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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Social Security,  
the Hon Brian Howe MP)



## OUTLINE

The Bill would amend the Social Security Act 1947 to -

renumber the provisions of the Act in an orderly way;

include current reciprocal agreements on social security with the United Kingdom and the New Zealand in the Act;

simplify, clarify and update the provisions of the Act concerning criminal prosecutions and increase the level of penalties for offences against the Act to current levels in other Commonwealth legislation;

bring the Act more into line with the announced policy of the Government in the following respects:

- all administrative decisions would have to be in writing unless the decisions are recorded on a computer;
- the secrecy provision would be extended to bind officials who have access to confidential information but who do not have duties or functions under the Act;
- the assets test "hardship" provision would require a person to request formally the application of the provision;
- the review and appeal provisions would be extended to all decisions made under the provisions of the Act;
- eligibility for supporting parent's benefit would be extended to a person whose spouse was held in legal custody on remand, so aligning qualification with the disqualification for benefit of the spouse; and

correct drafting defects.

## FINANCIAL IMPACT STATEMENT

The measures in the Bill have no readily quantifiable financial impact, although it is expected that there will be some very small savings in administrative costs by improving the Social Security Act 1947.

## SOCIAL SECURITY AMENDMENT BILL 1987

### Clause 1 : Short title etc.

This clause would enable the amending Act to be cited as the Social Security Amendment Act 1987. It provides that the Social Security Act 1947 is referred to as the Principal Act in the amending Act.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

### Clause 2 : Commencement

This clause would provide for the commencement of the provisions of the amending Act.

The day on which a clause would come into operation is referred to in the notes to the relevant clause.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

### Clause 3 : Application

This clause would provide for the application of some clauses of the amending Act.

The effect of the clause will be referred to in the notes to the relevant clauses.

### Clause 4 : Transitional and savings

This clause would provide for transitional arrangements and savings provisions concerning some clauses of the Amending Act.

The effect of the clause will be referred to in the notes to the relevant clauses.

### Clause 5 : Interpretation

This clause would modify the definition of "officer" in subsection 6(1) of the Principal Act in consequence of amendments which would be made to section 17 of the Principal Act by the amending Act.

The current definition of "officer" refers only to a person performing duties or exercising powers or functions under or in relation to the Principal Act.

Clause 5(a) would substitute a new definition of "officer" which would be extended to include a person appointed or employed by the Commonwealth who acquires information concerning a person for the purposes of section 17.

Clause 5(b) would insert a new subsection 6(1B) which would treat a person, for the purposes of the definition of "officer" as it would apply in section 17, as employed by the Commonwealth if the person performs services for the Commonwealth.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

### Clause 6 : Financial hardship

Section 6AD of the Principal Act provides the mechanism by which the normal operation of the pension "assets test" can be modified when the person concerned is in financial hardship.

This clause would amend section 6AD to require a person seeking the benefit of the provision to make a formal request that it apply to the person.

Clause 6(b) would amend subsection 6AD(1) to insert a new paragraph 6AD(1)(d) which would enable a person to request that the benefit of the provision be applied to the person.

Clause 6(a) would make a consequential amendment to subsection 6AD(1).

Clause 6(c) would insert a new subsection 6AD(1A) which provides that a decision under subsection 6AD(1) takes effect when the request is made. However, in an appropriate case, the date of effect can be backdated by up to 6 months.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 7 : Indexation

Section 6AF of the Principal Act provides for the indexation of the "assets test" threshold limits for the purposes of pension entitlement and fringe benefits.

This clause would substitute references to section 83CA, concerning the fringe benefit threshold limits, in consequence of amendments made by the amending Act to section 83CA.

By clause 2(7), this clause would come into operation on 12 June 1987. That is the day on which the next indexation of the threshold limits occurs.

#### Clause 8 : Certain persons deemed to continue to receive full-time education

Section 6B of the Principal Act enables a student child who ceases studies but who is not entitled to be paid unemployment benefit due to the operation of section 120A of the Principal Act to be treated as if those studies had not ceased.

