



Social Security Legislation Amendment Act (No. 2) 1991

No. 115 of 1991

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

PART 2—AMENDMENT OF THE SOCIAL SECURITY ACT 1947

3. Principal Act
4. Special benefit

PART 3—AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 TO HELP MAKE IT CORRESPOND TO THE SOCIAL SECURITY ACT 1947 AS IN FORCE ON 30 JUNE 1991

5. Principal Act
6. Income test definitions
7. Definitions
8. General definitions
9. Insertion of new section:
24A. Approved scholarship
10. Qualification for special benefit
11. Rate of job search allowance and sickness benefit (under 18)
12. Rate of job search allowance and sickness benefit (18 or over) and newstart allowance
13. Certain capital amounts not covered by other Subdivisions taken to be received over 12 months
14. Certain assets to be disregarded in calculating the value of a person's assets
15. Secretary may send recovery notice to compensation payer
16. Offence to make compensation payment after receiving preliminary notice or recovery payment

TABLE OF PROVISIONS—*continued*

Section

- 17. CPI Indexation Table
- 18. Debt from failure to comply with garnishee notice
- 19. Garnishee notice
- 20. Secretary may waive overpayment or debt
- 21. Non-reviewable decisions
- 22. Further amendments

PART 4—AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 TO
PROVIDE FOR NEW POLICIES

- 23. Principal Act
- 24. Qualification for wife pension
- 25. Qualification for widow B pension
- 26. Need for a claim
- 27. JSA recipient may ask Secretary to change appropriate tax year
- 28. Need for a claim
- 29. Qualification for special needs wife pension
- 30. Qualification for special needs widow B pension
- 31. Indexed and adjusted amounts
- 32. CPI Indexation Table
- 33. Rounding off indexed amounts
- 34. Insertion of new sections:
 - 1206A. Adjustment of certain pharmaceutical allowance rates
 - 1206B. Adjustment of certain pharmaceutical payment limits
- 35. Repeal of sections 1215 and 1216 and insertion of new sections:
 - 1215. Certain pensions of non-Australian residents generally not portable
 - 1216. Certain pensions generally portable for 12 months only
 - 1216A. Certain pensions may be portable after 12 months if recipient in specified foreign country
 - 1216B. Some women not affected by sections 1215, 1216 and 1216A
- 36. Effect of disqualified person returning to Australia
- 37. Rate of pensions paid outside Australia
- 38. New Schedule 8—social security agreement with The Netherlands
- 39. Consequential amendments
- 40. Minor amendments

PART 5—AMENDMENT OF THE NATIONAL HEALTH ACT 1953

- 41. Principal Act
- 42. Interpretation

PART 6—AMENDMENT OF THE SOCIAL SECURITY LEGISLATION
AMENDMENT ACT 1990

- 43. Principal Act
- 44. Income from certain money

SCHEDULE 1

ADDITIONAL AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 MADE BY
PART 3

SCHEDULE 2

NEW SCHEDULE 8

SCHEDULE 3

CONSEQUENTIAL AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 AND THE
DATA-MATCHING PROGRAM (ASSISTANCE AND TAX) ACT 1990 RELATING TO
JOB SEARCH AND NEWSTART ALLOWANCE

SCHEDULE 4

MINOR AMENDMENTS OF THE SOCIAL SECURITY ACT 1991



Social Security Legislation Amendment Act (No. 2) 1991

No. 115 of 1991

An Act to amend the *Social Security Act 1991* and other laws relating to social welfare, and for related purposes

[Assented to 27 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 (No. 2) 1991*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Part 2 is taken to have commenced on 15 April 1991.

(3) Part 3 commences immediately after the commencement of the *Social Security (Rewrite) Amendment Act 1991*¹.

(4) Part 4 commences immediately after the commencement of Part 3.

(5) Parts 5 and 6 are taken to have commenced on 1 March 1991.

PART 2—AMENDMENT OF THE SOCIAL SECURITY ACT 1947

Principal Act

3. In this Part, “**Principal Act**” means the *Social Security Act 1947*².

Special benefit

4. Section 129 of the Principal Act is amended by inserting after subparagraph (3) (a) (iv) the following subparagraph:

“(iva) a person who:

(A) is the holder of an extended eligibility (spouse) entry permit under the *Migration Act 1958*; and

(B) applied for the permit on or after 15 April 1991; or”.

PART 3—AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 TO HELP MAKE IT CORRESPOND TO THE SOCIAL SECURITY ACT 1947 AS IN FORCE ON 30 JUNE 1991

Principal Act

5. In this Part, “**Principal Act**” means the *Social Security Act 1991*³.

Income test definitions

6. Section 8 of the Principal Act is amended:

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

“‘**approved scholarship**’ means a scholarship in relation to which a determination under section 24A is in force;”;

(b) by inserting after paragraph (8) (m) the following paragraph:

“(ma) money from an exempt funeral investment;

Note: for ‘**exempt funeral investment**’ see subsection 23 (1).”;

(c) by adding at the end of subsection (8) the following paragraph:

“(zj) a payment of an approved scholarship awarded on or after 1 September 1990.

Note: for ‘**approved scholarship**’ see subsection 8 (1).”.

Definitions

7. Section 9 of the Principal Act is amended 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.”.

General definitions

8. Section 23 of the Principal Act is amended 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:
 - (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 partner; 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 whose maturity 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 is a member of a couple; or
 - (ii) both members of a couple; and
- (b) that matures on the death of:
 - (i) whichever member of the couple dies first; or
 - (ii) whichever member of the couple 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 whose maturity is to be applied to the expenses of the funeral of a member of the couple.”.

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

Approved scholarship

“24A. The Minister may determine in writing that a scholarship, or a class of scholarships:

- (a) awarded outside Australia; and

Social Security Legislation Amendment (No. 2) No. 115, 1991

(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.”.

Qualification for special benefit

10. Section 729 of the Principal Act is amended:

- (a) by omitting from subparagraph (2) (f) (vi) “and” (second occurring) and substituting “or”;
- (b) by adding at the end of paragraph (2) (f) the following subparagraph:
 - “(vii) a person who:
 - (A) is the holder of an extended eligibility (spouse) entry permit under the *Migration Act 1958*; and
 - (B) applied for the permit on or after 15 April 1991; and”.

