



Social Security Legislation Amendment Act 1988

No. 133 of 1988

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Social Security Legislation Amendment Act 1988

No. 133 of 1988

An Act to amend the law relating to social security and other related matters

[Assented to 22 December 1988]

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 1988*.

Commencement: Day of Royal Assent

Commencement

2. (1) Subject to this section, each provision of this Act commences, or shall be taken to have commenced, as the case requires, on the day shown by the note in italics at the foot of that provision.

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(2) The amendment of the *Air Accidents (Commonwealth Government Liability) Act 1963* made by Schedule 4 commences on the day on which this Act receives the Royal Assent.

(3) The amendments of the *First Home Owners Act 1983* made by Schedule 4 commence on 29 December 1988.

(4) The amendment of section 18 of the *Social Security and Veterans' Entitlements Amendment Act (No. 2) 1987* made by Schedule 4 shall be taken to have commenced on 13 December 1987.

(5) The remaining amendments of the *Social Security and Veterans' Entitlements Amendment Act (No. 2) 1987* made by Schedule 4 shall be taken to have commenced on 16 December 1987.

Commencement: Day of Royal Assent

Application

3. (1) The amendments made by paragraph 6 (b), section 50 and paragraphs 56 (c) and (d) and 57 (b) apply to assurance of support debts whether arising before, on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(2) The amendments made by sections 7 and 14, paragraphs 16 (a), (b) and (e), sections 17, 18, 19, 20, 21, 22 and 24, section 25 (other than paragraphs (d) and (f)), paragraph 26 (b), sections 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 53 and paragraph 49 (d) apply to payments of family allowance supplement, family allowance, double orphan's pension and child disability allowance under the *Social Security Act 1947* that fall due on or after 29 December 1988.

Commencement: 29 December 1988

(3) The amendments made by section 8 apply in relation to information obtained whether before, on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(4) The amendment made by section 9 applies to payments of remote area allowance under the *Social Security Act 1947* that fall due on or after 1 February 1988.

Commencement: 1 February 1988

(5) The amendments made by paragraphs 10 (a) and (b) apply to payments of pensions, benefits and allowances under the *Social Security Act 1947* that fall due on or after 22 December 1988.

Commencement: 22 December 1988

(6) The amendments made by paragraphs 10 (c), (d), (e) and (f) apply to payments of pensions, benefits and allowances under the *Social Security Act 1947* that fall due on or after 1 January 1989.

Commencement: 1 January 1989

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(7) The amendments made by paragraphs 16 (c) and (d) apply to payments of family allowance supplement under the *Social Security Act 1947* that fall due on or after 1 January 1989.

Commencement: 1 January 1989

(8) The amendment made by paragraph 25 (f) applies to requests under subsection 85 (7) of the *Social Security Act 1947* received on or after 29 December 1988.

Commencement: 29 December 1988

(9) The amendments made by sections 39 and 42 apply to payments of benefits and allowances under the *Social Security Act 1947* that fall due on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(10) The amendment made by section 40 applies to payments of benefits and allowances under the *Social Security Act 1947* that fall due on or after 1 February 1989.

Commencement: 1 February 1989

(11) The amendments made by paragraphs 41 (a), (b), (d), (e), (f), (g), (k), (m) and (n) apply to payments of benefits and allowances under the *Social Security Act 1947* that fall due on or after 13 December 1988.

Commencement: 13 December 1988

(12) The amendments made by paragraphs 41 (c), (h) and (j) and sections 43 and 44 apply to payments of benefits and allowances under the *Social Security Act 1947* that fall due on or after 1 January 1989.

Commencement: 1 January 1989

(13) The amendments made by section 46 apply to claims for unemployment benefit under the *Social Security Act 1947* lodged on or after 1 February 1989.

Commencement: 1 February 1989

(14) The amendments made by section 52 apply to notices under section 164 of the *Social Security Act 1947* given after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

(15) The amendment made by paragraph 57 (a) applies to debts arising whether before, on or after the day on which this Act receives the Royal Assent.

Commencement: Day of Royal Assent

Transitional provisions

4. (1) Where:

- (a) a person was, on 6 October 1988, in receipt of family allowance supplement under Part IX of the *Social Security Act 1947*; and

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- (b) the person's allowance period within the meaning of that Part expired, or will expire, on or before 15 December 1988;

the person's allowance period shall be taken for all purposes to have been extended until 15 December 1988.

Commencement: Day of Royal Assent

(2) In spite of the repeal effected by section 11, Part V of the *Social Security Act 1947*, and any other provisions of that Act relating to the operation of that Part, as in force immediately before the commencement of that section, continue to have effect until 31 December 1989 in relation to class C widows within the meaning of that Part who become class C widows because of a death of a man before 17 February 1989.

Commencement: 1 March 1989

- (3) A person who, immediately before 1 March 1989, was in receipt of:
- (a) a widow's pension as a class A widow under Part V of the *Social Security Act 1947* as then in force; or
 - (b) a supporting parent's benefit under Part VI of the *Social Security Act 1947* as then in force;

shall be taken to have been granted a sole parent's pension under Part V of the *Social Security Act 1947* as amended by this Act with effect from 1 March 1989.

Commencement: 1 March 1989

(4) A person who, immediately before 1 March 1989, was in receipt of a widow's pension as a class B widow under Part V of the *Social Security Act 1947* as then in force shall be taken to have been granted a class B widow's pension under Schedule 1B of the *Social Security Act 1947* as amended by this Act with effect from 1 March 1989.

Commencement: 1 March 1989

(5) A reference in an Act other than the *Social Security Act 1947* to widow's pension under, or pension under Part V of, the *Social Security Act 1947* shall, in relation to matters that occur on or after 1 March 1989, be read as a reference to pension under Part V or Schedule 1B, or allowance under Part VI, of the *Social Security Act 1947*.

Commencement: 1 March 1989

(6) A reference in an Act other than the *Social Security Act 1947* to supporting parent's benefit under, or benefit under Part VI of, the *Social Security Act 1947* shall, in relation to matters that occur on or after 1 March 1989 be read as a reference to pension under Part V of the *Social Security Act 1947*.

Commencement: 1 March 1989

PART II—AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Principal Act

5. In this Part, “Principal Act” means the *Social Security Act 1947*.

Commencement: Day of Royal Assent

Interpretation

6. Section 3 of the Principal Act is amended:

(a) by inserting after paragraph (w) of the definition of “income” in subsection (1) the following paragraphs:

“(wa) a payment made to the person by the Government of New Zealand, being a payment known as:

- (i) accommodation benefit;
- (ii) disability allowance;
- (iii) home help payment;
- (iv) special benefit; or
- (v) training incentive allowance;

(wb) a payment made to the person by the Government of the United Kingdom, being a payment known as:

- (i) clothing allowance;
- (ii) constant attendance allowance;
- (iii) decoration allowance; or
- (iv) mobility supplement;”;

Commencement: Day of Royal Assent

(b) by inserting in subsection (1) the following definition:

“‘assurance of support debt’ means a debt due and payable by a person to the Commonwealth because of the operation of subregulation 22 (1) of the Migration Regulations in respect of the payment to another person of special benefit under Division 6 of Part XIII of this Act;”;

Commencement: Day of Royal Assent

(c) by omitting subsection (8A) and substituting the following subsections:

“(8A) Where, immediately before 14 May 1987:

- (a)** an unmarried person was living in his or her former matrimonial home and the person’s former spouse was also living in that home;
- (b)** the person was in receipt of a pension, benefit or allowance under this Act as an unmarried person; and
- (c)** the Secretary considers that it would be reasonable for subsection (8) to apply to the person as if the reference in the subsection to 14 May 1987 were a reference to the day on which the Secretary notified or notifies the person of the effect of subsection (8);

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the Secretary may make a determination to that effect and, if the Secretary does so, subsection (8) applies in relation to the person in accordance with the determination.

“(8B) Subsection (8) does not apply to a person if:

- (a) the person is receiving an age pension, an invalid pension, a carer’s pension or a sheltered employment allowance;
- (b) the person is receiving a rehabilitation allowance in place of such a pension or allowance; or
- (c) the person is receiving child disability allowance in respect of a child who was formerly a dependent child of the person and the person’s former spouse.”;

Commencement: Day of Royal Assent

(d) by adding at the end the following subsections:

“(16) A reference in this Act to sole parent’s pension under Part V shall, in relation to matters that occurred before 1 March 1989, be read as a reference to widow’s pension as a class A widow under Part V of this Act as in force at any time before 1 March 1989 or supporting parent’s benefit under Part VI of this Act as in force at any time before 1 March 1989.

“(17) A reference in this Act to class B widow’s pension under Schedule 1B shall, in relation to matters that occurred before 1 March 1989, be read as a reference to widow’s pension as a class B widow under Part V of this Act as in force at any time before 1 March 1989.

“(18) A reference in this Act to widowed person’s allowance under Part VI shall, in relation to matters that occurred before 1 March 1989, be read as a reference to widow’s pension as a class C widow under Part V of this Act as in force at any time before 1 March 1989.”.

Commencement: 1 March 1989

Disposal of income or property

7. Section 6 of the Principal Act is amended:

- (a) by omitting from subsections (4) and (5) “other than Part IX”;
- (b) by omitting from paragraph (9) (a) “Part XIV” and substituting “Part IX or XIV”;
- (c) by inserting in subsection (13) “or an allowance under Part IX” after “prescribed pension”;
- (d) by adding at the end the following subsection:

“(16) For the purposes of the application of this section to Part IX, references in this section to 1 June 1984 shall be read as references to 15 May 1988.”.

Commencement: 29 December 1988

Secrecy

8. Section 19 of the Principal Act is amended:

- (a) by omitting from subsection (2) “a person” and substituting “another person”;
- (b) by omitting from subsection (4) “Notwithstanding” and substituting “Subject to subsection (4E) but notwithstanding”;
- (c) by inserting after subsection (4) the following subsections:

“(4A) In giving certificates for the purposes of paragraph (4) (a), the Secretary shall act in accordance with guidelines from time to time in force under subsection (4B).

“(4B) The Minister, by determination in writing:

- (a) shall set guidelines for the exercise of the Secretary’s power to give certificates for the purposes of paragraph (4) (a); and
- (b) may revoke or vary those guidelines.

“(4C) A determination made pursuant to subsection (4B) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*, subject to the provisions of subsection (4D).

“(4D) Section 48 of the *Acts Interpretation Act 1901* applies to a determination made pursuant to subsection (4B) as if paragraph (1) (b) of section 48 were omitted and the following paragraph substituted:

‘(b) subject to this section, shall take effect on the first day on which the determination is no longer liable to be disallowed, or to be deemed to be disallowed, under this section; and’.

“(4E) The Secretary shall not, under paragraph (4) (a) or (b), divulge information relating to any person other than a person who:

- (a) is receiving a pension, benefit or allowance under this Act; or
- (b) has received, or made a claim for, a pension, benefit or allowance under this Act within the period of 12 months preceding the divulging of the information.”.

Commencement: Day of Royal Assent

Rate of remote area allowance

9. Section 22 of the Principal Act is amended by inserting in paragraph (2) (a) “or (1B)” after “118 (1A)”.

Commencement: 1 February 1988

Rate of pension

10. Section 33 of the Principal Act is amended:

- (a) by omitting from paragraph (4) (a) “\$1,144” and substituting “\$1,248”;

Commencement: 22 December 1988

- (b) by omitting from paragraph (4) (aa) "\$1,456" and substituting "\$1,612";

Commencement: 22 December 1988

- (c) by adding at the end of paragraph (4) (ab) "and";

Commencement: 1 January 1989

- (d) by omitting paragraph (4) (b);

Commencement: 1 January 1989

- (e) by omitting from subsection (10) "Subject to subsection (11), in" and substituting "In";

Commencement: 1 January 1989

- (f) by omitting subsection (11).

Commencement: 1 January 1989

11. Parts V and VI of the Principal Act are repealed and the following Parts are substituted:

"PART V—SOLE PARENT'S PENSION

"Division 1—Preliminary

Interpretation

"43. (1) In this Part, unless the contrary intention appears:

'dependent child', in relation to a person, includes a child who is being wholly or substantially maintained by the person;

'dependent female' means a woman who for at least 3 years immediately before the death of a man (in this Part referred to as the man in respect of whom she was a dependent female), was wholly or mainly maintained by him and, although not legally married to him, lived with him as his wife on a permanent and *bona fide* domestic basis;

'qualifying child', in relation to a person, means a dependent child of that person:

(a) who is under the age of 16 years; or

(b) in respect of whom the person is qualified to receive a child disability allowance;

being a child:

(c) who is a natural or adopted child of the person;

(d) who is in the legal custody of the person;

(e) if the person has ever been a married person—who was being maintained by the person immediately before the person became a single person; or

(f) who:

(i) has been wholly or substantially in the care and control of the person for a period of at least 12

months immediately before the day when the person lodged a claim for sole parent's pension; and

- (ii) in the Secretary's opinion, is likely to remain wholly or substantially in the person's care and control permanently or indefinitely;

'single person' means:

- (a) a person who is not a married person;
- (b) a married person whose spouse:
 - (i) is serving a sentence of imprisonment in connection with the conviction of the spouse for an offence; and
 - (ii) has been so serving that sentence of imprisonment for a continuous period of at least 14 days;
- (c) a married person who is living separately and apart from his or her spouse; or
- (d) a married person who is unable to live together with his or her spouse in a matrimonial home by reason of the illness or infirmity of the spouse, being an illness or infirmity:
 - (i) that results in the spouse being unable to care for a child; and
 - (ii) that the Secretary is satisfied is likely to continue indefinitely.

"(2) For the purposes of the definition of 'single person' in subsection (1), a spouse who is undergoing a period of custody pending trial or sentencing for an offence is deemed to be a spouse who is serving a sentence of imprisonment in connection with the conviction of the spouse for an offence.

"Division 2—Qualifications for Sole Parent's Pension

Qualifications for sole parent's pension

"44. (1) A person is qualified to receive a sole parent's pension if:

- (a) the person is a single person;
- (b) the person has a qualifying child;
- (c) the person satisfies the requirements relating to residence in Australia set out in section 45, or section 46 applies to the person; and
- (d) section 47 does not apply in relation to the person.

