1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a third time)

SOCIAL SECURITY LEGISLATION AMENDMENT BILL 1994

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9319141—1,300/14.2.1994—(191/93) Cat. No. 94 4085 8 **MR**

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THIS Bill originated in the House of Representatives; and, having this day passed, is now ready for presentation to the Senate for its concurrence.

L. M. BARLIN
Clerk of the House of Representatives

House of Representatives,
Canberra, 8 February 1994

A BILL

FOR

An Act to amend the *Social Security Act 1991*, and for related purposes

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title etc.

1.(1) This Act may be cited as the *Social Security Legislation Amendment Act 1994*.

(2) In this Act, **"Principal Act"** means the *Social Security Act 1991*[1].

Commencement

2.(1) The following provisions commence on the day on which this Act receives the Royal Assent:

(a) Parts 1, 2 and 3;

(b) Part 4 and Schedule 1;

(c) Part 6;

(d) Parts 7, 8, 9, 10, 11, 12 and Schedule 3;

(e) Section 39 and Parts 1 and 9 of Schedule 4.

(2) Part 2 of Schedule 4 is taken to have commenced on 1 July 1991.

(3) Part 3 of Schedule 4 is taken to have commenced on 12 March 1992.

MR

(4) Part 4 of Schedule 4 is taken to have commenced on 29 June 1992.

(5) Part 5 of Schedule 4 is taken to have commenced on 1 January 1993.

(6) Section 40 and Part 6 of Schedule 4 are taken to have commenced on 20 March 1993.

(7) Part 7 of Schedule 4 is taken to have commenced on 25 March 1993. 5

(8) Part 5 and Schedule 2 commence on 1 July 1994.

(9) Part 8 of Schedule 4 commences on 1 July 1994, immediately after the commencement of Part 3 of the *Social Security Legislation Amendment Act (No. 2) 1993*.

Application 10

3.(1) The amendments made by Part 4 and Schedule 1 apply only to orders under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* that are made on or after the commencement of that Part.

(2) The amendments made by Part 5 apply not only to debts that arise on or after 1 July 1994 but also to debts that arise before that day. 15

PART 2—MOBILITY ALLOWANCE

Qualification for mobility allowance

4. Section 1035 of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

"(ca) all of the following apply: 20

(i) the person is a handicapped person;

(ii) the Secretary is of the opinion that:

(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and 25

(B) the person's inability to use public transport without substantial assistance is because of the person's physical or mental disability; and

(C) the person is undertaking job search activities under the Competitive Employment Placement and Training Program administered by the Department of Health, Housing, Local Government and Community Services; 30

(iii) the person is physically present in Australia;

(iv) the person is an Australian resident; or".

PART 3—AAT'S POWERS TO MAKE STAY ORDERS 35

Operation and implementation of the decision under review

5. Section 1293 of the Principal Act is amended by adding at the end the following subsections:

"(2) The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 1283 as if the references in section 41 of the AAT Act to the decision to which the relevant proceeding relates were references to:

5 (a) if the SSAT affirmed the original decision—the original decision; or

(b) if the SSAT varied the original decision:

(i) the original decision as varied by the SSAT; and

(ii) the original decision; or

(c) if the SSAT set aside the original decision and substituted a new

10 decision:

(i) the new decision; and

(ii) the original decision; or

(d) if the SSAT set aside the original decision and sent the matter back to the Secretary for reconsideration in accordance with any directions

15 or recommendations of the SSAT:

(i) any decision made as a result of that reconsideration; and

(ii) the original decision.

"(3) For the purposes of subsection (2), the original decision is the decision that was reviewed by the SSAT.".

20 **PART 4—DEBTS ARISING FROM AAT STAY ORDERS**

Insertion of new section

6. After section 1223AA of the Principal Act the following section is inserted:

Debts arising from AAT stay orders

25 "1223AB. If:

(a) a person applies to the Administrative Appeals Tribunal under section 1283 for review of a decision; and

(b) the Administrative Appeals Tribunal makes an order under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975*;

30 and

(c) as a result of the order, the amount that has in fact been paid to the person by way of social security payment is greater than the amount that was payable to the person;

the difference between the amount that was in fact paid to the person and the

35 amount that was payable to the person is a debt due to the Commonwealth and recoverable by the Commonwealth by means of:

(d) if the person is receiving a social security payment—deductions from that person's payment; or

(e) if section 1234A applies to another person who is receiving a social security payment—deductions from that other person's payment; or

(f) legal proceedings; or

(g) garnishee notice.

Note 1: Subsection 43(6) of the *Administrative Appeals Tribunal Act 1975* provides that the AAT's decision on the review will generally take effect from the day on which the SSAT's decision had effect. Since this is the case, the amount 'payable' to the person during the stay period is the amount finally determined by the AAT as being payable and not the amount that was paid in accordance with the terms of the stay order.

Note 2: For deductions see sections 1231 and 1234A.

Note 3: For legal proceedings see section 1232.

Note 4: For garnishee notice see section 1233.".

Consequential amendments

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

PART 5—PENALTY INTEREST CHARGE

Repeal of section 1229 and substitution of new sections

8. Section 1229 of the Principal Act is repealed and the following sections are substituted:

Interest payable on debt for failure to enter agreement to pay debt

"1229.(1) If:

(a) a person is not receiving a social security payment; and

(b) the person:

(i) owes a debt to the Commonwealth under a provision of this Part; or

(ii) owes a debt to the Commonwealth under subsection 246(1) of the 1947 Act; or

(iii) owes an assurance of support debt or a compensation debt under the 1947 Act;

the Secretary may give the person a notice advising the person of the following:

(c) the amount of the debt;

(d) that, unless the person, within 14 days after the notice is given:

(i) pays the whole of the debt; or

(ii) enters into an agreement under section 1229A to pay the debt;

interest may become payable on the debt;

(e) how any interest that becomes payable is to be calculated.

Interest payable

"(2) Subject to subsection (3), if:

(a) the whole of the debt is not paid within 14 days after the person is given the notice; or

5 (b) the person does not enter into an agreement to pay the debt within the 14 day period;

interest is payable by way of penalty on the debt by the person and the amount of the interest is to be worked out under subsection (4).

"(3) The Secretary may determine that interest is not payable on the debt 10 if the Secretary is satisfied that the person intends to pay the debt as soon as is reasonably practicable having regard to the circumstances of the person.

"(4) Interest is payable on the amount of the debt (excluding interest) as remains due from time to time:

(a) on and from the day after the 14 day period ends; and

15 (b) at the penalty interest rate.

Note: For penalty interest rate see section 1229B.

Payments in satisfaction of debt and interest

"(5) If:

(a) interest is payable on the debt; and

20 (b) an amount is paid for the purpose of paying the debt and the interest;

the amount so paid is to be applied as follows:

(c) until the debt (excluding interest) is fully paid—in satisfaction of the amount of the debt that is due when the payment is made;

(d) after the debt (excluding interest) is fully paid—in satisfaction of the 25 interest that had become payable on the debt before the debt was fully paid.

Interest ceases to be payable if agreement entered into

"(6) If a person enters into an agreement under section 1229A to pay the debt, interest that would, apart from this subsection, become payable on the 30 debt on and from the day on which the agreement is entered into is not payable.

Methods of recovery

"(7) The interest that is payable on the debt is a debt due to the Commonwealth and is recoverable by the Commonwealth by means of:

35 (a) if the person is receiving a pension, benefit or allowance under this Act—deductions from that person's pension, benefit or allowance; or

(b) if section 1234A applies to another person who is receiving a pension, benefit or allowance under this Act—deductions from that 40 other person's pension, benefit or allowance; or

(c) legal proceedings; or

(d) garnishee notice.

Note 1: For 'deductions' see sections 1231 and 1234A.

Note 2: For 'legal proceedings' see section 1232.

Note 3: For 'garnishee notice' see section 1233. 5

Interest payable on debt for breach of agreement to pay debt

"1229A.(1) If:

(a) a person is not receiving a social security payment; and

(b) the person owes:

(i) a debt to the Commonwealth under a provision of this Part; or 10

(ii) a debt to the Commonwealth under subsection 246(1) of the 1947 Act; or

(iii) an assurance of support debt or a compensation debt under the 1947 Act; and

(c) the person enters into an agreement to pay the debt by instalments; 15 and

(d) the person does not pay an instalment;

the Secretary may give the person a notice advising the person of the following:

(e) the amount of the debt; 20

(f) that, unless the person pays the instalment within 14 days after the notice is given, interest may become payable on the debt;

(g) how any interest that becomes payable is to be calculated.

Interest payable

"(2) Subject to subsection (3), if the instalment is not paid within 14 days 25 after the person is given the notice, interest is payable by way of penalty on the debt by the person and the amount of interest is to be worked out under subsection (4).

"(3) The Secretary may determine that interest is not payable on the debt if the Secretary is satisfied that the person intends to pay the instalment as 30 soon as is reasonably practicable having regard to the person's circumstances.

"(4) Interest is payable on the amount of the debt (excluding interest) as remains due from time to time:

(a) on and from the day after the 14 day period ends; and 35

(b) at the penalty interest rate.

Note: For penalty interest rate see section 1229B.

