



Social Security Legislation Amendment Act 1991

No. 69 of 1991

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**PART ADDED TO SCHEDULE 4 TO THE SOCIAL SECURITY ACT 1947 AND TO
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Social Security Legislation Amendment Act 1991

No. 69 of 1991

**An Act to amend the law relating to social welfare, and
for related purposes**

[Assented to 25 June 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Social Security Legislation Amendment Act 1991*.

Commencement: Day of Royal Assent

Commencement

2. Each provision of this Act commences, or is taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of the provision.

Commencement: Day of Royal Assent

**PART 2—AMENDMENTS OF THE SOCIAL SECURITY ACT
1947**

Principal Act

3. In this Part, “**Principal Act**” means the *Social Security Act 1947*.
Commencement: Day of Royal Assent

Interpretation

4. Section 3 of the Principal Act is amended:

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

“(aaa) in spite of sections 12C and 12D, any return on an exempt funeral investment (whenever made);”;

Commencement: Day of Royal Assent

(b) by inserting the following paragraph after paragraph (x) of that definition:

“(xa) a payment of an approved scholarship awarded after 1 September 1990;”;

Commencement: 1 September 1990

(c) by omitting from subsection (1) the definition of “superannuation pension” and substituting the following definition:

“‘**superannuation pension**’ means a pension payable from a superannuation fund;”;

Commencement: 1 February 1990

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

“‘**approved scholarship**’ means a scholarship in relation to which a determination under section 12AAB is in force;”;

Commencement: 1 September 1990

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

“‘**exempt funeral investment**’ means:

(a) a type A funeral investment of not more than \$5,000 (disregarding any return on the investment) that does not relate to a funeral:

(i) to which another type A funeral investment relates;
or

(ii) to which a type B funeral investment relates; or

(iii) expenses for which have been paid in advance; or

(b) a type B funeral investment of not more than \$5,000 (disregarding any return on the investment) that does not relate to a funeral:

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- (i) to which another type B funeral investment relates;
or
- (ii) to which a type A funeral investment relates; or
- (iii) expenses for which have been paid in advance;

'type A funeral investment' means an investment:

- (a) that:
 - (i) matures on the death of the investor; or
 - (ii) matures on the death of the investor's spouse; and
- (b) that cannot be realised before maturity; and
- (c) the return on which is not payable before maturity; and
- (d) the amount paid on the maturity of which is to be applied to the expenses of the funeral of the person on whose death it matures;

'type B funeral investment' means an investment:

- (a) made by:
 - (i) a person who has a spouse; or
 - (ii) a person and the person's spouse; and
- (b) that matures on the death of:
 - (i) whichever of the person or the person's spouse dies first; or
 - (ii) whichever of the person or the person's spouse dies last; and
- (c) that cannot be realised before maturity; and
- (d) the return on which is not payable before maturity; and
- (e) the amount paid on the maturity of which is to be applied to the expenses of the funeral of the person or the person's spouse."

Commencement: Day of Royal Assent

Calculation of income

5. (1) Section 3AA of the Principal Act is amended:

- (a) by omitting from subsection (1) all words after "person's income";
- (b) by inserting after subsection (1) the following subsection:
 - "(1A) The income of the person is calculated by adding up the income of the person from all sources.";
- (c) by inserting in paragraph (2) (b) "for use in that business" after "stock" (wherever occurring);
- (d) by inserting in subsection (2) "of that business" after "profits";
- (e) by inserting in paragraph (3) (b) "for use in that business" after "stock" (wherever occurring);
- (f) by inserting in subsection (3) "of that business" after "profits";

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- (g) by omitting subsection (4) and substituting the following subsections:

“(4) Where, under section 4C, a person is taken to receive income or additional income from a loan, income from the loan is not to be reduced by any expenses incurred by the person because of the loan.

“(5) Where, under Division 2, a person is taken to receive income by way of a rate of return on an investment, that income is not to be reduced otherwise than in accordance with section 12K.