"(2) A person is qualified to receive a sole parent's pension if:

- (a) the person became qualified to receive widow's pension as a class C widow under Part V of this Act as in force at any time before 1 March 1989 or becomes qualified to receive a widowed person's allowance;
- (b) the person would not have become so qualified but for subsection 46 (1) of this Act as in force before the commencement of this section or section 57; and

- (c) before the expiration of the period during which:
 - (i) widow's pension is payable to her as a class C widow; or
 - (ii) widowed person's allowance is payable to her;she becomes a single person who, but for paragraph 44 (c), would be qualified to receive a sole parent's pension.

Requirements as to Australian residence

"45. A person who has made a claim for a sole parent's pension satisfies the requirements relating to residence in Australia if:

- (a) on the day when the person lodged the claim, the person was an Australian resident and was in Australia; and
- (b) at least one of the following conditions is satisfied in relation to the person:
 - (i) if the person has only one qualifying child—that child became a qualifying child of the person while the person was an Australian resident;
 - (ii) if the person has 2 or more qualifying children—one of those qualifying children became a qualifying child of the person while the person was an Australian resident;
 - (iii) if the person has ever been a married person—the person was an Australian resident immediately before the person became a single person;
 - (iv) the person had been an Australian resident for a continuous period of at least 5 years immediately before the day when the person lodged the claim;
 - (v) the person has, at any time, been an Australian resident for a continuous period of at least 10 years.

Modification of residence requirements in certain cases

"46. (1) This section applies to a woman who has not resided in Australia at any time since 7 May 1973 if:

- (a) either:
 - (i) if the woman was a wife immediately before becoming a widow—she and her husband were residing permanently in Australia when she became a widow; or
 - (ii) if the woman is a widow because she is a dependent female—she and the man in respect of whom she was a dependent female were residing permanently in Australia when she became a widow; and
- (b) in the Secretary's opinion, she is a person who is in special need of financial assistance.

"(2) This section applies to a woman who became a widow by reason of the death of a man if:

- (a) immediately before the man's death, she was receiving:

- (i) a wife's pension under Part IV because the man was a person referred to in subsection 37 (1) or (2); or
 - (ii) a wife's service pension under Part III of the *Veterans' Entitlements Act 1986*; and
- (b) she was not in Australia at the time of the man's death.

Sole parents required to claim maintenance in some cases

"47. This section applies to a person (in this section called the 'sole parent') if:

- (a) the sole parent is entitled to claim maintenance from another person for himself or herself or for a dependent child of the sole parent;
- (b) the Secretary considers that it is reasonable that the sole parent should have taken action to obtain maintenance from the other person; and
- (c) the sole parent has not taken such action as the Secretary considers reasonable to obtain appropriate maintenance from the other person.

"Division 3—Rate of sole parent's pension

Rate of sole parent's pension

"48. (1) Subject to subsection (4), the annual rate of sole parent's pension payable to a person is worked out, as provided in subsection (2), by taking the maximum age or invalid pension rate, increasing that rate by amounts in respect of the person's dependent child or children and, if appropriate, by an amount of rent assistance, and, if necessary, reducing that rate having regard to the person's income or assets.

"(2) The annual rate of sole parent's pension payable to a person is the rate worked out using the formula:

$$AIP + DC + RA - IA$$

where:

- AIP** is the maximum rate of age or invalid pension specified in paragraph 33 (1) (a);
- DC** is the amount in respect of the person's dependent child or children worked out as provided by section 49;
- RA** is the annual amount (if any) payable under section 50 by way of rent assistance;
- IA** is the amount (if any) in respect of the person's income or assets worked out as provided by section 51.

"(3) Where the annual rate of sole parent's pension payable to a person is reduced having regard to the person's income or assets as mentioned in subsection (1), then, for the purpose of determining the kinds of payments that are included in a payment of the sole parent's pension, the amount in respect of the person's income or assets (in this subsection called the 'income or assets amount') worked out as provided by section 51 shall be taken to have been deducted:

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- (a) first, from the amount that represents the maximum rate of age or invalid pension specified in paragraph 33 (1) (a);
- (b) then, to the extent that any part of the income or assets amount remains undeducted—from the amount (if any) payable under section 50 by way of rent assistance; and
- (c) finally, to the extent that any part of the income or assets amount still remains undeducted—from the amount in respect of the person's dependent child or children worked out as provided by section 49.

“(4) The rate of a sole parent's pension payable to a person who is qualified for a sole parent's pension by reason of being a person referred to in paragraph (d) of the definition of 'single person' in subsection 43 (1) is a rate equal to the rate of age pension that would be payable to the person if:

- (a) the person were qualified to receive an age pension;
- (b) a direction under subsection 33 (2) were in force in relation to the person;
- (c) subsection 33 (12) were applicable to the person; and
- (d) no regard were had to any operation of subsection 33 (15) in relation to the person.

Amount in respect of dependent child or children

“49. (1) For the purposes of section 48, the amount in respect of a person's dependent child or children is the sum of:

- (a) the amount specified in subsection 33 (3); and
- (b) either:
 - (i) where the person has one dependent child—the applicable amount for that child; or
 - (ii) where the person has 2 or more dependent children—the sum of the applicable amounts for all the children.

“(2) In this section:

'applicable amount', for a dependent child, means the amount specified in whichever paragraph of subsection 33 (4) describes that child or would describe that child if that child were a dependent child for the purposes of that subsection.

Rent assistance

“50. (1) Rent assistance is payable to a person who is qualified to receive a sole parent's pension if:

- (a) the person pays, or is liable to pay, rent at a rate exceeding \$780 per annum; and
- (b) the person is in Australia.

“(2) The annual amount of rent assistance payable to a person is the lesser of the following amounts:

- (a) \$780;

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(b) the amount worked out using the formula:

$$\dagger \times (\text{ARP} - 780)$$

where:

ARP is the annual rent paid or payable by the person.

Amount in respect of person's income or assets

"51. (1) For the purposes of section 48, the amount in respect of a person's income or assets is:

(a) the amount worked out using the formula:

$$\dagger \times (\text{EI} + \text{EMI}); \text{ or}$$

(b) if it is greater than the amount worked out using the formula set out in paragraph (a)—the amount worked out using the formula:

$$\frac{26 \times \text{PRA}}{250}$$

where:

EI is the amount (if any) by which the annual rate of income of the person exceeds \$2,080;

EMI is the amount (if any) by which the annual rate of maintenance income of the person exceeds the annual maintenance free area of the person;

PRA is the pension reduction amount (if any) applicable to the person under section 8.

"(2) For the purpose of working out the amount represented by the letters **EI** in subsection (1), the annual rate of income of a person shall be taken to be the amount worked out using the following formula:

$$\text{AI} - (\text{SRC})$$

where:

AI is the actual annual rate of income of the person;

SRC is:

(a) where the person has only one dependent child—the reduction amount in respect of that child worked out as provided by subsection (3); or

(b) where the person has 2 or more dependent children—the sum of the reduction amounts in respect of those children worked out as provided by subsection (3).

"(3) For the purposes of subsection (2), the reduction amount in respect of a person's dependent child is:

(a) where the sum of amounts of any payments (other than exempt payments) received by the person in respect of the child equals or exceeds \$624—nil; or

(b) in any other case, the amount worked out using the formula:

$$624 - \text{PC}$$

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where:

PC is the sum of the amounts of any payments (other than exempt payments) received by the person in respect of the child.

“(4) Subsection (5) applies for the purpose of working out the amount represented by the letters **EMI** in subsection (1) where:

- (a) a person who is qualified to receive a sole parent’s pension has special maintenance income; and
- (b) the annual rate of the special maintenance income exceeds the amount worked out using the formula:

$$\left(\dagger \times (\text{AIP} + \text{DC} + \text{RA}) \right) + \text{AMFA}$$

where:

AIP and **DC** have the meanings they have in section 48;

RA is the amount of rent assistance payable to the person under section 50;

AMFA is the annual maintenance free area of the person.

“(5) Where this subsection applies then, for the purpose of working out the amount represented by the letters **EMI** in subsection (1), the annual rate of maintenance income of the person shall be taken to be the amount worked out using the formula:

$$\text{AMI} - (\text{SMI} - \text{F})$$

where:

AMI is the actual annual rate of maintenance income;

SMI is the annual rate of special maintenance income;

F is the amount worked out using the formula set out in paragraph (4) (b).

“(6) In this section:

‘exempt payment’ means a payment:

- (a) under this Act;
- (b) under the *Veterans’ Entitlements Act 1986*;
- (c) under the AUSTUDY scheme or the Assistance for Isolated Children Scheme;
- (d) of maintenance income; or
- (e) in the nature of family allowance;

‘payment in the nature of family allowance’ means a payment in respect of a child that:

- (a) is similar to a family allowance; and
- (b) because of subsection 82 (6), prevents a family allowance being payable in respect of the child.

“Division 4—General

Pension not payable to more than one person in respect of one dependent child

“52. (1) Where a child is a dependent child of 2 or more persons, that child shall, for the purposes of this Part, other than this section, be taken to be a dependent child of one of those persons only.

“(2) Where the Secretary is satisfied that a child is a dependent child of 2 or more persons, the Secretary shall make a determination in writing accordingly.

“(3) In a determination under subsection (2) about a child, the Secretary shall specify which of the 2 or more persons named in the determination is, for the purposes of this Part, to be taken as the person in relation to whom the child is a dependent child.

“(4) Where the Secretary makes a determination under subsection (2), the Secretary shall cause the 2 or more persons named in the determination to be informed of the terms of that determination.

Inmates of benevolent homes

“53. (1) If:

- (a) an inmate of a benevolent home, being a single person, becomes a pensioner; or
- (b) a pensioner, being a single person, becomes an inmate of a benevolent home;

his or her pension shall, so long as he or she remains an inmate of a benevolent home, be dealt with as follows:

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

“(2) In this section:

‘pensioner contribution’ means:

- (a) an amount per annum worked out using the formula:

$$364 \times NHA$$

where **NHA** is the amount in force from time to time for the purposes of subparagraph 47 (2) (b) (iii) of the *National Health Act 1953*; or

- (b) if the amount worked out under paragraph (a) is not a multiple of \$2.60—the next lower amount that is a multiple of \$2.60.

Restrictions on dual pensions

“54. (1) A person is not entitled to receive at the same time a pension under this Part and:

- (a) a pension under Part IV;
- (b) a pension under the *Seamen’s War Pensions and Allowances Act 1940* as a dependant of a deceased Australian mariner;
- (c) a pension under Part II of the *Veterans’ Entitlements Act 1986* as a dependant of a deceased veteran; or
- (d) a pension under Part IV of that Act as a dependant of a deceased member of the Forces or of a deceased member of a Peacekeeping Force.

“(2) A reference in subsection (1) to a dependant of a deceased person is a reference to a person (not being a child of the deceased person) who is a dependant of the deceased person for the purposes of:

- (a) in the case of a reference in paragraph (1) (b)—the *Seamen’s War Pensions and Allowances Act 1940*; or
- (b) in the case of a reference in paragraph (1) (c) or (d)—the *Veterans’ Entitlements Act 1986*.

“PART VI—WIDOWED PERSON’S ALLOWANCE

“Division 1—Qualifications for Widowed Person’s Allowance

Qualifications for widowed person’s allowance

“55. A person who has been a married person is qualified to receive a widowed person’s allowance if:

- (a) the person stops being a married person because the person’s spouse dies on or after 17 February 1989;
- (b) the person does not have a qualifying child within the meaning of Part V; and
- (c) the person satisfies the requirements relating to residence in Australia set out in section 56, or section 57 applies to the person.

Requirements as to Australian residence

“56. A person who has made a claim for a widowed person’s allowance in respect of the death of the person’s spouse satisfies the requirements relating to residence in Australia if:

- (a) on the day when the person lodged the claim, the person was an Australian resident and was in Australia; and
- (b) at least one of the following conditions is satisfied in relation to the person:
 - (i) when the person’s spouse died, the person and the spouse were Australian residents;

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- (ii) the person had been an Australian resident for a continuous period of at least 5 years immediately before the day when the person lodged the claim;
- (iii) the person has, at any time, been an Australian resident for a continuous period of at least 10 years.

Modification of residence requirements in certain cases

“57. This section applies to a woman who became a widow by reason of the death of a man if:

- (a) immediately before the man’s death, she was receiving:
 - (i) a wife’s pension under Part IV because the man was a person referred to in subsection 37 (1) or (2); or
 - (ii) a wife’s service pension under Part III of the *Veterans’ Entitlements Act 1986*; and
- (b) she was not in Australia at the time of the man’s death.

“Division 2—Rates and periods

Rate of widowed person’s allowance

“58. The annual rate of widowed person’s allowance payable to a person is the rate worked out in accordance with Division 3 of Part V as if:

- (a) the person were qualified to receive a sole parent’s pension; and
- (b) each of the person’s dependent children (if any) were a dependent child for the purposes of that Part.

Payment of widowed person’s allowance

“58A. (1) On each pension pay-day:

- (a) on which a person is qualified to receive widowed person’s allowance; and
- (b) that occurs during the period of 12 weeks commencing on the day on which the person’s spouse died;

an instalment of widowed person’s allowance is, subject to sections 158 and 159, payable to the person.

“(2) Where a woman is pregnant when her spouse dies, subsection (1) has effect in relation to the woman as if the reference in paragraph (1) (b) to a period of 12 weeks were a reference to the period starting on the day when the woman’s spouse died and ending:

- (a) 12 weeks after that day; or
- (b) when the child is born or the woman otherwise ceases to be pregnant;

whichever is the later.

“(3) The amount of an instalment of widowed person’s allowance shall be worked out by dividing the amount of the annual rate of the allowance by 26.

“(4) Where the amount of an instalment of widowed person’s allowance would not, apart from this subsection, be a multiple of 10 cents, the amount of the instalment shall be increased or decreased to the nearest multiple of 10 cents except where the amount is a multiple of 5 cents, in which case it shall be increased by 5 cents.

“Division 3—General

Restrictions as to dual entitlements

“58B. (1) A person is not entitled to receive at the same time an allowance under this Part and:

- (a) a pension under Part IV;
- (b) a pension under the *Seamen’s War Pensions and Allowances Act 1940* as a dependant of a deceased veteran; or
- (c) a pension under Part II of the *Veterans’ Entitlements Act 1986* as a dependant of a deceased veteran; or
- (d) a pension under Part IV of that Act as a dependant of a deceased member of the Forces or of a deceased member of a Peacekeeping Force.

