



# Social Security and Veterans' Affairs Legislation Amendment Act 1988

No. 135 of 1988

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# **Social Security and Veterans' Affairs Legislation Amendment Act 1988**

**No. 135 of 1988**

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## **An Act to amend the law relating to social security and veterans' entitlements, and for related purposes**

*[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 and Veterans' Affairs Legislation Amendment Act 1988*.

*Commencement: Day of Royal Assent*

#### **Commencement**

**2.** 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.

*Commencement: Day of Royal Assent*

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**Application**

3. (1) The amendments made by sections 5, 6, 7 and 8 apply to payments under the *Social Security Act 1947* that fall due on or after 1 December 1988.

*Commencement: 1 December 1988*

(2) The amendments made by sections 9, 10, 11 and 12 apply to payments under the *Social Security Act 1947* that fall due on or after 12 June 1989.

*Commencement: 12 June 1989*

(3) The amendments made by subsections 13 (1), 14 (1), 15 (1), 16 (1) and 17 (1) apply to payments under the *Social Security Act 1947* that fall due on or after 13 June 1989.

*Commencement: 13 June 1989*

(4) The amendment made by subsection 16 (2) applies to payments under the *Social Security Act 1947* that fall due on or after 13 December 1989.

*Commencement: 13 December 1989*

(5) The amendments made by subsections 13 (2), 14 (2), 15 (2), 16 (3) and 17 (2) apply to payments under the *Social Security Act 1947* that fall due on or after 13 June 1990.

*Commencement: 13 June 1990*

(6) The amendments made by sections 22, 23 and 24 apply to payments under the *Veterans' Entitlements Act 1986* that fall due on or after 1 December 1988.

*Commencement: 1 December 1988*

(7) The amendments made by sections 25, 26, 27 and 28 and subsection 29 (1) apply to payments under the *Veterans' Entitlements Act 1986* that fall due on or after 12 June 1989.

*Commencement: 12 June 1989*

(8) The amendment made by subsection 29 (2) applies to payments under the *Veterans' Entitlements Act 1986* that fall due on or after 14 June 1990.

*Commencement: 14 June 1990*

**PART II—AMENDMENTS OF SOCIAL SECURITY ACT 1947**

***Division 1—Principal Act***

**Principal Act**

4. In this Part, "Principal Act" means the *Social Security Act 1947*.

*Commencement: Day of Royal Assent*

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***Division 2—Amendments relating to investment income***

**Insertion of heading**

5. Before section 1 of the Principal Act the following heading is inserted:

***“Division 1—Preliminary”.***

*Commencement: 1 December 1988*

**Interpretation**

6. Section 3 of the Principal Act is amended:

(a) by inserting in the definition of “income” in subsection (1) “and any income that the person is taken to receive because of section 12C or 12D” after “gift or allowance” (first occurring);

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

“(aa) any return actually received by the person from an investment in respect of a period during which the person has, because of section 12C or 12D, been taken to receive income from that investment;”.

*Commencement: 1 December 1988*

**Repeal of section 3A**

7. Section 3A of the Principal Act is repealed.

*Commencement: 1 December 1988*

8. After section 12A of the Principal Act the following Division is inserted in Part I:

***“Division 2—Investment Income***

**Interpretation etc.**

“12B. (1) In this Division, unless the contrary intention appears:

‘accruing return investment’ means an arrangement by a person that consists of or includes an investment of money, being an investment:

(a) that produces:

(i) a fixed rate or quantifiable rate of return, whether or not that rate varies from time to time; or

(ii) a rate of return that may be reasonably approximated; and

(b) the value of which from time to time is unlikely to decrease as a result of market changes;

‘approved deposit fund’ means a fund that is an approved deposit fund for the purposes of Subdivision AA of Division 2 of Part III of the Assessment Act;

‘Assessment Act’ means the *Income Tax Assessment Act 1936*;

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**'deferred annuity'** means an annuity that is a deferred annuity for the purposes of Subdivision AA of Division 2 of Part III of the Assessment Act;

**'determination of entitlement'**, in relation to a person, means a determination:

- (a) whether the person is qualified to receive a pension, benefit or allowance under this Act; or
- (b) of the rate at which a pension, benefit or allowance under this Act is payable to the person;

**'eligible investment'** means an investment that satisfies all of the following conditions:

- (a) money or property invested is paid or transferred by the investor directly or indirectly to a body corporate or into a trust fund;
- (b) the assets that represent money or property invested (in this definition called the 'investment assets') are held otherwise than in the names of investors;
- (c) the investor does not, either alone or jointly with a relative or relatives of the investor, have effective control over the management of the investment assets;
- (d) the investor has a legally enforceable right to share in any distribution of the income or profits derived from the investment assets;

**'friendly society'** means:

- (a) a society registered as a friendly society under a law in force in a State or Territory; or
- (b) a society that had, before 13 December 1987, been approved for the purpose of the definition of 'friendly society' in subsection 115 (1);

and, for the purpose of the definition of 'market-linked investment' in this subsection, includes a society that has been approved for the purpose of the definition of 'friendly society' in subsection 115 (1) on or after 13 December 1987;

**'fund manager'**, in relation to an investment product, means the person or body specified, in relation to that investment product, in a notice under subsection (2);

**'investment product'** means a class of market-linked investments specified in a notice under subsection (2);

**'market-linked investment'** means:

- (a) an investment in:
  - (i) an approved deposit fund;
  - (ii) a deferred annuity;
  - (iii) a public unit trust; or

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- (iv) an insurance bond;
  - (b) an investment with a friendly society; or
  - (c) an eligible investment other than an investment referred to in paragraph (a) or (b);
- not being:
- (d) an accruing return investment; or
  - (e) an investment consisting of the acquisition of real property, stock or shares;

'public unit trust' means a unit trust that:

- (a) except where paragraph (b) applies—was, in relation to the unit trust's last year of income, a public unit trust for the purposes of Division 6B of Part III of the Assessment Act; or
- (b) where the first year of income of the unit trust has not yet finished—has, at some time since the trust was established, satisfied at least one of the paragraphs of subsection 102G (1) of the Assessment Act;

'return', in relation to an investment, means any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment;

'statutory rate of return' means 11% per annum or such lower percentage per annum as is specified in a notice in force under subsection 12E (1).

"(2) The Secretary, by notice in writing published in the *Gazette*:

- (a) may specify a class of market-linked investments that constitute an investment product; and
- (b) shall, in relation to each investment product so identified, specify a person or body for the purposes of the definition of 'fund manager' in subsection (1).

"(3) Where the value or amount at a particular time of a market-linked investment included in an investment product is equal to or less than the value or amount of that market-linked investment 12 months previously, the annual rate of return at that first-mentioned time for market-linked investments included in that investment product shall be taken for the purposes of a determination under this Act to be 0%.

"(4) A reference in this Division to the Secretary refusing, on application under subsection 12F (2), to make a determination under subsection 12F (1) does not include a reference to the Secretary refusing, pursuant to subsection 12F (11), to consider such an application.

#### **Accruing return investments**

"12C. (1) Where a person has made, or makes, whether before, on or after 13 December 1987, an accruing return investment, being an investment to which subsections (2) and (3) do not apply, the person shall, for the



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purposes of this Act, be taken to receive the current annual rate of return on that investment as income of the person from the day on which that investment was made.

“(2) Where a person makes, on or after 1 January 1988, an accruing return investment:

- (a) with a friendly society; or
- (b) of a kind where a return is not available until the end of a period of at least 12 months after that investment was made or until realisation of that investment;

the person shall, for the purposes of this Act, be taken to receive the current annual rate of return on that investment as income of the person from the day on which that investment was made.

“(3) Where a person has made, at any time before 1 January 1988, an accruing return investment:

- (a) with a friendly society; or
- (b) of a kind where a return is not available until the end of a period of at least 12 months after that investment was made or until realisation of that investment;

and the person becomes entitled to receive an amount by way of a return on that investment, the person shall, for the purposes of this Act, be taken to receive one fifty-second of that amount as income of the person during each week in the period of 12 months commencing on the day on which the person becomes entitled to receive that amount.

“(4) For the purposes of this section, the current annual rate of return on an investment of the kind referred to in subparagraph (a) (ii) of the definition of ‘accruing return investment’ in section 12B is a reasonable approximation of that rate of return.

“(5) A reference in subsection (3) to a person becoming entitled to receive an amount includes a reference to the person becoming entitled to receive an amount under an arrangement of the kind referred to in the definition of ‘accruing return investment’ in section 12B to the extent that subsection (1) or (2) does not apply to that entitlement.

**Market-linked investments**

“12D. (1) Where, on or after 9 September 1988, a person makes a market-linked investment, the person shall, for the purposes of this Act, be taken to receive the product rate of return on that investment as income of the person from:

- (a) the day on which that investment was made; or
- (b) the commencement of this section;

whichever is later.

“(2) For the purposes of this Division, the product rate of return on a market-linked investment is:

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- (a) except where paragraph (b) applies—the statutory rate of return for that investment; or
- (b) if a determination by the Secretary under subsection 12F (1) is in force in relation to that investment—the percentage per annum specified in that determination.

**Statutory rate of return for market-linked investments**

“12E. (1) The Minister may from time to time, by notice in writing, determine a rate of return for market-linked investments that is less than 11% but not less than 0% per annum.

“(2) A notice by the Minister under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Secretary may determine rate of return for market-linked investments**

“12F. (1) Where the Secretary is satisfied, either on application made under subsection (2) or otherwise, that the current annual rate of return on market-linked investments included in an investment product is less than the statutory rate of return on those market-linked investments, the Secretary shall determine the current annual rate of return on market-linked investments included in that investment product.

“(2) An application for a determination of the current annual rate of return on market-linked investments included in an investment product may be made in writing by:

- (a) the fund manager in relation to the investment product; or
- (b) a natural person who holds a market-linked investment included in the investment product.

“(3) Where the Secretary:

- (a) is considering an application under subsection (2) in relation to an investment product; or
- (b) otherwise than on application under subsection (2), proposes to make a determination under subsection (1) in relation to an investment product;

the Secretary shall notify the fund manager, in writing, accordingly.

“(4) In making a determination under subsection (1) of a current annual rate of return on market-linked investments included in that investment product, the Secretary shall have regard to all information that is available to the Secretary about the return (if any) on those market-linked investments during the immediately preceding period of 12 months.

“(5) A determination by the Secretary under subsection (1) comes into force, or shall be taken to have come into force:

- (a) except where paragraph (b) applies—on the date of the determination; or

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(b) where the determination is made on application under subsection (2)—on the day when the application was received by the Secretary.

“(6) The Secretary shall cause a determination made under subsection (1) to be notified in the *Gazette*, but a failure to do so does not invalidate the determination.

“(7) The Secretary may revoke a determination under subsection (1) of the current annual rate of return on market-linked investments included in an investment product if and only if the Secretary ceases to be satisfied that the current annual rate of return on those investments is lower than the statutory rate of return on those investments.

“(8) Where the Secretary:

(a) makes or revokes a determination under subsection (1) in relation to an investment product; or

(b) on application under subsection (2), refuses to make a determination under subsection (1) in relation to an investment product;

the Secretary shall give notice in writing accordingly to the fund manager in relation to that investment product.

“(9) A determination by the Secretary under subsection (1) in relation to an investment product remains in force until:

(a) the Minister determines a new rate of return under section 12E that is lower than the rate of return provided for by the Secretary's determination;

(b) a new determination by the Secretary under subsection (1) in relation to that investment product comes into force; or

(c) the determination is revoked by the Secretary under subsection (7);  
whichever happens first.

“(10) Subsection (11) applies in relation to an investment product where:

(a) on application under subsection (2), the Secretary has made or refused to make a determination under subsection (1) in relation to the investment product; or

(b) in any other case, the Secretary has made a determination under subsection (1) in relation to the investment product.

“(11) Where this subsection applies in relation to an investment product, the Secretary is not required to consider any application made in relation to that investment product that is made:

(a) within the period of 3 months after the making of the application referred to in paragraph (10) (a), or of the determination referred to in paragraph (10) (b), as the case requires; or

(b) if, within that period of 3 months, the Minister determines a new rate of return as mentioned in paragraph (9) (a) in relation to that

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investment product—within the period of 3 months after the date of the Minister's determination.

**Special provisions about certain investments made before 9 September 1988**

“12G. (1) Where:

- (a) before 9 September 1988, a person has made a market-linked investment; and
- (b) under an agreement made before 9 September 1988, dividends payable to the person in respect of that investment are not paid to the person directly but are invested in the person's name in market-linked investments included in the same investment product;

any market-linked investment arising from the investment of a dividend pursuant to that agreement on or after 9 September 1988 shall, for the purposes of this Division, be taken to have been made before 9 September 1988.

“(2) Subsections (3) and (4) apply where, at any time after 9 September 1988:

- (a) a person held, or holds, 2 or more market-linked investments included in the same investment product;
- (b) at least one of the investments was made before 9 September 1988 and at least one of the investments was made on or after that day; and
- (c) the person disposed, or disposes, of any of those investments.

