

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SECURITY AND REPATRIATION (PENSIONS INCOME  
AND ASSETS TEST) BILL 1983**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister representing the  
Minister for Social Security)



## GENERAL OUTLINE

This Bill proposes to amend the Social Security Act 1947 and the Repatriation Act 1920 to introduce an income and assets test for the purposes of the payment of pensions and service pensions under those Acts. The amendments were foreshadowed by the Minister for Social Security in a Parliamentary Statement on 23 August 1983, which was as follows -

"In the Budget Speech the Treasurer announced the Government's intention to re-introduce a means test that takes account of both income and assets for assessing entitlement for pension. This will replace the current test which only takes account of income, including income from assets.

It will apply to social security pensions including age, invalid and widows' pensions, sheltered employment and rehabilitation allowances, and supporting parents' benefits and repatriation service pensions.

The test will follow in broad terms that which applied prior to November 1976. The final details of how the new test will work in practice will be settled after I have consulted with pensioner organisations.

The existing arrangements are intended to concentrate assistance on those more in need, but this has not been achieved. A particular problem is the prevalence of contrived arrangements designed to exploit the pension income test by people who in fact are well able to support themselves. There has been increasing circumvention of the test by such mechanisms as converting income to capital gains.

The growth in these income test avoidance schemes in recent years has been such that they now jeopardise the Government's ability to direct scarce funds to the pressing welfare needs of the disadvantaged in our society.

Attempts by the previous Government to devise legislation addressing these loopholes failed. After considering similar options the Government has decided that nothing short of re-imposition of an assets component will redress this serious drain on the welfare purse.

In designing the new assets test, particular attention will be given to protecting the position of the great majority of pensioners who have only small assets, and those who are not attempting to circumvent existing rules.

In addition, the new test will be structured to ensure that there is no undue disruption of or intrusion into pensioners' affairs. Accordingly, specific types of assets that we envisage would be exempt include -

- . the pensioner's home or principal residence;
- . a car for personal use;

- personal effects including furniture, household effects, and a caravan, a boat, jewellery, and the like; and
- other assets to the value of \$1,500 for a single pensioner and \$2,500 for a pensioner couple.

After the exemption of assets of this type, the test would operate by taking a uniform 10 per cent of the value of other assets into account and deeming that amount to be income for pension assessment purposes. This will then be added to non-asset income, such as earnings, to arrive at a total figure of "means". Pensioners' means will then determine pension entitlement in the same way that income determines it at present.

Although these arrangements will be broadly the same as those which existed in 1976, employing a notional return rate of 10 per cent is relatively more generous than was the case in 1976 when prevailing interest rates were generally lower.

The great bulk of pensioners will, as at present, fall below the pension "free areas", so that they will continue to receive the full rate of pension. Some could be moderately better off than under current arrangements.

For example, a single pensioner without other income could have up to \$17,100 in a savings account and still receive the maximum rate of pension. A married pensioner couple could jointly hold \$28,500 without reduction in pension.

As a result, pensioners with a modest level of assets, or who have not been avoiding the income test would not be affected to any significant degree. But those with substantial assets who have been circumventing the income test to obtain or increase their pension entitlement will experience a reduction in that entitlement.

We intend that the new arrangements will include provisions which will ensure that the test is not circumvented by pensioners depriving themselves of assets.

An effect of these provisions will be to take into account assets which have been gifted or otherwise disposed of without receiving adequate financial consideration in return.

From tonight, a person who disposes of assets in this way will be deemed to continue to have that property for the purpose of determining entitlement to pension or fringe benefits. The treatment of modest gifts or allowances made by pensioners to their families will be a matter for discussion with pensioner organisations.

We expect that the new arrangements will be in place about twelve months after the passage of the necessary amending legislation. This allows for the major changes to administrative systems and arrangements that will be required.

I would emphasise that this change is part of the Government's ongoing examination and rationalisation of the retirement income system. It will further reduce the attraction of lump-sum superannuation payments and thereby encourage take up of superannuation pension or annuities to secure a regular retirement income.

It is therefore consistent with the Government's recent measures in relation to lump-sum superannuation, although it does not in any way lessen the need for these measures which are also designed to promote greater equity in taxation arrangements.

Nor will an assets test interfere with further reforms and modifications to superannuation arrangements or preclude the examination of the feasibility of a national superannuation scheme that is to be undertaken."

In addition, the Bill proposes to restructure the arrangements for assisting pensioners who pay rent.

SUMMARY OF AMENDMENTSSocial Security Act 1947

It is proposed by Part II of the Bill to amend this Act -

- . to introduce an income and assets test on the payment of pensions;
- . to provide for certain concessions in the income and assets test in relation to property owned and used by pensioners for recreational purposes and for pensioners who live on farming or rural property (the "lifestyle package");
- . to provide that deprivations of income or property by pensioners will be taken into account under the income and assets test; and
- . to restructure the arrangements for assisting pensioners who pay rent.

Repatriation Act 1920

It is proposed by Part III of the Bill to amend this Act -

- . to introduce an income and assets test on the payment of service pensions and to apply the test in the same manner as it is applied to Social Security pensioners;
- . to require a service pensioner to notify the Secretary of the Department of Veterans' Affairs when the service pensioner becomes the owner of property or deprives himself of income or property; and
- . to correct a drafting anomaly in the definition of a child of a prescribed person for fringe benefit entitlement and to align the provisions for an increase in allowable income and property for a prescribed person with those applicable under the Social Security Act 1947.

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PART I - PRELIMINARY

Part I (clauses 1 and 2) deals with preliminary matters.

Clause 1: Short title

By this clause, the amending Act would be cited as the Social Security and Repatriation (Pensions Income and Assets Test) Act 1983.

Clause 2: Commencement

By reason of sub-section 5(1A) of the Acts Interpretation Act 1901, an Act comes into operation on the twenty-eighth day after the date of Royal Assent unless the contrary intention appears in the Act.

This clause proposes that the provisions of the amending Act would come into operation on the day on which the amending Act receives the Royal Assent.

PART II - AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Part II (clauses 3 to 31) deals with amendments to the Social Security Act 1947.

Clause 3: Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Social Security Act 1947.

Clause 4: Interpretation

This clause proposes to amend section 6 of the Principal Act.

Sub-section 6(1) defines terms which apply throughout the Act (unless a contrary intention appears). Clause 4(a) would insert in sub-section 6(1) a definition of "exempt property" which would mean property which, for the purposes of new section 6AA, is disregarded under paragraph 6AA(2)(a). (See notes to clause 5, new section 6AA.)

Clause 4(b) would insert in sub-section 6(1) the following definitions -

- . "income";
- . "income and property amount"; and
- . "income derived from property".