Rate of job search allowance and sickness benefit (under 18)

11. Section 1067 of the Principal Act is amended:

- (a) by omitting from column 3B in Table B in point 1067-B1 “\$301.60” and substituting “\$204.80”;
- (b) by omitting from Note 4 to that table “item 1 to 4”;
- (c) by omitting from Note 5 to that table “other rates” and substituting “rates in column 3A”;
- (d) by omitting from paragraph 1067-D3 (b) all the words after “against” and substituting “item 2 in Table B in point 1067-B1”.

Rate of job search allowance and sickness benefit (18 or over) and newstart allowance

12. Section 1068 of the Principal Act is amended:

- (a) by omitting item 10 in Table B in point 1068-B1 and substituting the following items:

“10. Member of illness separated couple and person has turned 18 but not 21	\$301.60	\$226.50
11. Member of illness separated couple and person has turned 21	\$301.60	\$301.60”;
- (b) by omitting from Note 4 to Table B in point 1068-B1 “and 8” and substituting “, 8 and 10”;
- (c) by omitting from paragraph 1068-D3 (b) all the words from and including “column 3B” and substituting:
 - “column 3B against:
 - (i) in the case of a person who has turned 18 but not 21—item 1; or
 - (ii) in the case of a person who has turned 21—item 3;

- in Table B of point 1068-B1 of this Benefit Rate Calculator.”;
- (d) by inserting after paragraph 1068-F1 (a) the following paragraph:
- “(aa) column 3B item 2 of Table B in point 1068-B1 of this Benefit Rate Calculator does not apply to the person; and”.

Certain capital amounts not covered by other Subdivisions taken to be received over 12 months

13. Section 1074 of the Principal Act is amended by omitting from paragraph (1) (d) “made on or after 9 September 1988”.

Certain assets to be disregarded in calculating the value of a person’s assets

14. Section 1118 of the Principal Act is amended by inserting after paragraph (1) (m) the following paragraph:

- “(ma) an amount invested in an exempt funeral investment and any return on the investment;”.

Secretary may send recovery notice to compensation payer

15. Section 1174 of the Principal Act is amended by adding at the end the following subsection:

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

Offence to make compensation payment after receiving preliminary notice or recovery payment

16. Section 1176 of the Principal Act is amended by adding at the end the following subsection:

“(4) 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.”.

CPI Indexation Table

17. Section 1191 of the Principal Act is amended by omitting from column 3 of the CPI Indexation Table in subsection (1) “13 June” (wherever occurring) and substituting “1 July”.

Debt from failure to comply with garnishee notice

18. Section 1230 of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) This section applies to an amount in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.”.

Garnishee notice

19. Section 1233 of the Principal Act is amended by inserting after subsection (7E) the following subsection:

“(7F) This section applies to money in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.”.

Secretary may waive overpayment or debt

20. Section 1237 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) A determination made under subsection (3) giving, revoking or varying directions is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Non-reviewable decisions

21. Section 1250 of the Principal Act is amended by adding at the end of subsection (1) the following word and paragraph:

“; or (m) under subsection 1237 (3) (directions about Secretary’s power to waive debts).”.

Further amendments

22. The Principal Act is amended as set out in Schedule 1.

**PART 4—AMENDMENTS OF THE SOCIAL SECURITY ACT
1991 TO PROVIDE FOR NEW POLICIES**

Principal Act

23. In this Part, “Principal Act” means the *Social Security Act 1991*³.

Qualification for wife pension

24. Section 147 of the Principal Act is amended by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) sections 1215 to 1216B (limits on portability); and”.

Qualification for widow B pension

25. Section 362 of the Principal Act is amended by omitting paragraph (3) (a) and substituting the following paragraph:

“(a) sections 1215 to 1216B (limits on portability); and”.

Need for a claim

26. Section 551 of the Principal Act is amended by adding at the end the following subsection:

Social Security Legislation Amendment (No. 2) No. 115, 1991

“(3) Subsection (2) does not apply if:

- (a) a claim for job search allowance is made by or on behalf of a person; and
- (b) at the time the claim is made, the claim cannot be granted because the person is serving a liquid assets test waiting period.

Note: for liquid assets test waiting period see section 519.”.

JSA recipient may ask Secretary to change appropriate tax year

27. Section 561 of the Principal Act is amended by inserting in paragraph (1) (c) “75% or” after “made is”.

Need for a claim

28. Section 635 of the Principal Act is amended by adding at the end the following subsection:

“(4) Subsection (2) does not apply if:

- (a) a claim for job search allowance is made by or on behalf of a person; and
- (b) at the time the claim is made, the claim cannot be granted because the person is serving a liquid assets test waiting period.

Note: for liquid assets test waiting period see section 519.”.

Qualification for special needs wife pension

29. Section 774 of the Principal Act is amended by adding at the end the following word and paragraph:

“; and (c) is not disqualified by section 1215 or 1216 or subsection 1216A (2) (portability).”.

Qualification for special needs widow B pension

30. Section 778 of the Principal Act is amended by adding at the end the following word and paragraph:

“; and (h) is not disqualified by section 1215 or 1216 or subsection 1216A (2) (portability).”.

Indexed and adjusted amounts

31. Section 1190 of the Principal Act is amended:

- (a) by omitting the second description of a provision in column 4 of item 2 in the table;
- (b) by omitting from the 4th description of a provision in column 4 of item 2 in the table “items 1 to 10” and substituting “all amounts”;
- (c) by omitting from the 5th description of a provision in column 4 of item 2 in the table “10” and substituting “11”;
- (d) by omitting from the 1st description of a provision in column 4 of item 3 in the table “items 1, 2, 3, and 4” and substituting “all amounts”;

Social Security Legislation Amendment (No. 2) No. 115, 1991

(e) by omitting from the 2nd description of a provision in column 4 of item 3 in the table “and 8” and substituting “, 8 and 10”;

(f) by inserting after item 23 in the table the following items:

“23A.	Maintenance income free area for social security pension	pension maintenance income free area	[Pension Rate Calculator A—point 1064-F9—Table F1—columns 3 and 5—all amounts]
			[Pension Rate Calculator C—point 1066-F8—Table F—columns 3 and 5—all amounts]
“23B.	Maintenance income free area for social security benefit	benefit maintenance income free area	[Benefit Rate Calculator A—point 1067-J11—Table J—columns 3 and 4—all amounts] [Benefit Rate Calculator B—point 1068-H10—Table H—columns 3 and 4—all amounts]”.