Clauses 8(a) and (b) would extend the effect of section 6B to section 133 of the Principal Act. Section 133 prevents payment of unemployment benefit to a person for a period in which the person receives a Commonwealth education allowance.

The effect of this amendment will be that a student child who ceases studies, but is not entitled to unemployment benefit for the period in which an education allowance is paid, can be treated as a student child during that period. This can be relevant for the purpose of a student child attracting additional pension or benefit.

This effect will not be appropriate after 1 January 1988 when Commonwealth education allowances are to be increased to absorb additional pension or benefit.

By clause 2(2), clauses 8(a) and (b) would be deemed to have come into operation on 1 July 1986.

Clauses 8(c) and (d) would further amend section 6B to remove references to section 133.

By clause 2(10), clauses 8(c) and (d) would come into operation on 1 January 1988.

#### Clause 9 : Insertion of new section

This clause would insert a new section 9 in the Principal Act which would provide that a decision under the Principal Act is to be in writing.

This general principle would be modified where such a decision is either entered in a Department of Social Security computer or recorded with the use of such a computer. The modification of the general rule is necessary to reflect the fact that on-line computer processing, including decision-making, has arrived.

In practice, a print-out will be available to demonstrate that a decision was taken by a particular person.

By clause 2(8), this clause would come into operation on 1 July 1987.



There are already requirements in the Principal Act that certain decisions be in writing. In consequence of this general rule, these references would be omitted by Part 2 of Schedule 1 to the amending Act. These amendments would also come into operation on 1 July 1987 (see notes to clause 46).

Clause 10 : Repeal of sections 14 and 15 and  
substitution of new section

Sections 14 and 15 of the Principal Act provide for the review of certain administrative decisions and the appeal from certain administrative decisions taken under the Principal Act.

The range of decisions described in sections 14 and 15 is not complete, although in practice no technical objection is taken by the Department of Social Security on the ground that a particular administrative decision may strictly not be subject to review or appeal.

This clause would repeal sections 14 and 15 and substitute a new section 14 which would enable a "decision" to be reviewed or appealed.

By clause 2(8), this clause would come into operation on 1 July 1987.

Part 2 of the Schedule would also amend subsection 6(1) of the Principal Act to insert a definition of "decision" which would have the same meaning as in the Administrative Appeals Tribunal Act 1975. Subsection 3(3) of that Act allows the term its natural meaning and extends it to a wide range of administrative matters.

Clause 11 : Review by Administrative Appeals Tribunal

Section 15A of the Principal Act provides for the review by the Administrative Appeals Tribunal of decisions made under sections 14 or 15 of the Principal Act.

This clause would amend section 15A in consequence of the substitution of a new section 14 for the current sections 14 and 15.

By clause 2(8), this clause would come into operation on 1 July 1987.

Clause 4(1) is a transitional provision which would enable a decision taken under the current section 14 or 15 of the Principal Act to be regarded as a decision under the new section 14 for the purposes of the amended section 15A.

By clause 2(8), clause 4(1) would come into operation on 1 July 1987.

#### Clause 12 : Officers to observe secrecy

Section 17 of the Principal Act is the secrecy provision in the Act.

This clause would substitute new subsections 17(1), (2) and (3) and paragraph 17(4)(a) and amend subsection 17(5), to bring the provision into line with the current form of secrecy provisions in Commonwealth legislation.

The amendments affecting the definition of "officer" (see notes to clause 5) would also extend the scope of the provision.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 13 : Incentive allowance

Section 26 of the Principal Act would be amended by this clause in consequence of the insertion in the Principal Act of a general requirement that all decisions under the Act be in writing.

By clause 2(12), this clause would come into operation when section 26 is amended by the Disability Services (Transitional Provisions and Consequential Amendments) Act 1986. This will be when Part II of the Disability Services Act 1986 comes into operation by Proclamation.

