

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AMENDMENT BILL (NO 2) 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon Con Sciacca MP
Parliamentary Secretary to the Minister for Social Security
representing the Minister for Social Security)



SOCIAL SECURITY AMENDMENT BILL (NO 2) 1993

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill gives legislative effect to a number of measures that were announced in the 1993 Budget by making amendments to the *Social Security Act 1991*.

The measures provide for:

- Increasing the rate of payment for certain Newstart allowees;
- Applying the family payment income and assets tests to student parents;
- Reducing the income ceiling and assets test limit for basic family payment; and
- Limiting arrears of family payment.

SOCIAL SECURITY AMENDMENT BILL (NO 2) 1993

Increased rate of payment for certain Newstart allowees

From 20 March 1994, there will be a \$3 per week increase in the rate of newstart allowance for single persons:

aged 21 to 59 years who do not have dependent children; or

aged 60 years and over, who do not have dependent children and have not received a social security benefit continuously for at least 6 months.

The rate increase acknowledges that the relative position of this group has fallen compared with other income support recipients.

The estimated total social security portfolio costs of this measure are \$11.6m in 1993-94, \$41.7m in 1994-95 and \$40.9m in 1995-96.

Some 253,300 Newstart allowees will benefit from this measure each fortnight. This is in addition to some 31,700 recipients who will benefit from this measure under schemes administered by the Department of Education, Employment and Training and the Aboriginal and Torres Strait Islander Commission.

Family payment income and assets tests to apply to student parents

From 1 January 1994, the basic and additional family payment income tests and the additional family payment assets test will apply to student parents who receive prescribed educational scheme payments. This will place such families in the same situation, in terms of their total income assistance and support package, as other families where parents do not receive prescribed educational scheme payments but have the same level of income and/or assets.

The estimated savings of this measure are \$0.4m in 1993-94, \$0.8m in 1994-95 and \$0.8m in 1995-96.

It is expected that only a very small number of families will be affected by this measure.

Reduced income ceiling and assets value limit for basic family payment

From 1 January 1994:

- the existing income ceiling for basic family payment for families with one child will be reduced from \$64,938 to \$60,000. The additional amount allowed for each extra child will be reduced from \$3,249 to \$3,000;
- the existing assets value limit for basic family payment will be reduced from \$607,250 to \$550,000 (although the hardship rules that allow the operation of the assets test to be waived in certain circumstances will continue to apply); and
- the first indexation of these amounts will occur on 1 January 1995.

No changes are proposed for the income free area or the assets value limit for additional family payment.

The estimated savings of the reduction in the income ceiling for basic family payment are \$62.4m in 1993-94, \$124.9m in 1994-95 and \$124.9m in 1995-96. It is estimated that 116,000 families will be excluded from basic family payment as a result of the reduced income ceiling..

The estimated savings of the reduction in the assets value limit for basic family payment are \$0.6m in 1993-94, \$2.0m in 1994-95 and \$2.0m in 1995-96. It is estimated that 2,000 families will be excluded from basic family payment as a result of the reduced assets value limit.

Limiting arrears of family payment

From the day of Royal Assent, the amendments will:

- ensure that arrears of family payment will not be paid from earlier than the date on which a person seeks a review of an adverse decision unless no notice of the decision was sent to the person or unless the review is sought within 3 months of the notification;
- clarify the provisions concerning the discretion to suspend a family payment when contact with a client is lost; and
- make sure that adequate review of entitlements can take place by obliging clients to notify changes of address.

The estimated savings of this measure are \$19.7m in 1993-94, \$39.3m in 1994-95 and \$39.3m in 1995-96.

It is estimated that 25,000 family payment clients will be unable to claim arrears.

SOCIAL SECURITY AMENDMENT BILL (NO 2) 1993

PART 1 - PRELIMINARY

Part 1 of the Bill sets out how the amending Act is to be cited (**clause 1**) and when the various Parts and Sections of the amending Act are to commence (**clause 2**).

Part 1 also provides that the *Social Security Act 1991* is referred to in the amending Act as the 'Principal Act' (**clause 1**).