“(6) Subject to subsections (3), (4) and (5), the income of a person from a business is the gross income of the person from that business reduced by:

- (a) losses and outgoings relating to that business that are allowable deductions for the purposes of section 51 of the *Income Tax Assessment Act 1936*; and
- (b) depreciation relating to that business that is an allowable deduction for the purposes of subsection 54 (1) of that Act; and
- (c) amounts that are allowable deductions relating to that business under subsection 82AAC (1) of that Act.

“(7) In this section:

‘year’, in relation to a person carrying on a business, means a financial year for which income tax is levied, or the accounting period, if any, adopted by the person under the *Income Tax Assessment Act 1936* for that business instead of that financial year.”.

Commencement: Immediately after the commencement of section 6 of the Social Security Legislation Amendment Act 1990

- (2) Section 3AA of the Principal Act is amended:

- (a) by inserting after subsection (4) the following subsection:

“(4A) Where, under section 4D, a person is taken to receive income or additional income from money, income from the money is not to be reduced by any expenses incurred by the person because of the investment of the money.”;

- (b) by inserting in subsection (6) “, (4A)” after “(4)”.

Commencement: 1 March 1991

Calculation of value of property

6. Section 4 of the Principal Act is amended by inserting after subparagraph (1) (a) (ix) the following subparagraphs:

“(ixa) the amount invested in an exempt funeral investment (whenever made):

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- (ixb) the amount of any return on an exempt funeral investment (whenever made);”.

Commencement: Day of Royal Assent

Indexation

7. Section 9 of the Principal Act is amended by omitting “each subsequent” from the definition of “relevant year” in subsection (1) and substituting “the next”.

Commencement: 12 June 1991

8. After section 12AAA of the Principal Act the following section is inserted in Division 1 of Part 1:

Approved scholarship

“12AAB. (1) The Minister may, in writing signed by the Minister, declare that a scholarship, or a class of scholarships:

- (a) awarded outside Australia; and
- (b) not intended to be used wholly or partly to assist recipients to meet living expenses;

is an approved scholarship, or a class of approved scholarships, as the case may be, for the purposes of this Act.

“(2) An approval under subsection (1) may be expressed to have effect from a day on or after 1 September 1990.”.

Commencement: 1 September 1990

Accruing return investments

9. Section 12C of the Principal Act is amended:

- (a) by inserting in subsection (2) “full” before “realisation”.
- (b) by inserting in subsection (3) “full” before “realisation”.

Commencement: 8 January 1991

Certain capital amounts taken to be received over 12 months

10. Section 12L of the Principal Act is amended by omitting from paragraph (1) (c) “made on or after 9 September 1988”.

Commencement: 8 January 1991

Secrecy

11. Section 19 of the Principal Act is amended by omitting from subsection (15) “(5A)” and substituting “(5B)”.

Commencement: Immediately after the commencement of section 20 of the Social Security Legislation Amendment Act 1990

Rate of unemployment and sickness benefit

12. Section 118 of the Principal Act is amended:

- (a) by omitting from subsection (1A) “in paragraph (1) (d)” and substituting:

“in:

- (d) where the person has not turned 18—paragraph (1) (aa);
or
 - (e) where the person has turned 18 but not 21—paragraph (1) (bc); or
 - (f) where the person has turned 21—paragraph (1) (d)”;
- (b) by omitting from subparagraph (4) (a) (ii) “in paragraph (1) (c)” and substituting:

“in:

- (A) where the person has not turned 18—paragraph (1) (aa);
or
- (B) where the person has turned 18 but not 21—paragraph (1) (bc); or
- (C) where the person has turned 21—paragraph (1) (c)”.

Commencement: 20 September 1990

Rent assistance

13. Section 120 of the Principal Act is amended by inserting after paragraph (4) (c) the following paragraph:

“(ca) paragraph 118 (1) (bb) does not apply to the person;”.

Commencement: 20 September 1990

Recovery of amounts from person liable to make compensation payments

14. Section 154 of the Principal Act is amended by inserting after subsection (7) the following subsection:

“(7A) This section applies to a payment by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.”.

Commencement: Day of Royal Assent

Notice to insurers

15. Section 155 of the Principal Act is amended by inserting after subsection (8) the following subsection:

“(8A) This section applies in relation to a payment by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.”.