Clause 14 : Rate of age or invalid pension

Section 28 of the Principal Act provides for the calculation of the rate of age or invalid pension which applies to an age or invalid pensioner and the application of the income or assets test to that pension.

Clause 14(a) would amend subsection 28(IEA) to correct a drafting defect made by the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986.

By clause 2(1), clause 14(a) would be deemed to have come into operation on 22 May 1986 when that Act came into operation.

The "free area" of income before the income test applies is currently \$1,300 per annum which will increase to \$1,820 per annum from 1 July 1987 when the Social Security (Poverty Traps Reduction) Act 1986 comes into operation.

Clause 14(b) would amend subsection 28(IEA) to change a reference to \$1,300 to \$1,820 in consequence and so correct a drafting defect.

By clause 2(8), clause 14(b) would come into operation on 1 July 1987.

Clause 3(1) would provide that clause 14(b) would apply to payments falling due on or after 1 July 1987.

By clause 2(8), clause 3(1) would come into operation on 1 July 1987.

Clause 15 : Notification by pensioner

Section 30B of the Principal Act requires a pensioner under Part III of the Principal Act to notify changes in circumstances affecting entitlement to rent assistance.

This clause would amend section 30B to correct a drafting defect made by the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986.

By clause 2(1), the amendment would be deemed to have come into operation on 22 May 1986 when that Act came into operation.

Clause 16 : Dual entitlement

Section 49 of the Principal Act precludes a woman from receiving dual entitlement to a widow's pension under the Principal Act (civilian widow's pension) and a widow's pension under the veterans' legislation (war widow's pension), unless both pensions were being paid before 1 November 1986.

Where both pensions were being paid before 1 November 1986, it is possible for the civilian widow's pension to be reduced by, for example, the income test taking casual earnings into account. In some cases, the level of earnings may preclude any entitlement to that pension.

Subsection 49(4) operates in such a case to preclude any entitlement to civilian widow's pension on a permanent basis, regardless of the subsequent level of earnings. This was not intended.

This clause would omit subsection 49(4).

By clause 2(3), the amendment would be deemed to have come into operation on 1 November 1986. This would validate current practice.

Clause 17 : Rate of widow's pension

This clause would amend section 63 of the Principal Act to correct a reference to another provision of the Principal Act.

By clause 2(11), the amendment would come into operation immediately after the Social Security (Poverty Traps Reduction) Act 1985 comes into operation on 1 July 1987.

Clause 18 : Repeal of section 81 and  
substitution of new section

This clause would repeal section 81 of the Principal Act and substitute a new section 81 which would correct a drafting defect made by the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986.

By clause 2(1), the amendment would be deemed to have come into operation on 22 May 1986 when that Act came into operation.

Clause 19 : Interpretation

Section 83AAA provides rules for the interpretation of Part IVAA of the Principal Act, concerning supporting parent's benefit.

This clause would insert a new subsection 83AAA(3) which would treat a person as an "unmarried person" if the person's spouse was held in custody pending trial or sentencing for an offence (ie held on remand).

The amendment would bring the eligibility criteria for supporting parent's benefit into line with an amendment to section 135THA of the Principal Act which precludes eligibility for an income support payment where a person is held on remand.

By clause 2(4), the clause would be deemed to have come into operation on 1 December 1986 when section 135THA was amended. This will validate current practice.

Clause 20 : Application of certain provisions

This clause would amend section 83AAG of the Principal Act in consequence of the coming into operation of provisions which repeal other provisions referred to in subsection 83AAG(2).

By clause 2(11), the clause would come into operation immediately after the Social Security (Poverty Traps Reduction) Act 1985 comes into operation on 1 July 1987.