PART 2 - INCREASED RATE OF PAYMENT FOR CERTAIN NEWSTART ALLOWEES

1. Summary of the proposed changes

The amendment will provide a \$3 a week increase in the rate of newstart allowance payable to

- single persons aged 21 to 59 years without dependent children; and
- single persons aged 60 years or over who do not have dependent children and have not received a social security benefit continuously for at least 6 months.

2. Background

The rate of newstart allowance (NSA) for members of couples, whether with or without dependent children, are equivalent to relevant pension rates. Similarly, single recipients of JSA and NSA without dependent children, who have turned 60 and have received a social security benefit continuously for at least 6 months also attract a rate of NSA equivalent to the relevant pension rate.

However, single long-term unemployed persons without dependent children and who are:

21 to 59 years old; or

60 years or older but have not received a social security benefit continuously for at least 6 months

receive a lower rate of NSA than the rate payable to pensioners in similar circumstances.

The Principal Act will be amended to provide two new "person's family categories" in Table B (Maximum Basic Rates) in Benefit Rate Calculator B to accommodate separate rates for 21- 59 years old single NSA recipients and for 60 years old or older NSA recipients who have not received a social security benefit continuously for at least 6 months. The \$3 a week increase is an acknowledgment that the relative financial position of this group has fallen compared with other income support recipients

3. Clauses involved in the changes

Clause 2(4): specifies the commencement date as 20 March 1994.

Clause 3(a): amends Benefit Rate Calculator B of the Principal Act by omitting items 3 and 4 from Table B in point 1068-B1 and substituting items 3, 4, 4A and 4B.

Clause 3(b): adds two new points, 1068-B3 and 1068-B4, after point 1068-B2.

Clause 4: amends the Indexed and Adjusted Amounts Table in section 1190.

4. Explanation of the changes

NSA basic rates are calculated in accordance with Table B in Benefit Rate Calculator B (point 1068-B1). The rates provided by Table B apply equally to JSA and sickness allowance (SA) recipients. Currently, items 3 and 4 of Table B include rates for those NSA recipients for whom the \$3 increase is intended as well as for some JSA and SA clients.

Clause 3(a) will create four new categories of "person's family situation" in Table B of point 1068-B1 in place of the current items 3 and 4 to separate NSA recipients from recipients of JSA and SA. Item 3 of Table B will be omitted and a new item 3 substituted that will be limited to single JSA and SA recipients aged 21 to 59. New item 4A will be then inserted to cover single NSA recipients aged 21 to 59. Similarly, item 4 will be omitted and a new item 4 substituted that will cover single 60 years old or older JSA and SA recipients who have not received a social security benefit for at least 6 months. New item 4B will include single NSA recipients whose circumstances are the same as the NSA recipients in item 4. The column 3A rates for items 3, 4, 4A, and 4B will be set out at the current level, ie \$312.10 per fortnight and the column 3B rates will be set out at the current level of \$282.70. These are base rates for the above items.

The amounts specified in column 3B (rates for persons without dependent children) in respect of items 4A and 4B will be increased by \$6 per fortnight on 20 March 1994 (clause 3(b)).

The rate increase will take effect after the amounts specified in column 3A (rates for persons with dependent children) and 3B in respect of all four new items (3, 4, 4A and 4B) have been indexed on 20 September 1993 and 20 March 1994 (clause 3(b)). The effect of this amendment is that on 20 March 1994 NSA recipients included in items 4A and 4B of Table B will receive the amount of the current rate (\$282.70 per fortnight) indexed on 20 September and 20 March and increased by \$6 per fortnight.

Section 1190 of the Principal Act indicates what amounts set by the Principal Act are to be indexed and adjusted. Column 4 of item 2 of this section will be amended to provide for the subsequent indexations and adjustment of the rates set out in respect of items 3, 4, 4A and 4B of point 1068-B1 (clause 4).

5. Commencement

This change will commence on 20 March 1994 (clause 2(4)).