Commencement: Day of Royal Assent

Secretary may take action in relation to money owing to pensioners

16. Section 162 of the Principal Act is amended by inserting after subsection (9) the following subsection:

“(9A) This section applies to money in spite of any law of a State or Territory (however expressed) under which the money is inalienable.”.

Commencement: Day of Royal Assent

17. After section 168 of the Principal Act the following section is inserted:

Cancellation of payments by computer

“168AA. (1) In this section:

‘change’, in relation to a payment, means cancel or suspend, or increase or decrease the rate of, the payment.

“(2) Where:

- (a) a payment to a person under this Act is based upon data in a computer; and
- (b) the payment is changed because of the operation of a computer program approved by the Secretary; and
- (c) the program causes the change for a reason for which the Secretary could make a determination causing the change;

the change is taken to have been made because of such a determination by the Secretary for that reason.”.

Commencement: Day of Royal Assent

Pension etc. to cease to be payable in certain cases

18. Section 169 of the Principal Act is amended by inserting after paragraph (1) (b) the following word and paragraph:

“; and (c) that pension, benefit or allowance is not cancelled under subsection 168 (1);”.

Commencement: Day of Royal Assent

Employment entry payment—sole parent’s pension recipients

19. Section 237C of the Principal Act is amended by adding at the end the following subsections:

“(3) Where the Secretary is satisfied that:

- (a) a person:
 - (i) has entered an agreement for the person’s employment;
or
 - (ii) is to have an increase in income from employment; and
- (b) on beginning that employment or on that increase, as the case may be, the person would, but for receiving a payment under this subsection, be entitled to a payment under subsection (2);

the following provisions have effect:

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

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

- (a) a person is not entitled to a payment under this section unless the person has made a claim for the payment; and
- (b) a person is not entitled to a payment under this section if a claim for the payment is made more than 28 days after the beginning of the employment or the increase in respect of which the claim is made.”.

Commencement: Day of Royal Assent

Write off, waiver etc.

20. Section 251 of the Principal Act is amended by omitting subsection (1C) and substituting the following subsection:

“(1C) A determination made under subsection (1B) giving, revoking or varying directions is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Schedule 4

21. Schedule 4 to the Principal Act is amended:

- (a) by inserting “PART A” under “SCHEDULE 4”;
- (b) by adding at the end the Part set out in the Schedule to this Act.

Commencement: 1 September 1989

PART 3—AMENDMENTS OF THE SOCIAL SECURITY AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT ACT (NO. 2) 1990

Principal Act

22. In this Part “Principal Act” means the *Social Security and Veterans’ Affairs Legislation Amendment Act (No. 2) 1990*².

Commencement: Day of Royal Assent

Commencement

23. Section 2 of the Principal Act is amended by omitting from subsection (4) “(aa)” (wherever occurring) and substituting “(b)”.

Commencement: Immediately after the commencement of section 2 of the Principal Act

PART 4—AMENDMENT OF THE SOCIAL SECURITY LEGISLATION AMENDMENT ACT 1990

Principal Act

24. In this Part, “Principal Act” means the *Social Security Legislation Amendment Act 1990*³.

Commencement: Day of Royal Assent

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Application

25. Section 4 of the Principal Act is amended by omitting subsection (12).

Commencement: Immediately after the commencement of subsection 4 (12) of the Principal Act

**PART 5—AMENDMENTS OF THE SOCIAL SECURITY ACT
1991**

Principal Act

26. In this Part, “Principal Act” means the *Social Security Act 1991*⁴.

Commencement: 1 July 1991

Schedule 5

27. Schedule 5 to the Principal Act is amended:

(a) by inserting “PART A” under “SCHEDULE 5”;

(b) by adding at the end the Part set out in the Schedule to this Act.

Commencement: Immediately after the commencement of the Principal Act

SCHEDULE

Sections 21 and 27

PART ADDED TO SCHEDULE 4 TO THE SOCIAL SECURITY ACT 1947 AND TO SCHEDULE 5 TO THE SOCIAL SECURITY ACT 1991

PART B

PROTOCOL AMENDING THE RECIPROCAL AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA SIGNED AT CANBERRA ON THE 4TH DAY OF JULY 1988.