“(3) If the amount received in respect of the disposal is or was greater than or equal to:

- (a) the value or amount, at the time of the disposal, of the investment made before 9 September 1988; or
- (b) the sum of the values or amounts, at the time of the disposal, of the investments made before 9 September 1988;

as the case requires, the person shall, for the purposes of this Division, be taken to have disposed of the whole of that investment or those investments.

“(4) If the amount received in respect of the disposal (in this subsection called the ‘disposal amount’) is or was less than:

- (a) the value or amount, at the time of the disposal, of the investment made before 9 September 1988; or
- (b) the sum of the values or amounts, at the time of the disposal, of the investments made before 9 September 1988;

as the case requires, the person shall, for the purposes of this Division, be taken to have disposed of so much of that investment or those investments as is equal to the disposal amount.

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**Conversion of certain investments**

“12H. (1) Where an investment that was not an accruing return investment (in this subsection called the ‘original investment’) is converted into an accruing return investment, whether or not it was able to be so converted because of a provision of the agreement relating to the making of the original investment, then, for the purposes of this Division:

- (a) the accruing return investment shall be taken to have been made on the day the original investment was so converted; and
- (b) the original investment shall be taken to have been realised on that day.

“(2) Where an investment that was not a market-linked investment (in this subsection called the ‘original investment’) is converted into a market-linked investment, whether or not it was able to be so converted because of a provision of the agreement relating to the making of the original investment, then, for the purposes of this Division:

- (a) the market-linked investment shall be taken to have been made on the day the original investment was so converted; and
- (b) the original investment shall be taken to have been realised on that day.

**Determinations of entitlement of persons holding market-linked investments**

“12J. (1) When a determination of entitlement is made in relation to a person who has a market-linked investment that was made on or after 9 September 1988, the Secretary shall:

- (a) make that determination having regard to the current product rate of return for that market-linked investment; and
- (b) re-assess the rate at which pension, benefit or allowance under this Act should have been payable to the person in respect of any period since the immediately preceding determination of the person’s entitlement during which the product rate of return for that market-linked investment was less than the product rate of return that was used for the purposes of that immediately preceding determination of entitlement.

“(2) Where, under paragraph (1) (b), the Secretary re-assesses the rate at which pension, benefit or allowance under this Act should have been payable to a person in respect of a period, there is payable to the person the amount worked out using the formula:

$$A1 - A2$$

where:

- A1** is the amount of pension, benefit or allowance that should have been payable to the person in respect of the period;
- A2** is the amount of that pension, benefit or allowance that was paid to the person in respect of the period.

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**Treatment of costs of investments**

“12K. (1) Where, under another provision of this Division, a person is to be taken to receive a rate of return on an investment as income, the amount that the person is taken to receive shall, during each week in the period of 12 months after the day from which the person is to be taken to receive a rate of return on the investment as income, be reduced by one fifty-second of the total amount of the investment costs.

“(2) Subsection (1) does not apply in respect of investment costs incurred in respect of investments made before 9 September 1988.

“(3) In this section:

‘investment costs’, in relation to an investment made by a person, means such reasonable costs as would be required to be paid by any person making an identical investment as a condition of being permitted to make that investment.

**Certain capital amounts taken to be received over 12 months**

“12L. (1) Where a person becomes entitled, whether before or after the commencement of this section, to receive an amount of income, being an amount of a capital nature but not being:

- (a) income from remunerative work undertaken by the person;
- (b) a return from an accruing return investment; or
- (c) a return from a market-linked investment made on or after 9 September 1988;

the person shall, for the purposes of this Act, be taken to receive one fifty-second of that amount as income of the person during each week in the period of 12 months commencing on the day on which the person becomes entitled to receive that amount.

“(2) A reference in subsection (1) to a person becoming entitled to receive an amount includes a reference to the person becoming entitled to receive an amount under an arrangement of the kind referred to in the definition of ‘accruing return investment’ in section 12B to the extent that subsection 12C (1) or (2) does not apply to that entitlement.

**Operation of Part XIX**

“12M. (1) For the purposes of Part XIX, the fund manager in relation to an investment product shall be taken to be a person affected by a rate of return decision in relation to the investment product.

“(2) Sections 173, 174 and 175 do not apply in relation to a rate of return decision.

“(3) Where an application is made to the Social Security Appeals Tribunal under section 177 for review of a rate of return decision, being an application by a person other than the fund manager in relation to the

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investment product concerned, the National Convener shall give written notice to the fund manager of the making of that application.

“(4) In spite of anything in this Act, a person is not entitled to apply to the Social Security Appeals Tribunal for review of a rate of return decision more than 3 months after the decision came into force.

“(5) A person who applies to the Social Security Appeals Tribunal for review of a rate of return decision when an application has already been made to that Tribunal for review of that decision but before the review has been determined shall be taken to have applied to the National Convener under section 181 to be made a party to the review.

“(6) Section 183 does not apply in relation to a decision by the Social Security Appeals Tribunal where the decision under review was a rate of return decision.

“(7) A decision by the Social Security Appeals Tribunal affirming a rate of review decision comes into operation immediately on the giving of the decision by the Tribunal.

“(8) A decision by the Social Security Appeals Tribunal varying a rate of review decision, or setting aside a rate of review decision and making a new decision, comes into force on such day, and remains in force for such period, as is specified by the Tribunal, but the Tribunal is not empowered to specify a day or a period such that the decision as varied, or the new decision, would be taken to have effect at any time after the rate of return resulting from the decision under review had been replaced by a new rate of return, whether because of a later rate of return decision or otherwise.

“(9) Section 187 does not apply in relation to an application to the Social Security Appeals Tribunal for review of a rate of return decision.

“(10) The Social Security Appeals Tribunal is not empowered to review a rate of return decision except on application that is made within the time limit imposed by subsection (4) and expressed to be an application for review of the rate of return decision.

“(11) A reference in this section to an application having been made to the Social Security Appeals Tribunal does not include a reference to an application that has been withdrawn.

“(12) A decision constituted by a refusal, on application under subsection 12F (2), to make a determination under subsection 12F (1) shall for the purposes of this section be taken to have come into force on the day when the fund manager concerned is notified of that refusal.

“(13) In this section:

‘rate of return decision’, in relation to an investment product, means a decision under this Division constituted by:

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- (a) a refusal, on application under subsection 12F (2), to make a determination under subsection 12F (1) of a rate of return on market-linked investments included in the investment product;
- (b) a determination under subsection 12F (1) of a rate of return on market-linked investments included in the investment product; or
- (c) the revocation under subsection 12F (7) of a determination of a rate of return on market-linked investments included in the investment product.

**Operation of Administrative Appeals Tribunal Act**

“12N. (1) For the purposes of the AAT Act, the fund manager in relation to an investment product shall be taken to be a person affected by an SSAT rate of return decision in relation to the investment product.

“(2) Where an application is made to the Tribunal under section 205 for review of an SSAT rate of return decision, being an application by a person other than the fund manager in relation to the investment product concerned, the Registrar of the Tribunal shall give written notice to the fund manager of the making of the application.

“(3) A person who applies to the Tribunal for review of an SSAT rate of return decision when an application has already been made to the Tribunal for review of that decision but before proceedings for the review of the decision have been determined shall be taken to have applied to the Tribunal under subsection 30 (1A) of the AAT Act to be made a party to the proceeding for the review of the decision.

“(4) The Tribunal is not empowered to review a rate of return decision except on application that is expressed to be an application for review of an SSAT rate of return decision.

“(5) A reference in this section to an application having been made to the Tribunal does not include a reference to an application that has been dismissed under section 42A of the AAT Act.

“(6) In this section:

‘AAT Act’ means the *Administrative Appeals Tribunal Act 1975*;

‘rate of return decision’ has the same meaning as it has in section 12M;

‘SSAT rate of return decision’ means a decision of the Social Security Appeals Tribunal referred to in section 205, being a decision that is, or is made in substitution for, a rate of return decision;

‘Tribunal’ means the Administrative Appeals Tribunal.”.

*Commencement: 1 December 1988*



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**Division 3—Amendments relating to rent assistance and retirement villages**

**Interpretation**

**9.** Section 3 of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “rent” and substituting the following definition:

“rent”, in relation to a person, means amounts payable every 3 months, or more frequently, by the person as a condition of occupancy of premises, or a part of premises, occupied by the person as the person’s principal home, and includes:

- (a) amounts payable by the person for services provided in a retirement village that is the person’s principal home;
- (b) where the person is residing in a nursing home that is the person’s principal home—amounts payable by the person for accommodation in the nursing home;
- (c) amounts payable by the person for lodging in premises that are the person’s principal home;
- (d) amounts payable by the person for the use of a site for:
  - (i) a caravan or other vehicle; or
  - (ii) a structure;occupied by the person as the person’s principal home; or
- (e) amounts payable by the person for the right to moor a vessel that is occupied by the person as the person’s principal home;”;

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

“board”, when used in the expression ‘board and lodging’, means the provision of meals on a regular basis in connection with the provision of lodging;

‘ineligible property owner’ means a person who has a right or interest to which subparagraph 4 (1) (a) (i) or (ii) applies, or would apply if the value of the person’s property for the purposes of this Act were calculated in accordance with section 4, other than a person:

- (a) in relation to whom subsection 4 (2) applies or would apply;
- (b) who is residing in a nursing home, other than a person who is residing in a retirement village;
- (c) who pays amounts for the use of a site for a caravan or other vehicle, or a structure, that is the person’s principal home; or

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- (d) who pays amounts for the right to moor a vessel that is the person's principal home;
- 'retirement village' means residential premises the accommodation in which is primarily intended for persons who are at least 55 years old, being premises consisting of:
- (a) one or more of the following kinds of accommodation:
    - (i) self-care units;
    - (ii) serviced units;
    - (iii) hostel units; and
  - (b) communal facilities for use by the occupants of the units referred to in paragraph (a);
- and includes residential premises that, in the Secretary's opinion, have similar functions to those first-mentioned residential premises;"
- (c) by adding at the end the following subsections:
- "(19) Where:
- (a) a person pays or is liable to pay amounts for board and lodging; and
  - (b) the part of each such amount that is paid or payable in respect of lodging is not ascertainable;
- the amount of rent paid or payable by the person shall, for the purposes of this Act, be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).
- "(20) Where:
- (a) a person who is residing in a nursing home pays or is liable to pay amounts for accommodation and other services in the nursing home; and
  - (b) the part of each such amount that is paid or payable in respect of accommodation is not ascertainable;
- the amount of rent paid or payable by the person shall, for the purposes of this Act, be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).
- "(21) Unless the contrary intention appears, a reference in this Act to a person residing in a nursing home is a reference to a person who is:
- (a) residing in a benevolent home or in premises at which accommodation is provided exclusively or principally for persons who have a mental disability;
  - (b) residing in premises that are:
    - (i) an approved nursing home for the purposes of the *National Health Act 1953* or the *Nursing Homes Assistance Act 1974*;

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- (ii) an approved home for the purposes of the *Aged or Disabled Persons Homes Act 1954*; or
- (iii) an approved hostel for the purposes of the *Aged or Disabled Persons Hostels Act 1972*;
- (c) a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital; or
- (d) residing in premises made available for the accommodation of the person by an approved organisation providing hostel care services or personal care services to the person for the purposes of Part III of the *Aged or Disabled Persons Homes Act 1954*.”.

*Commencement: 12 June 1989*

**Calculation of value of property**

**10.** Section 4 of the Principal Act is amended by adding at the end the following subsection:

“(12) This section has effect subject to section 4B.”.

*Commencement: 12 June 1989*

**11.** After section 4A of the Principal Act the following section is inserted:

**Special provisions relating to residents of retirement villages**

“4B. (1) Where:

- (a) an unmarried person's principal home is in a retirement village; and
- (b) the person's entry contribution was more than the extra allowable amount;

the person shall be taken, for the purposes of this Act, to have a right or interest in his or her principal home to which subparagraph 4 (1) (a) (i) applies.

“(2) Where:

- (a) an unmarried person's principal home is in a retirement village; and
- (b) the person's entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act, whether or not the person actually has any right or interest in relation to the person's principal home and whatever the value of any such right or interest:

- (c) the person shall be taken not to have a right or interest in relation to the person's principal home;
- (d) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and
- (e) paragraph 4 (1) (a) and section 6 do not apply to the property that the person is, because of paragraph (d) of this subsection, taken to have.

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“(3) Where:

- (a) a married person's principal home is in a retirement village;
- (b) the person shares that principal home with his or her spouse; and
- (c) the person's entry contribution was more than the extra allowable amount;

the person shall be taken, for the purposes of this Act, to have a right or interest in his or her principal home to which subparagraph 4 (1) (a) (ii) applies.

“(4) Where:

- (a) a married person's principal home is in a retirement village;
- (b) the person shares that principal home with his or her spouse; and
- (c) the person's entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act, whether or not the person actually has any right or interest in relation to the persons's principal home and whatever the value of any such right or interest:

- (d) the person shall be taken not to have a right or interest in relation to the person's principal home;
- (e) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and
- (f) paragraph 4 (1) (a) and section 6 do not apply to the property that the person is, because of paragraph (e) of this subsection, taken to have.