"income"

The proposed definition of "income" will consist largely of the current definition of income in section 18 of the Principal Act and three additions required to give effect to the income and assets test. The definition in section 18 would be omitted by clause 6(a).

The new definition of "income" will apply throughout the Act except in relation to Part VII (unemployment and sickness benefits) and to some cases in Part VIII (rehabilitation allowance) where the definition of "income" in sub-section 106(1) will continue to apply.

Within the definition of "income" will fall, for example, income consisting of earnings, salaries, wages, commissions, fees and bonuses. The definition is largely intended to make a distinction between income from personal exertion and income from property. (This same distinction is made in section 6 of the Income Tax Assessment Act 1936 where "income from personal exertion" and "income from property" are defined to be mutually exclusive.)

The definition of "income" states those matters which fall within the definition and then provides for a number of exclusions. By the three additions, the following will be excluded from the definition -

- . income derived from property (paragraph (a));
- . a payment of a capital nature (paragraph (b)); and
- . personal earnings, moneys, valuable consideration or profits (not being income derived from property) that are produced by a person (such as a self-employed person) with the use of property (other than exempt property of the person), being personal earnings, moneys, valuable consideration or profits the annual rate of which does not exceed 10% of the value of the property (paragraph (w)). (See notes to clause 4(a) for details of "exempt property".)

Paragraphs (v) and (x) are amendments of a drafting kind which will maintain the current law. The following Table sets out the exclusions in the new definition in sub-section 6(1) and shows the corresponding provisions in the definition in current section 18 which is to be omitted.



TABLE

Current section 18	New sub-section 6(1)	Exclusion
-	(a)	income derived from property
-	(b)	payment of capital nature
(c)	(c)	emergency relief
(ca)	(d)	accommodation assistance under Homeless Persons Assistance Act 1974
(cb)	(e)	payment under Handicapped Persons Assistance Act 1974
(cc)	-	(included in new para (b))
(cd)	-	(included in new para (a))
(ce)	(f)	domiciliary nursing care benefit
(cf)	(g)	Commonwealth housing assistance
(d)	(h)	payment for dependent child
(da)	(j)	rent subsidy
(e)	(k)	payment under Social Security Act 1947
(ea)	(m)	payment to Labour Force Program trainee
(f)	(n)	Commonwealth pharmaceutical, sickness or hospital benefit
(g)	(o)	hospital, medical or dental payment by registered organisation
(h)	(k)	payment under Tuberculosis Act 1948
(ha)	(p)	certain pay, allowances and gratuities paid to Reserve Forces
(i)	(q)	board and lodging for tuberculosis treatment
(j)	(r)	service pension received by pensioner's spouse
(ja)	(s)	attendant allowance/transport allowance
(jb)	(t)	decoration allowance
(k)	-	(interest on war gratuity omitted as redundant)
(l)	(u)	clothing allowance
definition preamble	(v)	periodical payment or benefit from relatives
-	(w)	personal exertion income not over 10% of property value
-	(x)	board and lodging over \$65 pa (former paragraphs 29(1)(a) and 64(a))

"income and property amount"

The proposed definition of "income and property amount" will mean, in relation to a person, an amount equal to the sum of -

- . the annual rate of income of the person; and
- . the property component calculated in relation to that person.

(See notes to clause 5 for "property component".)

The "income and property amount" will be the amount by reference to which a person's rate of pension, benefit or allowance will be reduced. Relevant provisions in the Principal Act are as follows -

- . sub-section 28(2) age and invalid pensions;
- . sub-sections 28(2AB) and (2AC) over 70 years age pensions;
- . sub-section 32(2) wife's pension;
- . sub-section 34(2) spouse carer's pension;
- . sub-section 63(2) widow's pension;
- . sub-section 83AAE(1) supporting parent's benefit;
- . section 133J sheltered employment allowance; and
- . sub-section 135BA(1) rehabilitation allowance.

These provisions currently provide the income test which reduces the maximum rate at which a pension, benefit or allowance is payable by one-half of the amount by which a person's annual rate of income exceeds a specified amount.

Under the income and assets test, the rate provisions will operate by reference to the "income and property amount" of a person. The specified amounts will remain unchanged.

"income derived from property"

The proposed definition of "income derived from property" is intended to distinguish between income from property and other forms of income. This is an important distinction because income derived from property will not generally be taken into account under the income and assets test. Paragraph (a) of the new definition of "income" in sub-section 6(1) will specifically exclude income derived from property.

Within the definition of "income derived from property" will fall income by way of rent, dividends and interest. However, the definition specifically excludes income that consists of an annuity (not being an annuity purchased by the person), a superannuation pension or income derived from a life interest.

Clause 4(c) would insert in sub-section 6(1) a definition of "property" which would ensure that property situated outside Australia would be treated in an identical manner to property situated inside Australia for the purposes of the income and assets test.

Clause 4(d) would insert new sub-sections 6(3) and (4) in the Principal Act.

Sub-section 6(3) will provide that, notwithstanding the exclusion of income derived from property from the definition of "income" in sub-section 6(1), where a person derives income from exempt property, that income will be taken into account. Exempt property is property which will be disregarded in accordance with paragraph 6AA(2)(a) in determining the value of property of a person.

However, where the Director-General is satisfied that the annual rate of income derived from exempt property exceeds an amount equal to 10% of the value of the property from which that income is derived, only an amount of that income not exceeding 10% of the value of the property is to be taken into account as the person's income.

Sub-section 6(4) will relocate in the Principal Act the rule currently found in sub-section 29(2) of the Principal Act which provides that the income of a married person is 50% of the sum of the income of the person and the person's spouse. This rule will apply for the purpose of determining the amount of income to be included in the income and property amount of a married person. (By clause 8, section 29 of the Principal Act would be amended.)

Clause 5: Property component, disposal of income  
and property and purchased annuities

This clause proposes to insert in the Principal Act the following three new sections for the purposes of the income and assets test.

Section 6AA: Property component

Section 6AA will provide rules for determining the property component in relation to a person. The property component and a person's income are the two components of the "income and property amount" in relation to a person which is taken into account in determining the rate of pension, benefit or allowance payable to the person. (See notes to clause 4.)

Sub-section 6AA(1) will prescribe the amount which is to be treated as the property component in relation to a person.

Paragraph 6AA(1)(a) will deal with the case of a married person, specifying an amount equal to 10% of half the sum of the value of the property of the person and of the person's spouse, reduced by \$1,250, as the property component in relation to that person. (The halving principle in paragraph 6AA(1)(a) in relation to spouses' property would reflect a similar rule in relation to spouses' income currently existing in sub-section 29(2) of the Principal Act which would be relocated in new sub-section 6(3).) Paragraph 6AA(1)(b) will deal with the case of an unmarried person, specifying an amount equal to 10% of the value of the property of the person, reduced by \$1,500, as the property component in relation to that person.