PART 3 - FAMILY PAYMENT INCOME AND ASSETS TESTS TO APPLY TO STUDENT PARENTS

1. Summary of the proposed changes

The amendments made by Part 3 mean that the family payment income test and the additional family payment assets test will apply to student parents who receive prescribed educational scheme (PES) payments. The changes will place such families in the same situation, in terms of their total income assistance and support package, as other families where parents do not receive PES payments but have the same level of income and/or assets.

2. Background

Currently, all people receiving family payment other than people also receiving a PES payment have satisfied income and assets tests under the Principal Act or the *Veterans' Entitlements Act 1986*. 'Prescribed educational scheme' is defined in subsection 5(1) of the Principal Act and includes the AUSTUDY and ABSTUDY schemes.

People receiving PES payments are exempt from the additional family payment assets test by virtue of paragraph 1069-D4(b) of the Principal Act and from the family payment income test by virtue of paragraph 1069-H1(b) of the Act.

At present, it is possible for PES recipients to receive family payment automatically because of their PES status. This is the outcome of the last major restructure of the PES programs when additional amounts for children were removed from those schemes and later became part of the integrated family payment under the Principal Act.

The issue is one of equity in that the means tests of PES programs are more generous than those operating under Department of Social Security (DSS) programs. For example, postgraduate awards do not have any income or assets test. Consequently, student parents may receive:

- basic family payment even if their income is beyond the cut-out point (currently \$64,938 for families with one child plus an additional amount of \$3,249 for each extra child) under the basic family payment income test; or

- additional family payment even if their income is beyond the relevant cut-out point under the additional family payment income test (for example, the cut-out point for a family with one child under 13 is currently \$24,168); or

additional family payment even if the value of their assets is beyond the additional family payment assets value limit.

Some examples demonstrate the situation as follows:

Example 1 AUSTUDY starts to reduce if a student's own income in the year of study exceeds \$6,000 or if their partner's adjusted income for the financial year preceding the year of study exceeds \$13,300. (Note that a partner's adjusted income is the sum of the partner's previous year's taxable income plus maintenance received (if any) plus overseas taxable income (if any) minus set amounts for dependent children.) This means that a married couple can have a total adjusted income of \$19,300 before there is any reduction in the AUSTUDY living allowance rate. The couple can have a total of \$30,873 before entitlement is lost. Furthermore, because of the way income is assessed for AUSTUDY purposes, any increase in the income of a student's partner since the preceding financial year does not affect the level of the living allowance payable.

Example 2 In the case of a partnered student who is receiving both living allowance and dependent spouse allowance, the combined income of the student and her/his partner can exceed \$34,000 in the year of study while the minimum rates of the allowances remain payable. If the dependent spouse allowance only is payable, the level of the student's own income has no effect on the rate of allowance paid.

Example 3 There is no income test applied to either a student's or her/his partner's income for Postgraduate Award purposes.

Example 4 Although AUSTUDY parents who are students are assets tested at a threshold below that which applies for additional family payment, there is no assets test for Postgraduate Awards.

3. Clauses involved in the changes

Clause 2(2): specifies the commencement date as 1 January 1994, immediately after the commencement of Part 4 of the *Social Security Legislation Amendment Act (No. 2) 1993*.

Clause 5: amends the Family Payment Rate Calculator at the end of section 1069 of the Principal Act.

Clause 6: amends the Principal Act as set out in the Schedule (consequential amendments).

4. Explanation of the changes

Clause 5 will make various amendments to the Family Payment Rate Calculator at the end of section 1069 of the Principal Act.

Point 1069-D2 of the Principal Act sets out the conditions for a person to qualify for additional family payment in respect of a dependent child. One of those conditions is that the person must satisfy an assets test (paragraph 1069-D2(c)). Point 1064-D4 provides exceptions to that condition. Under this proposal, one of those exceptions is being removed such that PES recipients will be subject to the additional family payment assets test from 1 January 1994 (clause 5(a)).