“(5) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 33 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the persons's spouse is also in a retirement village; and
- (d) the person's entry contribution, and the entry contribution of the person's spouse, were each more than the extra allowable amount concerned;

then, for the purposes of this Act:

- (e) the person shall be taken to have a right or interest in his or her principal home to which subparagraph 4 (1) (a) (ii) applies;
- (f) any right or interest of the person in the principal home of the person's spouse shall be disregarded in calculating the actual value of the person's property for the purposes of this Act; and
- (g) any right or interest of the person's spouse in his or her principal home, or in the person's principal home, shall be disregarded in

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calculating the actual value of the property of the person's spouse for the purposes of this Act.

**“(6) Where:**

- (a) a married person's principal home is in a retirement village;**
- (b) a direction under subsection 33 (2) is in force in respect of the person or the person's spouse;**
- (c) the principal home of the person's spouse is also in a retirement village; and**
- (d) the person's entry contribution, and the entry contribution of the person's spouse, were each equal to or less than the extra allowable amount concerned;**

then, for the purposes of this Act, whether or not the person actually has any right or interest in relation to the person's principal home and whatever the value of any such right or interest;

- (e) the person shall be taken not to have a right or interest in relation to the person's principal home;**
- (f) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and**
- (g) paragraph 4 (1) (a) and section 6 do not apply to the property that the person is, because of paragraph (f) of this subsection, taken to have.**

**“(7) Where:**

- (a) a married person's principal home is in a retirement village;**
- (b) a direction under subsection 33 (2) is in force in respect of the person or the person's spouse;**
- (c) the principal home of the person's spouse is also in a retirement village; and**
- (d) the person's entry contribution was more than the extra allowable amount and the entry contribution of the person's spouse was equal to or less than the extra allowable amount;**

the following provisions apply for the purposes of the application of this Act to the person and to the person's spouse:

- (e) the person shall be taken to have a right or interest in his or her principal home to which subparagraph 4 (1) (a) (ii) applies;**
- (f) for the purposes of this Act, whether or not the person's spouse actually has any right or interest in relation to the spouse's principal home and whatever the value of any such right or interest:
  - (i) both the person, and the person's spouse, shall be taken not to have a right or interest in relation to the spouse's principal home;****

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- (ii) the property of the person's spouse shall be taken to include property the value of which is equal to the amount of the spouse's entry contribution; and
- (iii) paragraph 4 (1) (a) and section 6 do not apply to the property that the person's spouse is, because of subparagraph (ii) of this paragraph, taken to have;
- (g) any right or interest of the person's spouse in the person's principal home shall be disregarded in calculating the actual value of the property of the person's spouse for the purposes of this Act;
- (h) for the purpose of determining under section 8 whether a pension reduction amount is applicable to the person, or the person's spouse, that section shall have effect as if the amount specified in each of paragraphs 8 (1) (c) and (d) were the amount worked out using the formula:

$$\frac{C + D}{2}$$

where:

C is the amount specified in paragraph 8 (1) (c);

D is the amount specified in paragraph 8 (1) (d).

“(8) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 33 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is not in a retirement village;
- (d) the right or interest of the person's spouse in his or her principal home is to be disregarded because of subparagraph 4 (1) (a) (ii); and
- (e) the person's entry contribution was more than the extra allowable amount;

then:

- (f) for the purposes of this Act, the person shall be taken to have a right or interest in his or her principal home to which subparagraph 4 (1) (a) (ii) applies;
- (g) any right or interest of the person in the principal home of the person's spouse referred to in paragraph (d) shall be disregarded in calculating the actual value of the person's property for the purposes of this Act; and
- (h) any right or interest of the person's spouse in the person's principal home shall also be disregarded in calculating the actual value of the property of the person's spouse for the purposes of this Act.

“(9) Where:

- (a) a married person's principal home is in a retirement village;

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- (b) a direction under subsection 33 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is not in a retirement village;
- (d) the right or interest of the person's spouse in his or her principal home is to be disregarded because of subparagraph 4 (1) (a) (ii); and
- (e) the person's entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the person and to the person's spouse:

- (f) for the purposes of this Act, whether or not the person actually has any right or interest in relation to the person's principal home and whatever the value of any such right or interest:
  - (i) both the person, and the person's spouse, shall be taken not to have a right or interest in relation to the person's principal home;
  - (ii) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and
  - (iii) paragraph 4 (1) (a) and section 6 do not apply to the property that the person is, because of subparagraph (ii) of this paragraph, taken to have;
- (g) any right or interest of the person in the principal home of the person's spouse referred to in paragraph (d) shall be disregarded in calculating the actual value of the person's property for the purposes of this Act;
- (h) for the purposes of determining under section 8 whether a pension reduction amount is applicable to the person, or the person's spouse, that section shall have effect as if the amount specified in each of paragraphs 8 (1) (c) and (d) were the amount worked out using the formula:

$$\frac{C + D}{2}$$

where:

**C** is the amount specified in paragraph 8 (1) (c);

**D** is the amount specified in paragraph 8 (1) (d).

“(10) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 33 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is not in a retirement village;

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- (d) the person's spouse does not have a right or interest in his or her principal home that is to be disregarded because of subparagraph 4 (1) (a) (ii); and
- (e) the person's entry contribution was more than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the person and to the person's spouse:

- (f) for the purposes of this Act, the person shall be taken to have a right or interest in his or her principal home to which subparagraph 4 (1) (a) (ii) applies;
- (g) any right or interest of the person's spouse in the person's principal home shall be disregarded in calculating the actual value of the property of the person's spouse for the purposes of this Act;
- (h) for the purpose of determining under section 8 whether a pension reduction amount is applicable to the person, or the person's spouse, that section shall have effect as if the amount specified in each of paragraphs 8 (1) (c) and (d) were the amount worked out using the formula:

$$\frac{C + D}{2}$$

where:

C is the amount specified in paragraph 8 (1) (c);

D is the amount specified in paragraph 8 (1) (d).

“(11) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 33 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is not in a retirement village;
- (d) the person's spouse does not have a right or interest in his or her principal home that is to be disregarded because of subparagraph 4 (1) (a) (ii); and
- (e) the person's entry contribution was equal to or less than the extra allowable amount;

then, whether or not the person or the person's spouse actually has any right or interest in relation to the person's principal home and whatever the value of any such right or interest, the following provisions apply for the purposes of the application of this Act to the person and to the person's spouse:

- (f) both the person, and the person's spouse, shall be taken not to have a right or interest in relation to the person's principal home;
- (g) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and



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- (h) paragraph 4 (1) (a) and section 6 do not apply to the property that the person is, because of paragraph (g) of this subsection, taken to have.

“(12) In this section, a reference to the actual value of a married person's property is a reference to the value of the property that is actually property of the person rather than the person's spouse, that is, the value of the person's property that would be used to determine the value of the person's property, or of the property of the person's spouse, under paragraph 3 (5) (a).

“(13) In this section:

‘entry contribution’, in relation to a person whose principal home is in a retirement village, means:

- (a) in the case of an unmarried person—the amount, or the sum of all the amounts, paid or agreed to be paid to obtain for the person a right to live in the retirement village;
- (b) in the case of a married person who shares his or her principal home with his or her spouse—an amount equal to half of:

- (i) the amount; or
- (ii) the sum of all the amounts;

paid or agreed to be paid to obtain for the person and his or her spouse a right to live in the retirement village; or

- (c) in the case of a married person in respect of whom, or in respect of whose spouse, a direction under subsection 33 (2) is in force—the amount, or the sum of all the amounts, paid or agreed to be paid to obtain for the person a right to live in the retirement village;

other than amounts that are rent within the meaning of this Act;

‘extra allowable amount’ means:

- (a) in relation to a person who became entitled to take up residence in a retirement village before 12 June 1989:
  - (i) where the person is an unmarried person, or a married person in respect of whom, or in respect of whose spouse, a direction under subsection 33 (2) is in force—the amount that is the difference between the amount set out in paragraph 8 (1) (a) as in force immediately before that date and the amount worked out under paragraph 8 (1) (b) as so in force; or
  - (ii) in any other case—the amount that is the difference between the amounts set out in paragraphs 8 (1) (c) and (d) as in force immediately before that date; and
- (b) in relation to a person who became entitled to take up residence in a retirement village on or after 12 June 1989:

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- (i) where the person is an unmarried person, or a married person in respect of whom, or in respect of whose spouse, a direction under subsection 33 (2) is in force—the amount that is the difference between the amount set out in paragraph 8 (1) (a) as in force when the person became so entitled and the amount worked out under paragraph 8 (1) (b) as so in force; or
- (ii) in any other case—the amount that is the difference between the amounts set out in paragraphs 8 (1) (c) and (d) as in force when the person became so entitled.”.

*Commencement: 12 June 1989*

**Pension reduction amounts**

12. Section 8 of the Principal Act is amended by adding at the end the following subsection:

“(2) This section has effect subject to section 4B.”.

*Commencement: 12 June 1989*

**Rent assistance**

13. (1) Section 36 of the Principal Act is amended:

- (a) by inserting in subsection (1) “, other than an ineligible property owner,” after “person” (first occurring);
- (b) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) the person pays, or is liable to pay, rent, other than Government rent, at a rate exceeding \$1,040 per year;”;

- (c) by omitting from paragraph (3) (a) “\$780” and substituting “the amount specified in paragraph (1) (a)”;
- (d) by omitting paragraph (3) (b) and substituting the following paragraph:

“(b) the maximum amount in relation to the person;”;

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

“(5) In this section:

‘maximum amount’, in relation to a person, means:

- (a) if there is at least one relevant child in relation to the person—\$1,040; and
- (b) in any other case—\$780;

‘relevant child’, in relation to a person, means a child in respect of whom:

- (a) the maximum rate of pension applicable to the person, or the person’s spouse, is increased by a sum under subsection 33 (4); or

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- (b) the rate of service pension under Part III of the *Veterans' Entitlements Act 1986* applicable to the person's spouse is increased by a sum under paragraph 47 (3) (a), (b) or (c) of that Act."

*Commencement: 13 June 1989*

(2) Section 36 of the Principal Act is amended by omitting paragraphs (a) and (b) of the definition of "maximum amount" in subsection (5) and substituting the following paragraphs:

- "(a) if there are 3 or more relevant children in relation to the person—\$1,560;
- (b) if there are only one or 2 relevant children in relation to the person—\$1,300; and
- (c) in any other case—\$1,040;"

*Commencement: 13 June 1990*

**Rent assistance**

14. (1) Section 50 of the Principal Act is amended:

- (a) by inserting in subsection (1) " , other than an ineligible property owner," after "person" (first occurring);
- (b) by omitting from paragraph (1) (a) "rent at a rate exceeding \$780" and substituting "rent, other than Government rent, at a rate exceeding \$1,040";
- (c) by omitting paragraph (2) (a) and substituting the following paragraph:
  - "(a) the maximum amount in relation to the person;"
- (d) by omitting paragraph (2) (b) and substituting the following paragraph:
  - "(b) the amount worked out using the formula:

$$\frac{1}{2} \times (\text{ARP} - \text{RT})$$

where:

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

RT is the amount specified in paragraph (1) (a).";

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

"(3) In this section:

'maximum amount', in relation to a person, means:

- (a) if there is at least one dependent child of the person for whom there is, within the meaning of section 49, an applicable amount—\$1,040; or
- (b) in any other case—\$780."

*Commencement: 13 June 1989*

(2) Section 50 of the Principal Act is amended by omitting paragraphs (a) and (b) of the definition of "maximum amount" in subsection (3) and substituting the following paragraphs:

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- “(a) if there are 3 or more dependent children of the person for whom there are, within the meaning of section 49, applicable amounts—\$1,560;
- (b) if there are only one or 2 dependent children of the person for whom there are, within the meaning of section 49, applicable amounts—\$1,300; and
- (c) in any other case—\$1,040.”.

*Commencement: 13 June 1990*

**Rate of allowance**

**15. (1)** Section 74 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (a) “person;” and substituting “person, other than an ineligible property owner; and”;
- (b) by omitting paragraph (2) (b);
- (c) by omitting from paragraph (2) (c) “rent at a rate exceeding \$15” and substituting “rent, other than Government rent, at a rate exceeding \$20”;
- (d) by omitting from subsection (2) “\$15” (second occurring) and substituting “\$20”;
- (e) by omitting from subsection (2) “\$15” (last occurring) and substituting “the amount specified in paragraph (c)”.

*Commencement: 13 June 1989*

**(2)** Section 74 of the Principal Act is amended:

- (a) by omitting from subsection (2) “increased by \$20 per week” and substituting “increased by the maximum amount per week in relation to the person”;
- (b) by adding at the end the following subsection:

“(8) In this section:

‘maximum amount per week’, in relation to a person, means:

- (a) if there are 3 or more relevant children in relation to the person—\$30 per week; and
- (b) if there are only one or 2 relevant children in relation to the person—\$25 per week;

‘relevant child’, in relation to a person, means a child in respect of whom the person is qualified to receive an allowance.”.