Payments in satisfaction of debt and interest

"(5) If:

(a) interest is payable on the debt; and

(b) an amount is paid for the purpose of paying the debt and the interest; the amount so paid is to be applied as follows:

(c) until the debt (excluding interest) is fully paid—in satisfaction of the amount of the debt that is due when the payment is made;

(d) after the debt (excluding interest) is fully paid—in satisfaction of the interest that had become payable on the debt before it was fully paid.

Methods of recovery

"(6) The interest that is payable on the debt is a debt due to the Commonwealth and is recoverable by the Commonwealth by means of:

(a) if the person is receiving a pension, benefit or allowance under this Act—deductions from that person's pension, benefit or allowance; or

(b) if section 1234A applies to another person who is receiving a pension, benefit or allowance under this Act—deductions from that other person's pension, benefit or allowance; or

(c) legal proceedings; or

(d) garnishee notice.

Note 1: For 'deductions' see sections 1231 and 1234A.

Note 2: For 'legal proceedings' see section 1232.

Note 3: For 'garnishee notice' see section 1233.

Penalty interest rate

"1229B.(1) The penalty interest rate is:

(a) 20% per year; or

(b) if a lower rate is determined under subsection (2)—that lower rate.

"(2) The Minister may from time to time, by notice in writing, determine a rate of less than 20% per year that is to be the penalty interest rate for the purposes of sections 1229 and 1229A.

"(3) A notice under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.".

Insertion of new section

9. After section 1237A of the Principal Act the following section is inserted in Part 5.4:

Determination that penalty interest not payable in relation to particular periods

"1237B.(1) The Secretary may, in writing, determine that interest payable by a person in respect of a certain period under subsection 1229(3) or 1229A(3) is not payable.

"(2) The determination may relate to a period before the making of the determination.

"(3) The determination may be expressed to be subject to the person complying with specified conditions.

"(4) The Secretary must give a copy of the determination to the person as soon as practicable after making the determination. 5

"(5) A failure to comply with subsection (4) does not invalidate the determination.

"(6) If:

(a) the determination is expressed to be subject to the person complying with specified conditions; and 10

(b) the person contravenes a condition;

the determination ceases to have effect.

"(7) The Secretary may cancel or vary the determination by written notice to the person.". 15

Repeal of section 1352

10. Section 1352 of the Principal Act is repealed.

Further amendments

11. The Principal Act is further amended as set out in Schedule 2.

PART 6—CONFIDENTIALITY 20

General definitions

12. Section 23 of the Principal Act is amended by omitting from subsection (1) the definition of "protected information" and substituting the following definition:

" **'protected information'** means: 25

(a) information about a person that is or was held in the records of the Department; or

(b) information that there is no information about a person held in the records of the Department;".

Authorised access to and use of protected information 30

13. Section 1312 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsections:

"(1) A person may obtain protected information if the information is obtained for the purposes of this Act or the *Farm Household Support Act 1992*. 35

Note: In certain circumstances it is an offence for a person to obtain protected information without authority (see section 1312A).

"(1A) A person may:

(a) make a record of protected information; or

(b) disclose such information to any person; or

(c) otherwise use such information;

5 if the record, disclosure or use made of the information by the person is made:

(d) for the purposes of this Act or the *Farm Household Support Act 1992*; or

(e) for the purpose for which the information was disclosed to the
10 person under section 1313 or 1314 of this Act.

Note: In certain circumstances it is an offence for a person to use protected information without authority (see section 1312B).";

(b) by omitting from subsection (2) "Despite subsection (1), nothing" and substituting "Nothing".

15 **Repeal of section and substitution of new section**

14. Section 1312A of the Principal Act is repealed and the following section is substituted:

Offence—unauthorised access to protected information

"1312A. If:

20 (a) a person intentionally obtains information; and

(b) the person:

(i) is not authorised or required by or under this Act or the *Farm Household Support Act 1992*; and

(ii) has no other lawful authority;

25 to obtain the information; and

(c) the person knows or ought reasonably to know that the information is protected information;

the person is guilty of an offence.

Penalty: Imprisonment for 2 years.

30 Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

35 Note 2: A person, including an officer, is authorised to obtain protected information for the purposes of this Act or the *Farm Household Support Act 1992* (see subsection 1312(1)).

Note 3: For 'protected information' see subsection 23(1).

Note 4: If a person is guilty of an offence under this section and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and
40 1358B).".

Repeal of section and substitution of new section

15. Section 1312B of the Principal Act is repealed and the following section is substituted:

Offence—unauthorised use of protected information

"1312B. If:

(a) a person intentionally:

(i) makes a record of; or

(ii) discloses to any other person; or

(iii) otherwise makes use of;

information; and

(b) the person is not authorised or required by or under this Act or the *Farm Household Support Act 1992* to make the record, disclosure or use of the information that is made by the person; and

(c) the person knows or ought reasonably to know that the information is protected information;

the person is guilty of an offence.

Penalty: Imprisonment for 2 years.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

Note 2: A person, including an officer, is authorised to use information only if it is used for certain purposes (see subsection 1312(1A)). In certain circumstances an officer is required under this Act to disclose information (see section 1313). The Secretary can disclose certain information (see section 1314).

Note 3: For 'protected information' see subsection 23(1).

Note 4: If a person is guilty of an offence under subsection (1) and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B)."

Secretary's disclosure of information

16. Section 1314 of the Principal Act is amended:

(a) by omitting from subsection (1) "1312" and substituting "1312B";

(b) by inserting in paragraph (1)(a) "and for such purposes" after "persons";

(c) by inserting after subsection (1) the following Note:

"Note: A person to whom information is disclosed may commit an offence if the person uses the information without authority (see section 1312B).";

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

"(3) In disclosing information under paragraph (1)(b), the Secretary must act in accordance with guidelines from time to time in force under subsection 1315(1).".

Guidelines for exercise of Secretary's disclosure power

17. Section 1315 of the Principal Act is amended:

(a) by inserting after paragraph (1)(a) the following paragraph:

"(aa) is to set guidelines for the exercise of the Secretary's power under paragraph 1314(1)(b); and";

(b) by omitting from subsection (2) ", subject to the provisions of subsection (3)";

(c) by omitting subsection (3).

Offence—soliciting disclosure of protected information

18. Section 1316 of the Principal Act is amended:

(a) by omitting the Note to subsection (1) and substituting the following Penalty and Notes:

"Penalty: Imprisonment for 2 years.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

Note 2: For 'protected information' see subsection 23(1).

Note 3: If a person is guilty of an offence under subsection (1) and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B).";

(b) by omitting subsections (2) and (3).

Offence—untrue representations

19. Section 1316A of the Principal Act is amended:

(a) by omitting the Note to subsection (1) and substituting the following Penalty and Notes:

"Penalty: Imprisonment for 2 years.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

Note 2: For 'protected information' and 'officer' see subsection 23(1).

Note 3: If a person is guilty of an offence under subsection (1) and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B).";

(b) by omitting subsections (2) and (3).

Repeal of section 1317

20. Section 1317 of the Principal Act is repealed.

Offences—offering to supply protected information

21. Section 1318 of the Principal Act is amended:

(a) by omitting the Note and substituting the following Penalty and Notes:

"Penalty: Imprisonment for 2 years. 5

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence. 10

Note 2: For 'protected information' see subsection 23(1).

Note 3: If a person is guilty of the offence under subsection (1) and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B)."; 15

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

"(3) Nothing in subsection (1) or (2) renders an officer acting in the exercise or performance of his or her duties, functions or powers under this Act or the *Farm Household Support Act 1992* guilty of an offence.

Note: For 'officer' see subsection 23(1)." 20

Repeal of sections 1319 and 1320

22. Sections 1319 and 1320 of the Principal Act are repealed.

Officer's oath or declaration

23. Section 1321 of the Principal Act is amended by adding at the end the following Note: 25

"Note: For 'officer' see subsection 23(1).".

Insertion of new section

24. After section 1321 of the Principal Act the following section is inserted in Division 2 of Part 7.2:

Freedom of Information Act not affected 30

"1321A. The provisions of this Division that relate to the disclosure of information do not affect the operation of the *Freedom of Information Act 1982*.".

Repeal of section 1349

25. Section 1349 of the Principal Act is repealed. 35

Insertion of new Division

26. After Division 3 of Part 8.1 of the Principal Act the following Division is inserted in Part 8.1:

"*Division 4—Liability of corporations, employers and principals for offences*

Proceedings against corporations

"1358A.(1) If, in proceedings for an offence against this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:

(a) a director, employee or agent of the corporation engaged in that conduct; and

(b) the director, employee or agent was, in engaging in that conduct, acting within the scope of the director's, employee's or agent's actual or apparent authority; and

(c) the director, employee or agent had that state of mind.

"(2) If:

(a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and

(b) the conduct is within the scope of his or her actual or apparent authority;

the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

"(3) A reference in this section to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

"(4) A reference in this section to a director of a corporation includes a reference to a constituent member of a corporation incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

"(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

"(6) A reference in this section to an offence against this Act includes a reference to an offence created by section 5, 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914* that relates to this Act.

Proceedings against non-corporations

"1358B.(1) If, in proceedings for an offence against this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:

(a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and

(b) the employee or agent had that state of mind.

"(2) If:

(a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and

(b) the conduct is within the employee's or agent's actual or apparent authority;

the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

"(3) Despite any other provision in this Act, if:

(a) a person is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (1) and (2) had not been in force;

the person is not liable to be punished by imprisonment for that offence.