Point 1069-D9 provides that a person cannot qualify for additional family payment if the person's or the person's partner's income for the appropriate tax year is unknown. Point 1069-D10 provides exceptions to that rule. One of the exceptions is if the person is receiving one of the PES payments listed in paragraph 1069-D10(a). The reason for that exception is that a person receiving a PES payment is not, at present, subject to the family payment income test (see paragraph 1069-H1(b) of the Principal Act and clause 5(d) of this Bill). Because paragraph 1069-H1(b) will be removed by clause 5(d) to allow the family payment income tests to apply to PES recipients from 1 January 1994, there will be no reason to continue to exclude PES recipients from having to satisfy point 1069-D9. Accordingly, paragraph 1069-D10(a) is to be omitted (clause 5(b)) and the Note to that point is also being amended as a consequence (clause 5(c)).

Clause 6 will give effect to consequential amendments to the Principal Act as set out in the Schedule.

5. Commencement

These amendments will commence on 1 January 1994, immediately after the commencement of Part 4 of the *Social Security Legislation Amendment Act (No. 2) 1993*.

PART 4 - REDUCED INCOME CEILING AND ASSETS VALUE LIMIT FOR BASIC FAMILY PAYMENT

1. Summary of the proposed changes

The changes provide for a reduction in the income ceiling and assets value limit for **basic family payment** as follows:

- (a) on 1 January 1994, the existing income ceiling for basic family payment for families with one child will be reduced from \$64,938 to \$60,000; the additional amount allowed for each extra child will be reduced from \$3,249 to \$3,000;

(These changes need to be read in conjunction with changes proposed in the Social Security Legislation Amendment Bill (No 2) 1993 that will make sure that certain employer provided fringe benefits and foreign income are treated as income when applying the income test for family payment.)

- (b) on 1 January 1994, the existing assets value limit for basic family payment will be reduced from \$607, 250 to \$550,000 (although the hardship rules that allow the operation of the assets test to be waived in certain circumstances will continue to apply); and
- (c) the first indexation of these amounts will occur on 1 January 1995.

No changes are proposed for the income free area or the assets value limit for additional family payment.

2. Background

Family payment is an income assistance payment (as distinct from an income support payment such as a pension, benefit or allowance that might comprise a person's sole source of income) to help parents and guardians (and institutions) meet the cost of raising children.

Income and assets tests have previously been introduced for family payment as a means of directing financial assistance to those families in most need. However, it is considered that the current income ceiling and assets value limits for basic family payment are relatively generous and that a reduction in these amounts will target family payments towards those families who have the highest priority for assistance.

3. Clauses involved in the changes

Clause 2(3): specifies the commencement date as 1 January 1994 immediately after Part 3 of this Bill commences.

Clause 7: amends paragraph 838(1)(d) (qualification for individual family payment) of the Principal Act and amends a Note at the end of subsection 838(1).

Clause 8: amends Table H in point 1069-H26 of the Family Payment Rate Calculator of the Principal Act and replaces the existing Note to Table H.

Clause 9: amends subsection 1132A(3) (access to financial hardship rules - family payment) of the Principal Act.

Clause 10: replaces the existing item 21 from the Indexed and Adjusted Amounts Table in section 1190 (indexed and adjusted amounts) of the Principal Act. The clause also amends item 34A of the Indexed and Adjusted Amounts Table in section 1190.

Clause 11: amends column 2 of item 15 of the CPI Indexation Table in subsection 1191(1) (CPI Indexation Table) of the Principal Act.

Clause 12: amends subsection 1192(4) and inserts a new subsection 1192(4A) (indexation of amounts).

4. Explanation of the changes

Clause 7 amends paragraph 838(1)(d) (qualification for individual family payment) of the Principal Act to reduce the assets value limit (referred to in the Principal Act as the 'value of the person's assets') from \$607,250 to \$550,000 and inserts a Note at the end of subsection 838(1) to inform the reader that this reduced amount will be first indexed on 1 January 1995. (It should be noted that for the purpose of calculating the 'value of the person's assets', the value includes the assets of the person's partner and 'FP child or FP children' (as defined)).