Sub-section 6AA(2) will provide for several factors to be taken into account in determining the value of the property of a person for the purposes of new section 6AA.

Paragraph 6AA(2)(a) will provide for a list of items the value of which is to be disregarded in determining the value of property -

- . in the case of an unmarried person, the value of one home owned by the person which is the person's principal home or which is to become the person's principal home when the person can obtain access to it (sub-paragraph (i));
- . in the case of a married person, the value of one home owned by the person or the person's spouse which is their principal home or is to become their principal home when they can obtain access to it (sub-paragraph (ii));
- . the value of any property owned and used by a person (such as a self-employed person) to produce income, other than income derived from property, where the annual rate of that income exceeds an amount in excess of 10% of the value of the property (sub-paragraph (iii));

(Where a person produces income at an annual rate in excess of 10% of the value of the property used to produce that income, only the income will be taken into account.)

- . the value of any property owned by a person, other than "relevant property" of the person (see sub-section 6AA(10)) or a motor vehicle that is primarily for the private and domestic use of the person or of the person's spouse - this will include furniture and other household effects, clothing, tools, jewellery and personal collections maintained by the person as a hobby or pastime (sub-paragraph (iv));

- . in the case of an unmarried person, the value of one motor vehicle owned by the person which is primarily for the private and domestic use of the person (sub-paragraph (v));
- . in the case of a married person, the value of a motor vehicle or, where the person's spouse does not own a motor vehicle, the value of two motor vehicles, where such vehicles are primarily for the private and domestic use of the person or of the person's spouse (sub-paragraph (vi));
- . the value of any life interest, annuity (other than an annuity purchased by the person) or superannuation pension (other than a commuted amount) (sub-paragraph (vii));

(The property value of these items will be exempted because the income derived from them will be taken into account under the definition of "income" which will be relocated in sub-section 6(1). (See notes to clause 4.) A lump sum payment of superannuation will be treated as a payment of a capital nature and will be brought into account as property in the property component. Such lump sum superannuation payments will be excluded from being treated as income by paragraph (a) of the proposed definition of "income" in sub-section 6(1).)

- . the value of any contingent or reversionary interest which is held by a person (sub-paragraph (viii));
- . the value of any property to which a person is entitled from the estate of a deceased person but which a person has not received (sub-paragraph (ix));
- . the value of a residence owned by the person that is the principal home of a former spouse of the person (sub-paragraph (x));
- . the value of any property which could not be sold or disposed of by the person by reason of a legal restriction which the person could not readily overcome and which the person had not created (sub-paragraph (xi));

(The exemption will extend to legal restrictions imposed by a country other than Australia and would, for example, apply to cases where another country's property laws or its exchange control laws prevented a person in Australia from disposing of his property.)

- . moneys received from the sale of a principal home of a person where it appeared likely that the person would apply those moneys towards the acquisition of a new principal home, the exemption applying for a period of

12 months commencing on the date of sale of the principal home if the moneys are not used to produce income derived from property (sub-paragraph xii));

- for a period of 12 months, insurance or compensation payments received by a person for loss of or damage to the person's principal home or buildings, plant and personal effects owned by the person (sub-paragraph (xiii));

(The exemption will apply, for example, to insurance payments received by a person for loss of property due to bushfire or flood. Where the moneys are used to produce income derived from property the exemption will no longer apply and the moneys will be taken into account in determining the property component in relation to the person.)

- for a period of 3 months, payments of a capital nature received by a person, other than payments received from the disposition of the person's property, which are not used by the person to produce income derived from property (sub-paragraph (xiv));

(The exemption will apply, for example, to a lump sum superannuation payment received by a person. Where the moneys are used to produce income derived from property they will be taken into account in determining the property component in relation to the person.)

- the value of any interest, right or benefit acquired by a person in exchange for the payment or lending of money or the transfer of property to an organisation which provided the person with permanent accommodation (sub-paragraph (xv));

(This exemption will apply where a person receives accommodation in a retirement village in return for moneys paid or lent to the organisation which conducts the village.)

- the value of fares and accommodation purchased in advance by a person for the use of the person, the person's spouse and any child in respect of whom an increase in pension, benefit or allowance is being paid under the Principal Act (sub-paragraph (xvi));
- the value of a cemetery plot acquired by a person and funeral expenses paid in advance by the person (sub-paragraph (xvii)); and
- the Director-General will be able to disregard for a period the whole or part of the value of a person's property where the person would suffer financial hardship if that property were taken into account and it is reasonable in the circumstances to disregard that property (sub-paragraph (xviii)).

Paragraph 6AA(2)(b) will permit the value of any charge or encumbrance upon a person's property, other than property exempted under paragraph 6AA(2)(a), to be deducted from the value of the property. In the case, for example, where a person's land is subject to a mortgage, only the value of the person's net interest in the land will be taken into account to determine the property component.

Paragraph 6AA(2)(c) will deal with the case where a person had sold his principal home on terms and is also buying another principal home on terms. The balance due from time to time on the sale of the old home will be set off against the balance payable on the purchase of the new home.

Paragraph 6AA(2)(d) will permit the value of the property of a person or a person's spouse which is "relevant property" and which attracts a property exemption to be deducted from the overall value of the property of a person or the person's spouse. "Relevant property" will be defined in sub-section 6AA(10) and the calculation of the "property exemption" will be provided for in sub-section 6AA(8).

Paragraph 6AA(2)(e) will apply to a case where a person receives a property exemption under sub-paragraph 6AA(a)(xv). Where the person receives permanent accommodation from an organisation in a retirement village, in return for a loan to the organisation, the property component will include that amount of the loan which was not required to be made to the organisation in exchange for the accommodation.

Sub-section 6AA(3) will qualify the operation of paragraph 6AA(2)(b). Where a charge or encumbrance exists in relation to both exempt and non-exempt property of a person or the person's spouse, the amount which will be deducted under paragraph 6AA(2)(b) will be the proportion that value of the exempt property bears to the value of all the property which is subject to the charge or encumbrance.

Sub-section 6AA(4) will apply to a charge or encumbrance which is a collateral security and will aggregate it with a charge or encumbrance which is the principal security so that they are treated for the purposes of section 6AA as one charge or encumbrance.