*Commencement: 13 June 1990*

**Rent assistance**

**16. (1)** Section 120 of the Principal Act is amended:

- (a) by omitting “\$15” from paragraphs (a) and (b) of the definition of “entitlement period” in subsection (1) and substituting “the threshold amount”;

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- (b) by omitting "or" from paragraph (c) of the definition of "qualified person" in subsection (1);
- (c) by inserting after paragraph (d) of the definition of "qualified person" in subsection (1) the following word and paragraph:
  - "or (e) is in detention.";
- (d) by inserting in subsection (1) the following definitions:
  - "'detention' means detention in a prison, gaol, lock-up or other place of lawful detention;
  - 'relevant child', in relation to a person, means a child in respect of whom the rate of benefit applicable to the person is increased by a sum under subsection 118 (11);
  - 'threshold amount' means \$20.";
- (e) by omitting from paragraph (4) (c) "and" (last occurring);
- (f) by inserting after paragraph (4) (d) the following word and paragraph:
  - "and (e) the person is not an ineligible property owner;";
- (g) by omitting from paragraph (5) (a) "rent paid, or payable, by the person exceeds \$15" and substituting "rent, other than Government rent, paid or payable by the person exceeds the threshold amount";
- (h) by omitting paragraph (6) (b) and substituting the following paragraph:
  - "(b) in relation to whom there is a relevant child;";
- (j) by adding at the end of subsection (6) the following word and paragraph:
  - "and (d) who is not an ineligible property owner.";
- (k) by omitting from paragraph (7) (a) "rent paid or payable by the person exceeds \$15" and substituting "rent, other than Government rent, paid or payable by the person exceeds the threshold amount";
- (m) by omitting from paragraph (7) (b) "\$15" and substituting "\$20".

*Commencement: 13 June 1989*

(2) Section 120 of the Principal Act is amended by omitting from paragraph (5) (b) "\$10" and substituting "\$15".

*Commencement: 13 December 1989*

- (3) Section 120 of the Principal Act is amended:
- (a) by inserting in subsection (1) the following definition:
    - "'maximum amount', in relation to a person, means:
      - (a) if there are 3 or more relevant children in relation to the person—\$30; and
      - (b) if there are only one or 2 relevant children in relation to the person—\$25;";
  - (b) by omitting from paragraph (5) (b) "\$15" and substituting "\$20";

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- (c) by omitting from paragraph (7) (b) "\$20" and substituting "the maximum amount in relation to the person".

*Commencement: 13 June 1990*

**Incentive allowance**

17. (1) Section 143 of the Principal Act is amended:

- (a) by omitting "rate of \$15 per week." and substituting "relevant rate in relation to the person.";

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

"(2) In this section:

'relevant child', in relation to a person to whom sheltered employment allowance has been granted, means a child in respect of whom a sum under subsection 33 (4) is being taken into account in determining the amount of instalments of sheltered employment allowance that are payable to the person;

'relevant rate', in relation to a person to whom sheltered employment allowance has been granted, means:

- (a) if there is at least one relevant child in relation to the person—\$20 per week; and

- (b) in any other case—\$15 per week."

*Commencement: 13 June 1989*

(2) Section 143 of the Principal Act is amended by omitting paragraphs (a) and (b) of the definition of "relevant rate" in subsection (2) and substituting the following paragraphs:

- "(a) if there are 3 or more relevant children in relation to the person—\$30 per week;

- (b) if there are only one or 2 relevant children in relation to the person—\$25 per week; and

- (c) in any other case—\$20 per week."

*Commencement: 13 June 1990*

**Savings in relation to rent assistance in respect of payments for board and lodging**

18. (1) Where, immediately before 12 June 1989, a person was in receipt of rent assistance under or because of the *Social Security Act 1947* in respect of payments for board and lodging, then, subject to this section, from that date, the person shall be taken to be entitled to receive amounts by way of rent assistance under that Act that are not less than the amounts that the person would have received by way of rent assistance (having regard to any reductions in the amounts being paid from time to time by the person for board and lodging but disregarding any increases in those amounts) if none of the prescribed amendments had been made.

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**(2) Where:**

- (a) immediately before 12 June 1989, a person was in receipt of rent assistance under or because of the *Veterans' Entitlements Act 1986* in respect of payments for board and lodging;
- (b) after that date, the person became entitled to be paid a relevant pension, benefit or allowance under the *Social Security Act 1947*; and
- (c) subsection 30 (1) had not ceased to apply to that person until the person became entitled as mentioned in paragraph (b);

then, subject to this section, from the day when the person became entitled as mentioned in paragraph (b), the person shall be taken to be entitled to receive amounts by way of rent assistance under the *Social Security Act 1947* that are not less than the amounts (if any) that the person would have received by way of rent assistance (having regard to any reductions in the amounts being paid from time to time by the person for board and lodging but disregarding any increases in those amounts) if none of the prescribed amendments had been made.

**(3) Subsection (1) or (2) ceases to apply to a person:**

- (a) when the person ceases to be entitled to any relevant pension, benefit or allowance under the *Social Security Act 1947*;
- (b) when the person ceases to be a boarder; or
- (c) when the amount of rent assistance that the person would be entitled to receive because of that subsection is less than or equal to the amount of rent assistance that the person is entitled to receive under the provisions of the *Social Security Act 1947* as in force after 12 June 1989;

and neither subsection (1) nor subsection (2) again applies to a person after it has ceased to apply to the person because of this subsection.

**(4) In this section, references to payments for board and lodging include references to payments for accommodation and other services provided to a person who is residing in a nursing home.**

**(5) In this section:**

“boarder” means a person who ordinarily lives on premises where the person is provided with board and lodging;

“prescribed amendments” means:

- (a) any amendments of section 36 of the *Social Security Act 1947* made on or after 12 June 1989, except the ones made by paragraphs 13 (1) (b) and (c) of this Act;
- (b) any amendments of section 50 of the *Social Security Act 1947* made on or after 12 June 1989, except the ones made by paragraphs 14 (1) (b) and (d) of this Act;
- (c) any amendments of subsection 74 (2) of the *Social Security Act 1947* made on or after 12 June 1989, except the ones made by paragraphs 15 (1) (c) and (e) of this Act; and

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(d) any amendments of section 120 of the *Social Security Act 1947* made on or after 12 June 1989, except the ones made by paragraphs 16 (1) (a), (d), (g) and (k) of this Act;

“relevant pension, benefit or allowance” means a pension, benefit or allowance under the *Social Security Act 1947* that may include, or be increased by, an amount by way of rent assistance;

“rent assistance” means an increase in the amount, maximum amount or rate of a pension, benefit or allowance under the *Social Security Act 1947*, being an increase under or because of any of the following provisions of that Act:

- (a) section 36;
- (b) section 50;
- (c) subsection 74 (2);
- (d) subsections 120 (5) and (7).

*Commencement: 12 June 1989*

**Savings in relation to rent assistance for residents of retirement villages**

**19. (1)** Where, immediately before 3 November 1988, a person was in receipt of rent assistance under or because of the *Social Security Act 1947* in respect of payments for services provided in a retirement village, then, subject to this section, from 12 June 1989 the person shall be taken to be entitled to receive amounts by way of rent assistance under that Act that are not less than the amounts that the person would have received by way of rent assistance if none of the prescribed amendments had been made.

**(2) Where:**

- (a) immediately after 12 June 1989 a person was in receipt of rent assistance because of the operation of subsection 31 (1);
- (b) after 12 June 1989 the person became entitled to be paid a relevant pension, benefit or allowance under the *Social Security Act 1947*; and
- (c) subsection 31 (1) had not ceased to apply to that person until the person became entitled as mentioned in paragraph (b);

then, subject to this section, from the day when the person became entitled as mentioned in paragraph (b), the person shall be taken to be entitled to receive amounts by way of rent assistance under the *Social Security Act 1947* that are not less than the amounts (if any) that the person would have received by way of rent assistance if none of the prescribed amendments had been made.

**(3)** Subsection (1) or (2) ceases to apply to a person whose principal home was in a retirement village immediately before 3 November 1988:

- (a) when the person ceases to be entitled to any relevant pension, benefit or allowance under the *Social Security Act 1947*; or
- (b) when the person's principal home ceases to be in that retirement village;



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and neither subsection (1) nor subsection (2) again applies to a person after it has ceased to apply to the person because of this subsection.

(4) In this section:

“prescribed amendments” means the amendments of the *Social Security Act 1947* made by paragraphs 9 (b) (to the extent that it inserts a definition of “ineligible property owner” in subsection 3 (1) of that Act), 13 (1) (a), 14 (1) (a), 15 (1) (a) and 16 (1) (f) of this Act;

“relevant pension, benefit or allowance” means a pension, benefit or allowance under the *Social Security Act 1947* that may include, or be increased by, an amount by way of rent assistance;

“rent assistance” means an increase in the amount, maximum amount or rate of a pension, benefit or allowance under the *Social Security Act 1947*, being an increase under or because of any of the following provisions of that Act:

- (a) section 36;
- (b) section 50;
- (c) subsection 74 (2);
- (d) subsections 120 (5) and (7).

*Commencement: 12 June 1989*

***Division 4—Insertion of new Schedule 3***

**Insertion of new Schedule 3**

20. The Principal Act is amended by omitting Schedule 3 and substituting the Schedule set out in Schedule 1 to this Act.

*Commencement: 1 March 1989*

**PART III—AMENDMENTS OF VETERANS' ENTITLEMENTS ACT  
1986**

***Division 1—Principal Act***

**Principal Act**

21. In this Part, “Principal Act” means the *Veterans' Entitlements Act 1986*.

*Commencement: Day of Royal Assent*

***Division 2—Amendments relating to investment income***

**Interpretation**

22. Section 35 of the Principal Act is amended:

- (a) by inserting in the definition of “income” in subsection (1) “and any income that the person is taken to receive because of section 37C or 37D” after “gift or allowance” (first occurring);

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(b) by inserting after paragraph (a) of the definition of "income" in subsection (1) the following paragraph:

“(aa) any return actually received by the person from an investment in respect of a period during which the person has, because of section 37C or 37D, been taken to receive income from that investment;”.

*Commencement: 1 December 1988*

**Repeal of section 35A**

23. Section 35A of the Principal Act is repealed.

*Commencement: 1 December 1988*

24. After section 37A of the Principal Act the following Division is inserted:

***“Division 1A—Investment Income***

**Interpretation**

“37B. In this Division, unless the contrary intention appears:

‘accruing return investment’ means an arrangement by a person that consists of or includes an investment of money, being an investment:

(a) that produces:

(i) a fixed rate or quantifiable rate of return, whether or not that rate varies from time to time; or

(ii) a rate of return that may be reasonably approximated; and

(b) the value of which from time to time is unlikely to decrease as a result of market changes;

‘approved deposit fund’ means a fund that is an approved deposit fund for the purposes of Subdivision AA of Division 2 of Part III of the Assessment Act;

‘Assessment Act’ means the *Income Tax Assessment Act 1936*;

‘deferred annuity’ means an annuity that is a deferred annuity for the purposes of Subdivision AA of Division 2 of Part III of the Assessment Act;

‘determination of entitlement’, in relation to a person, means a determination:

(a) whether the person is qualified to receive a pension or allowance under this Part; or

(b) of the rate at which a pension or allowance under this Part is payable to the person;

‘eligible investment’ means an investment that satisfies all of the following conditions:

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- (a) money or property invested is paid or transferred by the investor directly or indirectly to a body corporate or into a trust fund;
- (b) the assets that represent money or property invested (in this definition called the 'investment assets') are held otherwise than in the names of investors;
- (c) the investor does not, either alone or jointly with a relative or relatives of the investor, have effective control over the management of the investment assets;
- (d) the investor has a legally enforceable right to share in any distribution of the income or profits derived from the investment assets;

'friendly society' means:

- (a) a society registered as a friendly society under a law in force in a State or Territory; or
- (b) a society that had, before 13 December 1987, been approved for the purpose of the definition of 'friendly society' in subsection 115 (1) of the *Social Security Act 1947*;

and, for the purpose of the definition of 'market-linked investment' in this subsection, includes a society that has been approved for the purpose of the definition of 'friendly society' in subsection 115 (1) of the *Social Security Act 1947* on or after 13 December 1987;

'investment product' means a class of market-linked investments specified in a notice under subsection 12B (2) of the *Social Security Act 1947*;

'market-linked investment' means:

- (a) an investment in:
  - (i) an approved deposit fund;
  - (ii) a deferred annuity;
  - (iii) a public unit trust; or
  - (iv) an insurance bond;
- (b) an investment with a friendly society; or
- (c) an eligible investment other than an investment referred to in paragraph (a) or (b);

not being:

- (d) an accruing return investment; or
- (e) an investment consisting of the acquisition of real property, stock or shares;

'public unit trust' means a unit trust that:

- (a) except where paragraph (b) applies—was, in relation to the unit trust's last year of income, a public unit trust for the purposes of Division 6B of Part III of the Assessment Act; or

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- (b) where the first year of income of the unit trust has not yet finished—has, at some time since the trust was established, satisfied at least one of the paragraphs of subsection 102G (1) of the Assessment Act;

'return', in relation to an investment, means any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment;

'statutory rate of return' means 11% per annum or such lower percentage per annum as is specified in a notice in force under subsection 12E (1) of the *Social Security Act 1947*.