“(2) A reference in subsection (1) to a dependant of a deceased person is a reference to a person (not being a child of the deceased person) who is a dependant of the deceased person for the purposes of:

- (a) in the case of a reference in paragraph (1) (b)—the *Seamen’s War Pensions and Allowances Act 1940*; or
- (b) in the case of a reference in paragraph (1) (c) or (d)—the *Veterans’ Entitlements Act 1986*.”.

Commencement: 1 March 1989

12. After section 60 of the Principal Act the following section is inserted:

Pensions to cease after 6 months absence from Australia in certain circumstances

“60A. (1) Where:

- (a) a person who is in receipt of a pension proposes to leave Australia;
- (b) the person notifies the Department of that proposal as required by a notice given to the person under section 163; and
- (c) the Secretary is satisfied that the person is qualified to receive that pension;

the Secretary shall give the person a certificate acknowledging the notification of the proposed departure and stating that the Secretary was satisfied as mentioned in paragraph (c) before the certificate was given.

“(2) Where:

- (a) a person who has made a claim for a pension proposes to leave Australia; and

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- (b) the person notifies the Department of that proposal before the claim is determined;

the Secretary shall give the person a certificate acknowledging the notification of the proposed departure.

“(3) Where:

- (a) a person leaves Australia on or after the commencement of this section;
- (b) the person has not received a certificate under subsection (1) or (2) acknowledging the notification of that departure; and
- (c) the absence of the person from Australia continues for more than 6 months;

the person is not qualified to receive a pension at any time after the first 6 months of the absence while the person remains absent.

“(4) For the purpose of subsection (3), an absence of a person from Australia comes to an end if the person returns to Australia, even if that return is only temporary.”.

Commencement: 1 February 1989

13. Before section 61 of the Principal Act the following section is inserted:

Entitlement to receive sole parent's pension ceases after 12 months absence

“60B. (1) Where:

- (a) a person left, or leaves, Australia on or after 1 July 1988;
- (b) before leaving, the person was in receipt of a sole parent's pension; and
- (c) the person continues to be absent from Australia for more than 12 months;

the person is not qualified to receive sole parent's pension at any time after the first 12 months of the absence while the person remains absent from Australia.

“(2) Subsection (1) does not apply in relation to a woman who is receiving sole parent's pension if:

- (a) the woman became a single person because of the death of a man; and
- (b) immediately before the death of that man:
 - (i) the woman was legally married to that man; and
 - (ii) the woman and the man were Australian residents.

“(3) Subsection (1) applies in relation to a person who was outside Australia on 1 July 1988 as if the person had left Australia on 1 July 1988.

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“(4) For the purposes of subsection (1), an absence of a person from Australia comes to an end if the person returns to Australia, even if that return is only temporary.

“(5) In this section:

‘single person’ has the same meaning as in Part V.”.

Commencement: 1 March 1989

Interpretation

14. Section 72 of the Principal Act is amended:

(a) by omitting from subsection (1) the definitions of “allowable income” and “income”;

(b) by inserting in subsection (1) the following definitions:

“‘base year of income’, in relation to a person at a particular time, means the year of income of the person that ended in the preceding calendar year;

‘income threshold’, in relation to a person at a particular time, means:

(a) if the person has only one dependent child at that time—\$15,600; or

(b) if the person has more than one dependent child at that time—the amount worked out using the formula:
$$\$15,600 + (\$624 \times (D - 1))$$

where:

D is the number of dependent children of the person;

‘notifiable event’, in relation to a person, means an event:

(a) that is specified in a notice given to the person under subsection 163 (1) relating to the payment of an allowance; and

(b) that is described in that notice as a notifiable event for the purposes of this section;

‘relevant taxable income’ for a year of income means:

(a) in relation to an unmarried person at a particular time—the amount that is at that time the taxable income of the person for the year of income;

(b) in relation to a married person at a particular time—the sum of:

(i) the amount that is at that time the taxable income of the person for the year of income; and

(ii) the amount that is at that time the taxable income of the person’s spouse for the year of income;

‘year of income’, has the same meaning as in the *Income Tax Assessment Act 1936*.”;

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- (c) by omitting subsections (2), (3), (4), (5) and (6) and inserting the following subsection:

“(2) For the purposes of this section, the amount of the taxable income of a person for a year of income of the person shall be taken to be, at a particular time:

- (a) if, at that time, the Commissioner of Taxation has, for the purposes of the *Income Tax Assessment Act 1936*, made an assessment or an amended assessment of the taxable income of the person for the year of income—the amount of the assessment, or the amended assessment, as the case may be;
- (b) if paragraph (a) does not apply but either:
 - (i) the year of income has not ended; or
 - (ii) the Secretary is satisfied:
 - (A) that the person is not required to lodge a return of income in relation to the year of income; or
 - (B) that the person has lodged, or proposes to lodge, a return of income in relation to the year of income;

for the purposes of the *Income Tax Assessment Act 1936*;

an estimate, or the most recent estimate, of the person's taxable income within the meaning of the *Income Tax Assessment Act 1936* for the year of income made by the person or by the person's spouse and notified in writing to the Department or an officer; or

- (c) in any other case—an unascertainable amount.”.

Commencement: 29 December 1988

Qualification to receive allowance

15. Section 73 of the Principal Act is amended:

- (a) by adding at the end the following subsection:

“(2) Where, during a period ending on or before 31 December 1988, family allowance would, but for a decision of the Secretary under section 81, be payable to a person in respect of a prescribed student child to whom, or in respect of whom, an allowance is payable under the Aboriginal Secondary Assistance Scheme, the Assistance for Isolated Children Scheme or the Veterans' Children Education Scheme, subsection (1) applies as if the person were receiving family allowance during the period in respect of the child.”;

Commencement: 17 December 1987

- (b) by omitting subsection (2) and substituting the following subsections:

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“(2) A person is not qualified to receive an allowance in respect of a child if subsection 13 (1) of the *Income Tax Rates Act 1986* applies or applied in relation to the last year of income of the child.

“(3) In this section:

‘last year of income’, in relation to a child in relation to a particular time, means the year of income of the child that ended on 30 June in the preceding calendar year;

‘year of income’ has the same meaning as in the *Income Tax Assessment Act 1936*.”.

Commencement: 1 January 1989

Rate of allowance

16. Section 74 of the Principal Act is amended:

(a) by omitting from paragraph (1) (a) “\$22” and substituting “\$24”;

Commencement: 29 December 1988

(b) by omitting from paragraph (1) (b) “\$28” and substituting “\$31”;

Commencement: 29 December 1988

(c) by adding at the end of paragraph (1) (b) “or”;

Commencement: 1 January 1989

(d) by omitting paragraphs (1) (d) and (e);

Commencement: 1 January 1989

(e) by omitting subsections (3), (4) and (5).

Commencement: 29 December 1988

17. After section 74 of the Principal Act the following sections are inserted:

Assets test

“74A. (1) An allowance is not payable to a person if the value of the property of the person exceeds \$300,000.

“(2) For the purposes of the application of subsection (1) in relation to a married person, the value of the property of the person shall be taken to include the value of the property of the person’s spouse.

Reduction of rate by reference to taxable income

“74B. (1) Subject to this section, where:

(a) a person who has lodged a claim for an allowance is qualified to receive an allowance; and

(b) the relevant taxable income of the person for the base year of income of the person exceeds the income threshold in relation to the person;

the rate per week of the allowance payable to the person during the allowance period is the rate per week worked out using the formula:

$$\text{MR} - \left(\frac{\text{EIB}}{104} \right)$$

where:

MR is the maximum rate per week of the allowance that could be payable to the person;

EIB is the amount by which the relevant taxable income of the person for the base year of income exceeds the income threshold in relation to the person.

“(2) Where:

(a) a notifiable event occurs in relation to a person who is receiving an allowance; and

(b) the relevant taxable income of the person for the year of income in which the notifiable event occurs (in this subsection called the ‘current year of income’) exceeds 125% of each of:

(i) the relevant taxable income of the person for the base year of income; and

(ii) the income threshold in relation to the person;

the rate per week of the allowance payable to the person during the remainder of the allowance period is the rate per week worked out using the formula:

$$\text{MR} - \left(\frac{\text{EIC}}{104} \right)$$

where:

MR is the maximum rate per week of the allowance that could be payable to the person;

EIC is the amount by which the relevant taxable income of the person for the current year of income exceeds 125% of the income threshold in relation to the person.

“(3) Where:

(a) a person’s rate of allowance has been reduced from the maximum rate per week of the allowance that could be payable to the person because of subsection (1) or (2);

(b) the person makes a request in writing, in accordance with a form approved by the Secretary, that this subsection apply to the person; and

(c) the relevant taxable income of the person for the year of income in which the request is made (in this subsection called the ‘current year of income’) is at least 25% less than the relevant taxable income of the person for the base year of income;

the rate per week of the allowance payable to the person during the remainder of the allowance period starting from the first applicable allowance pay day is:

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- (d) if the relevant taxable income of the person for the current year of income is less than the income threshold in relation to the person— the maximum rate per week that could be payable to the person; or
- (e) in any other case—the rate per week worked out using the formula:

$$\text{MR} - \left(\frac{\text{EIC}}{104} \right)$$

where:

MR is the maximum rate per week of the allowance that could be payable to the person;

EIC is the amount by which the relevant taxable income of the person for the current year of income exceeds 125% of the income threshold in relation to the person.

“(4) Where the rate per week of the allowance payable to a person in a calendar year has been worked out under this section, the rate per week of the allowance payable to the person does not have to be worked out again during that calendar year unless:

- (a) the person makes a request under subsection (3); or
- (b) the person notifies the Department or an officer of the occurrence of a notifiable event in relation to the person.

“(5) Where:

- (a) in determining the rate at which an allowance is payable to a person, regard was had to a relevant taxable income of the person that was worked out by reference to a taxable income of the person or the person’s spouse that was an amount estimated by the person;
- (b) the Commissioner of Taxation makes an assessment of that taxable income; and
- (c) the estimated amount is less than 75% of the amount of the Commissioner’s assessment;

then, in relation to each payment of allowance made to the person during the allowance period but on or after the date of the determination, so much of the payment as exceeds the amount that would have been the amount of the payment if the estimated amount had been equal to the amount of the Commissioner’s assessment shall be taken to be an amount of allowance that should not have been paid to the person for the purposes of subsection 246 (2).

“(6) Where:

- (a) during a year of income in relation to a person (in this subsection called the ‘relevant year of income’), a notifiable event occurred in relation to the person;
- (b) the person failed to comply with section 163 in relation to that notifiable event;

- (c) after the Commissioner of Taxation makes an assessment or assessments for the purposes of the *Income Tax Assessment Act 1936* of the taxable income, for the relevant year of income, of the person, of the person's spouse, or of each of them, the relevant taxable income of the person for the relevant year of income (in this subsection called the 'later relevant taxable income') is more than 125% of the amount of the relevant taxable income, at the time of the notifiable event, of the person for the year of income that was at that time the base year of income of the person (in this subsection called the 'earlier relevant taxable income'); and
- (d) the Secretary is satisfied that the difference between the amounts of the earlier relevant taxable income and the later relevant taxable income is directly attributable to the notifiable event;

then, in relation to each payment of allowance made to the person during the allowance period but on or after the date of the notifiable event, so much of the payment as exceeds the amount that would have been the amount of the payment if the earlier relevant taxable income had been equal to the later relevant taxable income shall be taken to be an amount of allowance that should not have been paid to the person for the purposes of subsection 246 (2).

“(7) In this section:

‘first applicable allowance pay day’, in relation to a person who makes a request under subsection (3), means:

- (a) if the request is made within 60 days after the person is notified of the decision to reduce the person's rate of allowance as mentioned in paragraph (3) (a):
 - (i) if the decision was made on an allowance pay day—that day; or
 - (ii) in any other case—the first allowance pay day after the day when the decision was made; or
- (b) where paragraph (a) does not apply:
 - (i) if the request is made on an allowance pay day—that day; or
 - (ii) in any other case—the first allowance pay day after the day when the request is made.

No allowance payable where taxable income is unascertainable

“74C. An allowance is not payable to a person if:

- (a) the taxable income of the person, or of the person's spouse (if any), for the base year of income is an unascertainable amount; or
- (b) where, under subsection 74B (2) or (3), the rate per week of the allowance payable to the person has been worked out by reference to the relevant taxable income of the person for a year of income other than the base year of income—the taxable income of the

person, or of the person's spouse (if any), for that other year of income is or becomes an unascertainable amount.

Indexation of assets and income thresholds

“74D. (1) In this section:

‘index number’, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter;

‘indexation amount’ means:

- (a) the amount of \$300,000 specified in subsection 74A (1); or
- (b) the amount of \$15,600 specified in paragraphs (a) and (b) of the definition of ‘income threshold’ in subsection 72 (1);

‘index year’ means the period of 12 months commencing on 1 January 1990 and each succeeding period of 12 months.

“(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.

“(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index number published in terms of the new reference base.

“(4) Where the factor ascertained under subsection (5) in relation to an index year is greater than one, this Act has effect as if for each indexation amount there were substituted, on the first day of the index year, an amount calculated by multiplying by that factor:

- (a) in a case to which paragraph (b) does not apply—the indexation amount; or
- (b) if, because of another application or other applications of this section, this Act has effect as if another amount or other amounts were substituted for the indexation amount—the substituted amount or the last substituted amount.

“(5) The factor to be ascertained for the purposes of subsection (4) in relation to an index year is the number (calculated to 3 decimal places) ascertained by dividing the index number for the July quarter immediately preceding the index year by the index number for the July quarter immediately preceding the first-mentioned July quarter.

“(6) Where the factor ascertained in accordance with subsection (5) in relation to an index year would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with

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that subsection in relation to that index year shall be taken to be the factor calculated to 3 decimal places in accordance with subsection (5) and increased by 0.001.