Sub-section 6AA(5) will qualify the operation of sub-section 6AA(2) in two respects. First, paragraph 6AA(5)(a) will provide that a home could continue to be regarded as a person's principal home during any period not exceeding 12 months during which the person is not residing in the home or not obtaining an exemption under sub-paragraph 6AA(2)(a)(xv). However, if the person begins to reside in another home owned by the person or to obtain such an exemption, the first home will cease to be the principal home. This rule will permit a person, for example, to take an extended vacation without losing the property exemption under paragraph 6AA(2)(a) which will apply to the person's principal

home. Second, paragraph 6AA(5)(b) will provide that a home could continue to be regarded as a principal home during any period where it was vacant due to a marital dispute between the person and the person's spouse.

Sub-section 6AA(6) will provide that a reference to a principal home or a holiday home will be read as including, in the case of a house, the usual land which is used in association with the house, and in the case of a flat or home unit, a garage or store-room used in association with the flat or home unit.

Sub-section 6AA(7) will provide that a reference in section 6AA to property of, or owned by, a person, either jointly or in common with other persons, will be read as a reference to the value of the person's interest in the property.

Sub-section 6AA(8) will provide for the application of a "property exemption" to the "relevant property" of a person, or in the case of a married person, the "relevant property" of the person or the person's spouse. ("Relevant property" will be defined in sub-section 6AA(10).)

This provision will combine the concession given in respect of "relevant property" (ie the "lifestyle package") with what would otherwise be the treatment of income relating to that property. Instead of giving the concession separately, and having income dealt with under the normal rules, these two elements will be combined to more accurately reflect the interaction of the concessional property rule and the income rules.

A property exemption will be calculated in the following manner. The person's "relevant property" will first be ascertained. The sum will then be found of the annual rate of income derived from the relevant property and the annual rate of any personal earnings, moneys, valuable consideration or profits that were derived by the person or the person's spouse with the use of that relevant property. This sum will be known as the "reduction amount".

Where the reduction amount is less than -

- . in a case where the value of the relevant property is equal to or exceeds \$30,000 - \$3,000; or
- . in any other case - an amount equal to 10% of the value of that relevant property,

a property exemption will apply. Where the reduction amount exceeds these amounts in a particular case a property exemption will not apply.



If the reduction amount is less than the specified amounts for a particular case, the amount of the property exemption will be calculated as follows -

- . in the case where the reduction amount is nil - the value of that relevant property or \$30,000, whichever is the lesser amount; or
- . in any other case -
  - .. \$30,000 reduced by an amount equal to the reduction amount multiplied by 10; or
  - .. the value of that relevant property reduced by an amount equal to the reduction amount multiplied by 10,

whichever is the lesser amount.

The following Table illustrates how the property exemption will apply -

TABLE

	example 1		example 2		example 3		example 4	
pensioner's assets (relevant property)	holiday home	farm	holiday home	farm	holiday home	farm	holiday home	farm
value	\$25,000	-	\$30,000	\$60,000	\$30,000	\$60,000	\$50,000	\$40,000
net income from assets	\$1,000	-	-	-	\$1,000	\$1,000	\$1,000	\$6,000
reduction amount	\$1,000		-		\$2,000		\$7,000	
property exemption	yes, reduction amount under \$2,500 (ie 10% of value of relevant property)		yes, reduction amount under \$3,000		yes, reduction amount under \$3,000		no, reduction amount over \$3,000	
amount of property exemption	\$15,000		\$30,000		\$10,000		-	
net value of property	\$10,000		\$60,000		\$80,000		\$90,000	

(Note: 10% of the net value of property is brought to account in the property component.)

Sub-section 6AA(9) will provide that a reference in section 6AA to a residence, a holiday home or property owned by a person will include a reference to ownership by the person of an approved interest in that property. An "approved interest" will be defined in sub-section 6AA(10).

Sub-section 6AA(10) will provide for definitions of the following terms used in section 6AA -

- . "approved interest";
- . "de facto spouse";
- . "holiday home";
- . "married person";
- . "relevant property";
- . "spouse";
- . "time sharing interest"; and
- . "unmarried person".

"approved interest"

This definition, in conjunction with sub-section 6AA(9), will ensure that a person will be treated as owning land for the purposes of section 6AA whether or not the interest of the person was absolute ownership, a purchase from a State Government or the Northern Territory Government by instalments over a period of years or a long-term lease, or any other interest which the Director-General is satisfied gives the person reasonable security of tenure.

"de facto spouse"

This definition will set out the necessary elements of a de facto marital relationship for the purposes of section 6AA.

"holiday home"

This definition will set out the necessary elements of a holiday home for the purposes of section 6AA. A holiday home may be included in the relevant property of a person.

"married person"

This definition will define a married person for the purposes of section 6AA.

"relevant property"

This definition will set out those items in relation to which a property exemption will be calculated under sub-section 6AA(8). (See notes to clause 5.)

The principal feature of relevant property is that it is property owned and maintained by the person primarily for recreational use. Paragraph (a) of the definition specifies the following as capable of being "relevant property" -

- . a holiday home;
- . a time sharing interest;
- . a caravan;
- . a motor vehicle that has sleeping facilities (not being a motor vehicle the value of which is disregarded under sub-paragraph 6AA(2)(a)(v) or (vi));
- . a boat; or
- . accessories for use with a boat, including a boat trailer.

Paragraph (b) of the definition will provide for a special rule in the case where the principal home of a person is situated on a farm or on rural land owned by the person.

"spouse"

The term "spouse" in section 6AA will, by this definition, include a de facto spouse.

"time sharing interest"

This definition will describe an interest held by a person in, for example, a house or home unit, which the person could use for at least two weeks in each year. A time-sharing interest may be included in the "relevant property" of a person.

"unmarried person"

An "unmarried person" will be defined for the purposes of section 6AA to be a person who is not a married person.

Section 6AB: Disposal of income and property

Section 6AB will provide generally that a person who deprived himself of income or property will have the income or property of which he deprived himself taken into account in determining the income and property amount in relation to the person.

Sub-section 6AB(1) will provide that where a person, on or after 24 August 1983, deprives himself of property during the course of his pension year, the amount of that deprivation beyond a specified limit will be included in the income and property amount of the person as part of the value of the property of the person. In the case of a married person, the amount which will be included in the property of the person will be 50% of the sum of the amount of deprivations of property that took place during the person's pension year which exceeded \$1,250. In the case of an unmarried person, the amount which will be included in the property of the person will be the sum of the amounts of deprivations of property that took place during the person's pension year which exceeded \$1,500.

Sub-section 6AB(2) will provide for a 10% reduction on each anniversary of the day on which a deprivation of property took place of the amount that was included in the value of the property of a person by reason of that deprivation of property. The amount so reduced will be taken into account in determining the value of the property of the person in each pension year.