(g) by adding at the end of the table the following items:

“45.	Rate of pharmaceutical allowance for a person who is not a member of a couple	PA ‘single’ rate	[Section 1061C—Table—column 3—item 1]
“46.	Rate of pharmaceutical allowance for a person with a partner where the partner is getting neither pension nor benefit	PA ‘partnered’ (item 2) rate	[Section 1061C—Table—column 3—item 2]
“47.	Rate of pharmaceutical allowance for a person with a partner where the partner is getting either pension or benefit	PA ‘partnered’ (item 3) rate	[Section 1061C—Table—column 3—item 3]
“48.	Rate of pharmaceutical allowance for a member of an illness separated or respite care couple	PA ‘illness separated or respite care’ rate	[Section 1061C—Table—column 3—item 4]

“49.	Pharmaceutical payment limit for a person who is not a member of a couple	‘single’ PPL	[Subsection 1061D (2)—Table—columns 3 and 4—item 1]
“50.	Pharmaceutical payment limit for a person with a partner where the partner is getting neither pension nor benefit	‘partnered’ (item 2) PPL	[Subsection 1061D (2)—Table—columns 3 and 4—item 2]
“51.	Pharmaceutical payment limit for a person with a partner where partner getting either pension or benefit	‘partnered’ (item 3) PPL	[Subsection 1061D (2)—Table—columns 3 and 4—item 3]
“52.	Pharmaceutical payment limit for a member of an illness separated or respite care couple.	‘illness separated or respite care’ PPL	[Subsection 1061D (2)—Table—columns 3 and 4—item 4]”.

CPI Indexation Table

32. Section 1191 of the Principal Act is amended:

(a) by inserting after item 17 in the table the following items:

“17A.	pension maintenance income free area	1 July	December	most recent December quarter before reference quarter	\$2.60
“17B.	benefit maintenance income free area	1 July	December	most recent December quarter before reference quarter	\$0.10”;

(b) by omitting from column 6 of item 14 in the table “\$1.00” and substituting “\$52.00”;

(c) by adding at the end of the table the following items:

“	Pharmaceutical allowance				
---	---------------------------------	--	--	--	--

Social Security Legislation Amendment (No. 2) No. 115, 1991

31.	PA 'partnered' (item 3) rate	20 September	March	most recent December quarter before reference quarter	\$0.10
32.	'partnered' (item 3) PPL	20 September	March	most recent December quarter before reference quarter	\$0.10".

Rounding off indexed amounts

33. Section 1194 of the Principal Act is amended:

- (a) by omitting from subsection (2) "If" and substituting "Subject to subsections (3), (4), (5) and (6), if";
- (b) by omitting from subsection (3) "If" and substituting "Subject to subsections (4), (5) and (6), if";
- (c) by adding at the end the following subsection:

"(6) If a provisional indexed amount for a pharmaceutical allowance rate or pharmaceutical payment limit is not a multiple of 10 cents, the indexed amount is the provisional indexed amount rounded down to the nearest multiple of 10 cents."

34. After section 1206 of the Principal Act the following sections are inserted in Division 4 of Part 3.16 of Chapter 3:

Adjustment of certain pharmaceutical allowance rates

"1206A. This Act has effect as if, on 20 September each year, there were substituted for the:

- (a) PA 'single' rate; and
- (b) PA 'partnered' (item 2) rate; and
- (c) PA 'illness separated or respite care' rate;

the amount worked out using the following formula:

$$\text{PA 'partnered' (item 3) rate} \times 2$$

where:

PA 'partnered' (item 3) rate is the current figure, as at 20 September, for PA 'partnered' (item 3) rate.

Note 1: for 'PA "partnered" (item 3 rate)' see table in subsection 1061D (2).

Note 2: for 'current figure' see subsection 20 (1).

Adjustment of certain pharmaceutical payment limits

“1206B. This Act has effect as if, on 20 September each year, there were substituted for the:

- (a) ‘single’ PPL; and
- (b) ‘partnered’ (item 2) PPL; and
- (c) ‘illness separated or respite care’ PPL;

the amount worked out using the following formula:

$$\text{‘partnered’ (item 3) PPL} \times 2$$

where:

‘partnered’ (item 3) PPL is the current figure, as at 20 September, for ‘partnered’ (item 3) PPL in column 3 or column 4, as the case requires, of the Pharmaceutical Payment Limit Table in subsection 1061D (2).

Note: for ‘current figure’ see subsection 20 (1).”.

35. Sections 1215 and 1216 of the Principal Act are repealed and the following sections are substituted:

Certain pensions of non-Australian residents generally not portable

“1215. (1) Subject to subsection (2), a woman who has never been an Australian resident is not qualified for a:

- (a) wife pension; or
- (b) widow B pension; or
- (c) special needs wife pension; or
- (d) special needs widow B pension.

“(2) Subject to subsection (3), if a woman:

- (a) has never been an Australian resident; and
- (b) was in receipt of:

- (i) a wife pension; or
- (ii) a widow B pension; or
- (iii) a special needs wife pension; or
- (iv) a special needs widow B pension;

under the *Social Security Act 1947* before 1 July 1990; and

(c) is in a specified foreign country on 1 July 1991;
she is not disqualified for that pension from 1 July 1991.

“(3) If a woman to whom subsection (2) applies:

- (a) enters a country that is not a specified foreign country; or
- (b) is in a country when it ceases to be a specified foreign country;

she is disqualified for that pension as from the time:

- (c) she enters the country; or
- (d) the country ceases to be a specified foreign country;

as the case may be.

Social Security Legislation Amendment (No. 2) No. 115, 1991

“(4) Subsection (3) does not apply if the woman enters, or is in, a country as a transit passenger on an unbroken journey between 2 specified foreign countries.

Note 1: for ‘Australian resident’ see subsection 7 (2).

Note 2: for ‘specified foreign country’ see subsections 23 (1) and 38 (1).

Certain pensions generally portable for 12 months only

“1216. Subject to section 1216B, if:

- (a) a woman has been an Australian resident; and
- (b) she has been outside Australia continuously for a period of 12 months; and
- (c) on the day after the 12 month period ends, she is not in Australia or a specified foreign country;

she is disqualified for:

- (d) wife pension; and
- (e) widow B pension; and
- (f) special needs wife pension; and
- (g) special needs widow B pension;

as from that day.

Note 1: for the period of 12 months after the woman leaves Australia, her right to continue receiving the pension referred to in this section will not be affected by her leaving Australia as long as she has complied with the departure certificate requirements (see sections 1218 and 1219) and if necessary has been an Australian resident for 12 months immediately before leaving Australia (see section 1220).

