), the family allowance ceases to be payable on the day on which the event occurs.”.

Repeal of section 104

20. Section 104 of the Principal Act is repealed.

Notification of certain events

21. Section 104A of the Principal Act is amended—

- (a) by adding “or” at the end of paragraph (b); and
(b) by omitting paragraphs (d) and (e).

Qualification for double orphan's pension

22. Section 105B of the Principal Act is amended by omitting from paragraph (1) (a) "104 (3)" and substituting "96 (6)".

Handicapped child's allowance not payable in certain circumstances

23. Section 105K of the Principal Act is amended by omitting "104 (3)" and substituting "96 (6)".

Temporary absences from home

24. Section 105KA of the Principal Act is amended—

- (a) by omitting from sub-section (1) "period of 12 months" and substituting "calendar year"; and
- (b) by omitting from paragraph (2) (a) "period of 12 months" and substituting "calendar year".

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

25. Section 105Q of the Principal Act is amended by omitting from sub-section (1A) "104 to the extent that it affects the operation of that sub-section" and substituting "96".

Unemployment benefits

26. Section 107 of the Principal Act is amended by omitting from paragraph (1) (a) "had attained the age of 16 years before" and substituting "attains or had attained the age of 16 years on or before".

Sickness benefits

27. Section 108 of the Principal Act is amended by omitting from paragraph (1) (a) "had attained the age of 16 years before" and substituting "attains or had attained the age of 16 years on or before".

Rate of unemployment and sickness benefit

28. (1) Section 112 of the Principal Act is amended—

- (a) by adding at the end of paragraphs (4B) (b) and (5) (b) "(not being a child or children who, by virtue of the operation of sub-section 6 (6), would not be treated as a dependent child or as dependent children, as the case may be, of the person)"; and
- (b) by omitting from sub-sections (4B) and (5) "payable" and substituting "applicable".

(2) Section 112 of the Principal Act is amended—

- (a) by omitting paragraph (4) (b) and substituting the following paragraph:

“(b) the spouse of the married person is not in receipt of a prescribed pension,”; and

- (b) by inserting after sub-section (4D) the following sub-sections:

“(4E) Where a person referred in paragraph (1) (a) is a person to whom this sub-section applies, the rate of the benefit applicable

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to that person under sub-section (1) is increased by an amount per week equal to the amount (if any) by which the relevant amount in relation to the person exceeds the amount per week applicable to that person under sub-section (1).

“(4F) For the purposes of sub-section (4E)—

(a) a person is a person to whom that sub-section applies if the person—

(i) does not live, and, for a continuous period of not less than 6 weeks has not lived, at a home of the parents, or either of the parents, of the person because—

(A) the parents of the person do not have, or, where the parents of the person are not living at the same home, neither of the parents of the person has, a home at which the parents are, or the parent is, as the case may be, prepared to allow the person to live; or

(B) domestic violence, incestuous harrassment or other such exceptional circumstances render it unreasonable to expect the person to live at a home of the parents, or either of the parents, as the case may be;

(ii) is not receiving, and is unlikely in the near future to receive, continuous support, whether direct or indirect and whether pecuniary or otherwise, from either of the person’s parents;

(iii) is not receiving continuous support, whether direct or indirect and whether pecuniary or otherwise, from any other person acting as the person’s guardian on a long-term basis; and

(iv) is not receiving, on a continuing basis, any payment in the nature of income support from the Commonwealth, a State or a Territory, other than a benefit; and

(b) the relevant amount in relation to a person is the amount by which the maximum student assistance amount exceeds the amount per week of any allowance that is applicable to the person under section 112A.

“(4G) For the purpose of paragraph (4F) (b), ‘maximum student assistance amount’ means an amount equal to 7 times the maximum amount that a person could receive, in respect of a period of one day, under the *Student Assistance Act 1973* as a living allowance within the meaning of that Act if that person—

(a) undertook at a tertiary education institution a course of study or instruction approved for the purposes of section 10 of the

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Student Assistance Act 1973 by the Minister administering that Act;

- (b) were an unmarried person and were not living with a person of the opposite sex on a *bona fide* domestic basis as the husband or wife of that person;
- (c) were not a person upon whom any other person was dependent; and
- (d) had attained the age of 25 years.”.