Sub-section 6AB(3) will provide that where a person on or after 24 August 1983, deprives himself of income, the amount of the deprivation will be included in the income of the person.

Sub-section 6AB(4) will provide for two rules which will limit the application of section 6AB to a deprivation of property or income. The first rule is that section 6AB will not apply where a deprivation took place more than five years before the person concerned became qualified to receive a relevant pension, benefit or allowance under the Principal Act. This rule will operate principally in relation to persons who will eventually qualify for age pensions when they reach the requisite age. The second rule is that section 6AB will not apply where the deprivation took place within a period of five years prior to the person becoming qualified for a pension, benefit or allowance under the Principal Act but before the time the Director-General is satisfied that the person could reasonably have expected to become so qualified. This rule will apply, for example, to a woman who disposes of income or property prior to the death of her husband which would qualify her for widow's pension under the Principal Act.

Sub-section 6AB(5) will provide rules for the interpretation of section 6AB.

Paragraph 6AB(5)(a) will provide that a person will be taken to have deprived himself of income if the person surrendered or disposed of his income or entered into a transaction or engaged in a course of conduct that diminishes the rate of his income.

Paragraph 6AB(5)(b) will provide that a person will be taken to have deprived himself of property where he disposes of property without adequate consideration.

Paragraph 6AB(5)(c) will provide that the amount of deprivation of income by a person will be taken to be the amount that, in the opinion of the Director-General, is the rate of income reduced by the amount of consideration (if any) which the person is given in respect of that deprivation as the Director-General determines to be fair and reasonable in the particular case.

Paragraph 6AB(5)(d) will provide that the amount of a deprivation of property by a person will be taken to be an amount equal to the value of the property disposed of reduced by the value (if any) of consideration given to the person.

Paragraph 6AB(5)(e) will provide that a reference to a disposition of property will be read as a reference to usual methods of disposition of property and will include any transaction entered into, or any course of conduct engaged in, by the person which diminishes the value of his property.

Paragraph 6AB(5)(f) will provide that a reference to a pension year in relation to a person receiving a pension, benefit or allowance under the Principal Act, will be read as a reference to a period of 12 months beginning on the pay day on which that pension, benefit or allowance first became payable to the person and each succeeding and preceding period of 12 months.

#### Section 6AC: Purchased annuities

Section 6AC will provide for a special rule for the treatment of an annuity purchased by a pensioner. An annuity is a species of property and as such its value would be taken into account, but for the operation of section 6AC, in the property component in relation to a pensioner. The special rule will permit each instalment of an annuity to be treated as the income of a person where the rate of pension, benefit or allowance paid under the Principal Act would be greater than if the annuity were taken into account as property.

#### Clause 6: Interpretation

Section 18 of the Principal Act provides definitions of terms used in Part III (pensions) of the Principal Act.

Clause 6(a) would omit the definition of "income" in section 18 in consequence of a new definition of "income" being inserted in sub-section 6(1) of the Principal Act. (See notes to clause 4(b).)

Clauses 6(b) and (c) would omit the definitions of "married person" and "unmarried person" in section 18 in consequence of new definitions of "married person" and "unmarried person" being inserted in sub-section 6(1) of the Principal Act.

Clause 7: Rate of age or invalid pension

Section 28 of the Principal Act prescribes the rates of pensions under Part III of the Principal Act.

This clause would amend section 28 to replace references to the income test with references to the income and assets test proposed in this Bill.

Clause 8: Calculation of income and property amount

Section 29 of the Principal Act provides for rules dealing with the computation of income for the purposes of Part III (pensions).

Paragraph 29(1)(a) provides that the value of board and lodging, or board or lodging, received by a person shall not exceed \$65 pa. This rule would be relocated in paragraph (x) of the new definition of "income" in sub-section 6(1) by clause 4(b).

Paragraph 29(1)(b) provides for a special rule where a child is dependent on a person. However, sub-section 29(1A) provides that this rule does not apply for the purposes of sub-section 28(2AB) or (2AC) (pensions for persons aged over 70 years). This clause proposes to restructure section 29 to incorporate these rules and to substitute references to the income and assets test proposed by this Bill. Section 29 will also clarify the operation of these rules by providing that the amount by which the income and property amount of the person shall be reduced will not be affected by payments under the Principal Act, the Repatriation Act 1920 or the Tuberculosis Act 1948 received by the person for or in respect of the dependent child.

Sub-section 29(2) provides that, subject to two exceptions in paragraphs 29(2)(a) and (b), the income of a married person shall be deemed to be half the total income of that person and his spouse. This rule would be relocated in new sub-section 6(4) by clause 4(d). The two exceptions in paragraphs 29(2)(a) and (b) would be incorporated in the definition of "married person" in new sub-section 6AA(10). (See notes to clause 5.)

Clause 9: Omission of heading

Division 4A of Part III of the Principal Act deals with supplementary assistance payable to a pensioner who pays rent. Supplementary assistance is currently a separate allowance payable in addition to pension.

In consequence of the proposed change in the treatment of the additional amount payable to a pensioner, this clause would omit the heading to Division 3A. (See notes to clause 10.)

#### Clause 10: Rent assistance

Section 30A is the primary provision in Division 4A of Part III of the Principal Act which deals with supplementary assistance payable to a pensioner who pays rent. Supplementary assistance is currently a specific allowance payable, subject to a special income test, in addition to pension.

This clause proposes to restructure this form of assistance.

Where a pensioner pays rent exceeding \$520 pa (\$10 pw), the rate of age or invalid pension will be increased by the lesser of -

- . one half of the rent exceeding \$520 pa (\$10 pw): new paragraph 30A(3)(a); and
- . \$520 pa (\$10 pw): new paragraph 30A(3)(b).

This means that the rate of pension will increase as follows -

<u>Rent paid (pw)</u>	<u>Increase in pension (pw)</u>
\$	\$
10 (or less)	0
12	1
14	2
16	3
18	4
20	5
22	6
24	7
26	8
28	9
30 (and over)	10 (maximum increase)

The rate of pension so increased will then be subject to the application of the income and assets test in order to ascertain the pension payable to the age or invalid pensioner.

New sub-section 30A(4) will provide that such an increase in the rate of pension will not be payable where the pensioner owns a residence which is not taken into account as the pensioner's property for the purposes of the income and assets test.

#### Clause 11: Rate of wife's pension

Section 32 of the Principal Act provides for the general rate of wife's pension payable to a wife's pensioner. Sub-section 32(2) then applies the current income test to the rate of wife's pension.

This clause would amend sub-section 32(2) to replace the reference to the income test with a reference to the income and assets test proposed in this Bill.