Note 2: because this section commences on 1 July 1991, a woman who has been outside Australia since 1 July 1990 and is not in Australia or a specified foreign country on 1 July 1991 becomes disqualified for the pension referred to in this section from 1 July 1991 unless section 1216B applies to her.

Note 3: this section applies to a woman who transferred to, or was granted, a pension referred to in this section after leaving Australia.

Note 4: if a woman lodges a claim for the pension before leaving Australia and the pension is granted to her after she has left Australia, she is to be taken to have been receiving the pension as from the earliest day on which the pension is payable to her (see subsection 23 (2)).

Note 5: this section may not apply if a scheduled international social security agreement makes provision inconsistent with this section.

Note 6: for ‘Australian resident’ see subsection 7 (2).

Note 7: for ‘specified foreign country’ see subsections 23 (1) and 38 (1).

Note 8: for effects of a person returning to Australia see section 1217.

Certain pensions may be portable after 12 months if recipient in specified foreign country

“1216A. (1) If:

- (a) a woman has been an Australian resident; and
- (b) she has been outside Australia continuously for a period of 12 months; and
- (c) on the day after the 12 month period ends, she is in Australia or a specified foreign country;

she is not disqualified for:

Social Security Legislation Amendment (No. 2) No. 115, 1991

- (d) wife pension; or
- (e) widow B pension; or
- (f) special needs wife pension; or
- (g) special needs widow B pension;

after the 12 month period ends.

“(2) Subject to section 1216B, if, after the 12 month period ends, the woman:

- (a) enters a country that is not a specified foreign country; or
- (b) is in a country when it ceases to be a specified foreign country;

she is disqualified for that pension as from the time:

- (c) she enters the country; or
- (d) the country ceases to be a specified foreign country;

as the case may be.

“(3) Subsection (2) does not apply if the woman enters, or is in, a country as a transit passenger on an unbroken journey between 2 specified foreign countries.

Note 1: for the period of 12 months after the woman leaves Australia her right to continue receiving the pension referred to in this section is not affected by her leaving Australia.

Note 2: if a woman lodges a claim for the pension before leaving Australia and the pension is granted to her after she has left Australia, she is to be taken to have been receiving the pension as from the earliest day on which the pension is payable to her (see subsection 23 (2)).

Note 3: this section applies to a woman who transferred to, or was granted, a pension referred to in this section after leaving Australia.

Note 4: this section may not apply if a scheduled international social security agreement makes provision inconsistent with this section.

Note 5: for ‘specified foreign country’ see subsections 23 (1) and 38 (1).

Note 6: for effects of a person returning to Australia see section 1217.

Some women not affected by sections 1216 and 1216A

“1216B. (1) A woman’s qualification for a:

- (a) wife pension; or
- (b) widow B pension; or
- (c) special needs wife pension; or
- (d) special needs widow B pension;

is not affected by her being outside Australia while an entitled person.

“(2) In this section:

‘allegation authority’ means:

- (a) the Greek Australian Workers’ Welfare Association (NSW); or
- (b) the Commission of Enquiry established by Letters Patent of 9 February 1984 and 16 August 1984 to investigate matters known as the Greek conspiracy;

'entitled person' means:

- (a) a woman who was an Australian resident for at least 10 years; or
- (b) a woman in receipt of a widow B pension because she was legally married and her husband has died; or
- (c) a woman who was, or is the partner of a man who was, the subject of a recommendation by an allegation authority that resulted in payment of an amount of compensation by the Commonwealth to her or her partner.

Note: for 'Australian resident' see subsection 7 (2)."

Effect of disqualified person returning to Australia

36. Section 1217 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) If a person is disqualified under section 1216 or subsection 1216A (2) for a pension the person remains disqualified until returning to Australia.”.

Rate of pensions paid outside Australia

37. Section 1221 of the Principal Act is amended:

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

“(2A) In spite of subsections (3) or (4), this section applies to a person:

- (a) receiving a wife pension or a widow B pension; and
- (b) who is a person described in paragraph (a) of the definition of 'entitled person' in subsection 1216B (2).”;

(b) by inserting in point 1221-B7 “other than an entitled person within the meaning of section 1216B,” after “person”.

New Schedule 8—social security agreement with The Netherlands

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

Consequential amendments

39. The Acts specified in Schedule 3 are amended as set out in that Schedule.

Minor amendments

40. The Principal Act is further amended as set out in Schedule 4.

PART 5—AMENDMENT OF THE NATIONAL HEALTH ACT 1953

Principal Act

41. In this Part, “**Principal Act**” means the *National Health Act 1953*⁴.

Interpretation

42. Section 84 of the Principal Act is amended by inserting the following paragraphs after paragraph (a) of the definition of “concessional beneficiary” in subsection (1):

“(aaa) a person:

- (i) to whom paragraph (a) applied on 28 February 1991; and
- (ii) to whom the paragraph would continue to apply but for section 4D of the *Social Security Act 1947* or Division 1A of Part 3.10 of the *Social Security Act 1991*;

“(aab) a person:

- (i) to whom paragraph (a) applied at any time after 21 August 1990 and before 28 March 1991; and
- (ii) to whom the paragraph would continue to apply but for the person having invested the person’s available money (within the meaning of section 4D of the *Social Security Act 1947*), or reinvested the person’s deposit money (within the meaning of that section), in:
 - (A) an account with a financial institution; or
 - (B) a loan, including a loan by way of debentures, bonds or other securities; or
 - (C) an accruing return investment; or
 - (D) a market-linked investment; or
 - (E) an immediate annuity; or
 - (F) shares;(within the meaning of the Principal Act) in anticipation of, or because of, that section or Division 1A of Part 3.10 of the *Social Security Act 1991*.”.

PART 6—AMENDMENT OF THE SOCIAL SECURITY LEGISLATION AMENDMENT ACT 1990

Principal Act

43. In this Part, “Principal Act” means the *Social Security Legislation Amendment Act 1990*⁵.

Income from certain money

44. Section 9 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Where a person:

- (a) was not a prescribed person within the meaning of section 251A of the Principal Act at any time after 21 August 1990 and before 28 March 1991; and

Social Security Legislation Amendment (No. 2) No. 115, 1991

(b) would have been a prescribed person on that day but for the person having invested the person's available money (within the meaning of section 4D of the Principal Act), or reinvested the person's deposit money (within the meaning of section 4D of the Principal Act), in:

- (i) an account with a financial institution; or
- (ii) a loan, including a loan by way of debentures, bonds or other securities; or
- (iii) an accruing return investment; or
- (iv) a market-linked investment; or
- (v) an immediate annuity; or
- (vi) shares;

(within the meaning of the Principal Act) in anticipation of, or because of, the amendments made by subsection (1);

then for the purposes of this Act and other laws of the Commonwealth, the person does not become a prescribed person until he or she would have become so if the amendments had not been made.”.