**Accruing return investments**

"37C. (1) Where a person has made, or makes, whether before, on or after 13 December 1987, an accruing return investment, being an investment to which subsections (2) and (3) do not apply, the person shall, for the purposes of this Act, be taken to receive the current annual rate of return on that investment as income of the person from the day on which that investment was made.

"(2) Where a person makes, on or after 1 January 1988, an accruing return investment:

- (a) with a friendly society; or
- (b) of a kind where a return is not available until the end of a period of at least 12 months after that investment was made or until realisation of that investment;

the person shall, for the purposes of this Act, be taken to receive the current annual rate of return on that investment as income of the person from the day on which that investment was made.

"(3) Where a person has made, at any time before 1 January 1988, an accruing return investment:

- (a) with a friendly society; or
- (b) of a kind where a return is not available until the end of a period of at least 12 months after that investment was made or until realisation of that investment;

and the person becomes entitled to receive an amount by way of a return on that investment, the person shall, for the purposes of this Act, be taken to receive one fifty-second of that amount as income of the person during each week in the period of 12 months commencing on the day on which the person becomes entitled to receive that amount.

"(4) For the purposes of this section, the current annual rate of return on an investment of the kind referred to in subparagraph (a) (ii) of the definition of 'accruing return investment' in section 37B is a reasonable approximation of that rate of return.

"(5) A reference in subsection (3) to a person becoming entitled to receive an amount includes a reference to the person becoming entitled to

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receive an amount under an arrangement of the kind referred to in the definition of 'accruing return investment' in section 37B to the extent that subsection (1) or (2) does not apply to that entitlement.

**Market-linked investments**

"37D. (1) Where, on or after 9 September 1988, a person makes a market-linked investment, the person shall, for the purposes of this Act, be taken to receive the product rate of return on that investment as income of the person from:

- (a) the day on which that investment was made; or
- (b) the commencement of this section;

whichever is later.

"(2) For the purposes of this Division, the product rate of return on a market-linked investment is:

- (a) except where paragraph (b) applies—the statutory rate of return for that investment; or
- (b) if a determination by the Secretary to the Department of Social Security under subsection 12F (1) of the *Social Security Act 1947* is in force in relation to that investment—the percentage per annum specified in that determination.

**Special provisions about certain investments made before 9 September 1988**

"37E. (1) Where:

- (a) before 9 September 1988, a person has made a market-linked investment; and
- (b) under an agreement made before 9 September 1988, dividends payable to the person in respect of that investment are not paid to the person directly but are invested in the person's name in market-linked investments included in the same investment product;

any market-linked investment arising from the investment of a dividend pursuant to that agreement on or after 9 September 1988 shall, for the purposes of this Division, be taken to have been made before 9 September 1988.

"(2) Subsections (3) and (4) apply where, at any time after 9 September 1988:

- (a) a person held, or holds, 2 or more market-linked investments included in the same investment product;
- (b) at least one of the investments was made before 9 September 1988 and at least one of the investments was made on or after that day; and
- (c) the person disposed, or disposes, of any of those investments.

"(3) If the amount received in respect of the disposal is or was greater than or equal to:

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- (a) the value or amount, at the time of the disposal, of the investment made before 9 September 1988; or
- (b) the sum of the values or amounts, at the time of the disposal, of the investments made before 9 September 1988;

as the case requires, the person shall, for the purposes of this Division, be taken to have disposed of the whole of that investment or those investments.

“(4) If the amount received in respect of the disposal (in this subsection called the ‘disposal amount’) is or was less than:

- (a) the value or amount, at the time of the disposal, of the investment made before 9 September 1988; or
- (b) the sum of the values or amounts, at the time of the disposal, of the investments made before 9 September 1988;

as the case requires, the person shall, for the purposes of this Division, be taken to have disposed of so much of that investment or those investments as is equal to the disposal amount.

**Conversion of certain investments**

“37F. (1) Where an investment that was not an accruing return investment (in this subsection called the ‘original investment’) is converted into an accruing return investment, whether or not it was able to be so converted because of a provision of the agreement relating to the making of the original investment, then, for the purposes of this Division:

- (a) the accruing return investment shall be taken to have been made on the day the original investment was so converted; and
- (b) the original investment shall be taken to have been realised on that day.

“(2) Where an investment that was not a market-linked investment (in this subsection called the ‘original investment’) is converted into a market-linked investment, whether or not it was able to be so converted because of a provision of the agreement relating to the making of the original investment, then, for the purposes of this Division:

- (a) the market-linked investment shall be taken to have been made on the day the original investment was so converted; and
- (b) the original investment shall be taken to have been realised on that day.

**Determinations of entitlement of persons holding market-linked investments**

“37G. (1) When a determination of entitlement is made in relation to a person who has a market-linked investment that was made on or after 9 September 1988, the Commission shall:

- (a) make that determination having regard to the current product rate of return for that market-linked investment; and

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- (b) re-assess the rate at which pension or allowance under this Act should have been payable to the person in respect of any period since the immediately preceding determination of the person's entitlement during which the product rate of return for that market-linked investment was less than the product rate of return that was used for the purposes of that immediately preceding determination of entitlement.

“(2) Where, under paragraph (1) (b), the Commission re-assesses the rate at which pension or allowance under this Act should have been payable to a person in respect of a period, there is payable to the person the amount worked out using the formula:

$$A1 - A2$$

where:

- A1** is the amount of pension or allowance that should have been payable to the person in respect of the period;
- A2** is the amount of that pension or allowance that was paid to the person in respect of the period.

**Treatment of costs of investments**

“37H. (1) Where, under another provision of this Division, a person is to be taken to receive a rate of return on an investment as income, the amount that the person is taken to receive shall, during each week in the period of 12 months after the day from which the person is to be taken to receive a rate of return on the investment as income, be reduced by one fifty-second of the total amount of the investment costs.

“(2) Subsection (1) does not apply in respect of investment costs incurred in respect of investments made before 9 September 1988.

“(3) In this section:

- ‘investment costs’, in relation to an investment made by a person, means such reasonable costs as would be required to be paid by any person making an identical investment as a condition of being permitted to make that investment.

**Certain capital amounts taken to be received over 12 months**

“37J. (1) Where a person becomes entitled, whether before or after the commencement of this section, to receive an amount of income, being an amount of a capital nature but not being:

- (a) income from remunerative work undertaken by the person;
- (b) a return from an accruing return investment; or
- (c) a return from a market-linked investment made on or after 9 September 1988;

the person shall, for the purposes of this Part, be taken to receive one fifty-second of that amount as income of the person during each week in the

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period of 12 months commencing on the day on which the person becomes entitled to receive that amount.

“(2) A reference in subsection (1) to a person becoming entitled to receive an amount includes a reference to the person becoming entitled to receive an amount under an arrangement of the kind referred to in the definition of ‘accruing return investment’ in section 37B to the extent that subsection 37C (1) or (2) does not apply to that entitlement.”.

*Commencement: 1 December 1988*

***Division 3—Amendments relating to rent assistance and retirement villages***

**Interpretation**

**25.** Section 35 of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “rent” and substituting the following definition:

“‘rent’, in relation to a person eligible to receive a service pension, a spouse’s service pension or a carer’s service pension, means amounts payable every 3 months, or more frequently, by the person as a condition of occupancy of premises, or a part of premises, occupied by the person as the person’s principal home, and includes:

- (a) amounts payable by the person for services provided in a retirement village that is the person’s principal home;
- (b) where the person is residing in a nursing home that is the person’s principal home—amounts payable by the person for accommodation in the nursing home;
- (c) amounts payable by the person for lodging in premises that are the person’s principal home;
- (d) amounts payable by the person for the use of a site for:
  - (i) a caravan or other vehicle; or
  - (ii) a structure;occupied by the person as the person’s principal home; or
- (e) amounts payable by the person for the right to moor a vessel that is occupied by the person as the person’s principal home;”;

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

“‘board’, when used in the expression ‘board and lodging’, means the provision of meals on a regular basis in connection with the provision of lodging;



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**'ineligible property owner'** means a service pensioner who has a right or interest to which subparagraph 50 (1) (a) (i) or (ii) applies, other than a pensioner:

- (a) in relation to whom subsection 50 (1A) applies;
- (b) who is residing in a nursing home, other than a pensioner who is residing in a retirement village;
- (c) who pays amounts for the use of a site for a caravan or other vehicle, or a structure, that is the pensioner's principal home; or
- (d) who pays amounts for the right to moor a vessel that is the pensioner's principal home;

**'retirement village'** means residential premises the accommodation in which is primarily intended for persons who are at least 55 years old, being premises consisting of:

- (a) one or more of the following kinds of accommodation:
  - (i) self-care units;
  - (ii) serviced units;
  - (iii) hostel units; and
- (b) communal facilities for use by the occupants of the units referred to in paragraph (a);

and includes residential premises that, in the Commission's opinion, have similar functions to those first-mentioned residential premises;”;

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

“(16) Where:

- (a) a person pays or is liable to pay amounts for board and lodging; and
- (b) the part of each such amount that is paid or payable in respect of lodging is not ascertainable;

the amount of rent paid or payable by the person shall, for the purposes of this Part, be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

“(17) Where:

- (a) a person who is residing in a nursing home pays or is liable to pay amounts for accommodation and other services in the nursing home; and
- (b) the part of each such amount that is paid or payable in respect of accommodation is not ascertainable;

the amount of rent paid or payable by the person shall, for the purposes of this Part, be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

“(18) A reference in this Part to a person residing in a nursing home is a reference to a person who is:

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- (a) residing in a benevolent home or in premises at which accommodation is provided exclusively or principally for persons who have a mental disability;
- (b) residing in premises that are:
  - (i) an approved nursing home for the purposes of the *National Health Act 1953* or the *Nursing Homes Assistance Act 1974*;
  - (ii) an approved home for the purposes of the *Aged or Disabled Persons Homes Act 1954*; or
  - (iii) an approved hostel for the purposes of the *Aged or Disabled Persons Hostels Act 1972*;
- (c) a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital; or
- (d) residing in premises made available for the accommodation of the person by an approved organisation providing hostel care services or personal care services to the person for the purposes of Part III of the *Aged or Disabled Persons Homes Act 1954*.”.

*Commencement: 12 June 1989*

**Calculation of value of property**

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

“(12) This section has effect subject to section 50A.”.

*Commencement: 12 June 1989*

**27.** After section 50 of the Principal Act the following section is inserted:

**Special provisions relating to residents of retirement villages**

“50A. (1) Where:

- (a) an unmarried person’s principal home is in a retirement village; and
- (b) the person’s entry contribution was more than the extra allowable amount;

the person shall be taken, for the purposes of this Part, to have a right or interest in his or her principal home to which subparagraph 50 (1) (a) (i) applies.

“(2) Where:

- (a) an unmarried person’s principal home is in a retirement village; and
- (b) the person’s entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Part, whether or not the person actually has any right or interest in relation to the person’s principal home and whatever the value of any such right or interest:

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- (c) the person shall be taken not to have a right or interest in relation to the person's principal home;
- (d) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and
- (e) paragraph 50 (1) (a) and section 52 do not apply to the property that the person is, because of paragraph (d) of this subsection, taken to have.

“(3) Where:

- (a) a married person's principal home is in a retirement village;
- (b) the person shares that principal home with his or her spouse; and
- (c) the person's entry contribution was more than the extra allowable amount;

the person shall be taken, for the purposes of this Part, to have a right or interest in his or her principal home to which subparagraph 50 (1) (a) (ii) applies.

“(4) Where:

- (a) a married person's principal home is in a retirement village;
- (b) the person shares that principal home with his or her spouse; and
- (c) the person's entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Part, whether or not the person actually has any right or interest in relation to the person's principal home and whatever the value of any such right or interest:

- (d) the person shall be taken not to have a right or interest in relation to the person's principal home;
- (e) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and
- (f) paragraph 50 (1) (a) and section 52 do not apply to the property that the person is, because of paragraph (e) of this subsection, taken to have.

“(5) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 47 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is also in a retirement village; and
- (d) the person's entry contribution, and the entry contribution of the person's spouse, were each more than the extra allowable amount concerned;

then, for the purposes of this Part:

- (e) the person shall be taken to have a right or interest in his or her principal home to which subparagraph 50 (1) (a) (ii) applies;
- (f) any right or interest of the person in the principal home of the person's spouse shall be disregarded in calculating the actual value of the person's property for the purposes of this Part; and
- (g) any right or interest of the person's spouse in his or her principal home, or in the person's principal home, shall be disregarded in calculating the actual value of the property of the person's spouse for the purposes of this Part.