Clause 21 : Repeal of section 83AE and substitution of new section

This clause would repeal section 83AE of the Principal Act and substitute a new section 83AE in consequence of the reciprocal agreements on social security to which the section refers becoming Schedules to the Principal Act rather than being Schedules to regulations under the Act.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 22 : Prescribed persons

Section 83CA provides for the income and asset tests applicable for eligibility for funeral benefits under Part IVA of the Principal Act. These tests are also the Commonwealth "fringe benefits" income tests, in that a pensioner whose income and assets are under the income test limits will be eligible for a pensioner health benefits (PHB) card.

Clauses 22(a), (b) and (c) would amend subsection 83CA(1) to correct drafting defects made by the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986.

By clause 2(1), clauses 22(a), (b) and (c) would be deemed to have come into operation on 22 May 1986 when that Act came into operation.

Clauses 22(d), (e) and (f) would amend subsection 83CA(4). The effect of the amendments would be to link directly the pension asset test thresholds in section 6AE of the Principal Act with the asset test thresholds for funeral benefits. The purpose of this linkage is to preserve the common differences in thresholds between an unmarried and a married person which were being eroded owing to unintended effects of the indexation rounding-off provisions in section 6AF of the Principal Act.

By clause 2(7), clauses 22(d), (e) and (f) would come into operation on 12 June 1987. This is the day on which the next indexation of the asset test threshold limits occurs.

#### Clause 23 : Rate of unemployment and sickness benefit

Section 112 of the Principal Act provides for the rate of unemployment or sickness benefit which is applicable to a beneficiary before the operation of the benefit income test.

Clause 23(a) would amend subsection 112(2) to ensure that a married person who is precluded from an income support payment because of Part VIIIIAA of the Principal Act (which deals with the situation where a person eligible to receive an income support payment is also eligible for compensation) is not regarded as dependent on the person's spouse.

By clause 2(6), clause 23(a) would be deemed to have come into operation on 1 May 1987 when Part VIIIIAA comes into operation.

Clause 23(b) would substitute a new subsection 112(4G) which would reflect changes made to the AUSTUDY education allowances under the "Priority One" initiatives.

By clause 2(5), clause 23(b) would be deemed to have come into operation on 1 January 1987.

Clause 4(2) is a savings provision which would ensure that where a person would be disadvantaged by the retrospective operation of clause 23(b), the overpayment would be waived.

By clause 2(5), clause 4(2) would be deemed to have come into operation on 1 January 1987 when clause 23(b) comes into operation.

#### Clause 24 : Rent assistance

Section 112A of the Principal Act provides for rent assistance applicable to an unemployment, sickness or special beneficiary who pays private rent. Under current arrangements, there is a waiting period which must generally be served before rent assistance becomes applicable.

Where a person who is a beneficiary serves the waiting period so that rent assistance becomes applicable and benefit ceases to be payable owing to cessation of qualification (eg commencement of employment), a waiting period has to be served again if the person re-qualifies for benefit.

This can cause hardship in some cases and can operate as a disincentive to take up an offer of employment which is of uncertain duration.

The clause would insert a new subsection 112A(1A) which would not require another waiting period to be served in such cases where the period between the cessation of qualification and re-qualification is less than 4 weeks.

By clause 2(3), this clause would come into operation on 1 November 1986. This would validate current practice.

#### Clause 25 : Limitation of amount payable as sickness benefit

Section 113 of the Principal Act limits the amount of sickness benefit payable to a person to the amount of income lost as a result of the person's temporary incapacity.



Under current arrangements, where both sickness benefit and rent assistance are payable to a person, section 113 limits only the amount of sickness benefit. When the "poverty traps reduction" legislation comes into operation on 1 July 1987, section 113 will limit the sum of the amounts of sickness benefit and rent assistance.

This clause would insert a new subsection 113(3) which would prevent section 113 operating in this way in cases where both sickness benefit and rent assistance were being paid to a person before 1 July 1987. This would ensure that such a person did not suffer a reduction in income support unrelated to the person's circumstances.

By clause 2(8), this clause would come into operation on 1 July 1987.

#### Clause 26 : Repeal of section 123

Section 123 of the Principal Act enables any increase in the rate of unemployment benefit of a person made by reference to a spouse, or a spouse and dependent child, to be paid to the spouse.