Clause 8 amends Table H in point 1069-H26 of the Family Payment Rate Calculator of the Principal Act to reduce the basic family payment income ceiling (referred to in the Principal Act as a person's family payment base rate - income ceiling) from \$64,938 to \$60,000 for families with one child. For families with more than one child, the limit will be reduced from \$64,938 plus \$3,249 for each extra child to \$60,000 plus \$3,000 respectively. The Note to Table H will inform the reader that these reduced amounts will be first indexed on 1 January 1995. (It should be noted that for the purpose of applying the income test, the person's income includes any taxable income, certain fringe benefits (see Part 2 of the Social Security Legislation Amendment Bill (No 2) 1993) and 'target foreign income' (see Part 4 of the Social Security Legislation Amendment Bill (No 2) 1993) of the person's partner).

Under subsection 1132A(1), a person may request that the Secretary to the Department of Social Security determine that the assets value limits for basic family payment set out in paragraph 838(1)(d) or for additional family payment set out in point 1069-D2 is not to apply to the person. The Secretary may so determine if the person would be disqualified for basic family payment or additional family payment, as the case may be, because the value of the person's assets exceeds those limits and the Secretary is satisfied that certain specified circumstances exist. However, subsection 1132A(3) currently provides that such a request cannot be made in respect of additional family payment if the value of a person's assets exceeds \$600,000. (This equated to the value of the assets limit for basic family payment when an assets value limit for its predecessor, family allowance, was first introduced on 1 January 1992.)

Clause 9 will amend subsection 1132A(3) (access to financial hardship rules - family payment) of the Principal Act to realign the amount specified in this subsection with the amount specified in paragraph 838(1)(d), that is, \$550,000. A Note is also to be inserted at the end of the subsection to inform the reader that the amount in subsection 1132A(3) is indexed and will be first indexed on 1 January 1995.

Clause 10 will replace the existing item 21 in the Indexed and Adjusted Amounts Table in section 1190 (indexed and adjusted amounts) of the Principal Act to better describe the amount that is to be indexed and to ensure that it is clear that both the basic ceiling amount and the additional amount for each extra child are subject to indexation. The clause will also amend item 34A of the Indexed and Adjusted Amounts Table in section 1190 to include the amount specified in subsection 1132A(3) as an amount to be indexed.

Clause 11 will amend column 2 of item 15 of the CPI Indexation Table in subsection 1191(1) (CPI Indexation Table) of the Principal Act consequent upon the amendment made by **clause 10**.

Clause 12 will amend subsection 1192(4) and insert a new subsection 1192(4A) (indexation of amounts). This is necessary as the first indexation of the amounts to which items 15 (family payment base rate income ceiling) and 24A (family payment asset value limit) relate will now take place on 1 January 1995 instead of 1 January 1994.

5. Commencement

The changes will commence on 1 January 1994 immediately after the commencement of the changes made to the Principal Act by Part 3 of this Bill.

PART 5 - LIMIT ARREARS OF FAMILY PAYMENT

1. Summary of the proposed changes

The Government's policy on arrears payments will be maintained by these amendments. They make sure that arrears of family payment will not be paid from earlier than the date on which a person seeks a review of an adverse decision unless no notice of the decision was sent to the person or unless the review is sought within three months of the notification. The provisions concerning the discretion to suspend a family payment when contact with the client is lost will be clarified. To make sure that adequate review of entitlements can take place, clients will be obliged to notify changes of address.

2. Background

The Principal Act provides three options when a decision is being reviewed. These are:

- to affirm the decision; or
- to vary the decision; or
- to set aside the decision and substitute a new decision.

The Full Federal Court in O'Connell and Sevel found that, in certain cases, the setting aside of a decision **did not require the substitution of a new decision**. The Court was of the opinion that, once the cancellation of a payment is set aside, the entitlement that had existed prior to cancellation would revive and would not require a statutory decision to entitle the client to the payment. The Full Court based this on a general proposition of administrative law that, if a statutory decision is set aside ab initio, the parties are placed in the position that they would have occupied if the decision had never been made. The Federal Court indicated that this general proposition would not apply if there were an express provision to the contrary in the statute. The Federal Court found that, as Mrs O'Connell and Mrs Sevel remained qualified during the intervening periods, they were entitled to all payments since the original decisions to cancel their payments.