Clause 12: Rate of spouse carer's pension

Section 34 of the Principal Act provides for the general rate of spouse carer's pension payable to a man who is a spouse carer. Sub-section 34(2) then applies the current income test to the rate of spouse carer's pension.

This clause would amend sub-section 34(2) to replace the reference to the income test with a reference to the income and assets test proposed in this Bill.

Clause 13: Repeal of section 47

Section 47 of the Principal Act provides for the current rules dealing with deprivation of income for the purposes of pensions under Part III of the Principal Act.

This clause would repeal section 47, in consequence of the introduction of the new provisions dealing with deprivation of property and income. (See notes to clause 5, new section 6AB.)

Transitional arrangements would be provided for in clause 30 for the changeover from the deprivation of income rules under section 47 to the deprivation of property and income rules under new section 6AB.

Clause 14: Interpretation

Section 59 of the Principal Act provides for definitions of terms and rules for the interpretation of Part IV (widow's pension) of the Principal Act. Sub-section 59(2) provides that the term "income" in Part IV means the same as that term in Part III (pensions).

This clause would omit sub-section 59(2) in consequence of the term "income" in Part III being relocated in section 6 of the Principal Act. (See notes to clause 4(b).)

Clause 15: Rate of widow's pension

Section 63 of the Principal Act provides for the general rates of widow's pension payable to a widow's pensioner. Sub-section 63(2) then applies the current income test to the rate of widow's pension.

This clause would amend sub-section 63(2) to replace the reference to the income test with a reference to the income and assets test proposed in this Bill.



Clause 16: Calculation of income and property amount

Section 64 of the Principal Act provides for special rules for computing income for the purposes of widow's pension under Part IV of the Principal Act.

Paragraph 64(a) provides that the value of board or lodging, or of board and lodging, received by a widow shall not exceed \$65 pa.

Since this rule would be incorporated in the new definition of "income" in section 6 of the Principal Act (see notes to clause 4(b), paragraph (x) of the definition of "income"), paragraph 64(a) would not be necessary.

This clause would therefore omit paragraph 64(a).

Clause 17: Omission of heading

Division 3A of Part IV of the Principal Act deals with supplementary assistance payable to a widow's pensioner who pays rent. Supplementary assistance is currently a separate allowance payable in addition to pension.

In consequence of the proposed change in the treatment of the additional amount payable to widow's pensioners who pay rent (see notes on clause 18), this clause would omit the heading to Division 3A.

Clause 18: Rent assistance

Section 65A is the primary provision in Division 3A of Part IV of the Principal Act which deals with supplementary assistance payable to a widow's pensioner who pays rent. Supplementary assistance is currently a specific allowance payable, subject to a special income test, in addition to pension.

This clause proposes to restructure this form of assistance, by repealing section 65A and substituting a new section 65A.

Sub-section 65A(1) will provide that where a widow's pensioner pays rent exceeding \$520 pa (\$10 pw), the rate of widow's pension will be increased by the lesser of -

- . one half of the rent exceeding \$520 pa (\$10 pw): new paragraph 65A(1)(a); and
- . \$520 pa (\$10 pw): new paragraph 65A(1)(b).

This means that the rate of widow's pension will increase as follows -

<u>Rent paid (pw)</u>	<u>Increase in pension (pw)</u>
\$	\$
10 (or less)	0
12	1
14	2
16	3
18	4
20	5
22	6
24	7
26	8
28	9
30 (and over)	10 (maximum increase)

The rate of widow's pension so increased will then be subject to the application of the income and assets test in order to ascertain the pension payable to the widow's pensioner.

Sub-section 65A(2) will provide that there would not be such an increase in the rate of pension where the widow's pensioner owned a residence which was not taken into account as the pensioner's property for the purposes of the income and assets test.

#### Clause 19: Repeal of section 76

Section 76 of the Principal Act provides for the current rules dealing with deprivation of income for the purposes of Part IV (widow's pension) of the Principal Act.

This clause would repeal section 76, in consequence of the introduction of the new provisions dealing with deprivation of property and income. (See notes to clause 5, new section 6AB.)

Transitional arrangements are provided in clause 30 for the changeover from the deprivation of income rules under section 76 to the deprivation of property and income rules under new section 6AB.

#### Clause 20: Interpretation

Section 83AAA of the Principal Act provides for definitions of terms and rules for the interpretation of Part IVA (supporting parent's benefit) of the Principal Act. Sub-section 83AAA(1) contains a definition of "benefit", which refers to an allowance by way of supplementary assistance.

This clause would amend the definition of "benefit" to omit this reference in consequence of the proposed restructuring of the allowance in this Bill. (See notes to clauses 17 and 18.)

Clause 21: Rate of benefit

Section 83AAE of the Principal Act provides for the rate of supporting parent's benefit payable to a supporting parent.

Sub-section 83AAE(1) provides that the rate of benefit is the same as the rate of pension (including supplementary assistance) payable to a widow's pensioner under Part IV of the Principal Act.

In consequence of the restructuring of supplementary assistance proposed in this Bill (see notes to clauses 17 and 18), clause 21(a) would omit this reference to supplementary assistance.

Sub-section 83AAE(2) provides for special rules for calculating the rate of benefit payable to a supporting parent. Sub-paragraph 83AAE(2)(c)(i) deems the "income" of a supporting parent to be one-half the total income of the supporting parent and the spouse of the supporting parent where qualification for the benefit arises due to the spouse not living with the supporting parent due to the indefinite illness or infirmity of the spouse. In consequence of the proposed rules dealing with the income and assets test being located in section 6 of the Principal Act, the rule in sub-paragraph 83AAE(2)(c)(i) would also be dealt with in section 6. (See notes to clause 4, new sub-section 6(4).)

Clause 21(b) would recast paragraph 83AAE(2)(c) to omit sub-paragraph 83AAE(2)(c)(i).

Clause 22: Application of certain provisions of Part IV

Section 83AAG of the Principal Act applies certain provisions of Part IV (widow's pension) to a supporting parent beneficiary as if the supporting parent were a widow's pensioner. Sub-section 83AAG(1) applies the provisions in Part IV dealing with supplementary assistance in this manner.

In consequence of the restructuring of supplementary assistance proposed in this Bill, this clause would omit a reference to Division 3A (which deals with supplementary assistance) and substitute a reference to section 65A. (See notes to clauses 17 and 18.)

Clause 23: Increase of pension under section 30A or 65A

Section 83AC of the Principal Act provides a special rule that supplementary assistance is not payable to a pensioner who is outside Australia.

In consequence of the restructuring of supplementary assistance proposed in this Bill, this clause would omit the reference to supplementary assistance and substitute a reference to section 30A (see notes to clauses 9 and 10) or section 65A (see notes to clauses 17 and 18).