Section 135TC of the Principal Act already enables a payment under the Principal Act to be split and, therefore, section 123 is not necessary.

This clause would repeal section 123.

By clause 2(8), this clause would come into operation on 1 July 1987.

Clause 4(3) is a transitional provision which would preserve the effect of decisions under section 123 by treating them as decisions under subsection 135TC(2).

By clause 2(8), clause 4(3) would also come into operation on 1 July 1987.

Clause 27 : Payment and calculation of instalments  
of certain pensions etc.

This clause would amend subsection 135TBA(9) of the Principal Act to omit a reference to subsection 135TBA(10) in consequence of subsection 135TBA(10) having been omitted.

By clause 2(11), the clause would come into operation immediately after the Social Security (Poverty Traps Reduction) Act 1985 comes into operation on 1 July 1987.

Clause 28 : Benefit not payable to full-time students

Section 133 of the Principal Act prevents unemployment, sickness or special benefit being paid to full-time students or students receiving Commonwealth education allowances.

This provision does not apply, however, to a person under 16 years of age who may be able to qualify for special benefit. In such a case, the "young homeless allowance" was intended to be a component of the rate of special benefit which is payable. To attract that allowance, a person has to have lived away from the parental home for at least 6 months.

This requirement is not desirable in such a situation and this clause would amend section 133 to enable a person who is under 16 years of age and qualifies for special benefit to receive the "young homeless allowance" if the person lives away from the parental home.

By clause 2(5), this clause would come into operation on 1 January 1987 when section 133 came into operation. This will validate current practice.

Clause 29 : Persons eligible to be paid  
rehabilitation allowance

Section 135B of the Principal Act requires some decisions to be in writing. In consequence of the insertion of the new section 9 in the Principal Act (see notes to clause 9) which requires all decisions under the Act to be in writing, this requirement will be necessary.

By clause 2(12), this clause would come into operation when section 135B is amended by the Disability Services (Transitional Provisions and Consequential Amendments) Act 1986 comes into operation. This will be when Part II of the Disability Services Act 1986 comes into operation by Proclamation.

Clause 30 : Interpretation

Section 135SA of the Principal Act provides definitions of terms used in Part VIIIIAA of the Act.

Clause 30(a) would substitute a new definition of "pension" which would correct a drafting defect.

By clause 2(6), clause 30(a) would come into operation on 1 May 1987 when Part VIIIIAA comes into operation.

Clause 30(b) would amend the definition of "pension" to omit a reference to a provision which would be repealed by the "poverty traps reduction" legislation.

By clause 2(11), clause 30(b) would come into operation immediately after the Social Security (Poverty Traps Reduction) Act 1986 comes into operation on 1 July 1987.

Clause 31 : Repeal of section 135SB

This clause would repeal section 135SB of the Principal Act. The function of the provision can be fulfilled by other provisions of the Act.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 32 : Recovery of amounts from person liable to make compensation payments

Section 135SD of the Principal Act provides a mechanism whereby an amount of compensation can be recovered from a person liable to pay compensation payments to a person who has received income support payments under the Act. It is part of Part VIII A of the Principal Act which limits the "double dipping" involved where a person is eligible for both compensation and income support payments.

Subsection 135SD(4) prohibits a person liable to such compensation payments making any payment once a notice has been served on the person under section 135SD. In some situations this prohibition can be unduly restrictive.

This clause would amend subsection 135SD(4) to enable a payment to be made where appropriate.

By clause 2(6), this clause would be deemed to have come into operation on 1 May 1987 when Part VIII A comes into operation.

Clause 33 : Notice to insurers

Section 135E of the Principal Act provides a mechanism whereby an amount of compensation can be recovered from an insurer liable to indemnify a person who is liable to pay compensation to another person who has received income support payments under the Act. It is part of Part VIII A of the Principal Act which limits the "double dipping" involved where a person is eligible for both compensation and income support payments.