(3) The amendments made by sub-section (2) apply in relation to each instalment of a benefit, payable under Part VII of the Principal Act, that falls due on or after 1 July 1986.

Rent assistance

29. (1) Section 112A of the Principal Act is amended—

- (a) by inserting in paragraph (a) of the definition of “prescribed period” in sub-section (1) “, or would, but for section 114, have been payable,” after “payable”;
- (b) by omitting from sub-paragraph (b) (ii) of that definition “; or” and substituting “or (iv)”;
- (c) by inserting after sub-paragraph (b) (iii) of that definition the following word and sub-paragraph:
 - “; or (iv) an allowance by way of rent assistance in addition to an unemployment benefit or a special benefit,”;
- (d) by omitting from paragraph (c) of that definition “6 months” (wherever occurring) and “paragraphs” and substituting “26 weeks” and “sub-paragraphs” respectively;
- (e) by omitting from sub-section (3A) “and (3C)” and substituting “, (3C) and (3D)”;
- (f) by inserting after sub-section (3C) the following sub-section:

“(3D) Where—

- (a) an allowance under this section would, but for this sub-section, be payable to a person who is living with the husband or wife of the person in their matrimonial home;
 - (b) the person is receiving, and the husband or wife of the person is not receiving, an unemployment benefit or a special benefit, or a rehabilitation allowance under Part VIII the amount of which is calculated by reference to an unemployment benefit; and
 - (c) there is payable to the husband or wife of the person an allowance of a kind referred to in paragraph (3C) (b),
- an allowance under this section is not payable to the first-mentioned person.”.

(2) Section 112A of the Principal Act is amended by omitting sub-section (3D).

(3) Section 112A of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) This section does not apply to a married person—

- (a) who is receiving an unemployment benefit, or a special benefit the amount of which is calculated by reference to an unemployment benefit;
- (b) whose spouse is living with the person in their home; and
- (c) whose spouse is receiving a sickness benefit, or a special benefit the amount of which is calculated by reference to a sickness benefit.”.

Limitation of amount payable as sickness benefit

30. Section 113 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) For the purposes of this section, the income of a person shall be deemed to include—

- (a) a payment received by the person under the scheme known as the New Enterprise Incentive Scheme; and
- (b) any amount payable to the person, or to the spouse of the person, under Part V.”.

Reduction of sickness benefit payable in certain cases, &c.

31. Section 115B of the Principal Act is amended—

- (a) by omitting from sub-section (1) “or is qualified or entitled to receive” and substituting “, or has become qualified or entitled to receive, on or before 30 June 1986”;
- (b) by inserting after sub-section (2) the following sub-sections:

“(2A) Where a person who is qualified to receive a sickness benefit in respect of an incapacity receives, or becomes qualified or entitled to receive, after 30 June 1986—

- (a) payments, being payments forming part of a series of periodical payments, that are, in the opinion of the Secretary, in whole or in part payments by way of compensation in respect of that incapacity; or
- (b) a lump sum payment that is, in the opinion of the Secretary, in whole or in part a payment by way of compensation in respect of that incapacity,

the amount per week of sickness benefit that would, but for this sub-section, be payable in respect of that incapacity shall—

- (c) in a case to which paragraph (a) applies—for the period in respect of which the periodical payments are, or are to be, made, be reduced by an amount equal to that part of the amount per week of those periodical payments that is, in the opinion of the Secretary, by way of compensation in respect of that incapacity; or

- (d) in a case to which paragraph (b) applies—for the period in respect of which the lump sum is, by virtue of sub-section (2B), to be deemed to be paid, be reduced by an amount equal to the prescribed amount at the time at which the lump sum payment is paid or becomes payable.