Clause 24: Grant of new pension to pensioner outside Australia

Section 83AF of the Principal Act provides for a special rule which enables a pensioner to be granted a new pension without having to return to Australia (eg, an invalid or wife's pensioner could be granted an age pension upon attaining age pension age). This special rule specifically does not enable a pensioner to be granted supplementary allowance.

In consequence of the restructuring of supplementary assistance proposed in this Bill, this clause would omit references to supplementary assistance in sub-sections 83AF(1) and (3).

Clause 25: Prescribed persons

Section 83CA of the Principal Act defines a "prescribed person" for the purposes of funeral benefit under Part IVA of the Principal Act. A prescribed person is a person who is not eligible for, or precludes another person from being eligible for, a funeral benefit, due to the prescribed person having an annual rate of income equal to or greater than the income limits specified in section 83CA. The income limits prescribed in section 83CA are also the income limits which apply under the National Health Act 1953 and the Health Insurance Act 1973 in relation to pensioner health benefits cards where an income test is applied to eligibility for health benefits free of charge.

Clauses 25(a) to (f) would make consequential amendments to section 83CA to omit references to the current income test and substitute references to the income and assets test proposed by this Bill.

Clauses 25(g) and (h) would make consequential amendments to section 83CA to omit definitions used in that section, and substitute references to definitions used in the assets and income test. (See notes to clause 4, sub-section 6AA(10).)

Clause 26: Supplementary allowance

Section 112A of the Principal Act provides for the payment of supplementary allowance to a sickness beneficiary under Part VII of the Principal Act. Supplementary allowance is payable under the same general conditions as supplementary assistance is currently payable to a pensioner.

In consequence of the restructuring of supplementary assistance proposed in this Bill, this clause would omit the reference to supplementary assistance and substitute references to section 30A (see notes to clauses 9 and 10) or section 65A (see notes to clauses 17 and 18).

This Bill does not propose the restructuring of supplementary allowance payable to sickness beneficiaries under section 112A.

Clause 27: Amount of allowance

Section 133J of the Principal Act provides for the allowance payable to a person who is qualified to receive a sheltered employment allowance under Part VIIA of the Principal Act. The allowance is the same as the pension payable to a pensioner under Part III of the Principal Act, except that it does not include supplementary assistance under Division 4A of Part III. (A person in receipt of a sheltered employment allowance is entitled to an incentive allowance under section 133JA of the Principal Act, instead of supplementary allowance.)

In consequence of the restructuring of supplementary assistance proposed in this Bill, this clause would omit the reference to Division 4A and substitute a reference to section 30A. (See notes to clauses 9 and 10.)

Clause 28: Persons eligible to be paid rehabilitation allowance

Section 135B of the Principal Act describes the persons eligible to be paid a rehabilitation allowance under Part VIII of the Principal Act. Sub-section 135B(3) provides that a person who is paid a rehabilitation allowance is not entitled to receive any other income support payment under the Principal Act, including supplementary assistance.

In consequence of the restructuring of supplementary assistance proposed in this Bill, this clause would omit the reference to supplementary assistance.

Clause 29: Rate of rehabilitation allowance

Section 135BA of the Principal Act provides for the rate of rehabilitation allowance payable to an eligible person under Part VIII of the Principal Act. The allowance is calculated by reference to other income support payments under the Principal Act, including supplementary assistance.

In consequence of the restructuring of supplementary assistance proposed in this Bill, this clause would omit references in section 135BA to supplementary assistance. (See notes to clauses 9 and 10, and 17 and 18.)

Clause 30: Application of amendments

This clause proposes rules for the application of the amendments which would be made by Part II.

Clause 30(1) would provide that the amendments would apply to each instalment of an income support payment under the Principal Act which falls due on or after a day fixed by the Minister by notice published in the Commonwealth of Australia Gazette. That day may not be before 1 November 1984.

Clause 30(2) would provide that entitlement to an income support payment under the Principal Act before the day so fixed by the Minister would be calculated in accordance with the Principal Act before the amendments came into operation.

Clause 30(3) would provide that where an amount had been deemed to be income under a deprivation of income provision (section 47 or 76) and the deprivation occurred before 24 August 1983, that amount shall continue to be deemed to be the income of the person after the day fixed under sub-clause 30(1).

Clause 30(4) would provide that where an amount had been deemed to be income under a deprivation of income provision (section 47 or 76) and the deprivation occurred on or after 24 August 1983, new section 6AB would apply in accordance with its terms.

#### Clause 31: Transitional

This clause proposes two transitional rules for the amendments to supplementary assistance under sections 30A and 65A of the Principal Act. (See notes to clauses 10 and 18.)

Clause 31(1) would preserve the "saving" effect of sub-sections 10(2) and 16(2) of the Social Services Act (No. 3) 1974 on supplementary assistance payable to a pensioner under sections 30A and 65A before 1 November 1974, until such time as section 30A or 65A as proposed to be amended by this Bill applies to the pensioner.

Clause 31(2) would preserve the "saving" effect of sub-section 22(2) of the Social Services Amendment Act 1981 on supplementary assistance payable to a pensioner under sections 30A and 65A before 1 February 1982, until such time as section 30A or 65A as proposed to be amended by this Bill applies to the pensioner.

## PART III - AMENDMENTS OF THE REPATRIATION ACT 1920

Part III (clauses 32-55) deals with amendments to the Repatriation Act 1920.

Clause 32: Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Repatriation Act 1920.

Clause 33: Payment of pensions

Section 36 of the Principal Act provides for the payment of pensions, including supplementary assistance (rent allowance) paid under section 98A, by instalments.

This clause proposes to delete the reference to section 98A in sub-section 36(3) and is consequential on the proposed repeal of section 98A by clause 50.

Clause 34: Appropriations for pensions, etc.

Section 51 of the Principal Act provides for appropriations from the Consolidated Revenue Fund for payment of pensions, allowances (including supplementary assistance paid under section 98A) and certain other benefits provided under the Act or regulations.

This clause proposes to delete the reference to section 98A in paragraph 51(a) and is consequential on the proposed repeal of section 98A by clause 50.

Clause 35: Pensions, etc, absolutely inalienable

Section 52 of the Principal Act provides that pensions are absolutely inalienable and applies to supplementary assistance paid under section 98A.

This clause proposes to delete the reference to section 98A in sub-section 52(1) and is consequential on the proposed repeal of section 98A by clause 50.

Clause 36: Offences

Section 53 of the Principal Act provides for penalties for persons who make false or misleading statements in applications for pension or who obtain a pension which is not payable. The penalties also apply to supplementary assistance paid under section 98A.