“(6) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 47 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is also in a retirement village; and
- (d) the person's entry contribution, and the entry contribution of the person's spouse, were each equal to or less than the extra allowable amount concerned;

then, for the purposes of this Part, whether or not the person actually has any right or interest in relation to the person's principal home and whatever the value of any such right or interest:

- (e) the person shall be taken not to have a right or interest in relation to the person's principal home;
- (f) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and
- (g) paragraph 50 (1) (a) and section 52 do not apply to the property that the person is, because of paragraph (f) of this subsection, taken to have.

“(7) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 47 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is also in a retirement village; and
- (d) the person's entry contribution was more than the extra allowable amount and the entry contribution of the person's spouse was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Part to the person and to the person's spouse:

- (e) the person shall be taken to have a right or interest in his or her principal home to which subparagraph 50 (1) (a) (ii) applies;

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- (f) for the purposes of this Part, whether or not the person's spouse actually has any right or interest in relation to the spouse's principal home and whatever the value of any such right or interest:
  - (i) both the person, and the person's spouse, shall be taken not to have a right or interest in relation to the spouse's principal home;
  - (ii) the property of the person's spouse shall be taken to include property the value of which is equal to the amount of the spouse's entry contribution; and
  - (iii) paragraph 50 (1) (a) and section 52 do not apply to the property that the person's spouse is, because of subparagraph (ii) of this paragraph, taken to have;
- (g) any right or interest of the person's spouse in the person's principal home shall be disregarded in calculating the actual value of the property of the person's spouse for the purposes of this Part;
- (h) for the purpose of determining under section 54 whether a pension reduction amount is applicable to the person, or the person's spouse, that section shall have effect as if the amount specified in each of paragraphs 54 (1) (c) and (d) were the amount worked out using the formula:

$$\frac{C + D}{2}$$

where:

**C** is the amount specified in paragraph 54 (1) (c);

**D** is the amount specified in paragraph 54 (1) (d).

“(8) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 47 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is not in a retirement village;
- (d) the right or interest of the person's spouse in his or her principal home is to be disregarded because of subparagraph 50 (1) (a) (ii); and
- (e) the person's entry contribution was more than the extra allowable amount;

then:

- (f) for the purposes of this Part, the person shall be taken to have a right or interest in his or her principal home to which subparagraph 50 (1) (a) (ii) applies;
- (g) any right or interest of the person in the principal home of the person's spouse referred to in paragraph (d) shall be disregarded in

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calculating the actual value of the person's property for the purposes of this Part; and

- (h) any right or interest of the person's spouse in the person's principal home shall also be disregarded in calculating the actual value of the property of the person's spouse for the purposes of this Part.

“(9) Where:

- (a) a married person's principal home is in a retirement village;  
(b) a direction under subsection 47 (2) is in force in respect of the person or the person's spouse;  
(c) the principal home of the person's spouse is not in a retirement village;  
(d) the right or interest of the person's spouse in his or her principal home is to be disregarded because of subparagraph 50 (1) (a) (ii); and  
(e) the person's entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Part to the person and to the person's spouse:

- (f) for the purposes of this Part, whether or not the person actually has any right or interest in relation to the person's principal home and whatever the value of any such right or interest:
- (i) both the person, and the person's spouse, shall be taken not to have a right or interest in relation to the person's principal home;
- (ii) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution; and
- (iii) paragraph 50 (1) (a) and section 52 do not apply to the property that the person is, because of subparagraph (ii) of this paragraph, taken to have;
- (g) any right or interest of the person in the principal home of the person's spouse referred to in paragraph (d) shall be disregarded in calculating the actual value of the person's property for the purposes of this Part;
- (h) for the purpose of determining under section 54 whether a pension reduction amount is applicable to the person, or the person's spouse, that section shall have effect as if the amount specified in each of paragraphs 54 (1) (c) and (d) were the amount worked out using the formula:

$$\frac{C + D}{2}$$

where:

- C is the amount specified in paragraph 54 (1) (c);  
D is the amount specified in paragraph 54 (1) (d).

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“(10) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 47 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is not in a retirement village;
- (d) the person's spouse does not have a right or interest in his or her principal home that is to be disregarded because of subparagraph 50 (1) (a) (ii); and
- (e) the person's entry contribution was more than the extra allowable amount;

the following provisions apply for the purposes of the application of this Part to the person and to the person's spouse:

- (f) for the purposes of this Part, the person shall be taken to have a right or interest in his or her principal home to which subparagraph 50 (1) (a) (ii) applies;
- (g) any right or interest of the person's spouse in the person's principal home shall be disregarded in calculating the actual value of the property of the person's spouse for the purposes of this Part;
- (h) for the purpose of determining under section 54 whether a pension reduction amount is applicable to the person, or the person's spouse, that section shall have effect as if the amount specified in each of paragraphs 54 (1) (c) and (d) were the amount worked out using the formula:

$$\frac{C + D}{2}$$

where:

- C is the amount specified in paragraph 54 (1) (c);
- D is the amount specified in paragraph 54 (1) (d).

“(11) Where:

- (a) a married person's principal home is in a retirement village;
- (b) a direction under subsection 47 (2) is in force in respect of the person or the person's spouse;
- (c) the principal home of the person's spouse is not in a retirement village;
- (d) the person's spouse does not have a right or interest in his or her principal home that is to be disregarded because of subparagraph 50 (1) (a) (ii); and
- (e) the person's entry contribution was equal to or less than the extra allowable amount;

then, whether or not the person or the person's spouse actually has any right or interest in relation to the person's principal home and whatever the value of any such right or interest, the following provisions apply for the

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purposes of the application of this Part to the person and to the person's spouse:

- (f) both the person, and the person's spouse, shall be taken not to have a right or interest in relation to the person's principal home;
- (g) the person's property shall be taken to include property the value of which is equal to the amount of the person's entry contribution;
- (h) paragraph 50 (1) (a) and section 52 do not apply to the property that the person is, because of paragraph (g) of this subsection, taken to have.

“(12) In this section, a reference to the actual value of a married person's property is a reference to the value of the property that is actually property of the person rather than the person's spouse, that is, the value of the person's property that would be used to determine the value of the person's property, or of the property of the person's spouse, under paragraph 35 (12) (a).

“(13) In this section:

‘entry contribution’, in relation to a person whose principal home is in a retirement village, means:

- (a) in the case of an unmarried person—the amount, or the sum of all the amounts, paid or agreed to be paid to obtain for the person a right to live in the retirement village;
- (b) in the case of a married person who shares his or her principal home with his or her spouse—an amount equal to half of:
  - (i) the amount; or
  - (ii) the sum of all the amounts;

paid or agreed to be paid to obtain for the person and his or her spouse a right to live in the retirement village; or

- (c) in the case of a married person in respect of whom, or in respect of whose spouse, a direction under subsection 47 (2) is in force—the amount, or the sum of all the amounts, paid or agreed to be paid to obtain for the person a right to live in the retirement village;

other than amounts that are rent within the meaning of this Part;

‘extra allowable amount’ means:

- (a) in relation to a person who became entitled to take up residence in a retirement village before 12 June 1989:
  - (i) where a person is an unmarried person, or a married person in respect of whom, or in respect of whose spouse, a direction under subsection 47 (2) is in force—the amount that is the difference between the amount set out in paragraph 54 (1) (a) as in force immediately



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- before that date and the amount worked out under paragraph 54 (1) (b) as so in force; or
- (ii) in any other case—the amount that is the difference between the amounts set out in paragraphs 54 (1) (c) and (d) as in force immediately before that date; and
- (b) in relation to a person who became entitled to take up residence in a retirement village on or after 12 June 1989:
- (i) where the person is an unmarried person, or a married person in respect of whom, or in respect of whose spouse, a direction under subsection 47 (2) is in force—the amount that is the difference between the amount set out in paragraph 54 (1) (a) as in force when the person became so entitled and the amount worked out under paragraph 54 (1) (b) as so in force; or
  - (ii) in any other case—the amount that is the difference between the amounts set out in paragraphs 54 (1) (c) and (d) as in force when the person became so entitled.”.

*Commencement: 12 June 1989*

**Pension reduction amounts**

**28.** Section 54 of the Principal Act is amended by adding at the end the following subsection:

“(2) This section has effect subject to section 50A.”.

*Commencement: 12 June 1989*

**Rent assistance**

**29.** (1) Section 55 of the Principal Act is amended:

- (a) by inserting in subsection (1) “, other than an ineligible property owner,” after “service pensioner”;
- (b) by omitting paragraph (1) (a) and substituting the following paragraph:
  - “(a) the pensioner pays, or is liable to pay, rent, other than Government rent, at a rate exceeding \$1,040 per year;”;
- (c) by omitting from subparagraph (3) (a) (i) “\$780” and substituting “the amount specified in paragraph (1) (a)”;
- (d) by omitting subparagraph (3) (a) (ii) and substituting the following subparagraph:
  - “(ii) the maximum amount in relation to the service pensioner;”;
- (e) by adding at the end the following subsection:
  - “(11) In this section:
    - ‘maximum amount’, in relation to a service pensioner, means:
      - (a) if there is at least one relevant child in relation to the service pensioner—\$1,040; and

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- (b) in any other case—\$780;
- 'relevant child', in relation to a service pensioner, means a child in respect of whom:
- (a) the rate of the service pension of the service pensioner or of the service pensioner's spouse is increased by a sum under paragraph 47 (3) (a), (b) or (c); or
  - (b) the rate, or maximum rate, of pension, benefit or allowance under the *Social Security Act 1947* applicable to the person's spouse is increased by a sum under or because of subsection 33 (4), or subsection 118 (11), of that Act."

*Commencement: 12 June 1989*

(2) Section 55 of the Principal Act is amended by omitting paragraphs (a) and (b) of the definition of "maximum amount" in subsection (11) and substituting the following paragraphs:

- "(a) if there are 3 or more relevant children in relation to the service pensioner—\$1,560;
- (b) if there are only one or 2 relevant children in relation to the service pensioner—\$1,300; and
- (c) in any other case—\$1,040;"

*Commencement: 14 June 1990*

**Savings in relation to rent assistance in respect of payments for board and lodging**

30. (1) Where, immediately before 12 June 1989, a person was in receipt of rent assistance under or because of the *Veterans' Entitlements Act 1986* in respect of payments for board and lodging, then, subject to this section, from that date, the person shall be taken to be entitled to receive amounts by way of rent assistance under that Act that are not less than the amounts that the person would have received by way of rent assistance (having regard to any reductions in the amounts being paid from time to time by the person for board and lodging but disregarding any increases in those amounts) if section 55 of that Act had not been amended on or after 12 June 1989 except by paragraphs 29 (1) (b) and (c) of this Act.

(2) Where:

- (a) immediately before 12 June 1989, a person was in receipt of rent assistance under or because of the *Social Security Act 1947* in respect of payments for board and lodging;
- (b) after that date, the person became entitled to be paid a pension under Part III of the *Veterans' Entitlements Act 1986*; and
- (c) subsection 18 (1) of this Act had not ceased to apply to that person until the person became entitled as mentioned in paragraph (b);

then, subject to this section, from the day when the person became entitled as mentioned in paragraph (b), the person shall be taken to be entitled to

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receive amounts by way of rent assistance under the *Veterans' Entitlements Act 1986* that are not less than the amounts that the person would have received by way of rent assistance (having regard to any reductions in the amounts being paid from time to time by the person for board and lodging but disregarding any increases in those amounts) if section 55 of that Act had not been amended on or after 12 June 1989 except by paragraphs 29 (1) (b) and (c) of this Act.

(3) Subsection (1) or (2) ceases to apply to a person:

- (a) when the person ceases to be entitled to be paid any pension under Part III of the *Veterans' Entitlements Act 1986*;
- (b) when the person ceases to be a boarder; or
- (c) when the amount of rent assistance that the person would be entitled to receive because of that subsection is less than or equal to the amount of rent assistance that the person is entitled to receive under the provisions of the *Veterans' Entitlements Act 1986* as in force after 12 June 1989;

and neither subsection (1) nor subsection (2) again applies to a person after it has ceased to apply to the person because of this subsection.

(4) In this section, references to payments for board and lodging include references to payments for accommodation and other services provided to a person who is residing in a nursing home.

(5) In this section:

“boarder” means a person who ordinarily lives on premises where the person is provided with board and lodging.

*Commencement: 12 June 1989*

**Savings in relation to rent assistance for residents of retirement villages**

31. (1) Where, immediately before 3 November 1988, a person was in receipt of rent assistance under or because of the *Veterans' Entitlements Act 1986* in respect of payments for services provided in a retirement village, then, subject to this section, from 12 June 1989, the person shall be taken to be entitled to receive amounts by way of rent assistance under that Act that are not less than the amounts that the person would have received by way of rent assistance if the amendments made by paragraphs 25 (b) (to the extent that it inserts a definition of “ineligible property owner” in subsection 35 (1) of that Act) and 29 (1) (a) of this Act had not been made.