Note: The following is an example of how subsection (3) applies to a person. A person who is an employee is convicted of an offence under section 1316. The employer is also convicted of the offence (see subsections 1358B(1) and (2)). The penalty for an offence under section 1316 is imprisonment for 2 years. Because of subsection (3) the employer cannot be imprisoned.

"(4) A reference in this section to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

"(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

"(6) A reference in this section to an offence against this Act includes a reference to an offence created by section 5, 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914* that relates to this Act.".

PART 7—VALUE OF ASSETS USED IN PRIMARY PRODUCTION

Effect of certain liabilities on value of assets used in primary production

27. Section 1121A of the Prinicipal Act is amended:

5 **(a)** by omitting the Method statement from subsection (2) and substituting the following Method statement:

"

Method statement	
Step 1.	Add together the value of the assets referred to in paragraph (1)(b): the result is called the **gross primary production asset value**.
Step 2.	Work out the value of the assets referred to in paragraph (1)(b) that are exempt assets: the result is called the **exempt primary production asset value**. Note 1: For 'exempt assets' see subsection (4). Note 2: If none of the assets referred to in paragraph (1)(b) are exempt assets, the exempt primary production asset value is nil.
Step 3.	Take the amount obtained in Step 2 away from the amount obtained in Step 1: the result is called the **non-exempt primary production asset value**.
Step 4.	Add together the value of the liabilities referred to in paragraph (1)(c): the result is called the **total primary production liability**.
Step 5.	Apply the formula in subsection (2A) to work out the value of the exempt primary production liability.
Step 6.	Take the amount obtained in Step 5 away from the amount obtained in Step 4: the result is called the **non-exempt primary production liability**.
Step 7.	Take the non-exempt primary production liability away from the non-exempt primary production asset value: the result is the **value of the person's primary production asset**.

";

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

"(2A) The formula to be applied is:

$$\frac{\textbf{total primary production liability} \times \textbf{exempt primary production asset value}}{\textbf{gross primary production asset value}}$$

10

";

(c) by omitting from subsection (3) "Step 3" and substituting "Step 7";

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

"(4) In this section, **'exempt assets'** means assets whose value is to be disregarded under section 1118.".

PART 8—CERTAIN LIFE INTERESTS CREATED BY PERSON'S DECEASED PARTNER TO BE ASSESSABLE ASSET

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

28. Section 1118 of the Principal Act is amended by omitting paragraph (1)(c) and substituting the following paragraph:

"(c) the value of any life interest of the person other than:

(i) a life interest in the principal home of the person, of the person's partner or of both of them; or

(ii) a life interest created by the person, by the person's partner or by both of them; or

(iii) a life interest created on the death of the person's partner;".

PART 9—INVESTMENT INCOME (MODIFICATION OF ASSESSABLE PERIOD)

Investment income definitions

29. Section 9 of the Principal Act is amended:

(a) by inserting "or the person's partner" after "the person" (first occurring) in the definition of "assessable period" in subsection (1);

(b) by inserting "or partner" after "the person" (second occurring) in the definition of "assessable period" in subsection (1).

Investments made before 1 January 1988 with friendly societies or where no immediate return

30. Section 1075 of the Principal Act is amended by omitting the Notes from subsection (1) and substituting the following Notes:

"Note 1: For 'assessable period' see subsection 9(1). It includes any period during which the person's partner was receiving a social security or service pension or a social security benefit.

Note 2: For 'realising' an investment see subsections 9(10) and (11).".

How investment losses are taken into account in working out pension and benefit rates

31. Section 1076 of the Principal Act is amended by omitting the Note from subsection (1) and substituting the following Note:

"Note: For 'assessable period' see subsection 9(1). It includes any period during which the person's partner was receiving a social security or service pension or a social security benefit.".

Market-linked investments made or acquired before 9 September 1988

32. Section 1077 of the Principal Act is amended by omitting the Note from subsection (1) and substituting the following Note:

5 "Note: For 'assessable period' see subsection 9(1). It includes any period during which the person's partner was receiving a social security or service pension or a social security benefit.".

How investment losses are taken into account in working out pension and benefit rates

33. Section 1079 of the Principal Act is amended by omitting the Note

10 from subsection (1) and substituting the following Note:

"Note: For 'assessable period' see subsection 9(1). It includes any period during which the person's partner was receiving a social security or service pension or a social security benefit.".

How investment losses are taken into account in working out pension and benefit rates

15 **34.** Section 1081 of the Principal Act is amended by omitting the Note from subsection (1) and substituting the following Note:

"Note: For 'assessable period' see subsection 9(1). It includes any period during which the person's partner was receiving a social security or service pension or a social security benefit.".

PART 10—RETIREMENT VILLAGES DEFINITIONS

20 ***Retirement villages* definitions**

35. Section 12 of the Principal Act is amended:

(a) by inserting after subsection (3) the following subsection:

"(3A) For the purposes of paragraph (3)(b), if accommodation in premises is primarily intended for persons who are a certain age that

25 is more than 55 years, the accommodation in those premises is taken to be primarily intended for persons who are at least 55 years old.";

(b) by adding at the end the following Note:

"Note: Subsection (3A) was inserted as a response to the decision of the Federal Court in *Repatriation Commission v Clarke* (unreported, VG73 of 1991).".

30

PART 11—WIDOW B PENSION

Need for a claim

36. Section 259 of the Principal Act is amended by omitting paragraph (4)(c) and substituting the following paragraph:

"(c) immediately before the end of the bereavement period the person

35 is qualified for payments under Subdivision B of Division 9 of Part 2.5; and".

Need for a claim

37. Section 369 of the Principal Act is amended by adding at the end the following subsections:

"(3) If:

(a) a woman is receiving a wife pension; and

(b) the woman's partner dies; and

(c) immediately before the end of the bereavement period the woman is qualified for wife pension; and

(d) immediately after the end of that period the woman is qualified for widow B pension;

the woman does not have to make a claim for the widow B pension.

"(4) If:

(a) a person is receiving a carer pension for caring for the person's partner; and

(b) the person's partner dies; and

(c) immediately before the end of the bereavement period the person is qualified for payments under Subdivision B of Division 9 of Part 2.5; and

(d) immediately after the end of that period the person is qualified for widow B pension;

the person does not have to make a claim for the widow B pension.".

PART 12—REVISED AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE REPUBLIC OF ITALY

Schedule 3—Agreement between Australia and the Republic of Italy Providing for Reciprocity in Matters Relating to Social Security

38. Schedule 3 to the Principal Act is amended as set out in Schedule 3.

PART 13—MINOR AND TECHNICAL AMENDMENTS

Minor and technical amendments

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

Amendment of the National Health Act

40. Section 84 of the *National Health Act 1953* is amended by adding at the end the following subsection:

"(3B) For the purposes of this Part, if:

(a) paragraph (ab) of the definition of 'concessional beneficiary' applies to a person (the **'mobility allowee'**); and

(b) no other paragraph of the definition of 'concessional beneficiary' applies to the mobility allowee;

a person who, apart from this subsection, would be a dependant of the mobility allowee is taken not to be a dependant of the mobility allowee.

5 Note: A person to whom, or in respect of whom, there is being paid a mobility allowance under the *Social Security Act 1991* is a person to whom paragraph (ab) of the definition of concessional beneficiary applies.".

SCHEDULE 1

Section 7

CONSEQUENTIAL AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING TO DEBTS ARISING FROM AAT STAY ORDERS

1. Subsection 1222(1) (Note 1):

After:

" section 1223AA debts—debts arising from prepayments;"

insert:

" section 1223AB debts—debts arising from AAT stay orders;".

2. Subsection 1222(2) (Recovery Methods Table):

After item 1A insert:

"

1B.	1223AB (debt arising from AAT stay order)	deductions legal proceedings garnishee notice	1231, 1234A 1232 1233

".

3. Section 1222A (Note 1):

After "1223AA," insert "1223AB,".

4. Subparagraph 1229(1)(a)(i):

After "section" insert "1223AB,".

5. Subsection 1233(1):

After "1223," insert "1223AA, 1223AB,".

SCHEDULE 2

Section 11

CONSEQUENTIAL AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING TO PENALTY INTEREST CHARGE

1. Subsection 1222(1) (Note 1):

Before the last dot point insert:

"• section 1229 debts—penalty interest debts;
• section 1229A debts—penalty interest agreement debts;".

2. Subsection 1222(2) (Recovery Methods Table):

After item 8 insert the following items:

"

8A.	1229 (penalty interest debt)	deductions legal proceedings garnishee notice	1231, 1234A 1232 1233
8B.	1229A (penalty interest agreement debt)	deductions legal proceedings garnishee notice	1231, 1234A 1232 1233

".

3. Section 1222A (Note 1):

Omit "and 1226A", substitute ", 1226A, 1229 and 1229A".