“(7) Where:

- (a) apart from this subsection, the application of this section would result in an amount (in this subsection called the ‘substituted amount’) being substituted for an indexation amount; and
- (b) the substituted amount is not a multiple of \$250;

the following provisions have effect:

- (c) if the substituted amount is a multiple of \$125, the substituted amount shall be increased by \$125;
- (d) if the substituted amount is not a multiple of \$125, the substituted amount shall be increased or reduced to the nearest multiple of \$250.”.

Commencement: 29 December 1988

Payment of allowance

18. Section 76 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Subject to this Part, where a claim by a person for an allowance is granted, the allowance shall be paid during the period starting on the day when the claim was lodged and ending on the next 31 December, and shall start to be paid from the first allowance pay day after the day before the day on which the claim was lodged.”.

Commencement: 29 December 1988

Interpretation

19. Section 79 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘family allowance pay day’ means Thursday, 29 December 1988 and each succeeding alternate Thursday;”.

Commencement: 29 December 1988

Repeal of section 80

20. Section 80 of the Principal Act is repealed.

Commencement: 29 December 1988

Payments under certain education schemes

21. Section 81 of the Principal Act is amended by omitting “the first day of a family allowance period” and substituting “a family allowance pay day”.

Commencement: 29 December 1988

Qualification for family allowance

22. Section 82 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

“(1) A person is qualified to receive family allowance in respect of a child if, and only if, the following conditions are satisfied:

- (a) the child is a dependent child of the person;
- (b) both the person and the child are persons to whom this section applies;
- (c) family allowance is not payable to an institution in respect of the child.

“(2) An institution is qualified to receive family allowance in respect of a child if, and only if, the following conditions are satisfied:

- (a) the child is an inmate of the institution;
- (b) the child is a person to whom this section applies.

“(3) This section applies to a person if the person is:

- (a) an Australian resident; or
- (b) a dependent child of an Australian resident who is living with the Australian resident.”.

Commencement: 29 December 1988

23. After section 82 of the Principal Act the following section is inserted:

Entitlement to receive family allowance ceases after 3 year absence of recipient or child

“83. (1) Where:

- (a) a person left, or leaves, Australia on or after 18 May 1986;
- (b) before leaving, the person was in receipt of family allowance in respect of a child; and
- (c) the person continues to be absent from Australia for more than 3 years;

the person is not qualified to receive family allowance at any time after the first 3 years of the absence while the person remains absent from Australia.

“(2) Where:

- (a) a child left, or leaves, Australia on or after 18 May 1986;
- (b) before the child left, a person was in receipt of family allowance in respect of that child; and
- (c) the child continues to be absent from Australia for more than 3 years;

the person is not qualified to receive family allowance in respect of that child at any time after the first 3 years of the absence while the child remains absent from Australia.

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“(3) For the purpose of subsections (1) and (2), where a person (including a child) who has been absent from Australia for less than 3 years returns to Australia and leaves again within 3 months:

- (a) the person shall be taken to have continued to be absent from Australia during the period while the person is in Australia; and
- (b) the period of the absence shall be taken to have included the period while the person was in Australia.

“(4) Where:

- (a) a person who has been absent from Australia is not qualified to receive family allowance in respect of a child because of the application of subsection (1), or a previous application of this subsection, in relation to the person’s absence;
- (b) the person returns to Australia; and
- (c) within 3 months after so returning, the person leaves Australia again;

the person is not qualified to receive family allowance in respect of that child at any time during the person’s absence from Australia that started when the person so left Australia.

“(5) Where:

- (a) a person is not qualified to receive family allowance in respect of a child who has been absent from Australia because of the application of subsection (2), or a previous application of this subsection, in relation to the child’s absence;
- (b) the child returns to Australia; and
- (c) within 3 months after so returning, the child leaves Australia again;

the person is not qualified to receive family allowance in respect of that child at any time during the child’s absence from Australia that started when the child so left Australia.

“(6) This section applies in relation to a person (including a child) who was outside Australia on 18 May 1986 as if the person had left Australia on 18 May 1986.”.

Commencement: 18 May 1989

Family allowance not payable in respect of certain student children

24. Section 84 of the Principal Act is amended:

- (a) by omitting from subsection (1) all the words after “18 years”;
- (b) by omitting from paragraph (2) (c) “subsection 74 (3)” and substituting “section 74B or 74C”.

Commencement: 29 December 1988

Income test for family allowances

25. Section 85 of the Principal Act is amended:

- (a) by omitting from paragraph (3) (a) “in respect of a family allowance period commencing on or after 15 October 1987; and” and substituting “on a family allowance pay day; and”;

Commencement: 29 December 1988

- (b) by omitting from subsection (3) “in respect of that family allowance period” and substituting “on that family allowance pay day”;

Commencement: 29 December 1988

- (c) by omitting from subsection (3) “one twelfth” and substituting “one twenty-sixth”;

Commencement: 29 December 1988

- (d) by omitting from subsection (5) “98 (2)” and substituting “84 (2)”;

Commencement 1 October 1987

- (e) by omitting subsection (6);

Commencement: 29 December 1988

- (f) by omitting from subsection (7) all the words after “the period” and substituting the following:

“commencing on:

- (d) if the request is received on a family allowance pay day—the day on which the request is received; or

- (e) in any other case—the first family allowance pay day after the day on which the request is received;

and ending on 31 December in the calendar year in which the request is received.”;

Commencement: 29 December 1988

- (g) by omitting subsection (8).

Commencement: 29 December 1988

Indexation of family allowance income test

26. Section 85A of the Principal Act is amended:

- (a) by omitting “99 (1)” from the definition of “indexation amount” in subsection (1) and substituting “85 (1)”;

Commencement 1 October 1987

- (b) by omitting from subsection (1) the definition of “index year” and substituting the following definition:

“‘index year’ means:

- (a) the period commencing on 29 December 1988 and ending on the last family allowance pay day in 1989; and

- (b) any subsequent period commencing on the first family allowance pay day in a calendar year and ending on

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the last family allowance pay day in the calendar year.”;

Commencement: 29 December 1988

- (c) by omitting from subsection (4) “99” (wherever occurring) and substituting “85”.

Commencement 1 October 1987

Sharing of family allowance between 2 persons

27. Section 86 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) In spite of any other provision of this Part, family allowance is not payable to 2 persons in respect of the same child on the same family allowance pay day except in accordance with this section.”.

Commencement: 29 December 1988

28. Sections 87 and 88 of the Principal Act are repealed and the following sections are substituted:

Payment of family allowance

“87. Family allowance is payable to a person or an institution in respect of a child on each family allowance pay day on which the person or institution is qualified to receive family allowance in respect of the child.

Amount of family allowance

“88. (1) The amount of family allowance payable to a person in respect of a child on a family allowance pay day occurring on or after 29 December 1988 and before 1 July 1989 is as follows:

- (a) where the child is the only child in respect of whom family allowance is payable, or where there are 2 or more such children and the child is the elder or eldest of them, the amount payable is \$9.80;
- (b) where there are 2 or more children in respect of whom family allowance is payable and the child is the younger or second eldest of them, the amount payable is \$13.95;
- (c) where there are 3 or more children in respect of whom family allowance is payable and the child is the third or fourth eldest of them, the amount payable is \$16.70;
- (d) where there are 5 or more children in respect of whom family allowance is payable and the child is not one of the 4 eldest of them, the amount payable is \$19.55.

“(2) The amount of family allowance payable to a person in respect of a child on a family allowance pay day occurring after 1 July 1989 is as follows:

- (a) where the child is the only child in respect of whom family allowance is payable, or where there are 2 or more such children and the child is the elder or eldest of them, the amount payable is \$10.55;

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- (b) where there are 2 or more children in respect of whom family allowance is payable and the child is the younger or second eldest of them, the amount payable is \$15.05;
- (c) where there are 3 or more children in respect of whom family allowance is payable and the child is the third or fourth eldest of them, the amount payable is \$18.00;
- (d) where there are 5 or more children in respect of whom family allowance is payable and the child is not one of the 4 eldest of them, the amount payable is \$21.05.

“(3) The amount of family allowance payable to an institution in respect of a child on a family allowance pay day occurring on or after 29 December 1988 and before 1 July 1989 is \$16.70.

“(4) The amount of family allowance payable to an institution in respect of a child on a family allowance pay day occurring after 1 July 1989 is \$18.

“(5) Subsections (6) and (7) apply to a person where, on a family allowance pay day:

- (a) family allowance is payable to the person in respect of 3 or more children; and
- (b) at least 3 of those children were born during the same multiple birth and are under the age of 6 years.

“(6) If the family allowance pay day occurs on or after 29 December 1988 and before 1 July 1989, the total amount of family allowance payable to the person on that day shall be increased by:

- (a) where the number of the children born during the same multiple birth is 3—\$64.30; and
- (b) where the number of the children born during the same multiple birth is 4 or more—\$85.75.

“(7) If the family allowance pay day occurs after 1 July 1989, the total amount of family allowance payable to the person shall be increased by:

- (a) where the number of the children born during the same multiple birth is 3—\$69.25; and
- (b) where the number of the children born during the same multiple birth is 4 or more—\$92.35.”.

Commencement: 29 December 1988

Repeal of section 89

29. Section 89 of the Principal Act is repealed.

Commencement: 29 December 1988

Repeal of section 90

30. Section 90 of the Principal Act is repealed.

Commencement: 29 December 1988

Interpretation

31. Section 94 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘family allowance pay day’ means a day that is a family allowance pay day for the purposes of Part X;”.

Commencement: 29 December 1988

32. Section 96 of the Principal Act is repealed and the following section is substituted:

Amount of double orphan’s pension

“96. (1) The amount of double orphan’s pension payable to a person in respect of a child on a family allowance pay day occurring on or after 29 December 1988 and before 1 July 1989 is \$25.75.

“(2) The amount of double orphan’s pension payable to a person in respect of a child on a family allowance pay day occurring after 1 July 1989 is \$27.70.”.

Commencement: 29 December 1988

Application of Part X

33. Section 97 of the Principal Act is amended by omitting subsection (2).

Commencement: 29 December 1988

Interpretation

34. Section 101 of the Principal Act is amended:

(a) by omitting the definition of “family allowance period”;

(b) by inserting the following definition:

“ ‘family allowance pay day’ means a day that is a family allowance pay day for the purposes of Part X.”.

Commencement: 29 December 1988

Qualification for allowance

35. Section 102 of the Principal Act is amended by omitting from paragraph (a) “, subsection 82 (6) and paragraph 89 (1) (b)” and substituting “and subsection 82 (6)”.

Commencement: 29 December 1988

Temporary absences from home

36. Section 103 of the Principal Act is amended by omitting from subsection (3) all the words from and including “but” and substituting “because of the absence, or likely absence, of the child.”.

Commencement: 29 December 1988

37. Section 104 of the Principal Act is repealed and the following sections are substituted:

Payment of allowance

“104. An allowance is payable to a person in respect of a child on each family allowance pay day on which the person is qualified to receive an allowance in respect of the child.

Amount of allowance

“104A. (1) Subject to subsections (3) and (4), the amount of allowance payable to a person in respect of a child on a family allowance pay day occurring on or after 29 December 1988 and before 1 July 1989 is \$48.

“(2) Subject to subsections (3) and (4), the amount of allowance payable to a person in respect of a child on a family allowance pay day occurring after 1 July 1989 is \$51.70.

“(3) Where:

- (a) an allowance is payable to a person in respect of a child on a family allowance pay day; and
- (b) in the opinion of the Secretary, the child was, for a particular percentage (in this section called the ‘ineligible percentage’) of the period of 2 weeks ending on the family allowance pay day:
 - (i) absent from the child’s home; and
 - (ii) in the care of another person or an institution for the purpose of receiving education, training or treatment;

the amount of allowance payable to the person on the family allowance pay day shall be the amount specified in whichever of subsections (1) and (2) is applicable, reduced by the ineligible percentage of that amount.

“(4) Where:

- (a) an allowance is payable to a person in respect of a child on a family allowance pay day;
- (b) on a day, or on 2 or more days, in the period of 2 weeks ending on the family allowance pay day the child was an inmate of an institution;
- (c) a benefit was payable in relation to the child under Part VA of the *National Health Act 1953* in respect of the day or days because the child was such an inmate; and
- (d) subsection 103 (2) or (3) applies in respect of the child;

the amount of allowance payable to the person on the family allowance pay day shall be the amount specified in whichever of subsections (1) and (2) is applicable, reduced by an amount worked out using the formula:

$$A \times \frac{D}{14}$$

where:

A is the amount specified in whichever of subsections (1) and (2) is applicable;

D is the number of days in respect of which paragraph (b) applies.”.

Commencement: 29 December 1988

Repeal of sections 105, 106, 107 and 108

38. Sections 105, 106, 107 and 108 of the Principal Act are repealed.

Commencement: 29 December 1988

Unemployment benefits

39. Section 116 of the Principal Act is amended by inserting after subsection (4) the following subsections:

“(4A) Paragraph (1) (c) does not apply to a person in respect of any day during a period that is a relevant period for the purposes of subsection (1) on which the person was attending a training camp as a member of:

- (a) the Australian Naval Reserve;
- (b) the Naval Emergency Reserve Forces;
- (c) the Australian Army Reserve;
- (d) the Australian Air Force Reserve;
- (e) the Air Force Emergency Reserve; or
- (f) the Regular Army Emergency Reserve.

“(4B) Where the Secretary considers that:

- (a) it would be reasonable to assume that:
 - (i) at the end of a period that is a relevant period for the purposes of subsection (1), a person was present in an area that is a remote area for the purposes of Part III;
 - (ii) the person was unemployed throughout the period and was capable of undertaking and willing to undertake, work that in the Secretary’s opinion, was suitable to be undertaken by the person; and
 - (iii) during the period, the person took reasonable steps to obtain such work; and
- (b) having regard to all relevant factors, including the location of offices of the Department, difficulties in transport and communications and the educational and cultural background of the person, it would be unreasonable to expect the person to comply with paragraph (1) (c) in respect of that period before payment of unemployment benefit to the person in respect of the period;

paragraph (1) (c) does not apply to the person in respect of the period.”.