SCHEDULE 1

Section 22

**ADDITIONAL AMENDMENTS OF THE SOCIAL SECURITY ACT
1991 MADE BY PART 3**

Part A—Amendments relating to termination of payments

After paragraphs 72 (e), 125 (e), 176 (e), 226 (e), 288 (e), 393 (e), 812 (e) and 1027 (e):

Insert:

“; and (f) the pension is not cancelled before the end of the notification period;”.

After paragraphs 345 (e), 439 (e), 491 (e), 660B (e), 877 (e) and 982 (e):

Insert:

“; and (f) the allowance is not cancelled before the end of the notification period;”.

After paragraph 579 (e):

Insert:

“; and (f) the allowance is not cancelled before the end of the notification period;”.

Section 579:

Omit “day before the event or change in circumstances occurs”, substitute “end of the notification period”.

After paragraph 717 (e):

Insert:

“; and (f) the benefit is not cancelled before the end of the notification period;”.

After paragraph 934 (e):

Insert:

“; and (f) the supplement is not cancelled before the end of the notification period;”.

Part B—Amendments relating to computer changes

After section 78A:

Insert:

Changes to payments by computer

“78B. If:

(a) payment of an age pension to a person is based upon data in a computer; and

SCHEDULE 1—continued

- (b) the pension rate is increased or reduced, or the pension is cancelled or suspended, 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 determine the change;

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

After section 131A:

Insert:

Changes to payments by computer

“131B. If:

- (a) payment of an invalid pension to a person is based upon data in a computer; and
- (b) the pension rate is increased or reduced, or the pension is cancelled or suspended, 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 determine the change;

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

After section 182A:

Insert:

Changes to payments by computer

“182B. If:

- (a) payment of a wife pension to a person is based upon data in a computer; and
- (b) the pension rate is increased or reduced, or the pension is cancelled or suspended, 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 determine the change;

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

SCHEDULE 1—continued

After section 231A:

Insert:

Changes to payments by computer

“231B. If:

- (a) payment of a carer pension to a person is based upon data in a computer; and
- (b) the pension rate is increased or reduced, or the pension is cancelled or suspended, 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 determine the change;

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

After section 295A:

Insert:

Changes to payments by computer

“295B. If:

- (a) payment of a sole parent pension to a person is based upon data in a computer; and
- (b) the pension rate is increased or reduced, or the pension is cancelled or suspended, 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 determine the change;

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

After section 352A:

Insert:

Changes to payments by computer

“352B. If:

- (a) payment of a widowed person allowance to a person is based upon data in a computer; and
- (b) the allowance rate is increased or reduced, or the allowance is cancelled or suspended, 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 determine the change;

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

SCHEDULE 1—continued

After section 400A:

Insert:

Changes to payments by computer

“400B. If:

- (a) payment of a widow B pension to a person is based upon data in a computer; and
- (b) the pension rate is increased or reduced, or the pension is cancelled or suspended, 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 determine the change;

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

After section 445A:

Insert:

Changes to payments by computer

“445B. If:

- (a) payment of a sheltered employment allowance to a person is based upon data in a computer; and
- (b) the allowance rate is increased or reduced, or the allowance is cancelled or suspended, 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 determine the change;

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

After section 497A:

Insert:

Changes to payments by computer

“497B. If:

- (a) payment of a rehabilitation allowance to a person is based upon data in a computer; and
- (b) the allowance rate is increased or reduced, or the allowance is cancelled or suspended, 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 determine the change;

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

SCHEDULE 1—continued

After section 586A:

Insert:

Changes to payments by computer

“586B. If:

- (a) payment of a job search allowance to a person is based upon data in a computer; and
- (b) the allowance rate is increased or reduced, or the allowance is cancelled or suspended, 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 determine the change;

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

After section 660IA:

Insert:

Changes to payments by computer

“660IB. If:

- (a) payment of a newstart allowance to a person is based upon data in a computer; and
- (b) the allowance rate is increased or reduced, or the allowance is cancelled or suspended, 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 determine the change;

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

After section 722A:

Insert:

Changes to payments by computer

“722B. If:

- (a) payment of a sickness benefit to a person is based upon data in a computer; and
- (b) the benefit rate is increased or reduced, or the benefit is cancelled or suspended, 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 determine the change;

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

SCHEDULE 1—continued

After section 818A:

Insert:

Changes to payments by computer

“818B. If:

- (a) payment of a special needs pension to a person is based upon data in a computer; and
- (b) the pension rate is increased or reduced, or the pension is cancelled or suspended, 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 determine the change;

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

After section 882A:

Insert:

Changes to payments by computer

“882B. If:

- (a) payment of a family allowance to a person is based upon data in a computer; and
- (b) the allowance rate is increased or reduced, or the allowance is cancelled or suspended, 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 determine the change;

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

After section 939A:

Insert:

Changes to payments by computer

“939B. If:

- (a) payment of a family allowance supplement to a person is based upon data in a computer; and
- (b) the supplement rate is increased or reduced, or the supplement is cancelled or suspended, 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 determine the change;

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

SCHEDULE 1—continued

After section 987A:

Insert:

Changes to payments by computer

“987B. If:

- (a) payment of a child disability allowance to a person is based upon data in a computer; and
- (b) the allowance rate is increased or reduced, or the allowance is cancelled or suspended, 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 determine the change;

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

After section 1029A:

Insert:

Changes to payments by computer

“1029B. If:

- (a) payment of a double orphan pension to a person is based upon data in a computer; and
- (b) the pension is cancelled or suspended 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 determine the change;

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

After section 1059A:

Insert:

Changes to payments by computer

“1059B. If:

- (a) payment of a mobility allowance to a person is based upon data in a computer; and
- (b) the allowance is cancelled or suspended 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 determine the change;

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

Part C—Amendments relating to investments with friendly societies

Sub-subparagraphs 1075 (1) (b) (ii) (B) and 1076 (b) (ii) (B):

Before “realisation” insert “full”.