Subsection 135SE(4) prohibits such an insurer making any payment once a notice has been served on the insurer under section 135SE. In some situations this prohibition can be unduly restrictive.

This clause would amend subsection 135SE(4) to enable a payment to be made where appropriate.

By clause 2(6), this clause would be deemed to have come into operation on 1 May 1987 when Part VIII A comes into operation.

Clause 34 : Direct deposit to financial institutions etc.

Section 135TD of the Principal Act enables special arrangements to be made with financial institutions for the direct deposit to an account of payment of a pension, benefit or allowance under the Act and for the recovery from that account of any overpayment.

Where recovery is sought, subsection 135TD(4) requires the financial institution to comply with a notice served on it under section 135TD(4) and imposes a criminal penalty for non-compliance.

This clause would amend subsection 135TD(4) to increase that penalty from \$1,000 to \$10,000.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 3(2) would provide that the amendment made by clause 34 would apply only to offences after the clause comes into operation.

By clause 2(13), clause 3(2) would come into operation on the day on which the amending Act receives the Royal Assent.

### Clause 35 : Notification and review

Section 135TE of the Principal Act is the general provision in the Act which enables requirements to be imposed upon a person to notify the occurrence of events affecting entitlement to pension, benefit or allowance and with the requirements upon a person to furnish a statement to enable such entitlement to be reviewed.

Subsection 135TE(5) creates an offence and imposes a criminal penalty for non-compliance.

Clause 35(a) would amend paragraph 135TE(5)(b) to extend the offence to recklessly providing false or misleading information.

Clause 35(b) would amend subsection 135TE(5) to increase that penalty from \$500 to \$1,000 or imprisonment for 6 months or both. In addition, a criminal penalty of \$5,000 would be imposed in the case of a body corporate.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 3(2) would provide that the amendments made by clause 35 would apply only to offences committed after the clause comes into operation.

By clause 2(13), clause 3(2) would come into operation on the day on which the amending Act receives the Royal Assent.

### Clause 36 : Power to obtain information etc.

Section 135TF of the Principal Act provides a general power to obtain information concerning the entitlement of a person to a pension, benefit or allowance under the Act.

Clause 36(a) would amend subsection 135TF(1) to omit references to provisions which will be repealed on 1 May 1987.

By clause 2(6), clause 36(a) would be deemed to have come into operation on 1 May 1987.

Clause 4(4) would provide that, notwithstanding the amendment of subsection 135TF(1), that provision would continue to apply on and after 1 May 1987 where the provisions of Division 3A of Part VII continue to apply. That Division will be repealed on 1 May 1987, subject to transitional arrangements.

By clause 2(6), clause 4(4) would be deemed to have come into operation on 1 May 1987.

Clause 36(b) would amend paragraph 135TF(3)(b) to extend the offence created by subsection 135TF(3) to recklessly providing false or misleading information.

Clause 36(c) would amend subsection 135TF(3), which imposes a criminal penalty for non-compliance, to increase the penalty from \$1,000 to \$2,000 or imprisonment for 12 months or both. In addition, a criminal penalty of \$10,000 would be imposed in the case of a body corporate.

By clause 2(13), clauses 36(b) and (c) would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 3(2) would provide that the amendment made by clauses 36(b) and (c) would apply only to offences committed after the clause comes into operation.

By clause 2(13), clause 3(2) would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 37 : Offences

Section 138 of the Principal Act provides for the main offences involving fraud concerning social security payments under the Principal Act.

This clause would clarify the scope of the provision.

Clauses 37(a), (c) and (e) would amend the offence provisions to make it clear that an offence was committed only if a person "knowingly" or "recklessly" engaged in particular conduct.

This would embody in section 138 the interpretation given paragraph 138(1)(d) by the High Court in Cameron v Holt (1979-80) 142 CLR 342, where it was held that mens rea is an ingredient of the offence created by that paragraph.