(2) Where:

- (a) immediately after 12 June 1989, a person was in receipt of rent assistance because of the operation of subsection 19 (1) of this Act;
- (b) after 12 June 1989, the person became entitled to be paid a pension under Part III of the *Veterans' Entitlements Act 1986*; and

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(c) subsection 19 (1) of this Act had not ceased to apply to that person until the person became entitled as mentioned in paragraph (b); then, subject to this section, from the day when the person became entitled as mentioned in paragraph (b), the person shall be taken to be entitled to receive amounts by way of rent assistance under the *Veterans' Entitlements Act 1986* that are not less than the amounts that the person would have received by way of rent assistance if the amendments made by paragraphs 25 (b) (to the extent that it inserts a definition of "ineligible property owner" in subsection 35 (1) of that Act) and 29 (1) (a) of this Act had not been made.

(3) Subsection (1) or (2) ceases to apply to a person whose principal home was in a retirement village immediately before 3 November 1988:

- (a) when the person ceases to be entitled to be paid any pension under Part III of the *Veterans' Entitlements Act 1986*; or
- (b) when the person's principal home ceases to be in that retirement village;

and neither subsection (1) nor subsection (2) again applies to a person after it has ceased to apply to the person because of this subsection.

*Commencement: 12 June 1989*

**PART IV—AMENDMENTS OF COMMONWEALTH EMPLOYEES'  
REHABILITATION AND COMPENSATION ACT 1988**

**Principal Act**

32. In this Part, "Principal Act" means the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*<sup>3</sup>.

*Commencement: Day of Royal Assent*

**Employees**

33. Section 5 of the Principal Act is amended by omitting from paragraph (10) (a) "*Entitlement*" and substituting "*Entitlements*".

*Commencement: Day of Royal Assent*

**Injury arising out of or in the course of employment**

34. Section 6 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

"(3) Subsection (1) does not apply where an employee sustains an injury:

- (a) while at a place referred to in that subsection; or
- (b) during an ordinary recess in his or her employment;

if the employee sustained the injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury."

*Commencement: 1 December 1988*

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**Compensation for injuries resulting in incapacity**

**35.** Section 19 of the Principal Act is amended:

- (a) by omitting from paragraphs (3) (b), (c), (d), (e) and (f) "the amount of earnings payable to the employee for that employment" and substituting "the amount that he or she was able to earn during that week in suitable employment";
- (b) by inserting after subsection (3) the following subsection:
  - "(3A) If, as a result of the incapacity:
    - (a) the amount per week payable to the employee in respect of his or her continued employment is reduced; and
    - (b) a pension under a superannuation scheme is payable to the employee;

subsection (3) applies in relation to the employee in relation to a week during which the employee is incapacitated as if the references in the subsection to the amount he or she was able to earn during the week in suitable employment were instead references to the sum of that amount and any amount of the pension referred to in paragraph (b) that is payable to the employee in respect of that week."

*Commencement: 1 December 1988*

**PART V—AMENDMENTS OF OTHER ACTS**

**Repeal of savings provisions**

**36.** The Acts specified in Schedule 2 are amended as set out in that Schedule.

*Commencement: 12 June 1989*

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**SCHEDULE 1**

Section 20

**"SCHEDULE 3**

Section 65

**AGREEMENT**

between

**THE GOVERNMENT OF AUSTRALIA**

and the

**GOVERNMENT OF NEW ZEALAND**

providing for reciprocity in matters  
relating to social security

The Government of Australia and  
The Government of New Zealand,

**WISHING** to strengthen the existing friendly relations between the two countries, and

**DESIRING** to co-ordinate the operation of their respective social security systems and to enhance the equitable access by people covered by this Agreement to social security benefits provided for under the laws of both countries, and

**WISHING** to modify the Agreement providing for reciprocity in matters relating to social security which they entered into on the Fifth day of October 1986 by means of a consolidated document,

**HAVE** agreed as follows:

**PART I—INTERPRETATION AND SCOPE**

**Article 1**

**Interpretation**

1. In this Agreement, unless the context otherwise requires:

- (a) 'Australian benefit' means a benefit referred to in Article 2 in relation to Australia;
- (b) 'benefit' means Australian benefit or New Zealand benefit;
- (c) 'competent authority' means, in the case of Australia, the Secretary to the Department of Social Security or an authorised representative of the Secretary and, in the case of New Zealand, the Director-General of Social Welfare or an authorised representative of the Director-General or, if either no longer exists, such other officer or body as the responsible Minister for the Party concerned notifies to the responsible Minister for the other Party;
- (d) 'New Zealand benefit' means a benefit referred to in Article 2 in relation to New Zealand; and

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**SCHEDULE 1—continued**

- (e) 'social security laws' means in relation to a Party, the laws specified in Article 2 in relation to that Party.
2. This Agreement applies:
- (a) in relation to Australia, to its external territories in the same manner as the social security laws of Australia apply to those territories; and
  - (b) in relation to New Zealand, to New Zealand only and not to the Cook Islands, Niue or Tokelau,
- and references to 'Australia', 'New Zealand' or 'territory' in relation to either of them shall be read accordingly.
3. In the application by a Party of this Agreement in relation 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 meanings, by whichever of those laws is the more applicable to the circumstances of that person.

**Article 2**

**Legislative Scope**

1. The legislation within the scope of this Agreement is:
- (a) in relation to Australia: the Social Security Act 1947 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for, apply to or affect the following benefits:
    - (i) age pensions;
    - (ii) invalid pensions;
    - (iii) wives' pensions;
    - (iv) carers' pensions;
    - (v) widows' pensions;
    - (vi) supporting parents' benefits;
    - (vii) unemployment benefits;
    - (viii) sickness benefits; and
    - (ix) family allowances; and
  - (b) in relation to New Zealand: the Social Security Act 1964 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for, apply to or affect the following benefits:
    - (i) national superannuation;
    - (ii) invalids' benefits;
    - (iii) widows' benefits;

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**SCHEDULE 1—continued**

- (iv) domestic purposes benefits;
- (v) unemployment benefits;
- (vi) sickness benefits;
- (vii) orphans' benefits; and
- (viii) family benefits.

2. Notwithstanding the provisions of paragraph 1, the legislation within the scope of this Agreement 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 bilateral agreement on social security entered into by either Party.

3. The competent authorities of the Parties shall notify each other of legislation that amends, supplements or replaces the legislation within the scope of this Agreement in relation to their respective Parties, promptly after the first-mentioned legislation is enacted.

**Article 3**

**Equality of Treatment**

A Party shall treat all persons affected by this Agreement equally in regard to rights and obligations that arise by virtue of this Agreement.

**PART II—RESIDENCE**

**Article 4**

**Entitlement to Benefits During Residence or Presence in a Country**

1. For the purposes of this Agreement and of the Social Security laws of Australia, where a person who is ordinarily resident in New Zealand has travelled directly from New Zealand to Australia and:

- (a) has been in Australia for a continuous period of at least 26 weeks immediately prior to lodging a claim for an Australian benefit; or
- (b) has a bona fide intention to remain in Australia for more than 26 weeks,

he or she shall be deemed to be an Australian resident.

2. For the purposes of this Agreement and of the Social Security laws of New Zealand, where an Australian resident has travelled directly from Australia to New Zealand and:

- (a) has been in New Zealand for a continuous period of at least 26 weeks immediately prior to lodging a claim for a New Zealand benefit; or
- (b) has a bona fide intention to remain in New Zealand for more than 26 weeks,

he or she shall be deemed to be ordinarily resident in New Zealand.



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**SCHEDULE 1—continued**

**Article 5**

**Recognition of Periods of Residence in New Zealand and Periods as an Australian Resident**

1. Where a person is an Australian resident and is claiming an Australian benefit each period in which that person was resident in New Zealand shall be deemed, only for the purposes of meeting any minimum qualifying periods for that claim, to be a period as an Australian resident.
2. Where a person is residing in New Zealand and is claiming a New Zealand benefit each period in which that person was an Australian resident or, as appropriate, in which a related person was an Australian resident shall be deemed, only for the purposes of meeting any minimum qualifying periods for that claim, to be a period of residence in New Zealand.
3. In paragraphs 1 and 2 'benefit' does not include unemployment benefit.
4. In paragraph 2 'related person' means:
  - (a) the spouse of the claimant;
  - (b) the last deceased spouse of the claimant;
  - (c) a child in respect of whom the benefit referred to in paragraph 2 is claimed; or
  - (d) the last surviving parent, or the deceased parent formerly responsible for the care and control, of a child,as the circumstances require.
5. Subject to paragraph 6, the question as to whether a person is or, at any past time, was an Australian resident or residing in New Zealand for the purposes of this Agreement shall be determined by reference to the domestic laws of the relevant Party.
6. Where, for a period, a person is both an Australian resident and a resident of New Zealand, that period shall be counted:
  - (a) in relation to a claim for an Australian benefit, only as a period as an Australian resident; and
  - (b) in relation to a claim for a New Zealand benefit, only as a period of residence in New Zealand.
7. In relation to a claim by a person under this Agreement for national superannuation any periods in which that person was an Australian resident and was present in Australia shall, for the purposes of that claim, be deemed to be periods in which that person was resident and present in New Zealand.

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**SCHEDULE 1—continued**

**PART III—PROVISIONS RELATING TO BENEFITS**

**Article 6**

**Payment of Supplementary and Additional Amounts**

Where a benefit is payable by a Party by virtue of this Agreement to or in respect of a person, there shall also be payable any supplement or additional amount that is payable, in addition to that benefit, to or in respect of a person who qualifies for that supplement or additional amount under the social security laws of that Party.

**Article 7**

**Entitlement to Payment by New Zealand of National Superannuation**

A person shall not be entitled by virtue of this Agreement to the payment by New Zealand of national superannuation unless that person is of an age at which an age pension may be payable to the person under the social security laws of Australia.

**Article 8**

**New Zealand Widows', Domestic Purposes and Orphans' Benefits**

Where a widow's benefit, a domestic purposes benefit or an orphan's benefit would be payable by New Zealand but for the fact that a child to whom that benefit would relate was born in Australia, that child shall, for the purposes of a claim for that benefit, be deemed to have been born in New Zealand.

**Article 9**

**Unemployment Benefit**

1. This Article applies to any person who is in the territory of a Party and whose right to remain in that territory is dependent on that person being a citizen of the other Party.
2. Subject to paragraph 4, a person to whom this Article applies shall not be qualified to receive unemployment benefit from a Party unless the person:
  - (a) has been continuously present in the territory of that Party for not less than 6 months since the date of his or her most recent arrival in that territory;
  - (b) satisfies the competent authority of that Party, by reference to the person's circumstances, or his or her work history in that territory, that the person has permanently settled in that territory; and
  - (c) meets those criteria which are specified for that benefit by the social security laws of that Party.
3. For the purposes of subparagraph 2 (b):
  - (a) a person shall be deemed to satisfy the requirements in relation to work history in the territory of a Party if, since the date referred to

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**SCHEDULE 1—continued**

in subparagraph 2 (a), the person has undertaken paid work for 8 weeks of at least 30 hours per week; and

- (b) consideration of a person's circumstances shall include consideration of:
- (i) the person's family arrangements;
  - (ii) the housing or accommodation arrangements of the person and, if applicable, of the spouse and children of the person, whether in the territory of the Party concerned, of the other Party or elsewhere, including actions such as the purchase or lease of a home in the first-mentioned territory and the disposal of a former home in the other territory or elsewhere; and
  - (iii) the arrangements made by the person in regard to any bank or comparable accounts, the transfer, disposal or location of any property, and taxation clearances.

4. This Article shall not apply to a person who has been:

- (a) in relation to Australia, an Australian resident; or
- (b) in relation to New Zealand, resident in New Zealand,

for the period of 12 months immediately preceding the date on which the person lodges a claim for unemployment benefit in, respectively, Australia or New Zealand.

5. For the purposes of paragraph 4, a period as an Australian resident or of residence in New Zealand in relation to a person shall include any period or periods of temporary absence by that person that do not exceed in the aggregate 2 calendar months, and that do not break the continuity of that period as an Australian resident or of residence of New Zealand.

**Article 10**

**Supporting Parents' Benefits and Domestic Purposes Benefits**

1. This Article applies to any person who is in the territory of a Party and whose right to remain in that territory is dependent on that person being a citizen of the other Party.

2. Subject to paragraph 3, a person to whom this Article applies shall not be granted a supporting parents' benefit or a domestic purposes benefit by a Party unless, in addition to meeting the requirements for that benefit of the social security laws of that Party, the person has been continuously present in the territory of that Party for not less than 6 months since the date of his or her most recent arrival in that territory.

3. This Article shall not apply to a person who has been:

- (a) in relation to Australia, an Australian resident; or
- (b) in relation to New Zealand, resident in New Zealand,

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for the period of 12 months immediately preceding the date on which the person lodges a claim, in Australia, for supporting parents' benefit or, in New Zealand, for domestic purposes benefit.

4. For the purposes of paragraph 3, a period as an Australian resident or of residence in New Zealand in relation to a person:

- (a) shall include any period or periods of temporary absence by that person that do not exceed in the aggregate 2 calendar months, and that do not break the continuity of that period as an Australian resident or of residence in New Zealand; and
- (b) shall not include any period deemed by Article 5 to be a period as an Australian resident or a period of residence in New Zealand.