Commencement: Day of Royal Assent

40. After section 116 of the Principal Act the following section is inserted:

Work test not required to be satisfied by certain persons in full-time training or voluntary work

“116A. (1) In this section:

‘approved full-time training course’ means a course in relation to which an approval under subsection (2) is in force;

‘approved organisation’ means an organisation in relation to which an approval under subsection (2) is in force;

‘class A widow’ has the same meaning as in Part V;

‘excepted day’, in relation to a person, means a day in respect of which, because of subsection (3) or (5), the person is not required to satisfy the Secretary of either of the matters set out in subparagraphs 116 (1) (c) (i) and (ii);

‘qualified beneficiary’ means a person who is in receipt of:

- (a) unemployment benefit;
- (b) sickness benefit;
- (c) job search allowance;
- (d) special benefit;
- (e) widow’s pension as a class A widow;
- (f) supporting parent’s benefit; or
- (g) payments as a trainee in full-time training under a program included in the programs known as Labour Force Programs;

‘year’ means a calendar year.

“(2) The National Director of the Commonwealth Employment Service may, for the purposes of this section, by writing:

- (a) approve full-time training courses of up to 4 weeks duration, being courses considered by the National Director to be vocationally useful; and
- (b) approve organisations that offer persons full-time voluntary work, being organisations that the National Director considers provide vocationally useful voluntary work.

“(3) Where:

- (a) a person who has attained the age of 18 years is, on a day during a period that is a relevant period for the purposes of subsection 116 (1), engaged in an approved full-time training course;
- (b) the person started the course on or after the commencement of this section; and
- (c) the person had been a qualified beneficiary for a continuous period of at least 12 months immediately before he or she started the course;

then, subject to subsection (4), the person is not required to satisfy the Secretary of either of the matters set out in subparagraphs 116 (1) (c) (i) and (ii) in respect of that day.

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“(4) Subsection (3) does not apply in relation to a day in a year in relation to a person if:

- (a) there are already 40 days in the year that are excepted days in relation to the person; or
- (b) having regard to opportunities, or possible opportunities, for employment that became available to the person on or before the day, the Secretary considers that subsection (3) should not apply in relation to the day.

“(5) Where:

- (a) a person who has attained the age of 18 years is, on a day during a period that is a relevant period for the purposes of subsection 116 (1), engaged in full-time voluntary work with an approved organisation;
- (b) the person started working for the organisation on or after the commencement of this section; and
- (c) the person had been a qualified beneficiary for a continuous period of at least 12 months immediately before he or she started working for the organisation;

then, subject to subsection (6), the person is not required to satisfy the Secretary of either of the matters set out in subparagraphs 116 (1) (c) (i) and (ii) in respect of that day.

“(6) Subsection (5) does not apply in relation to a day in a year in relation to a person if:

- (a) there are already 20 days in the year that are excepted days in relation to the person because of subsection (5);
- (b) there are already 40 days in the year that are excepted days in relation to the person, whether because of that subsection or subsection (3); or
- (c) having regard to opportunities, or possible opportunities, for employment that became available to the person on or before the day, the Secretary considers that subsection (5) should not apply in relation to the day.

“(7) A decision of the National Director of the Commonwealth Employment Service for the purposes of this section in relation to the approval of training courses or organisations is not a decision of an officer for the purposes of Part XIX.”.

Commencement: 1 February 1989

Rate of unemployment and sickness benefit

41. Section 118 of the Principal Act is amended:

- (a) by omitting subsection (5) and substituting the following subsection:

“(5) Where an unmarried person who is qualified to receive an unemployment or a sickness benefit has a dependent child or dependent children, the rate of benefit applicable to that person

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under the preceding provisions of this section shall, subject to subsection (6), be increased by \$12 per week.”;

Commencement: 13 December 1988

(b) by omitting subsection (7);

Commencement: 13 December 1988

(c) by omitting from subsection (8) “\$26” and substituting “\$27.85”;

Commencement: 1 January 1989

(d) by omitting from subsection (11) all the words from and including “Where” to and including “by —” and substituting the following:

“Where a person qualified to receive an unemployment or a sickness benefit has a dependent child or dependent children, the rate of the benefit applicable to that person shall, subject to subsection (12), be increased by:”;

Commencement: 13 December 1988

(e) by omitting from paragraph (11) (c) “\$22” and substituting “\$24”;

Commencement: 13 December 1988

(f) by omitting from paragraphs (11) (c), (ca) and (cb) “such child” and substituting “dependent child”;

Commencement: 13 December 1988

(g) by omitting from paragraph (11) (ca) “\$28” and substituting “\$31”;

Commencement: 13 December 1988

(h) by adding at the end of paragraph (11) (ca) “and”;

Commencement: 1 January 1989

(j) by omitting paragraph (11) (d);

Commencement: 1 January 1989

(k) by adding at the end of paragraph (12) (a) “or”;

Commencement: 13 December 1988

(m) by omitting from paragraph (12) (b) “or”;

Commencement: 13 December 1988

(n) by omitting paragraph (12) (c).

Commencement: 13 December 1988

Rent assistance

42. Section 120 of the Principal Act is amended:

(a) by omitting paragraph (a) of the definition of “entitlement period” in subsection (1) and substituting the following paragraph:

“(a) in relation to a person who is receiving an unemployment or sickness benefit and who, for a continuous period immediately following a qualifying period in relation to the person has been a qualified person—any part of that continuous period in respect of which the person pays, or is liable to pay, rent at a weekly rate exceeding \$15; and”;

(b) by inserting in subsection (1) the following definitions:

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“ ‘qualifying period’, in relation to a person, means:

- (a) a continuous period of 26 weeks (whether that period commenced before or after the commencement of this section) during which the person was a qualified person; or
- (b) a continuous period of more than 26 weeks (whether that period commenced before or after the commencement of this section) in relation to which the following conditions are satisfied:
 - (i) the person was a qualified person during a number of periods that occurred in the continuous period and that, in aggregate, equal 26 weeks;
 - (ii) none of the periods that occurred in the continuous period and during which the person was not a qualified person exceeded 4 weeks;

‘qualified person’ means a person who:

- (a) is in receipt of or would, but for section 122, be in receipt of a prescribed pension;
- (b) is in receipt of payments as a trainee in full-time training under a program included in the programs known as Labour Force Programs;
- (c) is in continuous full time training under such a program and is in receipt of payments by way of remuneration in respect of that training; or
- (d) is in receipt of payments under the Adult Migrant Education Program.”.

Commencement: Day of Royal Assent

Parental income test

43. Section 121A of the Principal Act is amended:

- (a) by omitting “\$16,000” from the definition of “adjusted parental income” in subsection (1) and substituting “\$16,950”;
- (b) by omitting “or” (last occurring) from paragraph (f) of the definition of “person to whom this section applies” in subsection (1);
- (c) by adding at the end of that definition the following word and paragraph:

“or (h) a person who lives at a home of the foster parents, or of a foster parent, of the person;”.

Commencement: 1 January 1989

44. After section 121A of the Principal Act the following section is inserted:

Indexation of parental income threshold

“121B. (1) In this section:

‘indexation amount’ means the amount of \$16,950 specified in the definition of ‘adjusted parental income’ in subsection 121A (1);

‘index year’ means the year commencing on 1 January 1990 and each subsequent year;

‘November earnings average’, in relation to a year, means the amount, not being a preliminary estimate, called the ‘All Employees—Average Weekly Total Earnings—Persons’, as published by the Australian Statistician in respect of a period ending on or before a particular day in November in that year;

‘year’ means a calendar year.

“(2) If at any time, whether before or after the commencement of this section, the Australian Statistician publishes an amount in substitution for a November earnings average previously published by the Australian Statistician, the publication of the later amount shall be disregarded for the purposes of this section.

“(3) Where the factor ascertained under subsection (4) in relation to an index year is greater than one, this Act has effect as if for the indexation amount there were substituted, on the first day of that year, an amount calculated by multiplying by that factor:

- (a) if paragraph (b) does not apply—the indexation amount; or
- (b) if, by virtue of another application or other applications of this section, this Act has effect as if another amount or amounts were substituted for the indexation amount—the substituted amount or the last substituted amount.

“(4) The factor to be ascertained for the purposes of subsection (3) in relation to an index year is the number (calculated to 3 decimal places) ascertained by dividing the November earnings average in relation to the immediately preceding year (in this subsection called the ‘last year’) by the November earnings average in relation to the year immediately preceding the last year.

“(5) Where the factor to be ascertained in accordance with subsection (4) in relation to an index year would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that subsection in relation to that index year shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

“(6) Where:

- (a) apart from this subsection, the application of this section would result in an amount (in this subsection called the ‘substituted amount’) being substituted for the indexation amount; and
- (b) the substituted amount is not a multiple of \$50;

the following provisions have effect:

- (c) if the substituted amount is a multiple of \$25, the substituted amount shall be increased by \$25;
- (d) if the substituted amount is not a multiple of \$25, the substituted amount shall be increased or reduced to the nearest multiple of \$50.”.

Commencement: 1 January 1989

45. After section 122A of the Principal Act the following section is inserted in Division 4 of Part XIII:

Certain persons released from detention entitled to double benefit in respect of first week of release

“122B. (1) Where:

- (a) after 1 January 1989, a person is released from detention after a period of at least 7 days in detention;
- (b) within 7 days of that release, the person lodges a claim for unemployment or sickness benefit; and
- (c) because of paragraph 125 (1) (b) or (3) (b), unemployment benefit or sickness benefit is payable to the person from and including the day on which the claim was made;

the amount of unemployment or sickness benefit payable to the person in relation to the period of 7 days starting on the day when the claim was made is twice the amount of the benefit that would, apart from this section, be payable to the person in respect of that period.

“(2) In this section:

‘detention’ means detention in a prison, gaol, lock-up or other place of lawful detention.”.

Commencement: 1 January 1989

Waiting period

46. Section 125 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “and (d)” and substituting “, (d) and (e)”;
- (b) by omitting from paragraph (1) (c) “and” (last occurring);
- (c) by adding at the end of subsection (1) the following word and paragraph:

“and (e) in a case where:

- (i) a person who has attained the age of 18 years has made a claim for unemployment benefit;
- (ii) at some time within the period of 3 months ending on the day on which the claim was made, the person had ceased to be in receipt of unemployment benefit; and

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- (iii) the person had been a qualified beneficiary for a continuous period of at least 12 months immediately before so ceasing to be in receipt of unemployment benefit;

from and including the day on which the person became unemployed or the day on which the claim was made, whichever is the later.”;

- (d) by adding at the end the following subsection:

“(6) In this section:

‘qualified beneficiary’ means a person who is in receipt of:

- (a) unemployment benefit;
- (b) sickness benefit;
- (c) job search allowance; or
- (d) payments as a trainee in full-time training under a program included in the programs known as Labour Force Programs.”.

Commencement: 1 February 1989

Rate of special benefit

47. Section 130 of the Principal Act is amended:

- (a) by omitting “but not exceeding” and substituting “but, subject to subsection (2), shall not exceed”;
- (b) by adding at the end the following subsections:

“(2) Where:

- (a) after the commencement of this section, a person is released from detention after a period of at least 7 days in detention; and
- (b) within 7 days of that release the person lodges a claim for special benefit;

the Secretary may determine that the rate of special benefit payable to the person, in relation to the period of 7 days starting on the day when the claim was made, shall be an amount not exceeding twice the rate of the unemployment benefit or the sickness benefit which, disregarding section 122B, could be paid to the person if the person were qualified to receive it.

“(3) In this section:

‘detention’ means detention in a prison, gaol, lock-up or other place of lawful detention.”.

Commencement: 1 January 1989

Benefit not payable to full-time students

48. Section 136 of the Principal Act is amended by adding at the end the following subsection:

“(5) This section has effect subject to section 116A.”.

Commencement: 1 February 1989

Making and lodgment of claims etc.

49. Section 159 of the Principal Act is amended:

(a) by omitting from paragraph (2) (a) “or of a benefit” and substituting “or Schedule 1B or of an allowance”;

Commencement: 1 March 1989

(b) by omitting from subsection (2) “or benefit” (wherever occurring) and substituting “or allowance”;

Commencement: 1 March 1989

(c) by omitting subsections (3) and (4) and substituting the following subsections:

“(3) Where:

(a) a claim is lodged for payment to a person of a pension under Part V or Schedule 1B, or an allowance under Part VI;

(b) the day on which the claim is lodged occurs within a period of one month commencing immediately after the day on which:

(i) the person’s spouse died or, if the person is a woman, the man in respect of whom the woman was a dependent female died; or

(ii) if the person is a woman—the woman, being a single person, gave birth to a child; and

(c) during that period, there occurred a previous day on which, if the claim had been lodged on the previous day, the person would have been qualified to receive that pension or allowance, or there occurred 2 or more such previous days;

the claim shall, for the purposes of this Act, be taken to have been lodged on that previous day or on the earlier or earliest of those previous days.

“(4) If a person lodges a claim for allowance under Part VI within 4 weeks of the death of his or her spouse the claim shall, for the purposes of this Act, be taken to have been lodged on the day on which the person’s spouse died.”;

Commencement: 1 March 1989

(d) by inserting after subsection (4) the following subsections:

“(4A) If a person lodges a claim for an allowance under Part X in respect of a dependent child of the person within 4 weeks after the birth of the child the claim shall, for the purposes of this Act,

be taken to have been lodged on the day on which the child was born.

“(4B) If an institution lodges a claim for an allowance under Part X in respect of a child within 4 weeks after the child becoming an inmate of the institution the claim shall, for the purposes of this Act, be taken to have been lodged on the day on which the child became an inmate of the institution.

“(4C) If a person lodges a claim for an allowance under Part XII after he or she became qualified to receive the allowance the claim shall, for the purposes of this Act, be taken to have been lodged on:

- (a) if the person became qualified to receive the allowance more than 12 months before the day on which the claim was lodged—the day occurring 12 months before the day on which the claim was lodged; or
- (b) in any other case—the day on which the person became qualified to receive the allowance.

“(4D) For the purposes of subsection (4C), a person to whom an allowance under Part X was not payable on a particular day, but to whom such an allowance could have been granted on that day if the person had lodged a claim for such an allowance before that day, shall be taken to have satisfied the condition set out in paragraph 102 (a) on that day.”;

Commencement: 29 December 1988

(e) by omitting subsection (6) and substituting the following subsection:

“(6) In this section, the expressions ‘dependent female’ and ‘single person’ have the same respective meanings as in Part V.”.