Clause 37(b) would amend paragraph 138(1)(a), which deals with fraudulent statements, to cover the case of an application under the pension loans scheme.

Clause 37(d) would amend paragraph 138(1)(b) to cover specifically the case of a person obtaining a part of a payment which is not payable. The provision currently covers the case of a person obtaining a payment which is not payable and it is not clear whether the special case falls within the broader case.

Clause 37(f) would amend subsection 138(1A) to enable both the current monetary penalty of \$2,000 and the period of imprisonment of 12 months to be imposed.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 3(2) would provide that the amendments made by clause 37 would apply to offences committed after the clause comes into operation.

By clause 2(13), clause 3(2) would come into operation on the day on which the amending Act receives the Royal Assent.



### Clause 38 : Indictable offences

Section 138A of the Principal Act provides that an offence against section 17 of the Act (the secrecy provision) is an indictable offence.

Subsection 138A(1) provides for a criminal penalty of \$5,000 or imprisonment for 2 years.

However, subsection 138A(2) enables proceedings in such cases to be tried summarily. In that event, subsection 138A(3) provides for a criminal penalty of \$1,000 or imprisonment for 6 months.

This clause would amend subsections 138A(1) and (3) to enable both a monetary penalty and a period of imprisonment to be imposed.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 3(2) would provide that the amendments made by clause 38 would apply only to offences committed after the clause comes into operation.

By clause 2(13), clause 3(2) would come into operation on the day on which the amending Act receives the Royal Assent.

### Clause 39 : Insertion of new section

This clause would insert a new section 138B in the Principal Act.

The new section 138B deals with establishing the criminal liability of a body corporate by reference to the state of mind or conduct of a director, servant or agent. The provision is in the normal form of such provisions in Commonwealth legislation.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 3(2) would provide that the amendments made by clause 39 would apply only to offences committed after the clause comes into operation.

By clause 2(13), clause 3(2) would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 40 : Repeal of section 139

Section 139 of the Principal Act provides that offences against the Principal Act may be commenced only -

within specific time limits (subsections 139(1) and (1A));  
and

with the consent of the Minister, the Secretary, the Director of Public Prosecutions or a person authorized by the Secretary or the Director to consent (subsection 139(2)).

These provisions serve little purpose, other than to require recourse to the Crimes Act 1914 where prosecution under the Principal Act is not possible. It is desirable that prosecution under the Principal Act be the normal course, with the Crimes Act 1914 being used only where the gravity of the offence so warrants. It is not desirable that the Crimes Act 1914 be used to avoid section 139.

This clause would repeal section 139. Since the Director of Public Prosecutions is primarily responsible for the conduct of prosecutions under Commonwealth law, it is proper that the Director make decisions on a case by case basis as to whether an offence is stale or otherwise not appropriate to prosecute.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 3(3) would provide that the repeal of section 139 does not apply to offences committed on or before clause 40 comes into operation.

By clause 2(13), clause 3(3) would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 41 : New Enterprise Incentive Scheme - effect  
where spouse of recipient is not in receipt of  
wife's pension or carer's pension

Section 139A of the Principal Act will be amended by the "poverty traps reduction" legislation on 1 July 1987.

This clause would amend section 139A to correct a minor drafting flaw in the amendment.

By clause 2(11), the clause would come into operation immediately after the Social Security (Poverty Traps Reduction) Act 1986 comes into operation on 1 July 1987.

Clause 42 : Repeal of section 139D and  
substitution of new section

Section 139D of the Principal Act applies in the case where a person was receiving both an income support payment under the Act and a Commonwealth education allowance before 1 January 1987. After that date, the rate of payment of the income support payment is "frozen" while the education allowance is being paid.

Following the decision that some persons eligible for such an education allowance may not receive the payment, which would instead be payable to their parents, it is necessary to amend section 139 to reflect the change in payment arrangements.

This clause would substitute a new section 139D to achieve this.