This results in a gap in the legislative mechanism that gives effect to the Government's policy of limiting arrears payments. The policy is to grant full arrears when a decision is given in favour of a client provided that the client has sought review of the adverse decision within three months of being given a notice of that decision. If the client delays beyond the three months, arrears are payable only from the date on which the client sought the review.

The Principal Act will be amended to ensure that arrears will not be paid from earlier than the day on which a review is sought unless no notice of the decision was given to the client or the client seeks a review of the decision within three months of notice of the decision being given.

The problem in O'Connell and Sevel arose because the clients had changed address without notifying the Department. When a client cannot be contacted, the Department cannot obtain the necessary information on which to decide whether family payment remains payable. When criteria for qualification or payability change by legislative amendment or a critical point is reached in the client's payment cycle (for example, when it needs to be determined whether a child, having turned sixteen, remains at school or not), it is impossible to decide whether payment should continue in the absence of a response.

Clients are urged to notify changes of address but, at present, no obligation to do so can be imposed. Subsection 872(2) provides that a notice under section 872 (under which clients are required to inform the Department of the happening of a specified event or a specified change in circumstances) may require a client to give information only if the occurrence of the event or the change in circumstances "might affect the payment of the family payment". A change of address in itself does not generally affect payment.

The Principal Act will be amended to impose an obligation on family payment recipients to notify changes of address. However, the adverse consequences of not notifying will come only when the Secretary concludes that a change of address has prevented the Department from collecting particular information that might affect the payment of the family payment. There will be a discretionary power to suspend if a family payment recipient:

- has been notified of the requirement to notify a change of address; and
- subsequently fails to comply with a notice requirement to give the Department particular information; and
- the Secretary is satisfied that the reason for the failure to comply with the notice requirement is that the recipient has changed address.

3. Clauses involved in the changes

Clause 2(1): specifies the commencement date as the day of Royal Assent, except for clause 19 that commences on the day on which the *Social Security Legislation Amendment Act 1993* receives Royal Assent.

Clause 13: adds a new interpretative provision in the form of new subsection (12) to section 23 relating to the giving of notices.

Clause 14: inserts new section 873A into the Principal Act requiring family payment recipients to notify changes of address.

Clause 15: amends section 874 of the Principal Act by inserting a reference to new section 881A.

Clause 16: inserts new section 881A to enable a client's family payment to be suspended when contact is lost.

Clause 17: amends section 889 of the Principal Act to insert references to new sections 873A and 881A.

Clause 18: inserts new section 1243A to make sure that entitlement to arrears of a social security payment when an earlier decision is set aside is in accordance with Government policy.

Clause 19: omits new subsection 1243A(3) so that the correct definition of "social security payment" will apply.

Clause 20: adds a new Note to subsection 1302A to signpost new subsection 23(12).

4. Explanation of the changes

Clause 13 will insert new subsection (12) into section 23 of the Principal Act to provide a guide to the application of section 1302A of the Principal Act and sections 28A and 29 of the *Acts Interpretation Act 1901*. If these provisions apply to deem a notice under the Principal Act to have been given, the new subsection explains that they apply even if the Secretary is satisfied that the person did not actually receive the notice. A Note gives the example of a notice being sent back to the Department marked "return to sender".

The new subsection will assist in the administration of the sections inserted by **clauses 14 and 16**. The first of these, new section 873A, will require a recipient of family payment to inform the Department of changes of address. This obligation is imposed by giving the recipient a notice setting out how and when to give the information about a change of address. There is no immediate effect of a failure to comply with this requirement because the object of the obligation is to assist in review of entitlement. The ramifications of failing to comply may come later, should the failure lead to the Department not receiving the information necessary to review entitlement.