Commencement: 1 March 1989

Secretary may take action in relation to money owing by pensioners

50. Section 162 of the Principal Act is amended by adding at the end the following subsection:

“(11) In this section:

- (a) a reference to a person being indebted to the Commonwealth under or as a result of this Act includes a reference to a person owing an assurance of support debt; and
- (b) a reference to a debt due under or as a result of this Act, or to a debt due by a pensioner, includes a reference to an assurance of support debt.”.

Commencement: Day of Royal Assent

Notification and review

51. Section 163 of the Principal Act is amended:

- (a) by omitting from subparagraph (4) (a) (i) “or”;
- (b) by inserting after subparagraph (4) (a) (i) the following subparagraph:

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“(ia) to the extent that the notice requires the person to notify any proposal by the person to leave Australia—such period as is specified in the notice; or”.

Commencement: 1 February 1989

Power to obtain information etc.

52. Section 164 of the Principal Act is amended:

(a) by inserting after subsection (2) the following subsections:

“(2AA) The Secretary shall not, in a notice under subsection (1), request a person to provide information, or to produce a document, unless the Secretary considers that the information or document may be relevant to the question of:

- (a) whether a person who is receiving, who has received, or who has made a claim for, a pension, benefit or allowance under this Act is or was entitled to receive the pension, benefit or allowance; or
- (b) the rate of pension, benefit or allowance under this Act that is or was applicable to such a person.

“(2AB) The Secretary may, for either or both of the purposes set out in subsection (2AC), by notice in writing given to a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, of a State or of a Territory or by any authority of the Commonwealth or of a State or Territory), require the person to provide the Department, or a specified officer, with such information as the Secretary requests relating to a specified class of persons within the period specified in the notice (not being less than 14 days after the notice is given).

“(2AC) The following purposes are purposes for which the Secretary may give a notice under subsection (2AB):

- (a) detecting cases where amounts of pension, benefit or allowance under this Act have been paid that should not have been paid;
- (b) verifying the entitlement of persons who have made claims for pensions, benefits or allowances under this Act to receive those pensions, benefits or allowances.

“(2AD) Subsections (2AE) to (2AJ) (inclusive) apply in relation to a notice given to a person (in this section called the ‘provider’) under subsection (2AB).

“(2AE) The Secretary may specify a particular class of persons in the notice whether or not the Secretary is able to identify any of the persons in the class as being persons who have received, who are receiving, or who have made claims for, pensions, benefits or allowances under this Act.

“(2AF) In the notice, the Secretary may request all or any of the following information, but no other information, in respect of each person in the specified class of persons:

- (a) full name and any previous name;
- (b) address;
- (c) sex;
- (d) marital status;
- (e) date of birth;
- (f) date of death;
- (g) dates of entries into and departures from Australia;
- (h) any payments received by the person from the provider within the period of 12 months preceding the giving of the notice and the account number of any account into which the provider paid any of those payments;
- (j) in relation to a course of study being undertaken by the person:
 - (i) whether the course is full-time or part-time;
 - (ii) the date on which the person started the course; and
 - (iii) the subjects being studied by the person.

“(2AG) Within 3 months after information is provided in response to the notice, the Secretary shall decide which of the information (if any) is, or is likely to be, relevant to the matters referred to in paragraphs (2AC) (a) and (b).

“(2AH) If the Secretary does not make a decision as required by subsection (2AG) within the period of 3 months referred to in that subsection, the Secretary shall ensure that all the information provided in response to the notice, and any record of all or any part of that information, is destroyed.

“(2AJ) If the Secretary decides, in accordance with subsection (2AG), that some or all of the information provided in response to the notice is not, or is not likely to be, relevant to the matters referred to in paragraphs (2AC) (a) and (b), the Secretary shall ensure that the irrelevant information, and any record of the irrelevant information, is destroyed.”;

- (b) by omitting from paragraph (3) (a) “subsection (1)” and substituting “this section”.

Commencement: Day of Royal Assent

Pension etc. to cease to be payable in certain cases

53. Section 169 of the Principal Act is amended by omitting from paragraphs (1) (a) and (2) (a) “XIV or” and substituting “X, XI, XII, XIV or”.

Commencement: 29 December 1988

Social Security Legislation Amendment No. 133, 1988

54. Before section 237 of the Principal Act the following section is inserted in Part XXI:

Schedule 1B

“236A. Class B widow’s pension is payable in accordance with Schedule 1B.”.

Commencement: 1 March 1989

55. After section 237 of the Principal Act the following section is inserted:

Employment entry payment

“237A. (1) Where:

- (a) after the commencement of this section, a person who has attained the age of 18 years commences employment;
- (b) immediately before commencing the employment:
 - (i) the person was in receipt of unemployment benefit; and
 - (ii) the person had been a qualified beneficiary for a continuous period of at least 12 months;
- (c) because the person commences the employment, the person ceases to be qualified to receive unemployment benefit;
- (d) in the opinion of the Secretary, the employment is likely to continue for more than 4 weeks; and
- (e) the person has not, within the last 12 months, received a payment under this section;

the person is entitled to an employment entry payment of \$100.

“(2) Where the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed; and
- (b) on the commencement of that employment, the person would, but for receiving a payment under this subsection, be entitled to a payment under subsection (1);

the following provisions have effect:

- (c) subject to paragraph (d), the person is entitled to an employment entry payment of \$100, which is payable to the person at such time as the Secretary decides, not being a time more than 14 days before the person is to commence that employment;
- (d) the person is not entitled to the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.

“(3) In spite of subsections (1) and (2):

- (a) a person is not entitled to a payment under this section unless the person has made a claim for the payment; and

- (b) a person is not entitled to a payment under this section if a claim for the payment is made more than 28 days after the commencement of the employment in respect of which the claim is made.

“(4) In this section:

‘qualified beneficiary’ means a person who is in receipt of:

- (a) unemployment benefit;
- (b) sickness benefit;
- (c) job search allowance;
- (d) special benefit; or
- (e) payments as a trainee in full-time training under a program included in the programs known as Labour Force Programs.”.

Commencement: 1 February 1989

Recovery of overpayments

56. Section 246 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (b) “or” (last occurring);

Commencement: 12 August 1988

- (b) by inserting after paragraph (2) (c) the following word and paragraph:

“or (d) on or after 12 August 1988, an amount has been paid to a person under a program included in the programs known as Labour Force Programs that should not have been paid;”;

Commencement: 12 August 1988

- (c) by inserting after subsection (2) the following subsection:

“(2A) In spite of anything contained in this Act, where:

- (a) a person owes an assurance of support debt; and
- (b) the person is receiving, or is entitled to receive, a pension, benefit or allowance under this Act (other than a funeral benefit under Part VIII);

the amount of that debt (including any amount payable by the person under subsection (3)) shall, unless the Secretary takes action under subsection 251 (1) in relation to the debt, be deducted from the pension, benefit or allowance by reducing each payment of the pension, benefit or allowance by a proportion of that pension, benefit or allowance, being a proportion decided by the Secretary in each particular case, until the sum of the amounts by which the payments are reduced equals the amount of the debt.”;

Commencement: Day of Royal Assent

- (d) by omitting paragraph (3) (a) and substituting the following paragraph:

“(a) a person:

- (i) is, on or after 1 September 1987, indebted to the Commonwealth under subsection (1); or

(ii) owes an assurance of support debt;”.

Commencement: Day of Royal Assent

Write off, waiver etc.

57. Section 251 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsections:

“(1A) In exercising the power under subsection (1) to waive the right of the Commonwealth to recover the whole or a part of a debt that is not referred to in subparagraph (1) (b) (ii), the Secretary shall act in accordance with directions from time to time in force under subsection (1B).

“(1B) The Minister, by determination in writing:

(a) may give directions relating to the exercise of the Secretary’s power under subsection (1) to waive the right of the Commonwealth to recover debts or parts of debts; and

(b) may revoke or vary those directions.

“(1C) The Minister shall cause a copy of a determination under subsection (1B) setting, revoking or varying directions to be laid before each House of the Parliament within 15 sitting days of that House after the making of the determination.”;

(b) by omitting subsection (4) and substituting the following subsection:

“(4) A reference in subsection (1) to a debt, or to an amount, arising or payable under or as a result of this Act includes a reference to:

(a) a debt or an amount payable to the Commonwealth because of subsection 42 (1) of the *Veterans’ Entitlements Act 1986*; and

(b) an assurance of support debt.”.

Commencement: Day of Royal Assent

Insertion of Schedule 1B

58. The Principal Act is amended by inserting after Schedule 1A the Schedule set out in Schedule 1 to this Act.

Commencement: 1 March 1989

Insertion of Schedule 4

59. The Principal Act is amended by adding at the end the Schedule set out in Schedule 2 to this Act.

Commencement: Day of Royal Assent

Consequential amendments relating to the introduction of sole parent’s pension and widowed person’s allowance

60. The Principal Act is amended as set out in Schedule 3.

Commencement: 1 March 1989

Social Security Legislation Amendment No. 133, 1988

PART III—AMENDMENTS OF OTHER ACTS

Minor and consequential amendments of other Acts

61. The Acts specified in Schedule 4 are amended as set out in that Schedule.

Commencement: Day of Royal Assent

SCHEDULE 1

Section 38

"SCHEDULE 1B

Section 236A

CLASS B WIDOW'S PENSION

Part 1—Preliminary

Interpretation

1. (1) In this Schedule, unless the contrary intention appears:

'class B widow' means a widow who does not have a qualifying child within the meaning of Part V and who:

- (a) is a former class B widow who, immediately before 1 July 1987, was in receipt of a widow's pension;**
- (b) on 1 July 1987, had attained the age of 45 years and:
 - (i) on that day, was in receipt of a supporting parent's benefit or a widow's pension as a class A widow;**
 - (ii) after that day, had started to receive such a benefit or pension; or**
 - (iii) after the commencement of this Schedule, has started to receive a sole parent's pension; or****
- (c) on 1 July 1987, had attained the age of 50 years;**

'dependent child', in relation to a person, includes a child who is being wholly or substantially maintained by the person;

'dependent female' means a woman who for at least 3 years immediately before the death of a man (in this Schedule referred to as the man in respect of whom she was a dependent female), was wholly or mainly maintained by him and, although not legally married to him, lived with him as his wife on a permanent and *bona fide* domestic basis;

'deserted wife' means a wife who has been deserted by her husband without just cause for a period of at least 6 months;

'former class B widow' means a widow to whom paragraph 44 (1) (b) of this Act, as in force immediately before 1 July 1987, applied at that time;

'husband' means a legally married male person;

'widow' includes:

- (a) a dependent female;**
- (b) a deserted wife;**
- (c) a woman whose marriage has been dissolved and who has not remarried; and**
- (d) a woman whose husband has been convicted of an offence and is imprisoned and has been imprisoned for a period of at least 6 months, including any period of imprisonment before and continuous with a period of imprisonment following upon the conviction;**

SCHEDULE 1—continued

but does not include a woman who is living with a man as his wife on a *bona fide* domestic basis although not legally married to him; 'wife' means a legally married female person.

(2) For the purposes of this Schedule, a woman shall be taken to be a deserted wife if:

- (a) she was a party to a purported marriage that is void (whether that marriage took place before or after the commencement of this Schedule);
- (b) the Secretary is of the opinion that when the purported marriage took place, the woman believed that the purported marriage was valid; and
- (c) the man who was a party to the purported marriage has deserted the woman for a period of at least 6 months otherwise than in circumstances in which, if the man and woman had been married, there would have been just cause for the man to desert the woman.

(3) A widow shall be taken to have become a widow:

- (a) in the case of a dependent female—upon the death of the man in respect of whom she was a dependent female;
- (b) in the case of a deserted wife—upon her desertion by her husband; and
- (c) in the case of a woman whose husband has been convicted of an offence and imprisoned—upon the imprisonment of her husband.

Part 2—Qualifications for class B widow's pension

Qualifications for class B widow's pension

2. A person is qualified to receive a class B widow's pension if:

- (a) the person is a class B widow;
- (b) the person satisfies the requirements relating to residence in Australia set out in clause 3, or clause 4 applies to the person; and
- (c) clause 5 does not apply in relation to the person.

Requirements as to Australian residence

3. A person who has made a claim for a class B widow's pension satisfies the requirements relating to residence in Australia if:

- (a) on the day when the person lodged the claim, the person was an Australian resident and was in Australia; and
- (b) at least one of the following conditions is satisfied in relation to the person:

SCHEDULE 1—continued

- (i) if the person was a wife immediately before becoming a widow—she and her husband were Australian residents when she became a widow;
- (ii) if the person is a widow because she is a dependent female—she and the man in respect of whom she was a dependent female were Australian residents when she became a widow;
- (iii) the person had been an Australian resident for a continuous period of at least 5 years immediately before the day when the person lodged the claim;
- (iv) the person has, at any time, been an Australian resident for a continuous period of at least 10 years.

Modification of residence requirements in certain cases

4. (1) This clause applies to a widow who has not resided in Australia at any time since 7 May 1973 if:

- (a) either:
 - (i) if the person was a wife immediately before becoming a widow—she and her husband were residing permanently in Australia when she became a widow; or
 - (ii) if the person is a widow because she is a dependent female—she and the man in respect of whom she was a dependent female were residing permanently in Australia when she became a widow; and
- (b) in the Secretary's opinion, she is a person who is in special need of financial assistance.

(2) This clause applies to a widow who became a widow by reason of the death of a man if:

- (a) immediately before the man's death, she was receiving:
 - (i) a wife's pension under Part IV because the man was a person referred to in subsection 37 (1) or (2); or
 - (ii) a wife's service pension under Part III of the *Veterans' Entitlements Act 1986*; and
- (b) she was not in Australia at the time of the man's death.

Widows required to claim maintenance in some cases

5. This clause applies to a person (in this section called the 'widow') if:

- (a) the widow is entitled to claim maintenance from another person for herself or for a dependent child of the widow;
- (b) the Secretary considers that it is reasonable that the widow should take action to obtain maintenance from the other person; and
- (c) the widow has not taken such action as the Secretary considers reasonable to obtain appropriate maintenance from the other person.