“(2B) A lump sum payment of a kind referred to in sub-section (2A) that is paid or payable to a person by way of compensation in respect of an incapacity shall, for the purposes of paragraph (2A) (d), be deemed to have been paid for a period of weeks that began on the day on which the incapacity commenced, being a period of weeks equal in number to the number obtained by dividing by the prescribed amount at the time at which the lump sum payment was paid or became payable an amount equal to that part of the lump sum payment that is, in the opinion of the Secretary, by way of compensation in respect of that incapacity.

“(2C) In sub-sections (2A) and (2B), the ‘prescribed amount’, in relation to a particular time, means the amount that is, at that time, specified in the latest estimate published by the Australian Statistician as being the estimate of the average total weekly earnings of all male employees in Australia for a particular month.”;

- (c) by inserting in sub-section (3) “, on or before 30 June 1986,” after “received” (first occurring);
- (d) by inserting after sub-section (3) the following sub-section:

“(3A) Where the Secretary is of the opinion that a payment by way of a lump sum, or a series of periodical payments, received after 30 June 1986, by a person who is, or has been, in receipt of sickness benefit in respect of an incapacity (whether the payment was, or all or any of the payments were, received before, during or after the close of the period of receipt of sickness benefit) is a payment that is, or are payments one or more of which is or are, in whole or in part, a payment or payments by way of compensation in respect of that incapacity, the Secretary may, by notice in writing served on the person, direct the person to pay to the Commonwealth an amount specified in the notice, being an amount equal to the amount by which the aggregate of the instalments of sickness benefit received by the person in respect of the incapacity prior to receiving the payment would have been reduced under sub-section (2A) if that sub-section had been applicable to those instalments from and including the day on which the incapacity commenced.”; and

- (e) by inserting in sub-section (4) “or (2A)” after “sub-section (1)”.

Waiting period

32. (1) Section 119 of the Principal Act is amended by omitting paragraph (5) (c) and substituting the following paragraph:

- “(c) where the person lodges a claim for the benefit within 13 weeks after the day (in this sub-section referred to as the ‘relevant day’)

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on which the person ceased to receive the prescribed pension referred to in paragraph (a) or became qualified to receive the benefit referred to in paragraph (b), as the case may be—

- (i) in a case to which paragraph (a) applies—from and including the day after the relevant day; and
- (ii) in a case to which paragraph (b) applies—from and including the relevant day; or”.

(2) Section 119 of the Principal Act is amended—

- (a) by adding at the end of paragraph (1) (d) “or the day after the day on which that prescribed pension was increased by reference to the person, whichever is the later”; and
- (b) by omitting from paragraph (5) (c) “from and including the relevant day” and substituting “from and including the day on which the person became qualified to receive the benefit or the day after the day on which that prescribed pension was increased by reference to the person, whichever is the later”.

33. (1) After section 132A of the Principal Act the following section is inserted:

Benefit not payable to full-time students

“133. (1) Where a person is engaged, on a full-time basis, in a course of education at an educational institution, a benefit is not payable to the person in respect of any period during which—

- (a) a payment in respect of the person has been or may be made under a prescribed educational scheme; or
- (b) such a payment in respect of the person might have been made, or might be so made, but for—
 - (i) the amount of any income or other support received by, or the amount of the assets of, the person or any other person;
 - (ii) the fact that a period, before the end of which the person is not entitled to receive a payment under the scheme, has not elapsed; or
 - (iii) the person’s non-compliance with conditions upon which such a payment would be made, being conditions relating to the person’s progress in the course of education or attendance at the educational institution.

“(2) In this section, ‘prescribed educational scheme’ means any of the following schemes:

- (a) the scheme known as the Tertiary Education Assistance Scheme;
- (b) the scheme known as the Adult Secondary Education Assistance Scheme;
- (c) the scheme known as the Aboriginal Study Grants Scheme;
- (d) the scheme known as the Post-Graduate Awards Scheme;
- (e) the scheme known as the Secondary Allowance Scheme.”.

(2) Notwithstanding sub-section 2 (5) of this Act, in relation to a benefit under Part VII of the Principal Act that was granted prior to 1 July 1986,

section 133 of the Principal Act as amended by this Act shall be deemed not to apply until 1 January 1987.