4. Subsection 1223(9):

Add at the end:

"Note 4: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

5. Subsection 1223AA(1):

Add at the end:

"Note 4: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

6. Subsection 1223A(1):

Add at the end:

"Note 4: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

7. Subsection 1223B(1):

Add at the end:

"Note 4: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

SCHEDULE 2—continued

8. Subsection 1224(1) (Note):

Omit, substitute:

"Note: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

9. Section 1224A:

Add at the end:

"Note 5: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

10. Section 1224B:

Add at the end:

"Note 4: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

11. Subsection 1224C(1):

Add at the end:

"Note 4: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

12. Subsection 1224D(1) (Note 5):

Omit, substitute:

"Note 5: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

13. Subsection 1225(1) (Note 5):

Omit, substitute:

"Note 5: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

14. Subsection 1226A(1) (Note 5):

Omit, substitute:

"Note 5: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

SCHEDULE 2—continued

15. Subsection 1227(1) (Note 5):

Omit, substitute:

"Note 5: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

16. Subsection 1230(1):

Add at the end:

"Note 3: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

17. Subsection 1230A(1):

Add at the end:

"Note 3: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).".

SCHEDULE 3

Section 38

AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE REPUBLIC OF ITALY

1. Schedule 3:

Repeal the Schedule, substitute:

"SCHEDULE 3

Section 1208

AGREEMENT

ON SOCIAL SECURITY

BETWEEN

AUSTRALIA

AND

THE REPUBLIC OF ITALY

AUSTRALIA AND THE REPUBLIC OF ITALY,

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

Desiring to review the Agreement providing for reciprocity in matters relating to Social Security signed on 23 April 1986, and

Acknowledging the need to co-ordinate further the operation of their respective social security systems and to enhance the equitable access by people who move between Australia and Italy to social security benefits provided for under the laws of both countries,

Have agreed as follows:

PART I—INTERPRETATION AND SCOPE

ARTICLE 1

Interpretation

1. In this Agreement, unless the context otherwise requires:
   (a) supplement for children—means, in relation to Australia, the additional family payment and, if applicable, the guardian allowance that would be payable to a person in addition to a benefit under the legislation of Australia if that person were an Australian resident in Australia and qualified for that payment and, if applicable, that allowance;
   (b) Australian resident—means an Australian resident as defined in the legislation of Australia;

SCHEDULE 3—continued

(c) benefit—means, in relation to a Party, a pension or allowance for which provision is made in the legislation of that Party and includes any additional amount, increase or supplement payable in addition to that pension or allowance to a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

(d) competent authority—means,
in relation to Australia:
the Secretary to the Department of Social Security; and,
in relation to Italy:
the Ministry of Labour and Social Welfare;

(e) dependants—means, in relation to Italy, persons who are within the categories of family members of an insured person or pensioner under the legislation of Italy and who are recognised by that legislation as the dependants of that person or pensioner;

(f) disability support pension—means, in relation to Australia, the payment made under the legislation of Australia to people who are considered to be severely disabled under that legislation;

(g) institution—means,
in relation to Australia:
the Department of Social Security; and
in relation to Italy:
an institution, apart from the competent authority, which is responsible for the application of this Agreement as specified in the administrative arrangements for this Agreement;

(h) Italian integration—means the *integrazione al minimo* paid to increase the amount of a benefit derived from contributions or otherwise to the minimum amount specified under the legislation of Italy;

(i) Italian social supplement—means that welfare benefit granted in addition to the pensions of those people who have incomes lower than the amount fixed by Italian legislation;

(j) legislation—means the laws specified in Article 2;

(k) period of Australian working life residence—means a period defined as such in the legislation of Australia;

(l) period of credited contributions—means a period or the total of two or more periods of contributions used to acquire an entitlement to a benefit and any period deemed to be a period of contributions under the legislation of Italy;

(m) spouse carer pension—means a carer pension payable, under the legislation of Australia, to the partner of a person who is in receipt of a disability support pension or of an age pension;

(n) survivors—means, in relation to Italy, persons who are within the categories of family members of a person who was insured or was a pensioner under the legislation of Italy and is now deceased, and who are recognised by that legislation as survivors of that person or pensioner;

(o) widow—means a *de jure* widow.

2. In the application of this Agreement by a Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has

SCHEDULE 3—continued

under the legislation within the scope of this Agreement, in relation to that Party, by virtue of Article 2.

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, supplement or replace them:

(a) in relation to Australia: the Social Security Act 1991 in so far as the Act provides for, applies to or affects the following benefits:
  (i) age pension;
  (ii) disability support pension;
  (iii) wife pension;
  (iv) pensions payable to widows;
  (v) widowed person allowance;
  (vi) spouse carer pension;
  (vii) double orphan pension; and
  (viii) supplements for children.

(b) in relation to Italy: the legislation in force at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that legislation, concerning the compulsory general insurance scheme for employees in regard to invalidity, old age and survivors; special insurance schemes for self-employed persons and other categories of workers; family benefits for dependants of pensioners and unemployment insurance and, in particular, the following benefits:
  (i) old age pensions;
  (ii) seniority pensions;
  (iii) anticipated pensions;
  (iv) invalidity allowances;
  (v) inability pensions;
  (vi) privileged invalidity allowances;
  (vii) privileged inability pensions;
  (viii) invalidity attendance allowance;
  (ix) survivors' pensions;
  (x) family benefit for dependants of pensioners; and
  (xi) unemployment allowances.

2. Notwithstanding the provisions of paragraph 1, and unless otherwise specified in this Agreement, the legislation of Australia and Italy shall not include any laws made at any time for the purpose of giving effect to any agreement on social security.

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

SCHEDULE 3—continued

ARTICLE 3
Personal scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; and/or

(b) has credited contributions under the legislation of Italy,

and, where applicable, to dependants and survivors in regard to entitlements they may derive from the person mentioned in this Article.

ARTICLE 4
Equality of treatment

1. The citizens of each of the Parties shall be treated equally in the application of the legislation of Australia and of Italy respectively and, in any case where qualification for a benefit under the legislation of a Party depends, in whole or in part, on citizenship of that Party, a person who is a citizen of the other Party shall, for the purposes of a claim for that benefit, be deemed to be a citizen of the first mentioned Party.

2. All persons to whom this Agreement applies shall be treated equally by the Parties in regard to entitlements and obligations derived from the legislation of the Parties and from this Agreement.

3. A Party shall not be required to apply paragraphs 1 and 2 of this Article to a person who is present in the territory of that Party without lawful authority.

PART II—PROVISIONS RELATING TO BENEFITS

AUSTRALIAN BENEFITS

ARTICLE 5
Residence or presence in Italy or in a third country

1. Subject to paragraph 2, where a person would be qualified for a benefit under the legislation of Australia or under this Agreement except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

(a) is an Australian resident or residing in the territory of Italy or of a third country with which Australia has implemented an agreement that includes provision for co-operation in the lodgement and determination of claims for benefits, and

(b) is in Australia, the territory of Italy or the territory of that third country,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia.

2. The requirement for a person to have been an Australian resident at some time shall not apply to a person who claims a double orphan pension in accordance with Article 9.

ARTICLE 6
Partner-related Australian benefits

A person who receives or is qualified to receive a benefit under the legislation of Australia due to the fact that his or her partner receives or is qualified to receive an

SCHEDULE 3—continued

Australian benefit by virtue of this Agreement, shall receive a rate calculated under this Agreement.

ARTICLE 7

Totalisation of periods of residence and periods of contributions

Totalisation for Australia

1. Where a person to whom this Agreement applies has accumulated:
   (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for a benefit; and
   (b) a period of Australian working life residence equal to or greater than the minimum period identified for that person in paragraph 4; and
   (c) a period of credited contributions in Italy;

then that period of credited contributions shall be deemed, only for the purposes of meeting any minimum qualifying period for that benefit set out in the legislation of Australia, to be a period when 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 period of continuous residence required by the legislation of Australia for entitlement of that person to a benefit; and
   (b) has accumulated a period of credited contributions in Italy in 2 or more separate periods that equals or exceeds in total the period referred to in sub-paragraph (a);

the total of the periods of credited contributions shall be deemed to be one continuous period.

3. For the purposes of this Article, where a period as an Australian resident and a period of credited contributions 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 Australian working life residence to be taken into account for the purposes of sub-paragraph 1(b) shall be as follows:
   (a) for the purposes of an Australian benefit payable to a person outside Australia: the minimum period required shall be 12 months, of which at least 6 months must be continuous; and
   (b) for the purposes of an Australian benefit payable to an Australian resident in Australia: no minimum period of Australian working life residence shall be required.

5. For the purposes of paragraphs 1 and 2 and for the purpose of a claim by a woman for a pension payable to a widow, that woman shall be deemed to have accumulated a period of credit contributions for any period her late husband accumulated a period of credited contributions, but any period during which the woman and her late husband both accumulated periods of credited contributions shall be taken into account once only.

SCHEDULE 3—continued

ARTICLE 8

Calculation of Australian benefits

1. Subject to the provisions of this Article, where an Australian benefit, other than a double orphan pension, is payable under this agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, benefits paid or due under the legislation of Italy shall be assessed in the following way:

(a) any Italian integration and/or social supplement and family benefit for the dependants of pensioners included in the total amount of that Italian benefit shall be disregarded;

(b) the social pension paid by Italy as non-contributory welfare support shall be disregarded; and

(c) only a proportion of any other Italian benefit shall be assessed by multiplying the number of whole months of Australian working life residence used for that person (but not exceeding 300) by the amount of that other Italian benefit and by dividing the result by 300.

2. A person referred to in paragraph 1 shall be entitled to receive the concessional treatment of income described in sub-paragraph (c) only for any period during which the rate of that person's Australian benefit is proportionalised.