SCHEDULE 1—continued

Part 3—Rate of class B widow's pension

Rate of widow's pension

6. (1) The annual rate of class B widow's pension payable to a person is the rate worked out in accordance with Division 3 of Part V as if:

- (a) the person were qualified to receive a sole parent's pension; and
- (b) each of the person's dependent children (if any) were a dependent child for the purposes of that Part.

(2) Subsection 48 (3) applies to payments of class B widow's pension as if references in that subsection to sole parent's pension were references to class B widow's pension.

Part 4—General

Inmates of benevolent homes

7. (1) If:

- (a) an inmate of a benevolent home, being a class B widow, becomes a pensioner; or
- (b) 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:

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

(2) In this section:

'pensioner contribution' means:

- (a) an amount per annum worked out using the formula:

$$364 \times NHA$$

where *NHA* is the amount in force from time to time for the purposes of subparagraph 47 (2) (b) (iii) of the *National Health Act 1953*; or

- (b) if the amount worked out under paragraph (a) is not a multiple of \$2.60—the next lower amount that is a multiple of \$2.60.

Restrictions on dual pensions

8. (1) A person is not entitled to receive at the same time a pension under this Schedule and:

- (a) a pension under Part IV;
- (b) a widowed person's allowance under Part VI;

SCHEDULE 1—continued

- (c) a pension under the *Seamen's War Pensions and Allowances Act 1940* as a dependant of a deceased Australian mariner;
- (d) a pension under Part II of the *Veterans' Entitlements Act 1986* as a dependant of a deceased veteran; or
- (e) a pension under Part IV of that Act as a dependant of a deceased member of the Forces or of a deceased member of a Peacekeeping Force.

(2) A reference in subsection (1) to a dependant of a deceased person is a reference to a person (not being a child of the deceased person) who is a dependant of the deceased person for the purposes of:

- (a) in the case of a reference in paragraph (1) (b)—the *Seamen's War Pensions and Allowances Act 1940*; or
- (b) in the case of a reference in paragraph (1) (c) or (d)—the *Veterans' Entitlements Act 1986*.”.

SCHEDULE 2

Section 59

“SCHEDULE 4

Section 65

**RECIPROCAL AGREEMENT
ON SOCIAL SECURITY**

between

**THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT
OF CANADA**

The Government of Australia and the Government of Canada,
Wishing to strengthen the existing friendly relations between the two
countries, and

Resolved to co-operate in the field of social security,
Have agreed as follows:

PART I
INTERPRETATION AND SCOPE

ARTICLE 1
Interpretation

1. In this Agreement:

‘benefit’ means, in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

‘Canadian creditable period’ means a period, or the total of two or more periods, of residence or contributions which has been or can be

SCHEDULE 2—continued

used to acquire the right to a Canadian benefit, but does not include any period considered under paragraph 2 of Article 10 as a Canadian creditable period;

‘carer’s pension’ means a carer’s pension payable to a spouse under the legislation of Australia;

‘competent authority’ means, in relation to Australia, the Secretary to the Department of Social Security and, in relation to Canada, the Minister of National Health and Welfare;

‘Government of Canada’ means the Government in its capacity as representative of Her Majesty the Queen in right of Canada and represented by the Minister of National Health and Welfare;

‘legislation’ means, in relation to a Party, the laws specified in Article 2 in relation to that Party;

‘period of residence in Australia’, in relation to a person, means a period defined as such in the social security laws of Australia, but does not include any period deemed pursuant to Article 6 to be a period in which that person was an Australian resident;

‘social security laws’ means:

- (i) in relation to Australia, the Social Security Act 1947 as amended, not including amendments effected by laws made for the purpose of giving effect to an agreement on social security; and
- (ii) in relation to Canada, the laws specified in subparagraph 1 (b) of Article 2;

‘widow’ means, in relation to Australia:

- (i) a de jure widow; or
- (ii) a woman who, for not less than 3 years immediately prior to the death of a man, lived with him on a permanent basis as his de facto spouse and was wholly or mainly maintained by him,

but does not include a woman who is the de facto spouse of a man.

2. In the application by a Party of this Agreement to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security laws of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraphs 2 and 3, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:
 - (a) in relation to Australia, the Social Security Act 1947 to the extent that the Act provides for and applies to:
 - (i) age pensions;
 - (ii) invalid pensions;
 - (iii) wives’ pensions;
 - (iv) carers’ pensions; and

SCHEDULE 2—continued

- (v) pensions payable to widows; and
- (b) in relation to Canada:
 - (i) the Old Age Security Act and the regulations made thereunder; and
 - (ii) the Canada Pension Plan and the regulations made thereunder.
- 2. In relation to Australia, the legislation to which this Agreement applies shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.
- 3. This Agreement shall apply to laws of a Party which extend the existing legislation of that Party to new categories of beneficiaries unless the competent authority of that Party communicates in writing an objection in regard to those laws to the competent authority of the other Party prior to the commencement of those laws.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is residing or has resided in Canada within the meaning of the Old Age Security Act or is making or has made contributions under the Canada Pension Plan

and, where applicable, to any spouse, dependant or survivor of such a person.

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

PART II

PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Canada or a Third State

- 1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:
 - (a) is an Australian resident or residing in Canada or a third State with which Australia has concluded an agreement on social security that includes provision for co-operation in the assessment and determination of claims for benefits; and
 - (b) is in Australia, Canada or that third State,

SCHEDULE 2—continued

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife's pension or carer's pension who has never been an Australian resident.

ARTICLE 6

Totalisation in relation to Australian Benefits

1. Where a person has been an Australian resident for a period that is:
 - (a) less than the period as an Australian resident required to qualify him or her under the legislation of Australia for a benefit; and
 - (b) equal to or greater than the minimum period identified in accordance with paragraph 6 for that person,but has accumulated both a period of residence in Australia and a Canadian creditable period which, when added together, are equal to or greater than the minimum period required for qualification for that benefit by the legislation of Australia, that Canadian creditable period shall be deemed, for the purposes of a claim for that benefit, to be a period in which that person was an Australian resident.
2. In the case of a claim by a person for an invalid pension or pension payable to a widow, paragraph 1 shall apply only to a Canadian creditable period accumulated by that person under the Canada Pension Plan.
3. For the purposes of a claim by a person for a pension payable to a widow, that person shall, subject to Article 9, be deemed to have accumulated a Canadian creditable period for any period for which her spouse accumulated a creditable period under the Canada Pension Plan but any period during which the person and her spouse both accumulated Canadian creditable periods under the Canada Pension Plan shall be taken into account once only.
4. For the purposes of paragraph 1, where a person:
 - (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
 - (b) has accumulated a Canadian creditable period in two or more separate periods that exceed in total the minimum period referred to in subparagraph (a),the total of the Canadian creditable periods shall be deemed to be one continuous period.
5. For the purposes of this Article:
 - (a) where a period of residence in Australia and a Canadian creditable period coincide, the period of coincidence shall be taken into account once only as a period in which that person was an Australian resident; and
 - (b) a Canadian creditable period accumulated under the Old Age Security Act which coincides with a Canadian creditable period accumulated under the Canada Pension Plan shall be taken into account once only.

SCHEDULE 2—continued

6. The minimum period of residence in Australia which a person must have accumulated before paragraph 1 applies shall be as follows:
 - (a) for an Australian benefit other than an invalid pension, the minimum period required shall be one year of which at least 6 months must be continuous; and
 - (b) for an invalid pension, the minimum period required shall be 2 years of which at least 6 months must be continuous.

ARTICLE 7

Australian Pro-Rata Benefits

1. Where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the social security laws of Australia but:
 - (a) disregarding in the computation of his or her income the guaranteed income supplement under the Old Age Security Act and the portion of the spouse's allowance under that Act equivalent to the guaranteed income supplement and other Canadian federal, provincial or territorial payments of a similar character as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Canada; and
 - (b) by assessing as income to that person only a proportion of any other benefit received by that person under the legislation of Canada calculated by multiplying the number of whole months, plus one, accumulated by that person in a period of residence in Australia, but not exceeding 300, by the amount of that benefit and dividing that product by 300.
2. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined according to the legislation of Australia but, subject to paragraph 5, disregarding in the computation of his or her income any Canadian benefit which that person is entitled to receive, and deducting the amount of that Canadian benefit from the rate of Australian benefit which would otherwise be payable to that person.
3. Where the rate of a benefit calculated in accordance with paragraph 2 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
4. For the purposes of paragraph 3, a comparison of the rates of a benefit determined in accordance with paragraphs 1 and 2 shall be made as at:
 - (a) the date of the first pension pay-day occurring after the date on which the claim for the benefit was lodged; and
 - (b) each anniversary of that pension pay-day for so long as the person concerned is entitled to the benefit, using, in that comparison, the

SCHEDULE 2—continued

number of months in the period of residence in Australia accumulated by the person at the date as at which the comparison is made.

5. For the purposes of paragraph 2, where one or other, or both, of a person and his or her spouse are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her spouse shall be apportioned equally between them and disregarded in the computation of their respective incomes, and the amount so apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.
6. An Australian benefit that is payable only by virtue of this Agreement to a person who:
 - (a) was an Australian resident on 8 May 1985; and
 - (b) commences to receive that benefit before 1 January 1996shall be paid, during any absence of that person from Australia that commences before 1 January 1996, at a rate calculated in accordance with paragraphs 2 and 3.
7. As soon as practicable after an exchange of letters in which Canadian federal, provincial or territorial payments are mutually determined for the purposes of subparagraph 1 (a), the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying those Canadian payments.

ARTICLE 8

Wives' Pensions and Carers' Pensions

For the purposes of this Agreement, a person who receives an Australian wife's pension or carer's pension due to the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall be deemed to receive that pension by virtue of this Agreement.

ARTICLE 9

Pensions Payable to Widows

Where, under the legislation of Australia, a widow lodges a claim for a pension payable to a widow, matters which concern her former spouse and affect that claim shall be considered for the purposes of that claim by reference only to her last-deceased spouse who was her husband or was a man in respect of whom she satisfies the conditions specified in subparagraph (ii) of the definition of "widow" in Article 1.

PART III

PROVISIONS RELATING TO CANADIAN BENEFITS

ARTICLE 10

Totalising of Periods for Purposes of the Legislation of Canada

1. Subject to paragraph 3, if a person is not entitled to a benefit on the basis of his or her Canadian creditable periods, eligibility for that benefit

SCHEDULE 2—continued

shall be determined by totalising these periods and those specified in paragraph 2.

2. (a) For the purposes of determining eligibility for a benefit under the Old Age Security Act, a period of residence in Australia shall be considered as a period of residence in Canada.
- (b) For the purposes of determining eligibility for a benefit under the Canada Pension Plan, a calendar year which includes a period of residence in Australia of at least 6 calendar months shall be considered as a year for which contributions have been made under the Canada Pension Plan.
3. For the purposes of this Article, where a Canadian creditable period and a period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

ARTICLE 11

Benefits under the Old Age Security Act

1. (a) If a person is entitled to payment of a pension in Canada under the Old Age Security Act without recourse to the provisions of this Agreement, but has not accumulated sufficient periods of residence in Canada to qualify for payment of the pension abroad under that Act, a partial pension shall be paid to that person outside Canada if the Canadian creditable period accumulated under the Old Age Security Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension abroad.
- (b) The amount of the pension payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension, exclusively on the basis of the periods creditable under that Act.
2. (a) If a person is not entitled to a pension or spouse's allowance under the Old Age Security Act solely on the basis of periods of residence in Canada, a partial pension or a spouse's allowance shall be paid to that person if the Canadian creditable period accumulated under that Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension or a spouse's allowance.
- (b) The amount of the pension or the spouse's allowance payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods creditable under that Act.
3. Notwithstanding any other provision of this Agreement:
 - (a) the competent authority of Canada shall not pay a pension under the Old Age Security Act to a person outside Canada unless his or her Canadian creditable period accumulated under that Act and

SCHEDULE 2—continued

period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension abroad;

- (b) a spouse's allowance shall not be payable by virtue of this Agreement to a person who has not accumulated a Canadian creditable period of at least one year under the Old Age Security Act; and
- (c) a spouse's allowance and a guaranteed income supplement shall be paid outside Canada only to the extent permitted by the Old Age Security Act.

ARTICLE 12

Benefits under the Canada Pension Plan

1. If a person is not entitled to a disability pension, disabled contributor's child's benefit, survivor's pension, orphan's pension or death benefit solely on the basis of the periods creditable under the Canada Pension Plan, but is entitled to that benefit through the totalising of periods as provided in Article 10, the competent authority of Canada shall calculate the amount of the earnings-related portion of such benefit under the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under the Canada Pension Plan.
2. The amount of the flat-rate portion of the benefit payable by virtue of this Agreement shall, in a case referred to in paragraph 1, be determined by multiplying:
 - (a) the amount of the flat-rate portion of the benefit determined under the Canada Pension Plan
by
 - (b) the fraction which represents the ratio of the periods of contributions to the Canada Pension Plan in relation to the minimum qualifying period required under the Canada Pension Plan for entitlement to that benefit,but in no case shall that fraction exceed the value of one.

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 13

Lodgement of Documents

1. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party is lodged with the competent authority of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the competent authority of the first Party.
2. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may

SCHEDULE 2—continued

be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

ARTICLE 14

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
 - (a) a period as an Australian resident and a Canadian creditable period; and
 - (b) any event which is relevant to that eligibility or entitlement shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.
2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.
3. A death benefit under the Canada Pension Plan shall not be paid by virtue of this Agreement in respect of a death which occurred before the date of entry into force of this Agreement.
4. Where:
 - (a) the competent authority of Canada pays a benefit to a person in respect of a past period;
 - (b) for all or part of that period, the competent authority of Australia has paid to that person a benefit under the legislation of Australia; and
 - (c) the amount of the Australian benefit would have been varied had the Canadian benefit been paid during that period, then
 - (d) the amount that would not have been paid by the competent authority of Australia had the Canadian benefit been paid on a periodical basis from the date to which the arrears of benefit referred to in subparagraph (a) were paid shall be a debt due by that person to Australia; and
 - (e) the competent authority of Australia may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit to that person.
5. In paragraph 4, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia.