Social Security Legislation Amendment (No. 2) No. 115, 1991

SCHEDULE 1—continued

Part D—Amendments relating to indexation date

Sections 1203, 1204, 1205 and 1206:

Omit “13 June” (wherever occurring), substitute “1 July”.

SCHEDULE 2

Section 38

NEW SCHEDULE 8

“SCHEDULE 8

Section 1208

AGREEMENT

between

AUSTRALIA

and

THE KINGDOM OF THE NETHERLANDS

ON SOCIAL SECURITY

The Government of Australia and the Government of The Kingdom of The Netherlands,

Wishing to strengthen the existing friendly relations between their two countries, and

Resolved to co-operate in the field of social security;

Have agreed as follows:

PART I.

GENERAL PROVISIONS

Article 1

Definitions

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

“benefit” means in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement for which a beneficiary is qualified;

“Competent Authority” means, in relation to Australia: the Secretary to the Department of Social Security, and, in relation to The Netherlands: the Minister for Social Affairs and Employment;

“Competent Institution” means, in relation to Australia: the Competent Authority for Australia, and in relation to The Netherlands: the Insurance Institution which is charged with the implementation of the legislation of The Netherlands specified in Article 2 and which is competent under that legislation;

“legislation” means, in relation to Australia, the laws specified in Article 2 in relation to Australia; and, in relation to The

SCHEDULE 2—continued

Netherlands, the laws, ordinances and administrative regulations relating to the systems and branches of social security specified in Article 2 in relation to The Netherlands;

“period of insurance” means a period defined as such in the legislation of The Netherlands;

“period of residence in Australia”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 9 to be a period in which that person was an Australian resident; and

“territory” means, in relation to Australia, The Commonwealth of Australia, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, and, in relation to The Netherlands, the territory of the Kingdom in Europe.

2. 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 legislation of either Party.

Article 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, consolidate, supplement or replace them:
 - (a) in relation to Australia: the Social Security Act 1947, in so far as the Act provides for, applies to or affects the following benefits:
 - (i) age pensions;
 - (ii) wives' pensions for women who are the wives of persons receiving age pension;
 - (b) in relation to The Netherlands, its legislation on:
 - (i) general old age insurance;and for the application of Article 6 also its legislation on:
 - (ii) sickness insurance;
 - (iii) unemployment insurance;
 - (iv) children's allowances;
 - (v) invalidity insurance;
 - (vi) general survivor's insurance.
2. Notwithstanding the provisions of paragraph 1 the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving

SCHEDULE 2—continued

effect to any agreement on social security entered into by either Party.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries or to new branches or systems of social security only if the two Parties so agree in a Protocol to this Agreement.
4. This Agreement shall not apply to social and medical assistance schemes, to special schemes for civil servants or persons treated as such, or to benefit schemes for victims of war or its consequences.

Article 3

Personal Scope

Subject to other articles of this Agreement, it shall apply to any person who:

- (a) is or has been an Australian resident, or
 - (b) is or has been subject to the legislation of The Netherlands,
- and, where applicable, to other persons in regard to the rights they derive from a person described above.

Article 4

Equality of Treatment

1. Subject to the domestic laws of a Party the citizens of each of the Parties shall be treated equally in the application of the social security laws of Australia and of The Netherlands.
2. Subject to this Agreement and unless otherwise provided, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise by virtue of this Agreement.

Article 5

Payment of benefits abroad

1. Except where otherwise provided in this Agreement and subject to the legislation of the Parties, benefits may not be reduced, modified, suspended or withdrawn on account of the recipient residing in the territory of the other Party.
2. Where qualification for Australian wives' pensions for women, who are the wives of persons receiving age pensions, are subject to limitations as to time, then reference to Australia in those limitations shall be read also as reference to the territory of The Netherlands.

Article 6

Secondment

1. Where a person, who is subject to the legislation of The Netherlands, in the service of an employer having its place of business in the

SCHEDULE 2—continued

territory of The Netherlands is sent from that territory by that employer to work in the territory of Australia for a period not expected to exceed 5 years, the person may remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.

2. If the duration of the work is expected to extend beyond the aforementioned duration a person who is subject to the legislation of The Netherlands in the service of an employer having his place of business in the territory of The Netherlands, is sent from that territory by that employer to work in the territory of Australia, the person may, if justified by special reasons, remain subject to the legislation of The Netherlands as if he were employed in the territory of the Netherlands.
3. If the actual duration of work of the person described in paragraph 1 exceeds the expected period of work owing to unforeseeable circumstances that person may remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.
4. For the purposes of the Netherlands' legislation, a person who is subject to the Netherlands' legislation in accordance with the provisions of this article shall be considered to be resident in the territory of The Netherlands.
5. According to the provisions of this article the Netherlands' legislation shall be applicable if the employer or employee has applied for a certificate of secondment within three months after the first day of secondment or as expressed in paragraph 3 before the end of the expected period of secondment and this certificate has been issued to the person concerned.

PART II.
PROVISIONS RELATING TO
AUSTRALIAN BENEFITS

Article 7

Residence or Presence in The Netherlands or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:
 - (a) is an Australian resident or residing in The Netherlands or a third State with which Australia has concluded an agreement

SCHEDULE 2—continued

on social security that includes provision for co-operation in the assessment and determination of claims for benefits, and
(b) is in Australia or The Netherlands or that third State,
that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

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

Article 8

Spouse-related Australian Benefits

1. For the purposes of this Agreement, a person who receives a wife's pension under the Social Security Act 1947 as amended from time to time due to the fact that the spouse of that person receives by virtue of this Agreement an Australian benefit, shall be deemed to receive that wife's pension by virtue of this Agreement.
2. For the purposes of this Agreement, a person in Australia who receives a carer's pension under the Social Security Act 1947 as amended from time to time because that person is caring for someone who receives an Australian benefit by virtue of this Agreement, shall be deemed to receive that carer's pension by virtue of this Agreement.

Article 9

Totalisation for Australia

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
 - (a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for that Australian benefit; and
 - (b) a period of residence in Australia equal to or greater than the period identified in paragraph 4 for that person,and has accumulated a period of insurance then, for the purposes of a claim for that Australian benefit, that period of insurance shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.
2. For the purposes of paragraph 1, where a person:
 - (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit, and
 - (b) has accumulated a period of insurance in two or more separate

SCHEDULE 2—continued

- periods that equals or exceeds in total the minimum period referred to in subparagraph (a),
the total of the periods of insurance shall be deemed to be one continuous period.
3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance accumulated by that person coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.
 4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:
 - (a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous, and
 - (b) for the purposes of an Australian benefit that is payable to an Australian resident there shall be no minimum period of residence in Australia.