New section 881A will provide for the discretionary suspension of a client's family payment where certain criteria are met:

- (a) the client has been given a notice requiring the notification of changes of address;
- (b) the client is given a notice either:
 - under section 873 asking for particular information on matters that might affect the payment;
 - under section 1304 asking for information or a document relevant to the payment; or
 - if the client owes a debt under the Principal Act or the *Farm Household Support Act 1992*, under section 1305 asking for information or a document relevant to the client's financial situation;

- (c) the client fails to comply with the requirements set out in the section 873, 1304 or 1305 notice (including to return the notice within a specified time); and
- (d) the Secretary is satisfied that the reason for the failure to comply with the notice is that the client has changed address.

(Most notices under (b) above will be under section 873.)

Clause 15 will insert a reference to new section 881A into section 874 that regulates the continuing effect of a determination to grant or pay family payment. The reference will include a decision to suspend under section 881A in the list of decisions that will bring to an end the determination to grant or pay.

Clause 17 will insert references to new sections 873A and 881A into section 889 that regulates the date of effect of adverse determinations. A suspension under new section 881A will come into effect on the day on which the determination is made or a later day if that is specified in the determination. An earlier date may be specified if the adverse determination relates to a false statement or misrepresentation or if the recipient has contravened the Act and the contravention has caused a delay in making the determination. However, the section will exclude a contravention of section 873A from having this effect.

Clause 18 will insert new section 1243A into the Principal Act. It has the effect of making sure that arrears will be payable only from the date of application for review if a client does not seek a review until later than three months after notice of an adverse decision is given. It provides, in these circumstances, that, if the Secretary, an authorised review officer, the Social Security Appeals Tribunal or the Administrative Appeals Tribunal decides that the adverse decision should be set aside, a new determination is required for payment to resume. The payment will resume subject to the usual date of effect provisions that limit arrears when the review is sought after more than three months. New section 1243A is an express provision contrary to the general administrative law proposition that, if a statutory decision is set aside *ab initio*, the parties are placed in the position that they would have occupied if the adverse decision had never been made.

New section 1243A will use the term "social security payment". This is currently defined only for the purposes of section 1223 in subsection 1223(11). Clause 4 of the Social Security Legislation Amendment Bill 1993 will insert an identical definition of "social security payment" into subsection 23(1) for use throughout the Principal Act. However, because that Bill may not have received Royal Assent by the time that new section 1243A commences, the same definition is being repeated for the purposes of that section in new subsection 1243A(3). **Clause 19** will then omit subsection 1243A(3) commencing on the day on which the Social Security Legislation Amendment Bill 1993 receives Royal Assent and the new definition in subsection 23(1) will apply.

Clause 20 will insert a Note to subsection 1302A(1) to signpost new subsection 23(12). Subsection 23(12) expands the rule contained in subsection 1302A(1) on whether a notice is taken to have been given.

5. Commencement

These changes will commence on the day of Royal Assent, except for **clause 19** which commences on Royal Assent to the Social Security Legislation Amendment Bill 1993 (**clause 2**).

SCHEDULE - CONSEQUENTIAL AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

The *Social Security Legislation Amendment Bill 1993* was introduced into Parliament during the Autumn Sittings 1993 but had not obtained passage as at the date this Bill was introduced. Included in the *Social Security Legislation Amendment Bill 1993* are several amendments (clauses 57 and 58) premised on the fact that PES student parents are currently exempted from the family payment income test and the additional family payment assets test. The amendments will take effect from the date of Royal Assent of that Bill. Although the amendments will have effect from the date of Royal Assent of that Bill they will become superfluous as a result of the amendments made by clauses 5(a) and (d) of this Bill. Hence, items 2 and 3 of this Schedule repeal the provisions that will be inserted by clauses 57 and 58 of the *Social Security Legislation Amendment Bill 1993*. It is intended that the amendments made by those clauses have effect for the period between the date of Royal Assent of that Bill and 1 January 1994, the date of commencement of clauses 5(a) and 5(b) of this Bill.

As a consequence, an amendment is to be made to delete the requirement that would be given effect by clause 55 of that Bill that section 842 be subject to section 845A - item 1 of the Schedule refers.