3. Subject to the related provisions in this Article, where an Australian benefit, other than a double orphan pension, is payable under this Agreement to a person who is an Australian resident and in Australia, 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 any Italian benefit (including any Italian integration and/or social supplement and family benefit for dependants of pensioners) to which that person is entitled

(b) deducting that Italian benefit (including any Italian integration and/or social supplement and family benefit for dependants of pensioners) from the maximum rate of the Australian benefit; and

(c) applying to the Australian benefit remaining, after the application of sub-paragraph (b), the relevant rate calculation set out in the legislation of Australia, using as the person's income the result from the application of sub-paragraph (a).

4. For the purposes of this Article and for the application of the legislation of Australia, where a member of a couple is, or both his or her partner are, entitled to receive an Italian benefit or benefits, each of them shall be deemed to be in receipt of one half of either the amount of that benefit or of the total of the benefits, as the case may be.

ARTICLE 9

Double orphan pension and spouse carer pension

1. Where a double orphan pension would be payable to a person under the legislation of Australia, in respect of a young person whose sole surviving parent died while that

SCHEDULE 3—continued

young person was an Australian resident, if that person and that young person were inhabitants of Australia, that pension shall, subject to the provisions of those laws, be payable while that person and that young person are residents of Italy.

2. For the purposes of qualification for a spouse carer pension under this Agreement, a person who is in Italy shall be regarded as being in Australia.

ARTICLE 10

Exclusion of specified Italian payments from the Australian income test

1. Subject to paragraph 3 of Article 8 and paragraph 2 of this Article, where a person receives or is entitled to receive a benefit under the legislation of Australia by virtue of this Agreement or otherwise and that person and or that person's partner receive an Italian benefit or benefits which include Italian integration and/or Italian social supplement and/or family benefits for dependants of pensioners, that integration, social supplement and family benefits for dependants of pensioners shall not be included as income for the purposes of assessing the rate of that Australian benefit.

2. For the purposes of this Article only, the term benefit shall include job search, newstart and sickness allowances payable under the social security laws of Australia.

ITALIAN BENEFITS

ARTICLE 11

Totalisation of periods of contributions and periods of residence

Totalisation for Italy

1. Where a person to whom this Agreement applies has accumulated:
   (a) a period of credited contributions in Italy that is less than the period required to qualify that person under the legislation of Italy for a benefit; and
   (b) a period of credited contributions equal to or greater than the minimum period identified for that benefit for that person in paragraph 2; and
   (c) a period of Australian working life residence;

then that period of Australian working life residence shall be deemed, for the purposes of meeting any minimum qualifying period for that benefit set out in the legislation of Italy, to be a period of credited contributions.

2. The minimum period of credited contributions in Italy to be taken into account for the purposes of paragraph 1 shall be as follows:
   (a) for old age pension: 1 year;
   (b) for anticipated pension: 1 year;
   (c) for seniority pension: 15 years;
   (d) for invalidity allowance: 1 year;
   (e) for inability pension: 1 year;
   (f) for privileged invalidity pension allowance: 1 year;
   (g) for privileged inability pension: 1 year; and
   (h) for survivor's pension: 1 year.

SCHEDULE 3—continued

3. For the purposes of voluntary insurance under the legislation of Italy, a period of credited contributions in Italy in relation to a person shall be combined, where necessary, with any period of Australian working life residence accumulated by that person, provided the first-mentioned period totals at least one year.

4. For all purposes of this Article, where a period of credited contributions and a period of Australian working life residence coincided, the period of coincidence shall be taken into account once only by Italy as a period of contributions.

ARTICLE 12

Italian pro-rata benefits

1. The amount of Italian benefit payable to a person through the application of Article 11 shall be determined as follows:

(a) the amount of the theoretical benefit to which the person concerned would be entitled shall be established as if the period of credited contributions in Italy, and the period of Australian working life residence referred to in sub-paragraph 1(c) of Article 11, and accumulated to the date from which the benefit would be payable to that person, had accumulated under the legislation of Italy; and

(b) the amount of benefit payable shall be that amount which bears to the amount referred to in sub-paragraph (a) the same ratio as that period of credited contributions bears to the sum of that period of credited contributions and that period of Australian working life residence for that person.

2. If the sum of the periods referred to in sub-paragraph 1(b) exceeds the maximum period provided for by the legislation of Italy for entitlement to the maximum rate of the benefit concerned, the maximum period shall be substituted for that sum in calculations made in accordance with that sub-paragraph.

3. The calculation of a rate in relation to a person in accordance with paragraph 1 shall take into account only the salary or income of that person which was subject to contributions under the legislation of Italy.

4. If a person resides in Italy and is entitled to benefits under the legislation of both Parties and the total of these benefits is less than the minimum pension amount (*trattamento minimo di pensione*) specified under the legislation of Italy, the Italian institution shall pay, in addition to its benefit, the Italian integration needed to reach the said minimum pension amount.

ARTICLE 13

Exclusion of specified Australian payments from the Italian income test

Where a person receives or is entitled to receive a benefit under the legislation of Italy by virtue of this Agreement or otherwise and that benefit includes an Italian integration, Italian social supplement and or family allowance for dependants of pensioners, any supplements for children paid to that person and or that person's partner under the social security laws of Australia shall not be included as income for the purposes of assessing the rate of that Italian integration, Italian social supplement and or family benefit.

SCHEDULE 3—continued

ARTICLE 14
Unemployment allowance

For the purposes of eligibility by a citizen of Australia or of Italy for unemployment allowance under the social security laws of Italy, any periods of employment accumulated in Australia by that person, other than periods of self-employment, shall be totalised with periods of credited contributions in Italy for that person, if those last-mentioned periods total one year of more.

ARTICLE 15
Family benefits

Family benefits payable under the legislation of Italy:

(a) shall be payable under this Agreement to Australian residents who are receiving an Italian benefit payable under the social security laws of Italy, whether those persons are citizens of Australia or of Italy; and

(b) shall not preclude the payment of family payments under the social security laws of Australia, including those laws as modified or adapted by laws giving effect to an agreement on social security with a third country,

and shall, for the purpose of reciprocity under this Agreement, be regarded as the Italian benefit equivalent to those Australian benefits described as:

(c) wife pension;

(d) spouse carer pension; and

(e) supplements for children.

PART III—MISCELLANEOUS PROVISIONS

ARTICLE 16
Lodgement of claims

1. A claim for benefit, under this Agreement or otherwise, may be lodged:

(a) in the territory of either Party in accordance with the administrative arrangements for this Agreement; or

(b) in a third country if that country is of the kind referred to in Article 5,

at any time after the Agreement enters into force.

2. Where a claim for a benefit of a Party is lodged in the territory of the other Party or in a third country in accordance with paragraph 1, the date on which the claim is lodged shall be the date of lodgement of the claim for all purposes relating to the claim.

ARTICLE 17
Determination of claims

1. In determining the entitlement of a person to a benefit under this Agreement:

(a) a period of Australian residence and a period of credited contributions; and

(b) any event 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 and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

SCHEDULE 3—continued

2. The start date for the payment of a benefit under this Agreement shall be determined by the legislation of the Party concerned and in no case shall that date be a date earlier than the entry into force of this Agreement.

3. Where:

(a) a claim is made for a benefit payable by one of the Parties, whether by virtue of this Agreement of otherwise; and

(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 (in this Article called "assumed benefit"), that is payable by the other Party and that, if paid, would affect the amount of the first-mentioned benefit,

that claim may be determined by the first-mentioned Party as if the assumed benefit were in fact being paid to that claimant.

4. Where a claim for a benefit is determined in accordance with the preceding paragraph 3 and it is subsequently established that the amount of the assumed benefit in relation to that person was not in fact paid, any deficiency in the payment of the first-mentioned benefit shall be adjusted retrospectively.

5. Where:

(a) it appears that a person who is entitled to the payment of a benefit by one of the Parties might also be entitled to the payment of a benefit by the other Party, in either case whether by virtue of this Agreement or otherwise;

(b) the amount of the benefit that might be paid by that other Party would affect the amount of the benefit payable by the first-mentioned Party; and

(c) the amount that could be due in respect of the benefit by that other Party, whether by virtue of this Agreement or otherwise, is likely to include an adjustment for arrears of that benefit,

then

(d) that other Party shall, if the first-mentioned Party so requests, pay the amount of those arrears to the first-mentioned Party; and

(e) the first mentioned Party may deduct from the amount of those arrears any excess amount of the benefit paid by it and shall pay any balance remaining to that person.

ARTICLE 18
Portability of benefits

1. Benefits of one Party are also payable in the territory of the other Party.

2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable under this Agreement, is also payable outside the territories of both Parties.

3. Where qualification for a benefit of one Party is subject to limitations as to time, then references to that Party in those limitations shall be read also as references to the territory of the other Party.

4. A Benefit payable by a Party under this Agreement shall be paid by that Party without deduction for government administrative fees and charges for processing and

SCHEDULE 3—continued

paying that benefit whether paid in the territory of the other Party or outside the respective territories of both Parties.

