

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 20 November 1985

(Minister for Social Security)

A BILL

FOR

An Act relating to Social Security

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 **1. (1)** This Act may be cited as the *Social Security (Proportional Portability of Pensions) Amendment Act 1985*.

(2) The *Social Security Act 1947*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on 1 July 1986.

10 **3.** Section 83AA of the Principal Act is repealed and the following section is substituted:

Interpretation

15 “83AA. (1) In this Part, unless the contrary intention appears—
 ‘pension’ means a pension under Part III or IV or a benefit under Part
 IVAAA;

'period of residence in Australia', in relation to a person, means the period, or the aggregate of the periods, during which the person has been a resident of Australia, other than any period—

- (a) during which the person had not attained the age of 16 years; or
- (b) after the person, being a woman, had attained the age of 60 years or, being a man, had attained the age of 65 years.

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“(2) Where a person who is in receipt of an age pension or an invalid pension is a married person and the person's spouse is in receipt of an age pension or an invalid pension, the period of residence in Australia of the person shall, for the purposes of this Part, be taken to be the period of residence in Australia of the person or the person's spouse, whichever is the longer.

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“(3) For the purposes of this Part—

- (a) the period of residence in Australia of a person who is in receipt of a wife's pension shall be taken to be the period of residence in Australia of the person's spouse; and
- (b) the period of residence in Australia of a person who is in receipt of a carer's pension shall be taken to be the period of residence in Australia of the person in respect of whom the first-mentioned person is providing constant care and attention.

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“(4) The period of residence in Australia of a person who is in receipt of a widow's pension and who became qualified to receive that pension by reason of the death of the person's former spouse shall, for the purposes of this Part, be taken to be—

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- (a) the period of residence in Australia of the person; or
- (b) the period of residence in Australia of the person's former spouse, whichever is the longer.

“(5) For the purposes of the definition of 'period of residence in Australia' in sub-section (1), a person shall be taken to have been a resident of Australia during a period during which the person was an absent resident.

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“(6) Where the period of residence in Australia of a person would, apart from this sub-section, be a number of whole months, that period of residence in Australia shall, for the purposes of this Part, be increased by one month.

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“(7) Where the period of residence in Australia of a person would, apart from this sub-section, be a number of whole months and a day or days, that period of residence in Australia shall, for the purposes of this Part, be increased so that it is equal to that number of months plus one month.”.

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4. After section 83AB of the Principal Act the following section is inserted:

Rate of pension payable outside Australia

5 “83AC. (1) Where a person who commences to receive a pension after
1 July 1986 leaves Australia after commencing to receive that pension and
is absent from Australia for more than 12 months, the annual rate of
pension payable to the person after the end of the period of 12 months
after the departure of the person from Australia and while the person is
absent from Australia is the rate calculated in accordance with sub-section
10 (3).

15 “(2) Where a person who is absent from Australia on 1 July 1986
commences, after that date, to receive a pension by virtue of section 21A
or 24A, sub-section 31 (1A), sub-paragraph 33 (1) (c) (ii) or section 61A or
61B, the annual rate of pension payable to the person while the person is
absent from Australia is the rate calculated in accordance with sub-section
15 (3).

“(3) For the purposes of sub-sections (1) and (2), the annual rate of
pension payable to a person is the rate calculated in accordance with the
formula $\frac{PQ}{300}$, where—

20 **P** is the annual rate of pension that would be payable to the person
apart from this section; and

Q is the number of months of the period of residence in Australia of
the person or 300, whichever is the lower number.

“(4) Where—

25 (a) this section applies in relation to a person who is receiving a
pension; and

(b) another pension is granted to the person by virtue of section 83AF,
this section continues to apply in relation to the person while the person
remains outside Australia.

30 “(5) This section does not apply to—

(a) a person who—

(i) was a resident of Australia or an absent resident on 8 May
1985; and

35 (ii) commences to receive a pension before 1 January 1996,
during any absence of the person from Australia that commenced
before 1 January 1996;

(b) a person who—

(i) was a resident of Australia or an absent resident on 8 May
1985; and

40 (ii) is in a country with which Australia does not have an
agreement that affects the operation of this Act;

- (c) a person who is receiving an invalid pension that the person became qualified to receive by reason of becoming permanently incapacitated for work or permanently blind while the person was in Australia or during a temporary absence from Australia; or
- (d) a person who is receiving a widow's pension that the person became qualified to receive under section 60 by reason of the death in Australia or during a temporary absence from Australia of the person's former spouse."

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Grant of new pension to pensioner outside Australia

5. Section 83AF of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

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"(4) A reference in sub-section (2) or (3) to a prescribed provision is a reference to section 21A or 24A, sub-section 31 (1A), sub-paragraph 33 (1) (c) (ii) or section 61A."

NOTE

1. No. 26, 1947, as amended. For previous amendments, see Nos. 38 and 69, 1948; No. 16, 1949; Nos. 6 and 26, 1950; No. 22, 1951; Nos. 41 and 107, 1952; No. 51, 1953; No. 30, 1954; Nos. 15 and 38, 1955; Nos. 67 and 98, 1956; No. 46, 1957; No. 44, 1958; No. 57, 1959; No. 45, 1960; No. 45, 1961; Nos. 1 and 95, 1962; No. 46, 1963; Nos. 3 and 63, 1964; Nos. 57 and 152, 1965; No. 41, 1966; Nos. 10 and 61, 1967; No. 65, 1968; No. 94, 1969; Nos. 2 and 59, 1970; Nos. 16 and 67, 1971; Nos. 1, 14, 53 and 79, 1972; Nos. 1, 26, 48, 103 and 216, 1973; Nos. 2, 23 and 91, 1974; Nos. 34, 56, 101 and 110, 1975; Nos. 26, 62 and 111, 1976; No. 159, 1977; No. 128, 1978; No. 121, 1979 (as amended by Nos. 37 and 98, 1982); No. 130, 1980; Nos. 61 and 170, 1981; No. 159, 1981 (as amended by No. 98, 1982); Nos. 37, 98 and 148, 1982; Nos. 4 and 36, 1983; No. 69, 1983 (as amended by No. 78, 1984); Nos. 46, 78, 93, 120, 134 and 165, 1984; and Nos. 24, 95 and 127, 1985.