By clause 2(5), this clause would be deemed to have come into operation on 1 January 1987.

Clause 43 : Extra-territorial operation of certain provisions

Section 141 of the Principal Act provides for the extra-territorial operation of some provisions of the Act.

This clause would omit a reference to section 115A of the Principal Act in consequence of its being repealed on 1 May 1987.

By clause 2(6), this clause would be deemed to have come into operation on 1 May 1987.

Clause 4(4) would provide that, notwithstanding the amendment of subsection 141(1), that provision would continue to apply on and after 1 May 1987 where the provisions of Division 3A of Part VII continue to apply. Division 3A will be repealed on 1 May 1987, subject to transitional arrangements.

By clause 2(6), clause 4(4) would be deemed to have come into operation on 1 May 1987.

Clause 44 : Payments of pension etc. and war pension

Section 145 of the Principal Act is part of the machinery for the integration of income security payments under the Act and similar payments under the Veterans' Entitlements Act 1986.

This clause would change references to the repatriation legislation to references to the Veterans' Entitlements Act 1986 which has replaced that legislation.

By clause 2(1), this clause would come into operation on 22 May 1986 when the Veterans' Entitlements Act 1986 came into operation.

Clause 45 : Waiver etc.

Section 146 of the Principal Act would change a reference to a provision in the Repatriation Act 1920 to the corresponding provision in the Veterans' Entitlements Act 1986 in consequence of the replacement of the former Act by the latter.

By clause 2(1), this clause would come into operation on 22 May 1986 when the Veterans' Entitlements Act 1986 came into operation.

Clause 46 : Additional amendments

This clause would provide that the Principal Act would be amended as indicated in Schedule 1 to the amending Act. Schedule 1 is divided into Parts 1 and 2.

By clause 2(13), the amendments contained in Part 1 would come into operation on the day on which the amending Act receives the Royal Assent while, by clause 2(8), the amendments contained in Part 2 would come into operation on 1 July 1987.

Clause 47 : Schedule

The Schedule to the Principal Act contains the text of the reciprocal agreement on social security between Australia and Italy.

This clause would amend the title of the Schedule to substitute "Schedule 2" in consequence of the texts of other reciprocal agreements being added to the Schedule.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 48 : Insertion of Schedule 1

This clause would amend the Principal Act by adding a new Schedule as set out in Schedule 2 to the amending Act.

The new Schedule, which would be Schedule 1 to the Principal Act, contains the text of the current reciprocal agreement on social security between Australia and the United Kingdom, together with the subsequent agreements which amend that agreement.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 49 : Insertion of Schedule 3

This clause would amend the Principal Act by adding a new Schedule as set out in Schedule 3 to the amending Act.

The new Schedule, which would be Schedule 3 to the Principal Act, contains the text of the current reciprocal agreement on social security between Australia and New Zealand.

By clause 2(13), this clause would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 50 : Renumbering and re-letting of the Social Security Act

This clause would provide that the Principal Act, as amended by the amending Act, would be renumbered consecutively and re-letted alphabetically.

In addition, clause 50(10) would provide that a reference in a law of the Commonwealth or of a Territory, or a reference in an instrument or document, to a provision of the Principal Act which has been renumbered or re-letted is to be read as a reference to the renumbered or re-letted provision.

This would mean, for example, that references in the Veterans' Entitlements Act 1986 to provisions in the Principal Act, or in an instrument of delegation or forms under the Principal Act, would be read as references to the renumbered or re-letted provisions.

By clause 2(9), this clause would come into operation on 2 July 1987.

A table showing the provisions of the Principal Act immediately before and after 2 July 1987 is included at the end of this explanatory memorandum

#### SCHEDULE 1

See notes to clause 46.

#### SCHEDULE 2

See notes to clause 48.

#### SCHEDULE 3

See notes to clause 49.

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SCHEDULE 1

SCHEDULE 1

SCHEDULE 2

SCHEDULE 2

SCHEDULE 3

SCHEDULE 3