Eligibility for mobility allowance

34. Section 133RB of the Principal Act is amended by omitting paragraph (1) (b) and substituting the following paragraph:

“(b) who—

- (i) is engaged in either or both of the following activities:
 - (A) gainful employment (including sheltered employment);
 - (B) the undertaking of vocational training (other than training provided under Part VIII), being training that, in the opinion of the Secretary, will assist the person to find gainful employment (including sheltered employment) or to carry on a profession, trade or business; and
- (ii) is, in the opinion of the Secretary, so engaged on a continuing basis for not less than 20 hours in each week.”.

Provision of treatment and training

35. Section 135 of the Principal Act is amended by omitting from subparagraph 135 (1) (a) (v) “, being men, have not attained the age of 65 years or, being women, have not attained the age of 60 years” and substituting “have not attained the age of 65 years”.

Claims

36. Section 135TA of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) For the purposes of sub-section (1), where a claim for a pension, benefit or allowance is made by or on behalf of a person and at the time the claim is made, the claim cannot be granted because the person is not qualified or eligible to receive that pension, benefit or allowance, the claim shall, subject to sub-section 135TB (2), be deemed not to have been made.”.

Payment and calculation of instalments of certain pensions, &c.

37. Section 135TBA of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “war pension”;
- (b) by omitting from sub-section (9) “Subject to sub-section (10), the” and substituting “The”; and
- (c) by omitting sub-sections (10) and (10A).

Pension, benefit or allowance may be paid to bank, &c.

38. Section 135TD of the Principal Act is amended—

- (a) by omitting from sub-section (7) “commencing at” and substituting “commencing 4 weeks before”; and
- (b) by omitting from sub-section (7) “that particular time” (twice occurring) and substituting “the time at which the order first came into force”.

Special temporary allowance

39. (1) Section 135U of the Principal Act is amended by omitting sub-section (6) and substituting the following sub-section:

“(6) Where the sum of the amounts per fortnight payable to a person in accordance with sub-section (3) is less than the amount per fortnight (in this sub-section referred to as the ‘relevant amount’) of pension that would, if this section did not apply to the person, be payable to the person, the amount per fortnight of the allowance referred to in paragraph (3) (b) is increased so that the sum of the amounts per fortnight payable to the person in accordance with sub-section (3) is equal to the relevant amount.”.

(2) Section 135U of the Principal Act is amended by inserting “26, 30A, 112A or” before “133JA” in the definition of “pension” in sub-section (1).

(3) Section 135U of the Principal Act is amended by omitting “30A” from the definition of “pension” in sub-section (1) and substituting “30”.

Payments received under the New Enterprise Incentive Scheme—effect where spouse of recipient is in receipt of a particular benefit or allowance

40. Section 139C of the Principal Act is amended by inserting “Incentive” after “Enterprise” in paragraph (2) (c).

Recovery of overpayments

41. Section 140 of the Principal Act is amended by adding at the end of sub-section (2) “by reducing each payment of that pension, benefit or allowance by a proportion of that pension, benefit or allowance, being a proportion determined in writing by the Secretary in each particular case, until the sum of the amounts by which the payments are reduced equals that amount”.

Waiver, &c.

42. Section 146 of the Principal Act is amended by adding at the end the following sub-section:

“(5) A determination made under sub-section (1) takes effect—

- (a) on the day specified in the determination, being the day on which the determination was made or any other day before or after that day; or
- (b) if no day is so specified, on the day on which the determination was made.”.

PART III—AMNESTY IN RELATION TO CERTAIN LIABILITIES UNDER THE SOCIAL SECURITY ACT 1947

Interpretation

43. (1) In this Part—

“relevant allowance” means an allowance under Part V, VI or VIB of the Act or a pension under Part VIA of the Act;

“relevant pension” means a pension, benefit or allowance under the Act;
“the Act” means the *Social Security Act 1947*.

(2) Subject to sub-section (1), expressions used in this Part that are also used in the Act have in this Part, unless the contrary intention appears, the same respective meanings as those expressions have in the Act.