**Article 11**

**Wife's Pension and Carer's Pension**

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

**Article 12**

**Sickness Benefit**

1. This Article applies to a person who, immediately before leaving New Zealand, was receiving a New Zealand sickness benefit or an analagous emergency benefit payable under the Social Security Act 1964 of New Zealand.

2. Where a person to whom this Article applies:

- (a) has moved directly from New Zealand to Australia, without passing through a third country;
  - (b) has remained incapacitated for work since arrival in Australia; and
  - (c) claims an Australian sickness benefit within 4 weeks of that arrival,
- that person shall be deemed for the purposes of that claim to have suffered a loss of income by reason of that incapacity amounting to the maximum rate of Australian sickness benefit applicable to that person.

3. A person who qualifies for an Australian sickness benefit under paragraph 2 shall, subject to the social security laws of Australia, be paid that benefit from the date of that person's arrival in Australia.

**PART IV—REIMBURSEMENT PROVISIONS**

**Article 13**

**Reimbursement of Certain Australian Benefits**

1. Where by virtue of this Agreement or otherwise a person receives from Australia:

- (a) an age pension;

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- (b) an invalid pension;
- (c) a widow's pension;
- (d) a wife's pension;
- (e) a rehabilitation allowance under Part XVI of the Social Security Act 1947 of Australia which is paid in lieu of an invalid pension or a widow's pension; or
- (f) an allowance granted under Part XIV of the Social Security Act 1947 of Australia,

and, when that person left New Zealand, had lodged a claim for and would have been entitled to receive, or was receiving,

- (g) national superannuation;
- (h) an invalid's benefit; or
- (i) a widow's benefit,

otherwise than by virtue of the Agreement, then New Zealand will reimburse Australia the full cost of the Australian benefit subject to paragraphs 3 and 4.

2. A supplement or additional amount payable by Australia in addition to a benefit referred to in subparagraphs 1 (a) to 1 (f) inclusive shall for the purposes of paragraph 1 be deemed to be part of that benefit.

3. The Australian benefits described in subparagraphs 1 (a) to 1 (f) inclusive which are subject to reimbursement by New Zealand shall be those granted by Australia to persons who leave New Zealand on or after the First day of April 1989.

4. New Zealand shall not be required to reimburse Australia for payment of the benefits listed in subparagraphs 1 (a) to 1 (f) inclusive after a recipient has left Australia permanently or has been absent from Australia for more than 26 weeks unless and until that recipient returns to Australia when the obligation to reimburse shall revive.

5. At least 2 months before the start of any New Zealand financial year while this Agreement is in effect the competent authority for Australia will supply to the competent authority for New Zealand a written estimate of the amount of the reimbursable benefits Australia expects to pay in that financial year.

6. Within 3 months from the start of a New Zealand financial year referred to in paragraph 5, New Zealand shall pay to Australia the amount of the estimate given under paragraph 5 for that financial year.

7. Within 3 months from the end of a New Zealand financial year referred to in paragraph 5 the competent authority for Australia shall provide to the competent authority for New Zealand a written reconciliation statement covering the amounts of reimbursable benefits estimated and actually paid for and in that financial year.

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**SCHEDULE 1—continued**

8. If the reconciliation statement described in paragraph 7 shows that an amount of money should be paid by one Party to the other to balance the payments in the relevant New Zealand financial year then that amount shall be paid within 3 months from receipt of that statement.

**PART V—MISCELLANEOUS PROVISIONS**

**Article 14**

**Payment of Benefits During Temporary Absences**

1. Subject to the provisions of this Agreement, where Australia pays:
- (a) an age pension;
  - (b) an invalid pension;
  - (c) a wife's pension;
  - (d) a widow's pension;
  - (e) an allowance granted under Part XIV of the Social Security Act of Australia;
  - (f) a rehabilitation allowance under Part XVI of the Social Security Act 1947 of Australia which is paid in lieu of an invalid pension or a widow's pension; or
  - (g) a family allowance,

by virtue of this Agreement, that benefit (apart from any rent assistance) shall not, for a period of up to 26 weeks, cease to be payable by reason only of a temporary absence from Australia.

2. Subject to the provisions of this Agreement, where New Zealand pays:
- (a) national superannuation;
  - (b) an invalid's benefit;
  - (c) a widow's benefit;
  - (d) an orphan's benefit; or
  - (e) a family benefit,

by virtue of this Agreement, that benefit shall not, for a period of up to 26 weeks, cease to be payable by reason only of a temporary absence from New Zealand.

3. A carer's pension (apart from any rent assistance) payable by virtue of this Agreement or otherwise shall not, for a period of up to 26 weeks, cease to be payable by reason only of a temporary absence of the beneficiary from Australia in New Zealand.

4. Where a person who resides in Australia left New Zealand with a bona fide intention to remain outside New Zealand for a period of 26 weeks or less and continued to receive from New Zealand national superannuation, an invalid's benefit, a widow's benefit, an orphan's benefit or a family benefit after that person's departure from New Zealand, subsequently decides to remain in Australia for longer than 26 weeks, the competent authority for

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**SCHEDULE 1—continued**

New Zealand shall not establish an overpayment of such a benefit by reason of that person's departure from New Zealand.

**Article 15**

**Exclusion of New Zealand Benefits from Australian Income Test**

Where a benefit is paid by Australia to a person who is in New Zealand and a benefit is also paid by New Zealand to that person, the amount of the benefit paid by New Zealand shall not be included in the income of that person for the purposes of the social security laws of Australia.

**Article 16**

**Recovery of Overpayments**

**1. Where:**

- (a) an amount paid by one of the Parties to a person in respect of a benefit exceeds the amount, if any, that is properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit; and
- (b) a benefit is payable by the other Party to that person, whether by virtue of this Agreement or otherwise,

the competent authority of that other Party shall, if requested by the other competent authority to do so, and in accordance with this Article, deduct the amount equivalent to the excess payment referred to in subparagraph (a) from amounts due in respect of the last-mentioned benefit.

2. The amount of an excess payment referred to in paragraph 1 shall be the amount determined by the competent authority of the Party by whom the excess payment was made.

3. The rate of deductions made in accordance with paragraph 1 from amounts due in respect of a benefit, and any incidental or related matters, shall be determined by the competent authority of the Party by whom that benefit is payable, in accordance with the social security laws of that Party.

4. In cases where excess payments cannot be recovered by deductions from other benefits under paragraph 1, a competent authority, if requested by the other competent authority, shall assist the latter in endeavouring to arrange for repayment by the recipient of those excess payments.

5. Amounts deducted by one of the Parties in accordance with paragraph 1, and any amounts received by that Party pursuant to arrangements referred to in paragraph 4, shall be remitted to the other Party as agreed between the competent authorities or in administrative arrangements made pursuant to Article 17.

6. In this Article, 'benefit' is not limited to those benefits specified in Article 2.

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**SCHEDULE 1—continued**

**Article 17**

**Administrative Arrangements**

1. The competent authorities of the Parties shall make whatever administrative arrangements are necessary from time to time in order to implement this Agreement, and to enable benefits payable by one of the Parties, whether by virtue of this Agreement or otherwise, to persons who are residing in, or who are in, the territory of the other Party to be paid to those persons on behalf of the first-mentioned Party by that other Party.
2. Where arrangements of the kind referred to in paragraph 1 are required to be made on a mutual basis, the competent authorities shall co-operate both in regard to matters affecting the operation of both social security systems and of each of them.
3. A benefit payable by one of the Parties by virtue of this Agreement shall be paid by that Party without deduction for administrative fees and charges.

**Article 18**

**Exchange of Information**

1. The competent authorities of the Parties shall exchange such information as is necessary for the operation of this Agreement or of the social security laws of the Parties concerning all matters arising under this Agreement or under those laws other than those matters referred to in the social security laws of New Zealand as 'Contributions Towards Cost of Domestic Purposes Benefits for Solo Parents' and 'Medical and Hospital Benefits and other Related Benefits'.
2. Any information received by the competent authority of a Party pursuant to paragraph 1 shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this Agreement or the social security laws of the Parties and shall be used for other purposes or disclosed to other persons only with the prior consent of the competent authority who provided the information.
3. In no case shall the provisions of paragraphs 1 and 2 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 administration of that or of the other Party.
4. A Party shall not raise any charges against the other Party for services of an administrative nature rendered by that first-mentioned Party to the other in accordance with this Agreement or the administrative arrangements



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**SCHEDULE 1—continued**

made pursuant to Article 17, but that other Party shall meet any costs or expenses which are reasonably incurred for those services and are payable to another person or organisation.

**Article 19**

**Reviews and Appeals**

Any person who is affected by a decision of the competent authority of a Party in relation to a matter arising by virtue of this Agreement shall have the same rights to review by, or appeal to, administrative and judicial bodies of that Party as are provided under the domestic laws of that Party.

**Article 20**

**Review of Agreement**

The Parties may agree at any time to review any of the provisions of this Agreement and, in any case, shall, within the period of 2 years commencing on the date on which this Agreement comes into effect, review the present limitation on continuation of payment by a Party of benefits to persons who move outside the territory of the Party.

**PART VI—FINAL PROVISIONS**

**Article 21**

**Entry into Force**

1. This Agreement shall enter into force on the date on which the Parties exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in New Zealand, as the case may be, and thereupon this Agreement shall have effect on and from the date specified for that purpose in that exchange of notes.

2. Subject to paragraph 3, when this Agreement commences to have effect the Agreement on Social Security between the Government of Australia and the Government of New Zealand, signed at Melbourne on the Fifth day of October 1986, shall terminate and persons who were receiving benefits under that 1986 Agreement shall receive those benefits by virtue of this Agreement.

3. This Article shall not affect the provisions of paragraph 2 of Article 24 of the Agreement on Social Security between the Government of Australia and the Government of New Zealand signed at Melbourne on the Fifth day of October 1986.

**Article 22**

**Termination**

1. Subject to paragraph 2, 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.

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**SCHEDULE 1—continued**

2. In the event that this Agreement is terminated in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who:

- (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,
- by virtue of this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Canberra this 31st day of October 1988.

FOR THE GOVERNMENT  
OF AUSTRALIA:  
BRIAN HOWE

FOR THE GOVERNMENT  
OF NEW ZEALAND:  
GEOFFREY PALMER

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**SCHEDULE 2**

Section 36

**REPEAL OF SAVINGS PROVISIONS**

***Social Services Act (No. 3) 1974***

**Subsections 10 (2), 16 (2) and 25 (2):**

Omit the subsections.

***Social Services Amendment Act (No. 3) 1976***

**Subsection 50 (1):**

- (a) Omit “, 10”.
- (b) Omit “, 23”.

**Subsection 50 (4):**

Omit all the words after “widow’s pension”, substitute “or a supporting mother’s benefit”.

***Social Services Amendment Act 1979***

**Paragraph 14 (3) (a):**

Add at the end “and”.

**Paragraph 14 (3) (b):**

Omit the paragraph.

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**SCHEDULE 2—continued**

**Paragraph 16 (3) (a):**

Omit “section; and”, substitute “section.”.

**Paragraph 16 (3) (b):**

Omit the paragraph.

***Social Services Amendment Act 1981***

**Subsections 22 (2), (3) and (7):**

Omit the subsections.

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**NOTES**

1. No. 26, 1947, as amended. For previous amendments, see Nos. 38 and 69, 1948; No. 16, 1949; Nos. 6 and 26, 1950; No. 22, 1951; Nos. 41 and 107, 1952; No. 51, 1953; No. 30, 1954; Nos. 15 and 38, 1955; Nos. 67 and 98, 1956; No. 46, 1957; No. 44, 1958; No. 57, 1959; No. 45, 1961; Nos. 1 and 95, 1962; No. 46, 1963; Nos. 3 and 63, 1964; Nos. 57 and 152, 1965; No. 41, 1966; Nos. 10 and 61, 1967; No. 65, 1968; No. 94, 1969; Nos. 2 and 59, 1970; Nos. 16 and 67, 1971; Nos. 1, 14, 53 and 79, 1972; Nos. 1, 26, 48, 103 and 216, 1973; Nos. 2, 23 and 91, 1974; Nos. 34, 56, 101 and 110, 1975; Nos. 26, 62 and 111, 1976; No. 159, 1977; No. 128, 1978; No. 121, 1979 (as amended by Nos. 37 and 98, 1982); No. 130, 1980; Nos. 61 and 170, 1981; No. 159, 1981 (as amended by No. 98, 1982); Nos. 37, 38 and 148, 1982; Nos. 4 and 36, 1983; No. 69, 1983 (as amended by No. 78, 1984); Nos. 46, 78, 93, 120, 134 and 165, 1984; 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.
2. No. 27, 1986, as amended. For previous amendments, see Nos. 106 and 130, 1986; Nos. 78, 88 and 130, 1987; and Nos. 13, 35 and 75, 1988.
3. No. 75, 1988.

*[Minister's second reading speech made in—  
House of Representatives on 3 November 1988  
Senate on 25 November 1988]*