ARTICLE 19
Administrative arrangements

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

ARTICLE 20
Exchange of information and mutual assistance

1. The competent authorities and institutions responsible for the application of this Agreement:

(a) shall communicate to each other any information necessary for the application of this Agreement and of their respective social security laws;

(b) shall lend their good offices and furnish assistance to one another, including the communication to each other of any necessary information, with regard to the determination or payment of any benefit under this Agreement or under the social security laws of either Party as if the matter involved the application of their own legislation;

(c) shall 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 in so far as those changes affect the application of this Agreement; and

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the parties with their countries, to the extent and in the circumstances specified in the administrative arrangements for this Agreement.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any administrative arrangements made pursuant to Article 19.

3. Any information about a person transmitted under this Agreement to an institution shall be protected in the same manner as information obtained under the legislation of that Party.

4. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority or the 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 the Agreement, the competent authorities and the institutions of a Party may communicate in its official language with the other Party.

ARTICLE 21
Appeals

1. Any person affected by a determination, direction, decision or approval made or given by the competent authority or institution of a Party, in relation to a matter arising

SCHEDULE 3—continued

under this Agreement, shall have the same rights to a review by administrative and judicial bodies of that Party of that determination, direction, decision or approval as are provided under the laws of that Party.

2. An appeal and documents related to an appeal in accordance with paragraph 1, may be lodged in the territory of either Party in line with administrative arrangements for this agreement.

3. Subject to paragraph 4, the date on which appeals and related documents are lodged in accordance with paragraph 2 with the institution of one Party shall be regarded as the date of lodgement of those appeals and related documents with the institution of the other Party.

4. In relation to Australia, the reference in this Article 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 22

Review of Agreement

1. The Parties may agree at any time to review the whole or any part of this Agreement.

2. Subject to paragraph 1, the Parties shall consult regarding a review of this Agreement and its implementation after the Agreement has been in force for 4 years.

3. Where a party amends, supplements or replaces its legislation, the Parties shall, if one Party so requests, consult on any consequences of that change to the legislation and on the continuing implementation of the Agreement including on whether an amendment to the Agreement is necessary.

PART IV—FINAL PROVISIONS

ARTICLE 23

Entry into force and transitional provisions

1. This Agreement shall be ratified by both Parties in accordance with their respective procedures and shall enter into force on the first day of the month following that in which there has been an exchange of instruments of ratification.

2. When this Agreement enters into force the Agreement between Australia and the Republic of Italy on Social Security signed on 23 April 1986 shall, subject to paragraph 3, terminate.

3. Subject to paragraph 4, where, on the date on which this Agreement enters into force, a person:

(a) is in receipt of a benefit under the legislation of either Party by virtue of the Agreement which was signed on 23 April 1986; or

(b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit.

SCHEDULE 3—continued

4. The rate of a benefit for which a person is qualified by virtue of paragraph 3 shall, subject to this Agreement, be assessed in accordance with the provisions of the legislation of the relevant Party.

5. Where a resident of Italy:

(a) was in receipt of a widow B pension from Australia and had that pension cancelled because of the enactment of section 1215 of the Social Security Act 1991; or

(b) had applied for a widow B pension on or before 30 June 1992 but that application had not been determined by that date,

then that cancelled pension shall be reinstated back to the date of cancellation or that application shall be determined as if section 1215 had not been enacted. The rate of the reinstated widow B pension or of the widow B pension paid under any successful application shall be calculated under the provisions of the Agreement mentioned in paragraph 2 of this Article until this Agreement comes into force and thereafter shall be calculated under this Agreement.

ARTICLE 24
Termination

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention to terminate this Agreement.

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

(a) at the date of termination, are in receipt of benefits under this Agreement; or

(b) before the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits under this Agreement.

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

DONE in duplicate at Rome on the thirteenth day of September 1993, in the English and Italian languages, both texts being equally authoritative.

FOR AUSTRALIA:	FOR THE REPUBLIC OF ITALY:
Peter Baldwin	Gino Giugni ".

SCHEDULE 4

Section 39

MINOR AND TECHNICAL AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

PART 1—AMENDMENTS COMMENCING ON ROYAL ASSENT

1. Subsection 4(11):

Omit "puposes", substitute "purposes".

2. Paragraph 5(10)(c):

Omit "an" (first occurring), substitute "a".

3. Subsection 7(2):

Add at the end:

"Note 2: Subparagraph (b)(i): under the *Australian Citizenship Act 1948*, a person has Australian citizenship if the person:

- was born in Australia; or
- was born to Australian parents in certain circumstances; or
- has had Australian citizenship conferred under that Act.

In some circumstances a person can lose Australian citizenship. For further details see the *Australian Citizenship Act 1948*.".

4. Subsection 9(7):

Omit the subsection.

5. Subsection 12C(5) (paragraphs (g) and (h) of the definition of "couple's assets deeming provisions"):

Omit the paragraphs, substitute:

"(g) section 734.".

6. Subsection 23(1) (paragraph (m) of the definition of "recipient statement notice"):

Omit "872", substitute "873".

7. Subsection 35(2):

(a) Omit "(i)", substitute "(a)".

(b) Omit "(ii)", substitute "(b)".

8. Subsection 59(3):

After "a pension payday is" insert "not a multiple of 10 cents but is".

9. Subsection 121(3):

After "a pension payday is" insert "not a multiple of 10 cents but is".

SCHEDULE 4—continued

10. Subsection 163(3):
After "a pension payday is" insert "not a multiple of 10 cents but is".

11. Subsection 166(3):
Omit "woman" (last occurring), substitute "person".

12. Paragraph 175B(b):
Omit "person's", substitute "woman's".

13. Subsection 214(3):
After "a pension payday is" insert "not a multiple of 10 cents but is".

14. Subsection 237(1) (last Note):
Insert "3" after "Note".

15. Subsection 273(3):
After "a pension payday is" insert "not a multiple of 10 cents but is".

16. Subsection 333(3):
After "a pension payday is" insert "not a multiple of 10 cents but is".

17. Subsection 380(3):
After "a pension payday is" insert "not a multiple of 10 cents but is".

18. Subsection 539(3):
Omit "subsection", substitute "subsections".

19. Section 624 (fifth subsection):
Omit "**(6)**", substitute "**(5)**".

20. Subsection 663(5):
Omit the subsection.

21. Subsection 675(1):
Omit the subsection, substitute:

"(1) For the purposes of subsection 666(1), a person's **income of a similar nature to salary or wages** includes a payment received by the person under the New Enterprise Incentive Scheme (see Part 3.15).".

22. Subsection 710(2):
Omit the subsection (including the subsection heading), substitute:

SCHEDULE 4—continued

Loss of salary, wages or income includes NEIS payments

"(2) For the purposes of subsection (1), the income that a person has lost because of the person's incapacity for work includes a payment received by the person under the New Enterprise Incentive Scheme.".

23. Subsection 800(3):

After "a pension payday is" insert "not a multiple of 10 cents but is".

24. Subsection 954(1):

Add at the end the following Note:

"Note 5: CDA may be payable to a person who is living overseas. This is because section 953 provides that a child is a CDA child of a person if the person is getting family payment for the child and section 840 provides that family payment may be payable overseas for up to 3 years for temporary absences. The child must, however, be an inhabitant of Australia or living with one (see section 835).".

25. Paragraph 1026(c):

Omit ",".

26. Section 1061R (Notes 2 and 3):

Omit "World War 1" (wherever occurring), substitute "World War I".

27. Section 1064 (Pension Rate Calculator A—point 1064-E8 —paragraph (e)):

Omit "; or", substitute ".".

28. Section 1066 (Pension Rate Calculator C—point 1066-E6 —paragraph (e)):

Omit "; or", substitute ".".

29. Section 1066A (Pension Rate Calculator D—point 1066A-EA12 —Note 4):

Omit "columns", substitute "column".

30. Section 1067 (Benefit Rate Calculator A—point 1067-H4 —paragraph (b)):

Omit "become", substitute "becomes".

31. Section 1069 (Family Payment Rate Calculator—point 1069-D15 —last paragraph):

Omit "(b)", substitute "(c)".

32. Section 1098:

Add at the end:

"Note: Section 1120 deals with the effect of a change to the relevant number for an annuity.".

SCHEDULE 4—continued

33. Subsection 1120(1):

Add at the end:

"Note: The appeal referred to in paragraph (d) is an appeal under the relevant taxation legislation and not an application for review under Chapter 6 of this Act.".

34. Paragraph 1126(1)(d):

(a) Insert "of the person's partner" after "assets" (first occurring).

(b) Omit "of the person's partner:", substitute ":".

35. Subsection 1130(10):

Insert "ordinary" after "the annual rate of".

36. Subparagraph 1133(2)(a)(ii):

Omit "an", substitute "a".

37. Paragraphs 1152(5)(g), 1153(3)(e) and 1154(2)(f):

Insert "$" after "taken to be".

38. Heading to Division 3 of Part 3.13:

Omit the heading.

39. Paragraph 1163(6)(b):

Omit "an", substitute "a".

40. Section 1198B:

Insert "an" after "column 2 of".

41. Section 1210 (International Agreement Portability Rate Calculator—point 1210-A2—paragraph (a)):

Omit "amount", substitute "amounts".

PART 2—AMENDMENTS COMMENCING ON 1 JULY 1991

42. After subsection 7(4):

Insert:

"(4AA) Whether residence in a particular place is residence in an external territory for the purposes of subsection (4) is to be determined as at the time of residence.".