Modification of Social Security Act

44. This Part has effect notwithstanding anything in the Act.

Persons not to be liable under Social Security Act in certain cases

45. (1) Where—

- (a) a person has received a relevant pension in respect of a period that included 12 February 1986;
- (b) due to the occurrence of an event or a change of circumstances during the relevant period—
 - (i) the person ceased to be entitled to receive the relevant pension or a related relevant pension; or
 - (ii) the rate at which the person was entitled to receive the relevant pension or a related relevant pension decreased;
- (c) the person failed to comply with an obligation imposed by the Act in relation to notifying the Department of the occurrence of the event or the change in circumstances;
- (d) during the period commencing on 12 February 1986 and ending on the expiration of 31 May 1986, the person has voluntarily informed the Department of the occurrence of the event or the change of circumstances; and
- (e) the person has not, before so informing the Department, been—
 - (i) charged with an offence in respect of the failure to notify referred to in paragraph (c); or
 - (ii) informed in writing by an officer that proceedings have been or will be instituted in respect of such an offence or that an amount of money paid as a result of the failure to notify is recoverable by the Commonwealth,

the person—

- (f) is not guilty of an offence in respect of the failure to notify; and
- (g) is not indebted to the Commonwealth in respect of any amount of the relevant pension or any related relevant pension paid to the person, being an amount that would not have been paid had there not been the failure to notify.

(2) Where—

- (a) a person has received a payment of a relevant pension in respect of a period that included 12 February 1986;
- (b) the person has made a false statement to an officer, being a statement the making of which has—

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- (i) resulted in the relevant pension or a related relevant pension being paid to the person during the relevant period—
 - (A) at a time when the person was not entitled to be paid that relevant pension or related relevant pension; or
 - (B) at a higher rate than the rate at which the person was entitled to be paid that relevant pension or related relevant pension; or
- (ii) prevented the cancellation of, or a reduction of the rate of, the relevant pension or a related relevant pension, being paid to the person during the relevant period;
- (c) in the case of a statement of a kind referred to in sub-paragraph (b) (i)—at the time of making the statement, the person did not know that the statement was false;
- (d) during the period commencing on 12 February 1986 and ending on the expiration of 31 May 1986, the person has voluntarily informed the Department of the making of the false statement; and
- (e) the person has not, before so informing the Department, been—
 - (i) charged with an offence in respect of the making of the false statement; or
 - (ii) informed in writing by an officer that proceedings have been or will be instituted in respect of such an offence or that an amount of money paid as a result of the making of the false statement is recoverable by the Commonwealth,

the person—

- (f) is not guilty of any offence in respect of the making of the false statement; and
- (g) is not indebted to the Commonwealth in respect of any amount of the relevant pension or any related relevant pension paid to the person, being an amount that would not have been paid had the false statement not been made.

(3) For the purposes of paragraphs (1) (b) and (2) (b), the relevant period, in relation to the payment of a relevant pension to a person, is the period—

- (a) commencing on the day after the latest day prior to 12 February 1986 in respect of which the person did not receive that relevant pension or a related relevant pension; and
- (b) ending at the expiration of 11 February 1986.

(4) For the purposes of this section, a relevant pension is related to another relevant pension if—

- (a) where the first-mentioned pension is a relevant allowance—the other relevant pension is a relevant allowance; or
- (b) where the first-mentioned relevant pension is not a relevant allowance—the other relevant pension is not a relevant allowance.

(5) For the purposes of paragraphs (1) (d) and (2) (d), a person shall be deemed not to have voluntarily informed the Department of a particular fact or state of affairs if the person informs the Department of that fact or state of affairs—

- (a) in accordance with a notice served on the person under section 135TE of the Act; or
- (b) in response to a question asked of the person by the Secretary or any other officer.

(6) Part II of the Act applies to a decision by an officer under this Part as if such a decision were a decision by the officer under the Act.

(7) Nothing in this section affects the criminal or civil liability of a person who, at the time when that liability arose, was an officer or was otherwise employed in the Department.