Article 10

Calculation of Australian Benefits

1. Subject to paragraph 2, where a person who is outside Australia is qualified for an Australian benefit only by virtue of this Agreement, the rate of that benefit shall be determined according to the legislation of Australia.
2. When assessing the income of a person for the purposes of calculating the rate of a benefit pursuant to paragraph 1:
 - (a) any payment according to the Algemene Bijstandswet, to that person under the legislation of The Netherlands shall be disregarded, and
 - (b) only the proportion of any other Netherlands' benefit described as follows which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Netherlands' benefit and dividing that product by 300.

The calculation described in paragraph 2 (b) may be expressed as

$$A = \frac{Q}{300} \left[R - \frac{(NP * Q/300 + I - F)}{2} \right]$$

where:

A = rate of Australian benefit payable;

SCHEDULE 2—continued

- Q = number of months of the period of residence in Australia of the person or 300 whichever is the lower;
- R = maximum rate of Australian benefit;
- NP = Netherlands' old age benefit excluding AOW toeslag;
- I = income within the meaning of Australian legislation excluding NP; and
- F = free area under the Australian income test.

3. A person who receives an Australian benefit in the territory of The Netherlands under the legislation of Australia shall be entitled to receive the concessional assessment of income set out in paragraph 2 (a).
4. A person who receives a proportionalised Australian benefit in the territory of The Netherlands under the legislation of Australia shall be entitled to receive the concessional assessment of income set out in paragraph 2.
5. Subject to the provisions of paragraph 6, where a person who is in Australia is qualified to receive an Australian benefit only by virtue of this Agreement, the rate of that benefit shall be determined by:
 - (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation the Netherlands' benefit received by that person;
 - (b) deducting the amount of the Netherlands' benefit received by that person from the maximum rate of that Australian benefit; and
 - (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).
6. Where a married person is, or both that person and his or her spouse are, in receipt of a Netherlands' benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the Social Security Act 1947 as amended from time to time, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
7. If a person would receive an Australian benefit except for the operation of paragraph 5 or except for that person's failure to claim the benefit, then for the purposes of a claim by that person's spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.
8. The reference in paragraph 7 to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of any benefit, pension or allowance under the Social Security Act

SCHEDULE 2—continued

1947 as amended from time to time whether by virtue of this Agreement or otherwise.

PART III.

PROVISIONS RELATING TO THE NETHERLANDS BENEFITS

Article 11

Benefits under the General Old Age Pensions Act

1. The Netherlands' Competent Institution shall determine the old age pension directly and exclusively on the basis of periods of insurance completed under the Netherlands' General Old Age Pensions Act.
2. Subject to paragraph 3, periods before January 1, 1957 during which a national of one Party resided in the territory of The Netherlands after reaching the age of fifteen or during which, while residing in another country the person was gainfully employed in The Netherlands, shall also be considered as periods of insurance if the person does not satisfy the condition of the Netherlands' legislation permitting such periods to be treated for that person as periods of insurance.
3. The periods referred to in paragraph 2 shall be taken into consideration in the calculation of the old age pension only if the person concerned has been insured under the Netherlands' General Old Age Pensions Act and has resided for at least six years in the territory of one or both Parties after reaching the age of fifty-nine and only while the person is residing in the territory of either Party. However, the periods before January 1, 1957 shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old age pension under the legislation of a country other than The Netherlands.

PART IV.

COMMON PROVISIONS

Article 12

Common Provisions for the Calculation of Benefits

1. For the purposes of calculating Australian benefits under paragraph 2 of Article 10, the AOW-toeslag shall not be taken into account if the beneficiary resides in the territory of The Netherlands.
2. For the purposes of calculating the AOW-toeslag under Article 11, Australian benefits for the spouse of the beneficiary shall not be taken into account if the beneficiary resides in the territory of Australia.

SCHEDULE 2—continued

PART V.

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 13

Lodgement of Documents

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party which should for the purposes of that legislation, have been presented within a prescribed period to a Competent Authority, Competent Institution or Tribunal of that Party, but which is presented within the same period to a Competent Authority, Competent Institution or Tribunal of the other Party, shall be treated as if it had been presented to the Competent Authority, Competent Institution or Tribunal of the first Party. The date on which such a claim, notice or appeal was submitted to that Competent Authority, Competent Institution or Tribunal of the first Party shall be considered only for the purposes of assessing entitlement to benefit as the date of its submission to that Competent Authority, Competent Institution or Tribunal of the other Party.
2. A claim for a benefit under the legislation of one Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant:
 - (a) requests that it be considered an application under the legislation of the other Party, or
 - (b) provides information at the time of application indicating that periods of residence or periods of insurance have been completed under the legislation of the other Party and the claim is received by the Competent Institution of the other Party within six months from the date of lodgement with the first Party.
3. In any case to which paragraph 1 or 2 applies, the Competent Authority, Competent Institution or Tribunal to which the claim, notice or appeal has been submitted shall transmit it without delay to the Competent Authority, Competent Institution or Tribunal of the other Party.
4. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia.

Article 14

Recovery of Overpayments

1. Where:
 - (a) a benefit under this Agreement is claimed from, or is being paid by, one of the Parties; and

SCHEDULE 2—continued

- (b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit from the other Party and that, if paid, would affect the amount of that first-mentioned benefit
- that first-mentioned benefit shall not be paid or continue to be paid if a claim is not duly lodged for payment of the second-mentioned benefit or if that claim is not actively pursued.
2. For the purposes of the Social Security Act 1947, where:
- (a) a benefit is paid or payable by a Party to a person in respect of a past period and that past period occurred after the entry into force of the Agreement;
 - (b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and
 - (c) the amount of the benefit paid by that other Party would have been reduced had the benefit referred to in subparagraph (a) been paid during that past period,
- then the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout the past period shall, for the purposes of this Article, be referred to as an “overpayment”.
3. A Competent Institution which has made an overpayment of a benefit to a beneficiary may request the other Competent Institution which is required to pay a corresponding benefit to that beneficiary to deduct the amount of the overpayment from any arrears of that corresponding benefit which the latter Competent Institution pays to that beneficiary. The latter Competent Institution shall if so requested deduct the amount of the overpayment from those arrears and transfer it to the former Competent Institution. Where the whole or part of any overpayment cannot be deducted from any arrears the provisions of paragraph 4 shall apply.
4. Where a Competent Institution of a Party is unable to recover pursuant to paragraph 3 all the amount of an overpayment it has made, it may, within the conditions and limits laid down by the legislation which it applies, request the Competent Institution of the other Party to deduct the unrecovered amount of the overpayment from any pension, benefit or allowance which the latter Competent Institution pays to the beneficiary. The latter Competent Institution shall make the deductions under the conditions and within the limits set out in the legislation which it applies as if it had made the overpayment and shall transfer the amounts deducted to the former Competent Institution.