43. Section 1068 (Benefit Rate Calculator B—point 1068-G2):

Add at the end "of the person's partner".

SCHEDULE 4—continued

PART 3—AMENDMENTS COMMENCING ON 12 MARCH 1992

44. Section 1067 (Benefit Rate Calculator A—point 1067-C1):
Omit "point 1067-C2", substitute "points 1067-C2 and 1067-C2A".

45. Section 1067 (Benefit Rate Calculator A—point 1067-C1—Note):
Omit the Note.

46. Section 1067 (Benefit Rate Calculator A):
After point 1067-C2 insert:

No additional amount if benefit not payable to partner because of industrial action preclusion or deferment provision

"1067-C2A. An additional amount is not to be added under point 1067-C1 if:

(a) job search allowance or newstart allowance is not payable to the person's partner because of an industrial action preclusion provision or a deferment provision; or

(b) job search allowance or newstart allowance would not be payable to the person's partner if a claim were duly made because of an industrial action preclusion provision or a deferment provision.

Industrial action preclusion provision

"1067-C2B. For the purposes of point 1067-C2A, sections 517 (job search allowance) and 596 (newstart allowance) are industrial action preclusion provisions.

Deferment provisions

"1067-C2C. For the purposes of point 1067-C2A, the following are deferment provisions:

(a) a JSA automatic or discretionary deferment provision;

(b) a newstart automatic or discretionary deferment provision.

Note: For 'JSA automatic deferment provision', 'JSA discretionary deferment provision', 'newstart automatic deferment provision' and 'newstart discretional deferment provision' see subsection 23(1).".

47. Section 1068 (Benefit Rate Calculator B—point 1068-C1):
Omit "and 1068-C3", substitute ", 1068-C3 and 1068-C3A".

48. Section 1068 (Benefit Rate Calculator B—point 1068-C1—Note):
Omit the Note.

49. Section 1068 (Benefit Rate Calculator B):
After point 1068-C3 insert:

SCHEDULE 4—continued

No additional amount if benefit not payable to partner because of industrial action preclusion or deferment provision

"1068-C3A. An additional amount is not to be added under point 1068-C1 if:

(a) job search allowance or newstart allowance is not payable to the person's partner because of an industrial action preclusion provision or a deferment provision; or

(b) job search allowance or newstart allowance would not be payable to the person's partner if a claim were duly made because of an industrial action preclusion provision or a deferment provision.

Industrial action preclusion provision

"1068-C3B. For the purposes of point 1068-C3A, sections 517 (job search allowance) and 596 (newstart allowance) are industrial action preclusion provisions.

Deferment provisions

"1068-C3C. For the purposes of point 1068-C3A, the following are deferment provisions:

(a) a JSA automatic or discretionary deferment provision;

(b) a newstart automatic or discretionary deferment provision.

Note: For 'JSA automatic deferment provision', 'JSA discretionary deferment provision', 'newstart automatic deferment provision' and 'newstart discretional deferment provision' see subsection 23(1).".

PART 4—AMENDMENTS COMMENCING ON 29 JUNE 1992

50. Subsection 1208(4):

Omit "Subject to subsection (6), an agreement", substitute "An agreement".

51. Subsection 1208(6):

Omit the subsection.

52. Section 1208 (Note):

Omit the Note.

53. Schedule 1A—clause 11A:

Omit the clause.

54. Schedule 2 (Note):

Omit the Note.

SCHEDULE 4—continued

PART 5—AMENDMENTS COMMENCING ON 1 JANUARY 1993

55. Subsection 5(3) (Note 2):
Omit the Note.

56. Subsection 5(3) (Note 3):
Omit "3".

57. Subsection 10(2):
Omit the subsection.

58. Paragraph 80(2)(d):
Omit "and".

59. Paragraph 80(2)(e):
Omit the paragraph.

60. Paragraph 80(3)(d):
Omit "and".

61. Paragraph 80(3)(e):
Omit the paragraph.

62. Paragraph 80(4)(d):
Omit "and".

63. Paragraph 80(4)(e):
Omit the paragraph.

64. Subsection 80(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) Subject to subsections (5A) and (5B), if the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

65. Paragraph 146D(2)(d):
Omit "and".

66. Paragraph 146D(2)(e):
Omit the paragraph.

SCHEDULE 4—continued

67. Paragraph 146D(3)(d):
Omit "and".

68. Paragraph 146D(3)(e):
Omit the paragraph.

69. Paragraph 146D(4)(d):
Omit "and".

70. Paragraph 146D(4)(e):
Omit the paragraph.

71. Subsection 146D(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) Subject to subsections (5A) and (5B), if the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

72. Paragraph 184(2)(d):
Omit "and".

73. Paragraph 184(2)(e):
Omit the paragraph.

74. Paragraph 184(3)(d):
Omit "and".

75. Paragraph 184(3)(e):
Omit the paragraph.

76. Paragraph 184(4)(d):
Omit "and".

77. Paragraph 184(4)(e):
Omit the paragraph.

78. Subsection 184(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) If the favourable determination is made following a woman having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

SCHEDULE 4—continued

79. Paragraph 233(2)(d):
Omit "and".

80. Paragraph 233(2)(e):
Omit the paragraph.

81. Paragraph 233(3)(d):
Omit "and".

82. Paragraph 233(3)(e):
Omit the paragraph.

83. Paragraph 233(4)(d):
Omit "and".

84. Paragraph 233(4)(e):
Omit the paragraph.

85. Subsection 233(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) Subject to subsections (5A) and (5B), if the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

86. Paragraph 299(2)(d):
Omit "and".

87. Paragraph 299(2)(e):
Omit the paragraph.

88. Paragraph 299(3)(d):
Omit "and".

89. Paragraph 299(3)(e):
Omit the paragraph.

90. Paragraph 299(4)(d):
Omit "and".

91. Paragraph 299(4)(e):
Omit the paragraph.

SCHEDULE 4—continued

92. Subsection 299(5):

Omit the subsection (but not the subsection heading), substitute:

"(5) Subject to subsections (5A) and (5B), if the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

93. Paragraph 354(2)(d):

Omit "and".

94. Paragraph 354(2)(e):

Omit the paragraph.

95. Paragraph 354(3)(d):

Omit "and".

96. Paragraph 354(3)(e):

Omit the paragraph.

97. Paragraph 354(4)(d):

Omit "and".

98. Paragraph 354(4)(e):

Omit the paragraph.

99. Subsection 354(5):

Omit the subsection (but not the subsection heading), substitute:

"(5) If the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

100. Paragraph 402(2)(d):

Omit "and".

101. Paragraph 402(2)(e):

Omit the paragraph.

102. Paragraph 402(3)(d):

Omit "and".

SCHEDULE 4—continued

103. Paragraph 402(3)(e):
Omit the paragraph.

104. Paragraph 402(4)(d):
Omit "and".

105. Paragraph 402(4)(e):
Omit the paragraph.

106. Subsection 402(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) If the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

107. Paragraph 588(2)(d):
Omit "and".

108. Paragraph 588(2)(e):
Omit the paragraph.

109. Paragraph 588(3)(d):
Omit "and".

110. Paragraph 588(3)(e):
Omit the paragraph.

111. Paragraph 588(4)(d):
Omit "and".

112. Paragraph 588(4)(e):
Omit the paragraph.

113. Subsection 588(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) If the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

114. Paragraph 660K(2)(d):
Omit "and".

SCHEDULE 4—continued

115. Paragraph 660K(2)(e):
Omit the paragraph.

116. Paragraph 660K(3)(d):
Omit "and".

117. Paragraph 660K(3)(e):
Omit the paragraph.

118. Paragraph 660K(4)(d):
Omit "and".

119. Paragraph 660K(4)(e):
Omit the paragraph.

120. Subsection 660K(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) If the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

121. Paragraph 728Q(2)(d):
Omit "and".

122. Paragraph 728Q(2)(e):
Omit the paragraph.

123. Paragraph 728Q(3)(d):
Omit "and".

124. Paragraph 728Q(3)(e):
Omit the paragraph.

125. Paragraph 728Q(4)(d):
Omit "and".

126. Paragraph 728Q(4)(e):
Omit the paragraph.

127. Subsection 728Q(5):
Omit the subsection (but not the subsection heading), substitute:

SCHEDULE 4—continued

"(5) If the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

128. Paragraph 767(2)(d):
Omit "and".

129. Paragraph 767(2)(e):
Omit the paragraph.

130. Paragraph 767(3)(d):
Omit "and".

131. Paragraph 767(3)(e):
Omit the paragraph.

132. Paragraph 767(4)(d):
Omit "and".

133. Paragraph 767(4)(e):
Omit the paragraph.

134. Subsection 767(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) If the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

135. Subsection 820(5):
Omit the subsection (but not the subsection heading), substitute:

"(5) Subject to subsection (5A), if the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.".

136. Subparagraph 991(1)(c)(ii):
Omit "family allowance supplement", substitute "family payment".

137. Section 1069 (Family Payment Rate Calculator—points 1069-D11 and 1069-D12):
Omit the points, substitute:

SCHEDULE 4—continued

Effect of maintenance rights on qualification

"1069-D11. A person is not qualified for additional family payment for a dependent child of the person if:

(a) the person, or the person's partner, is entitled to claim maintenance for the child; and

(b) the Secretary considers that it is reasonable for the person, or the partner, to take action to obtain maintenance; and

(c) the person, or the partner, does not take such action as the Secretary considers reasonable to obtain maintenance.".