PART IV—AMENDMENTS OF THE COMPENSATION (COMMONWEALTH GOVERNMENT EMPLOYEES) ACT 1971

Principal Act

46. The *Compensation (Commonwealth Government Employees) Act 1971*² is in this Part referred to as the Principal Act.

Functions and powers of Commissioner

47. Section 20 of the Principal Act is amended—

- (a) by inserting in sub-section (5) “, subject to sub-section (10),” after “the Commonwealth is”;
- (b) by omitting from sub-section (6) “sub-section (7)” and substituting “sub-sections (7) and (10)”;
- (c) by adding at the end the following sub-sections:

“(8) Where—

- (a) a determination is made under this Act in relation to a claim;
- (b) the Commissioner, before making the determination referred to in paragraph (a), gave the claimant a notice, pursuant to section 59A, requesting the claimant to give the Commissioner information specified in the notice (in this sub-section referred to as the ‘relevant information’);
- (c) the claimant failed to comply with that notice;
- (d) at the time when the Commissioner made the determination referred to in paragraph (a), the Commissioner did not have the relevant information and the relevant information was not reasonably available to the Commissioner;
- (e) after the determination referred to in paragraph (a) is made, the claimant discloses the relevant information to the Commissioner or to the Administrative Appeals Tribunal;

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- (f) the Commissioner, pursuant to sub-section (4), reconsiders the determination referred to in paragraph (a) and makes a determination that is more favourable to the claimant than the determination referred to in paragraph (a);
- (g) the Commissioner is satisfied that, if the Commissioner had had the relevant information at the time when the determination referred to in paragraph (a) was made, the Commissioner would have made a determination more favourable to the claimant than the determination referred to in paragraph (a); and
- (h) the Commonwealth would, but for sub-section (10), be liable, under sub-section (5) or (6), to reimburse the claimant for costs incurred by the claimant,

the Commissioner may make a declaration, in writing, that sub-section (5) or (6), as the case may be, does not apply in relation to those costs.

“(9) Where—

- (a) a determination is made under this Act in relation to a claim;
- (b) the Commissioner, before making the determination referred to in paragraph (a), gave the claimant a notice, pursuant to section 59A, requesting the claimant to give the Commissioner a copy of a document specified in the notice (in this sub-section referred to as the ‘relevant document’);
- (c) the claimant failed to comply with that notice;
- (d) at the time when the Commissioner made the determination referred to in paragraph (a), the Commissioner did not have the information contained in the relevant document and that information was not reasonably available to the Commissioner;
- (e) after the determination referred to in paragraph (a) is made, the claimant gives the document, or a copy of the document, or the information contained in the relevant document to the Commissioner or to the Administrative Appeals Tribunal;
- (f) the Commissioner, pursuant to sub-section (4), reconsiders the determination referred to in paragraph (a) and makes a determination that is more favourable to the claimant than the determination referred to in paragraph (a);
- (g) the Commissioner is satisfied that, if the Commissioner had had the information contained in the relevant document at the time when the determination referred to in paragraph (a) was made, the Commissioner would have made a determination more favourable to the claimant than the determination referred to in paragraph (a); and
- (h) the Commonwealth would, but for sub-section (10), be liable, under sub-section (5) or (6), to reimburse the claimant for costs incurred by the claimant,

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the Commissioner may make a declaration, in writing, that sub-section (5) or (6), as the case may be, does not apply in relation to those costs.

“(10) Where the Commissioner makes a declaration under sub-section (8) or (9) that sub-section (5) or (6) does not apply in relation to costs incurred by a claimant, sub-section (5) or (6), as the case requires, does not apply in relation to those costs.

“(11) The Commissioner shall give a copy of a declaration made under sub-section (8) or (9) to the claimant.

“(12) Applications may be made to the Administrative Appeals Tribunal for review of a decision by the Commissioner to make a declaration under sub-section (8) or (9).

“(13) In sub-section (12), ‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.”.