The Government of Australia and the Government of Canada

Desiring to amend the Reciprocal Agreement on Social Security signed by them at Canberra on the 4th day of July 1988 (in this Protocol referred to as “the Agreement”)

Have agreed as follows:

ARTICLE 1

Article 1 of the Agreement is amended by omitting from paragraph 1 the definition of “widow” and substituting the following definition of “widowed person”:

“ ‘widowed person’ means, in relation to Australia, a person who:

- (i) stops being a married person or becomes a single person because of the death of the person’s spouse; or
- (ii) is a class B widow because of the death of her legal husband or because she is a dependent female,

but does not include a person who has a new spouse.”

ARTICLE 2

Article 2 of the Agreement is amended by omitting from subparagraph 1 (a) (v) the word “widows” and substituting the words “widowed persons”.

ARTICLE 3

Article 6 of the Agreement is amended by:

- (a) omitting from paragraphs 2 and 3 the word “widow” where appearing and substituting the words “widowed person”;
- (b) omitting from paragraph 3 the word “her” where first appearing and substituting the words “the person’s”;
- (c) omitting from paragraph 3 the word “her” where second appearing and substituting the word “the”; and

SCHEDULE—continued

(d) omitting paragraph 6 and substituting the following paragraph:

“6. The minimum period to be taken into account for the purposes of subparagraph 1 (b) shall be as follows:

- (a) for a person who is residing outside Australia;
 - (i) in regard to a benefit other than an invalid pension, a minimum period of residence in Australia of one year of which at least 6 months must be continuous; and
 - (ii) in regard to an invalid pension, a minimum period of residence in Australia of 2 years of which at least 6 months must be continuous; and
- (b) for an Australian resident;
 - (i) in regard to a benefit other than an invalid pension, a minimum period as an Australian resident of one year of which at least 6 months must be continuous; and
 - (ii) in regard to an invalid pension, a minimum period as an Australian resident of 2 years of which at least 6 months must be continuous.”

ARTICLE 4

Article 9 of the Agreement is deleted and the following Article is substituted:

ARTICLE 9

Pensions Payable to Widowed Persons

Where, under the legislation of Australia, a person lodges a claim for a pension payable to a widowed person, matters which concern that person's former spouse and affect that claim shall be considered for the purposes of that claim by reference only to the last-deceased spouse of that person.”

ARTICLE 5

Article 15 of the Agreement is amended by:

- (a) omitting paragraph 2;
- (b) renumbering paragraph 3 as paragraph 4; and
- (c) inserting the following new paragraphs 2 and 3:

“2. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside Australia and Canada:

- (a) for Australia:
 - (i) age pension;

SCHEDULE—continued

- (ii) invalid pension;
 - (iii) wife's pension;
 - (iv) a pension payable to a widowed person who became a widowed person while both the person and the spouse were Australian residents;
 - (v) Class "B" widow's pension; and
- (b) for Canada:
subject to subparagraph 3 (c) of Article 11, the benefits referred to in the legislation of Canada.
3. A pension payable to a widowed person or a carer's pension, whether payable by virtue of this Agreement or otherwise, shall be paid in Australia and Canada with no limitation by time."

ARTICLE 6

This Protocol, which shall form an integral part of the Agreement, shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalized and, thereupon, this Protocol shall have effect as from the date on which the Agreement entered into force.

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

DONE in two copies at Ottawa, this 11 day of October 1990, in the English and French languages, each text being equally authoritative.

**J. HUMPHREYS
FOR THE GOVERNMENT
OF AUSTRALIA**

**PERRIN BEATTY
FOR THE GOVERNMENT
OF CANADA**

Social Security Legislation Amendment No. 69, 1991

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; Nos. 13, 35, 58, 75 and 85, 1988; Nos. 133 and 135, 1988 (as amended by Nos. 84 and 164, 1989); Nos. 59, 83, 84, 163 (as amended by No. 164, 1989) and 164, 1989; Nos. 56, 84 and 119, 1990; and No. 6, 1991.
2. No. 84, 1990.
3. No. 6, 1991.
4. No. 46, 1991.

*[Minister's second reading speech made in—
House of Representatives on 13 March 1991
Senate on 14 May 1991]*