138. Section 1069 (Family Payment Rate Calculator—point 1069-F1):

Omit "Subject to point 1069-F2, a", substitute "A".

139. Section 1069 (Family Payment Rate Calculator—points 1069-F2 and 1069-F3):

Omit the points.

140. Section 1069 (Family Payment Rate Calculator—points 1069-G3 and 1069-G4):

Omit the points.

141. Section 1069 (Family Payment Rate Calculator—point 1069-I1—Method statement—Step 1—Note 1):

Omit "points", substitute "point".

142. Section 1069 (Family Payment Rate Calculator—point 1069-I1—Method statement—Step 1):

Before Note 1, insert the following Note:

"Note 1A: Maintenance income for children who are not AFP children is not taken into account for the purposes of the maintenance income test (see point 1069-I1A).".

143. Section 1069 (Family Payment Rate Calculator—point 1069-I1—Method statement—Step 2):

Omit "1069-I9", substitute "1069-I7A".

144. Section 1069 (Family Payment Rate Calculator—heading to point 1069-I2):

Omit the heading, substitute:

"*Maintenance income of members of couples*".

145. Section 1069 (Family Payment Rate Calculator—point 1069-I4):

Omit the point, substitute:

SCHEDULE 4—continued

Amount of ceiling

"1069-I4. This is how to work out the ceiling applicable to a person:

	Method statement
Step 1.	Work out the amount of the person's maintenance income free area using point 1069-I7.
Step 2.	Work out the amount of the person's appropriate pension MBR using point 1069-I4A.
Step 3.	Annualise the person's additional family payment by adding up the amounts of additional family payment that would be payable to the person (before the application of the income or maintenance income test) and multiplying the result by 26.
Step 4.	Annualise the person's guardian allowance by multiplying by 26 the amount of guardian allowance that would be payable to the person (before the application of the income or maintenance income test).
Step 5.	Annualise the person's rent assistance by multiplying by 26 the amount of rent assistance that would be payable to the person (before the application of the income or maintenance income test).
Step 6.	Add up the amounts obtained from Steps 2, 3, 4 and 5 and divide the result by 2.
Step 7.	Add up the amounts obtained from Steps 1 and 6: the result is the **ceiling applicable to the person**.

Appropriate pension MBR

"1069-I4A. The appropriate pension MBR (maximum basic rate) for a person at a particular time is:

(a) if the person is not a member of a couple—the amount that is, at that time, the maximum basic rate of age pension payable to a person to whom item 1 of Table B in point 1064-B1 of Pension Rate Calculator A in section 1064 applies; or

(b) if the person is a member of a couple—the amount that is, at that time, twice the maximum basic rate of age pension payable to a person to whom item 2 of Table B in point 1064-B1 of Pension Rate Calculator A in section 1064 applies.".

SCHEDULE 4—continued

146. Section 1069 (Family Payment Rate Calculator—point 1069-I5—paragraph (b)):

Omit "V", substitute "5".

147. Section 1069 (Family Payment Rate Calculator—point 1069-I5—subparagraph (c)(i)):

Omit "VI", substitute "6".

148. Section 1069 (Family Payment Rate Calculator—points 1069-I8 and 1069-I9):

Omit the points, substitute:

Only maintenance actually received taken into account in applying Table I2

"1069-I7A. In determining whether or not item 2 or 3 of Table I2 applies to a person, point 1069-I2 is to be disregarded. This has the effect of taking into account only maintenance income that the person actually receives rather than any maintenance income that the person is taken to receive because of maintenance income received by the person's partner.

Maintenance income excess

"1069-I8. A person's maintenance income excess is the person's maintenance income less the person's maintenance income free area.

Reduction for maintenance income

"1069-I9. A person's reduction for maintenance income is:

$$\frac{\textbf{maintenance income excess}}{52}.$$

Note: Explanation of derivation of maintenance income reduction formula—start with the person's maintenance income excess—divide by 26 to convert from a yearly to a fortnightly basis—divide by 2 to give a 50% taper.".

149. Subsection 1116(7):

Omit the subsection.

150. Subparagraph 1129(1)(b)(i):

Omit "1125", substitute "1124A, 1125, 1125A".

151. Subparagraph 1131(1)(d)(i):

Omit "1125", substitute "1124A, 1125, 1125A".

152. Section 1190 (Indexed and Adjusted Amounts Table—item 19—column 3):

Omit "FPRA", substitute "AFP MBR".

SCHEDULE 4—continued

153. Section 1190 (Indexed and Adjusted Amounts Table—item 48—column 4):

Omit "C7", substitute "C8".

154. Section 1190 (Indexed and Adjusted Amounts Table—item 49A—column 4):

Omit "C7", substitute "C8".

PART 6—AMENDMENTS COMMENCING ON 20 MARCH 1993

155. Section 1190 (Indexed and Adjusted Amounts Table—item 17A—column 3):

Omit "rate", substitute "rent".

156. Section 1190 (Indexed and Adjusted Amounts Table—item 17A—column 4):

After "1166-D1(c)" insert "—annual amount".

157. Paragraph 1247(1)(ba):

Omit the paragraph.

PART 7—AMENDMENTS COMMENCING ON 25 MARCH 1993

158. Subsection 1072A(3):

Omit "1072D", substitute "1074F".

159. Subsection 1072C(1):

Omit "1072D", substitute "1074F".

160. Section 1074B (Note 2):

Omit "1074F", substitute "1074G".

PART 8—AMENDMENTS COMMENCING ON 1 JULY 1994, IMMEDIATELY AFTER THE COMMENCEMENT OF PART 3 OF THE SOCIAL SECURITY LEGISLATION AMENDMENT ACT (NO. 2) 1993

161. Paragraph 1061ZJ(4)(c):

Omit ", more than 3 months after the notice is given,".

162. Paragraph 1061ZU(4)(c):

Omit ", more than 3 months after the notice is given,".

SCHEDULE 4—continued

PART 9—AMENDMENTS COMMENCING ON ROYAL ASSENT RELATING TO FRINGE BENEFITS

163. Subsection 92(1):

Omit the subsection, substitute:

"(1) A person who:

(a) is receiving an age pension; and

(b) is an Australian resident; and

(c) is in Australia;

is qualified for fringe benefits.

Note: For 'Australian resident' see subsections 7(2) and (3).".

164. Subsection 146R(1):

Omit the subsection, substitute:

"(1) A person who:

(a) is receiving disability support pension; and

(b) is an Australian resident; and

(c) is in Australia;

is qualified for fringe benefits.

Note: For 'Australian resident' see subsections 7(2) and (3).".

165. Subsection 196(1):

Omit the subsection, substitute:

"(1) A woman who:

(a) is receiving a wife pension; and

(b) is an Australian resident; and

(c) is in Australia;

is qualified for fringe benefits.

Note: For 'Australian resident' see subsections 7(2) and (3).".

166. Subsection 247(1):

Omit the subsection, substitute:

"(1) A person who:

(a) is receiving a carer pension; and

(b) is an Australian resident; and

(c) is in Australia;

is qualified for fringe benefits.

Note: For 'Australian resident' see subsections 7(2) and (3).".

SCHEDULE 4—continued

167. Subsection 313(1):

Omit the subsection, substitute:

"(1) A person who:

(a) is receiving a sole parent pension; and

(b) is an Australian resident; and

(c) is in Australia;

is qualified for fringe benefits.

Note: For 'Australian resident' see subsections 7(2) and (3).".

168. Subsection 360(1):

Omit the subsection, substitute:

"(1) A person who:

(a) is receiving a widowed person allowance; and

(b) is an Australian resident; and

(c) is in Australia;

is qualified for fringe benefits.

Note: For 'Australian resident' see subsections 7(2) and (3).".

169. Subsection 408(1):

Omit the subsection, substitute:

"(1) A woman who:

(a) is receiving a widow B pension; and

(b) is an Australian resident; and

(c) is in Australia;

is qualified for fringe benefits.

Note: For 'Australian resident' see subsections 7(2) and (3).".

170. Subsection 592H(1):

Add at the end:

"; and (d) the person is an Australian resident; and

(e) the person is in Australia.

Note: For 'Australian resident' see subsections 7(2) and (3).".

171. Subsection 660W(1):

Add at the end:

"; and (d) the person is an Australian resident; and

(e) the person is in Australia.

Note: For 'Australian resident' see subsections 7(2) and (3).".

SCHEDULE 4—continued

172. Subsection 728ZC(1):

Add at the end:

"; and (d) the person is an Australian resident; and
(e) the person is in Australia.

Note: For 'Australian resident' see subsections 7(2) and (3).".

173. Subsection 771H(1):

Add at the end:

"; and (d) the person is an Australian resident; and
(e) the person is in Australia.

Note: For 'Australian resident' see subsections 7(2) and (3).".

NOTE

Social Security Act 1991

1. No. 46, 1991, as amended. For previous amendments, see Nos. 68, 69, 70, 73, 74, 115, 116, 141, 175, 194 and 208, 1991; Nos. 12, 69, 81, 94, 118, 133, 134, 138, 228, 229, 230, 233 and 241, 1992; and Nos. 25, 36, 00, 00 and 00, 1993.

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