Compensation payable in respect of injuries resulting in partial incapacity

48. (1) Section 46 of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(4A) In determining, for the purposes of sub-sections (2) and (3), the amount per week that an employee is able to earn in some suitable employment or business, the Commissioner shall have regard to—

- (a) in a case where the employee is in employment—the amount per week that the employee is earning in that employment;
- (b) in a case where, after becoming partially incapacitated for work, the employee received an offer of suitable employment and failed to accept that offer—the amount per week that the employee would be earning in that employment if the employee had accepted that offer and were engaged in that employment;
- (c) in a case where, after becoming partially incapacitated for work, the employee received an offer of suitable employment and, having accepted that offer, failed to engage, or to continue to engage, in that employment—the amount per week that the employee would be earning in that employment if the employee were engaged in that employment;
- (d) in a case where, after becoming partially incapacitated for work, the employee has failed to seek suitable employment—the amount per week that, having regard to the state of the labour-market at the relevant time, the employee could reasonably be expected to earn in such employment if the employee had sought, obtained and were engaged in such employment;
- (e) in a case where paragraph (b), (c) or (d) applies to the employee—whether the employee’s failure to accept an offer of employment, to engage, or to continue to engage, in employment or to seek employment, as the case may be, was, in the Commissioner’s opinion, reasonable in all the circumstances; and

(f) any other matter that the Commissioner considers relevant.”.

(2) The amendment made by sub-section (1) applies in relation to any weekly payments of compensation made in respect of a period occurring on or after the commencement of this section notwithstanding that the compensation is payable in respect of an injury sustained before the commencement of this section.

Notice to Commonwealth of injury, disease or loss of or damage to property

49. Section 53 of the Principal Act is amended by omitting from sub-sections (1), (2) and (3) “, as prescribed,” (wherever occurring).

50. (1) Section 54 of the Principal Act is repealed and the following sections are substituted:

Manner of making claim for compensation

“54. Compensation is not payable under this Act to a person unless a claim in writing for the compensation was served on the Commissioner, by or on behalf of the person, in accordance with section 54A.

Service of documents on Commissioner

“54A. For the purposes of this Act, service of a document on the Commissioner shall be effected by giving the document to the Commissioner or to a delegate of the Commissioner.

Service of documents on Commonwealth

“54B. For the purposes of this Act, service of a document on the Commonwealth or an authority of the Commonwealth shall be effected by giving the document to—

- (a) in any case—the Secretary to the Department of Social Security;
- (b) in a case where the employee concerned was not a member of the Defence Force at the time when the injury or accident occurred or symptoms of the disease, or of the aggravation, acceleration or recurrence of the disease, first became apparent—the Secretary of the Department or the chief executive officer of the authority or Administration, in which the employee was employed at that time; or
- (c) in a case where the employee concerned was a member of the Defence Force at that time—the Secretary to the Department of Defence.”.

(2) The amendment made by sub-section (1) applies only in relation to an injury sustained by a person on or after the commencement of this section.

51. (1) After section 59 of the Principal Act the following section is inserted:

Power of Commissioner to request the provision of information

“59A. (1) Where the Commissioner is satisfied that a claimant for compensation under this Act—

- (a) has information or a document that is relevant to the claim; or
- (b) may obtain such information or a copy of such a document without unreasonable expense or inconvenience,

the Commissioner may, by notice in writing given to the claimant, request the claimant to give that information or a copy of that document to the Commissioner before the end of the period specified in the notice.

“(2) The period specified in a notice under sub-section (1) shall—

- (a) commence on the date of the notice; and
- (b) end not less than 28 days after that date.

“(3) A claimant who has received a notice under sub-section (1) shall be taken to have complied with the notice if the claimant gives the Commissioner the information or document specified in the notice within the period specified in the notice or such further period as the Commissioner allows.”.

(2) The amendment made by sub-section (1) applies in relation to a claim made before or after the commencement of this section.