SCHEDULE 2—continued

5. The amount of any overpayment shall be a debt due by the person who received it to the Party that paid it.
6. A Party may determine that the amount, or any part, of the debt owing to it under paragraph 5 may be deducted from future payments of any pension, benefit or allowance payable at any time by that Party to the person owing the debt.
7. The Competent Institution receiving a request under paragraph 3 or 4 shall take the action agreed upon between the liaison agencies to recoup the amount of the overpayment and to transfer it to the other Competent Institution.

Article 15

Payments of Benefits

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement or to payment of social security contributions. Those measures shall operate retrospectively to the time the restrictions were imposed.
2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties, without deduction for government administrative fees and charges for processing and paying that benefit.
3. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.
4. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to authorities and insurance institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to authorities and insurance institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic or consular authorities.

Article 16

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Institutions responsible for the application of this Agreement shall:

SCHEDULE 2—continued

- (a) to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;
 - (b) lend their good offices and furnish assistance to one another (including the communication to each other of any information necessary) with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies as if the matter involved the application of their own legislation;
 - (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement;
 - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 17.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Competent Institutions for the reimbursement of certain types of expenses.
3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Party by a Competent Authority or a Competent Institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.
4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Competent Institution 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 the other Party.
5. In the application of this Agreement, the Competent Authority and the Competent Institutions of a Party may communicate with the other in the official language of that Party.

SCHEDULE 2—continued

Article 17

Administrative Arrangement

1. The Competent Authorities of the Parties shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.
2. Liaison agencies shall be designated to facilitate the implementation of this Agreement.

Article 18

Review of the Agreement

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

PART VI.

TRANSITIONAL AND FINAL PROVISIONS

Article 19

Commencement of Benefits

1. The commencement date for payment of a benefit under this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.
2. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
 - (a) a period as an Australian resident and a period of insurance, and
 - (b) any event or fact which is relevant to that entitlement,shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.
3. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of the Agreement.
4. Subject to paragraph 3, a person may be qualified to receive a benefit, other than a lump sum payment, under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

SCHEDULE 2—continued

Article 20

Entry Into Force and Termination

1. Both Parties shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the date of the last notification.
2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel notice of termination of this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:
 - (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, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at The Hague this 4th day of January 1991, in the English language.

FOR THE GOVERNMENT OF
AUSTRALIA
GRAHAM RICHARDSON

FOR THE GOVERNMENT OF
THE KINGDOM OF THE
NETHERLANDS
ELSKE TER VELD”.

SCHEDULE 3

Section 39

**CONSEQUENTIAL AMENDMENTS OF THE SOCIAL SECURITY
ACT 1991 AND THE DATA-MATCHING PROGRAM
(ASSISTANCE AND TAX) ACT 1990 RELATING TO JOB
SEARCH AND NEWSTART ALLOWANCE**

Social Security Act 1991

Paragraph 1061A (1) (b):

Omit the paragraph, substitute:

“(b) if the person has not turned 18—job search allowance; or”.

Paragraph 1061A (2) (a):

Omit “unemployment benefit”, substitute “job search allowance, newstart allowance”.

Schedule 1A (subclause 1 (1)):

Omit “For”, substitute “Subject to paragraph (2) (k), for”.

Schedule 1A (subclause 1 (2)):

Add the following paragraphs:

- “and (k) a job search allowance under the 1947 Act and a job search allowance under this Act in respect of a person who has not turned 18 correspond to each other; and
- (l) an unemployment benefit under the 1947 Act in respect of a person who has not been in receipt of an old benefit or old benefits for longer than 12 months and a job search allowance under this Act correspond to each other; and
 - (m) an unemployment benefit under the 1947 Act in respect of a person who has been in receipt of an old benefit or old benefits for longer than 12 months and a newstart allowance under this Act correspond to each other.”.

Schedule 1A (after subclause 1 (2)):

Add the following subclause:

“(3) In paragraphs (2) (1) and (m):

‘old benefit’, in relation to a person, means:

- (a) an unemployment benefit under the 1947 Act; or
- (b) a job search allowance under the 1947 Act; or
- (c) in the case of a person who, but for the abolition of the allowance formerly paid by the Department of Employment, Education and Training and known as the Formal Training Allowance, would have paid that allowance on 1 July 1991—that allowance.”.

SCHEDULE 3—continued

Data-matching Program (Assistance and Tax) Act 1990

Section 3 (subparagraphs (c) (x) and (ix) of the definition of “personal assistance”):

Omit the subparagraphs, substitute:

- “(x) job search allowance;
- (xi) newstart allowance;”.

SCHEDULE 4

Section 40

MINOR AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

Part A—Amendments of Index of definitions

Section 3 (Index of definitions):

Insert in their appropriate alphabetical positions determined on a letter-by-letter basis:

“Approved scholarship	8 (1)
Exempt funeral investment	23 (1)
Type A funeral investment	23 (1)
Type B funeral investment	23 (1)”.

Part B—Notes

Section 1061C:

Add at the end:

“Note: the amounts in column 3 are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1206A).”.

Subsection 1061D (2):

Add at the end:

“Note: the amounts in columns 3 and 4 are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1206B).”.

After points 1064-F9, 1066-F8, 1067-J11 and 1068-H10:

Insert:

“Note 4: the amounts are indexed in line with CPI increases (see sections 1191 to 1194).”.

NOTES

1. No. 116, 1991.
2. 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 Nos. 6 and 73, 1991.
3. No. 46, 1991.
4. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; No. 95, 1989; and Nos. 3 and 119, 1990.
5. No. 6, 1991 as amended by No. 69, 1991.

*[Minister's second reading speech made in—
House of Representatives on 31 May 1991 a.m.
Senate on 5 June 1991]*