ARTICLE 15

Payment of Benefits

1. The payment outside Australia of an Australian benefit payable by virtue of this Agreement shall not be restricted by those provisions of the social security laws of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia and lodges a claim

SCHEDULE 2—continued

- for an Australian benefit and leaves Australia within 12 months of the date of that return.
2. A carer's pension as defined in this Agreement, whether payable by virtue of this Agreement or otherwise, shall be paid within Australia and Canada.
 3. A benefit payable by virtue of this Agreement shall be paid without deduction for administrative fees and charges.

ARTICLE 16

Exchange of Information and Mutual Assistance

1. The competent authorities shall:
 - (a) notify each other of laws that amend, supplement or replace the social security laws of their respective Parties promptly after the first-mentioned laws are made;
 - (b) communicate to each other any information necessary for the application of this Agreement or of the respective social security laws of the Parties concerning all matters arising under this Agreement or under those laws;
 - (c) lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or any other entitlement under the respective social security laws as if the matter involved the application of their own laws; and
 - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 17.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities for the reimbursement of certain types of expenses.
3. Any information about a person which is transmitted in accordance with this Agreement to a competent authority shall be protected in the same manner as information obtained under the social security laws of that Party and shall be disclosed only in the manner permitted by the laws of that Party.
4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the competent authority of a Party the obligation:
 - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administrative practice of that or the other Party.

SCHEDULE 2—continued

ARTICLE 17

Administrative Arrangements

The competent authorities of the Parties shall make whatever administrative arrangements are necessary from time to time to implement this Agreement.

ARTICLE 18

Language of Communication

In the application of this Agreement, the competent authority of a Party may communicate directly with the other competent authority in any official language of that Party.

ARTICLE 19

Understandings with a Province of Canada

The relevant authority of Australia and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada provided that those understandings are not inconsistent with the provisions of this Agreement.

ARTICLE 20

Resolution of Difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.
3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.
4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.
5. The arbitrators shall determine their own procedures.
6. The decision of the arbitrators shall be final and binding.

ARTICLE 21

Review of Agreement

Where a Party requests the other to meet to review this Agreement, representatives of the Parties shall meet no later than 6 months after that request was made and, unless the Parties otherwise mutually determine, their meeting shall be held in the territory of the Party to which that request was made.

SCHEDULE 2—continued

PART V
FINAL PROVISIONS

ARTICLE 22

Entry into Force and Termination

1. This Agreement shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.
2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:
 - (a) at the date of termination, are in receipt of benefits; or
 - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in two copies at Canberra this 4th day of July 1988 in the English and French languages, each text being equally authoritative.

BEN HUMPHREYS

DON MAZANKOWSKI

**FOR THE GOVERNMENT
OF AUSTRALIA**

**FOR THE GOVERNMENT
OF CANADA”.**

SCHEDULE 3

Section 60

**CONSEQUENTIAL AMENDMENTS OF THE SOCIAL SECURITY
ACT RELATING TO THE INTRODUCTION OF SOLE PARENT’S
PENSION AND WIDOWED PERSON’S ALLOWANCE**

Subsection 3 (1):

Insert the following definitions:

“ ‘sole parent’s pension’ means a pension under Part V;

‘widowed person’s allowance’ means an allowance under Part VI;”.

Subsection 3 (1) (paragraph (a) of the definition of “prescribed pension”):

Add at the end “or Schedule 1B”.

Subsection 3 (1) (paragraph (b) of the definition of “prescribed pension”):

Omit “VI or”.

SCHEDULE 3—continued

Subsection 3 (1) (paragraph (c) of the definition of “prescribed pension”):

Insert “VI or” after “Part”.

Subsection 3 (1) (definition of “supporting parent’s benefit”):

Omit the definition.

Subsection 3 (1) (definition of “widow’s pension”):

Omit “Part V”, substitute “Schedule 1B”.

Subsection 3 (10):

- (a) Insert “or Schedule 1B” after “XIII” (first occurring).
- (b) Omit “, a benefit under Part VI or XIII or an allowance under Part”, substitute “or Schedule 1B, a benefit under Part XIII or an allowance under Part VI,”.

Paragraph 5 (2) (a):

- (a) Omit “, a benefit under Part VI”, substitute “or Schedule 1B”.
- (b) Insert “VI,” before “XIV”.

Paragraph 5 (2) (b):

Omit “, benefit”.

Subsection 5 (2):

Omit “, benefit” (last occurring).

Paragraph 6 (9) (a):

Omit “, a benefit under Part VI, an allowance under Part IX or XIV”, substitute “or Schedule 1B, an allowance under Part VI, IX or XIV”.

Paragraph 7 (1) (a):

- (a) Omit “, a benefit under Part VI”, substitute “or Schedule 1B”.
- (b) Insert “VI,” before “XIV”.

Section 8:

Omit “or a benefit under Part VI or”, substitute “or Schedule 1B, an allowance under Part VI or a benefit under Part”.

Subsection 10 (1):

Omit “, a benefit under Part VI or”, substitute “or Schedule 1B, an allowance under Part VI, a benefit under Part”.

Paragraph 12 (2) (b):

Omit “or”.

SCHEDULE 3—continued

After paragraph 12 (2) (c):

Insert the following word and paragraph:

“; or (d) Schedule 1B;”.

Subsection 12 (4):

Omit “subsection 44 (1)”, substitute “sections 45 and 56 and clause 3 of Schedule 1B”.

Paragraph 21 (1) (a):

Insert “or Schedule 1B” after “XIV”.

Paragraph 22 (2) (b):

Omit the paragraph, substitute the following paragraph:

“(b) who is in receipt of a pension under Part V because the person is a person to whom paragraph (d) of the definition of ‘single person’ in subsection 43 (1) applies; or”.

Subsection 33 (7):

Omit “a benefit under Part VI”, substitute “a pension under Part V”.

Subsection 33 (20):

Omit “, a supporting parent’s benefit”, substitute “or Part V”.

Subsection 34 (6):

Omit “or widow’s pensions or supporting parent’s benefits”, substitute “sole parents’ or widows’ pensions, or widowed persons’ allowances,”.

Paragraph 35 (1) (a):

Omit “, a benefit under Part VI”, substitute “or Part V”.

Subsection 59 (1) (definition of “pension”):

Omit “or a benefit”, substitute “or Schedule 1B or an allowance”.

Subsection 59 (4):

- (a) Omit “widow’s pension”, substitute “pension under Part V or Schedule 1B or an allowance under Part VI”.
- (b) Omit “that pension”, substitute “that pension or allowance”.

Paragraph 61 (5) (d):

Omit the paragraph, substitute the following paragraph:

“(d) a person:

- (i) who is receiving a pension under Part V or Schedule 1B, or an allowance under Part VI, that the person became qualified to receive because of the death of the person’s former spouse

SCHEDULE 3—continued

at a time when the former spouse was an Australian resident;
and

- (ii) who would, apart from subsection 46 (2), section 57 and subclause 4 (2) of Schedule 1B of this Act, and section 46 of this Act as in force at any time before 1 March 1989, have become so qualified to receive that pension or allowance.”.

Subsection 66 (1) (paragraph (b) of the definition of “deceased pensioner”):

Omit “or a benefit”, substitute “or Schedule 1B or an allowance”.

Subsection 66 (1) (paragraph (a) of the definition of “pensioner”):

Omit “or a benefit”, substitute “or Schedule 1B or an allowance”.

Subsection 66 (1) (paragraphs (b) and (c) of the definition of “pensioner”):

Omit “benefit”, substitute “allowance”.

Paragraphs 68 (2) (a) and (c):

Omit “or a benefit”, substitute “or Schedule 1B or an allowance”.

Subparagraph 73 (a) (i):

Insert “or Schedule 1B” after “XVI”.

Subsection 116 (1):

Omit “or a benefit”, substitute “or Schedule 1B or an allowance”.

Subsection 116A (1) (paragraphs (e) and (f) of the definition of “qualified beneficiary”):

Omit the paragraphs, substitute the following paragraph:
“(e) sole parent’s pension; or”.

Subsection 116A (1) (definition of “class A widow”):

Omit the definition.

Subsection 117 (1):

Omit “, a benefit under Part VI or an allowance under Part”, substitute “or Schedule 1B or an allowance under Part VI or”.

Subsection 121A (1) (paragraph (g) of the definition of “person to whom this section applies”):

Insert “or Schedule 1B” after “XVI”.

Paragraph 129 (1) (a):

Omit “, a benefit under Part VI, an allowance under Part”, substitute “or Schedule 1B, an allowance under Part VI or”.

SCHEDULE 3—continued

Paragraph 141 (2) (a):

Omit “or a benefit under Part VI or XIII”, substitute “or Schedule 1B, an allowance under Part VI or a benefit under Part XIII”.

Subsection 141 (2):

Omit “pension or benefit” (wherever occurring), substitute “pension, benefit or allowance”.

Section 144:

Repeal the section, substitute the following section:

Other pensions etc. not payable to a person in receipt of allowance

“144. A pension or allowance is not payable to a person under Part IV, V or VI or Schedule 1B in respect of any period in respect of which an allowance is payable to the person under this Part.”.

Section 149 (definition of “pension”):

Omit the definition, substitute the following definition:

“ ‘pension’ means an invalid pension, a pension under Part V or Schedule 1B or an allowance under Part VI;”.

Paragraph 158 (1) (a):

Insert “or Schedule 1B” after “or V”.

Paragraph 158 (1) (b):

Omit “VI or”.

Paragraph 158 (1) (c):

Omit “Part IX”, substitute “Part VI, IX”.

Subsection 160 (1) (definition of “pension”):

Omit “or a benefit under Part VI”, substitute “or Schedule 1B”.

Subparagraph 167 (1) (a) (i):

Insert “or Schedule 1B” after “or V”.

Subparagraph 167 (1) (a) (ii):

Omit “a benefit”, substitute “an allowance”.

Subsection 167 (2):

Omit “or benefit” (wherever occurring), substitute “or allowance”.

Paragraph 167 (4) (b):

Omit “or a benefit”, substitute “or Schedule 1B or an allowance”.

SCHEDULE 3—continued

Subsection 167 (4):

Omit “or benefit” (wherever occurring), substitute “or allowance”.

Paragraphs 169 (1) (a) and (2) (a):

Insert “or Schedule 1B” after “section 172”.

Paragraph 169 (3) (a):

Omit “a widow’s pension, a supporting parent’s benefit”, substitute “a pension under Part V or Schedule 1B, an allowance under Part VI”.

Subsection 169 (3):

Omit “or benefit” (wherever occurring), substitute “, allowance or benefit”.

Subsection 237 (1) (paragraph (a) of the definition of “pension”):

Add at the end “or V”.

Subsection 237 (1) (paragraph (b) of the definition of “pension”):

Omit the paragraph.

Subsection 237 (1) (paragraph (c) of the definition of “pension”):

Omit “Part XIV”, substitute “Part VI or XIV”.

Subsection 237 (5):

- (a) Omit “a widow’s pension under Part V, or a supporting parent’s benefit under Part VI”, substitute “a pension under Part V or Schedule 1B, or an allowance under Part VI”.
- (b) Omit “that benefit”, substitute “that allowance”.

Subparagraph 242 (1) (a) (ii):

Insert “or Schedule 1B” after “Part V”.

Subparagraph 242 (1) (a) (iii):

Omit “a benefit”, substitute “an allowance”.

Subsection 245 (2):

Omit “receive that pension or benefit”, substitute the following:
“receive:

- (e) in relation to a time before 1 March 1989—that pension or benefit;
or
- (f) in relation to a time on or after 1 March 1989—a pension under Part V or Schedule 1B or an allowance under Part VI;”.

SCHEDULE 4

Section 61

MINOR AND CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Air Accidents (Commonwealth Government Liability) Act 1963

Paragraph 15 (3) (a):

Omit "section" (first occurring).

First Home Owners Act 1983

Subsection 13 (1):

Omit "in respect of the prescribed period, the person shall, for the purposes of this Act, be treated as being a dependent child of the applicant.", substitute "on a prescribed family allowance pay day, the person shall, for the purposes of this Act, be treated as being a dependent child of the applicant."

Subsection 13 (2) (definitions of "family allowance period" and "prescribed period"):

Omit the definitions, substitute the following definitions:

"'family allowance pay day' has the same meaning as in subsection 79 (1) of the *Social Security Act 1947*;

'prescribed family allowance pay day', in relation to an applicant, means a family allowance pay day that falls within a period commencing on the prescribed date in relation to the applicant and ending 11 months after that date."

Social Security and Veterans' Entitlements Amendment Act (No. 2) 1987

Subsection 3 (5):

Omit "and section 40".

After subsection 3 (5):

Insert the following subsection:

"(5A) Subject to subsection 4 (8), the amendment made by section 40 applies to payments of benefit under Part XIII of the *Social Security Act 1947* that fall due on or after 13 December 1987.

Commencement: Day of Royal Assent".

Paragraph 18 (1) (c):

Insert "(first occurring)" before "and substituting".

Section 59:

Omit ", 135SB", substitute "135SB,".

SCHEDULE 4—continued

The part of Schedule 1 that amends paragraph 47 (1B) (b) of the *Veterans' Entitlements Act 1986*:

- (a) Omit from Column 2 of the Schedule "Part VIII", substitute "VIII".
- (b) Omit from Column 3 of the Schedule "Part XVI", substitute "XVI".

The part of Schedule 1 that amends the definition of "pensioner" in subsection 65 (1) of the *Veterans' Entitlements Act 1986*:

- (a) Omit from Column 2 of the Schedule "subsection 135TJ (1A)", substitute "135TJ (1A)".
- (b) Omit from Column 3 of the Schedule "subsection 167 (2)", substitute "167 (2)".

The part of Schedule 4 that amends subsection 48 (4) of the *Defence (Re-establishment) Act 1965*:

Omit "VIIAA", substitute "VIIA".

The part of Schedule 4 that amends subsection 49C (5) of the *Defence (Re-establishment) Act 1965*:

Omit "VIA", substitute "VIIA".

NOTE

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; Nos. 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; Nos. 24, 52, 95, 127 and 169, 1985; Nos. 5, 28, 33, 106, 130 and 152, 1986; Nos. 77, 88 and 130, 1987; and Nos. 13, 35, 58 and 75, 1988.

[*Minister's second reading speech made in—
House of Representatives on 19 October 1988
Senate on 25 November 1988*]