Costs of proceedings before Administrative Appeals Tribunal

52. Section 64 of the Principal Act is amended—

- (a) by inserting in sub-section (2) “, subject to this section,” after “Tribunal may”;
- (b) by inserting in sub-section (3) “, subject to this section,” after “Tribunal shall”; and
- (c) by inserting after sub-section (5) the following sub-sections:

“(5A) Where in any proceedings the Administrative Appeals Tribunal varies or sets aside a determination of the Commissioner (in this sub-section referred to as the ‘relevant determination’), the Administrative Appeals Tribunal shall not make an order pursuant to paragraph (2) (a) or sub-section (3) in favour of a party in relation to the costs of those proceedings if—

- (a) the Commissioner, before making the relevant determination, gave the party notice, pursuant to section 59A (1), requesting the party to give the Commissioner information specified in the notice (in this sub-section referred to as the ‘relevant information’); and
- (b) the Administrative Appeals Tribunal is satisfied that—
 - (i) the party failed to comply with that notice;
 - (ii) at the time when the Commissioner made the relevant determination, the Commissioner did not have the relevant information and the relevant information was not reasonably available to the Commissioner; and

- (iii) if the Commissioner had had the relevant information at the time when the Commissioner made the relevant determination, the Commissioner would have made a determination more favourable to the claimant than the relevant determination.”.

“(5B) Where in any proceedings the Administrative Appeals Tribunal varies or sets aside a determination of the Commissioner (in this sub-section referred to as the ‘relevant determination’), the Administrative Appeals Tribunal shall not make an order pursuant to paragraph (2) (a) or sub-section (3) in favour of a party in relation to the costs of those proceedings if—

- (a) the Commissioner, before making the relevant determination, gave the party a notice, pursuant to section 59A (1), requesting the party to give the Commissioner a copy of a document specified in the notice (in this sub-section referred to as the ‘relevant document’); and
- (b) the Administrative Appeals Tribunal is satisfied that—
 - (i) the party failed to comply with that notice;
 - (ii) at the time when the Commissioner made the relevant determination, the Commissioner did not have the information contained in the relevant document and that information was not reasonably available to the Commissioner; and
 - (iii) if the Commissioner had the information contained in the relevant document at the time when the Commissioner made the relevant determination, the Commissioner would have made a determination more favourable to the claimant than the relevant determination.”.

Compensation not payable both under Act and under determination

53. Section 103 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “entitled to” (first occurring) and substituting “eligible to receive”;
- (b) by omitting from sub-section (2) “to” (second occurring);
- (c) by omitting from sub-section (2) “entitled” (second occurring) and substituting “eligible”; and
- (d) by omitting sub-section (6) and substituting the following sub-section:

“(6) Where an employee who has made an election under sub-section (2), or a fresh election in accordance with sub-section (3), to receive compensation under this Act, compensation is not payable to the employee under this Act unless the employee serves a claim upon the Commissioner in accordance with section 54.”.

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NOTES

1. No. 26, 1947, as amended. For previous amendments, see 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, 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, 103 and 216, 1973; Nos. 2, 23 and 91, 1974; Nos. 34, 56, 101 and 110, 1975; Nos. 26, 62 and 111, 1976; No. 159, 1977; No. 128, 1978; No. 121, 1979 (as amended by Nos. 37 and 98, 1982); No. 130, 1980; Nos. 61 and 170, 1981; No. 159, 1981 (as amended by No. 98, 1982); Nos. 37, 38 and 148, 1982; Nos. 4 and 36, 1983; No. 69, 1983 (as amended by No. 78, 1984); Nos. 46, 78, 93, 120, 134 and 165, 1984; and Nos. 24, 52, 95, 127 and 169, 1985; and No. 5, 1986.
2. No. 48, 1971, as amended. For previous amendments, see No. 136, 1971; No. 122, 1972; Nos. 105 and 216, 1973; No. 92, 1974; Nos. 157 and 166, 1976; No. 68, 1978; Nos. 111 and 155, 1979; No. 74, 1981; No. 98, 1982; No. 78, 1984; and No. 95, 1985.

*[Minister's second reading speech made in—
House of Representatives on 17 April 1986
Senate on 8 May 1986]*