This clause proposes to delete the reference to section 98A in sub-section 53(5) and is consequential on the proposed repeal of section 98A by clause 50.

### Clause 37: Interpretation

This clause proposes that the income and assets test applied to service pensioners would be the test applied by the proposed provisions of the Social Security Act 1947. (See notes to Part II.)

Paragraph (a) of this clause proposes that certain definitions would have the same meaning as the proposed provisions of the Social Security Act.

Paragraph (b) proposes certain modifications to the provisions of the Social Security Act to enable them to be applied to service pensions -

- . the Repatriation Commission would have the same powers of determination as the Director-General of Social Security;
- . a reference to a child would be read as a reference to an eligible child of a veteran;
- . the provisions relating to those service pensioners separated because of ill-health or infirmity, which are contained in sub-sections 84(2) and 85(1AA) of the Principal Act would continue to have effect; and
- . references to a child in receipt of a service pension in sub-section 28(1C) of the Social Security Act 1947 would have no application.

### Clause 38: Grant of service pensions

Section 84 of the Principal Act provides that the Repatriation Commission or a Repatriation Board may grant a service pension.

In practice, decisions on service pension claims are made by delegates of the Commission.

Clause 37 proposes that the Commission have the same powers of determination in the application of the income and assets test as the Director-General of Social Security. Clause 38 proposes that references to a Board in section 84 be omitted and responsibility for granting service pensions be solely with the Commission.

### Clause 39: Service pension in respect of a member permanently unemployable, etc.

Section 85 of the Principal Act provides that the Repatriation Commission or a Repatriation Board may grant a service pension to certain veterans and their dependants.



Paragraphs (a) and (b) of this clause propose that references to a Board in section 85 be omitted in line with clause 37 which proposes that only the Commission have the same powers of determination in the application of the income and assets test as the Director-General of Social Security.

Paragraph (c) proposes that the maximum rate of pension payable to the child of a veteran will not include the proposed increase in pension payable to service pensioners who pay rent (clause 10).

A child is defined in section 83 of the Principal Act as being under the age of 16 years who is in the care, custody and control of the veteran or a child over the age of 16 who has not attained the age of 25 years who is receiving full-time education and who is wholly or substantially dependent on the veteran. Sub-section 85(5), introduced in 1968, provides that the maximum rate of service pension payable to a veteran is increased in respect of each child and service pension is not payable to the child.

Those children receiving service pension prior to the 1968 amendment and who are still eligible children, continue to be paid service pensions.

Clause 40: Service pension for male carers of severely handicapped female service pensioners

Section 85AA of the Principal Act provides that the Repatriation Commission or a Repatriation Board may grant a service pension to the husband of a severely handicapped female service pensioner where he provides her with constant care and attention.

Clause 37 proposes that the Commission have the same powers of determination in the application of the income and assets test as the Director-General of Social Security. Clause 40 proposes that references to a Board in section 85AA be omitted and responsibility for granting service pensions rest with the Commission.

Clause 41: Variation of rate of service pension

Section 87 of the Principal Act provides for the variation of the rate of service pension according to income. Paragraph (a) of this clause proposes the omission of the following sub-sections -

- . 87(2) which provides that the income of a husband and wife shall be deemed to be half the income of both;
- . 87(3) which provides that an age or invalid pension payable under the Social Security Act 1947 to the husband or wife of a service pensioner shall not be regarded as income and also provides that the income of the service pensioner shall be reduced in respect of each eligible child;

- .87(3AAA) which provides that deductions from income in respect of children are not to apply to service pensions paid to those over 70 years of age and which are subject to a special income test; and
- .87(3AA) which provides that, for the purposes of sub-section 87(3), a person receiving a rehabilitation allowance under Part VIII of the Social Security Act 1947 and who was, immediately before being granted that allowance, in receipt of an invalid pension, shall be taken as being in receipt of an invalid pension.

Similar provisions to the above are contained in the Social Security Act 1947 and the proposed amendments to these provisions will be applied by sub-section 87(1).

Paragraph (b) of this clause substitutes the words "income and property amount" for the word "income" in sub-section 87(3A). This sub-section disregards certain payments under Repatriation legislation, including the payment of disability pension, in the application of the income test and it is proposed that this continue under the income and assets test.

#### Clause 42: Repeal of section 91

Section 91 of the Principal Act provides that where a person deprives himself of income for the purpose of obtaining a pension or a higher rate of pension, the income so deprived shall be deemed to be income for the purposes of the income test.

Clause 5 proposes the introduction of new provisions concerning the deprivation of income and property as an integral part of the income and assets test (proposed new section 6AB of the Social Security Act 1947). By virtue of the application of the Social Security Act 1947 provisions, this would allow the deprivation provisions in the Social Security Act to apply to service pensioners and applicants.

This clause therefore proposes to repeal section 91.

#### Clause 43: Right to be paid service pension outside Australia

Sub-section 92(2) of the Principal Act provides that an allowance by way of supplementary assistance is not payable during any period when the service pensioner is outside Australia.

Clause 10 proposes to amend the Social Security Act 1947 to provide for an increase in pension where the pensioner pays rent and to abolish the present, separate payment of supplementary assistance. Clause 37 proposes the application of the amended provisions to service pensions.

Paragraph (a) of this clause proposes that sub-section 92(2) be amended to apply section 83AC of the Social Security Act a service pension.

Service pensions are not normally granted to a person resident overseas although a pension granted when the person was resident in Australia may be paid overseas. Sub-section 92(5) of the Principal Act provides that where a pension is payable to a person overseas under the Social Security Act 1947 and the person would qualify for a service pension if he were resident in Australia and his Social Security pension were cancelled, he may be granted a service pension.

Paragraphs (b) and (c) of this clause propose that the increase in pension payable to a person who pays rent not be paid in these circumstances.

#### Clause 44: Payment of service pensions

Section 93 of the Principal Act provides that service pensions and certain allowances, including supplementary assistance paid under section 98A, may be paid to another person for the benefit of the service pensioner.

This clause proposes to delete the reference to section 98A in section 93 and is consequential on the proposed repeal of section 98A by clause 50.

#### Clause 45: Pension to widow and children of service pensioner

Section 94 of the Principal Act provides that the Repatriation Commission or a Repatriation Board may grant or continue the payment of service pensions to the wife and children of a service pensioner.

Clause 37 proposes that the Commission have the same powers of determination in the application of the income and assets test as the Director-General of Social Security. Clause 45 proposes that references to a Board in section 94 be omitted and responsibility for granting or continuing service pensions rest with the Commission.

#### Clause 46: Service pensioner in a public institution

Section 95 of the Principal Act relates to the payment of service pension to a pensioner in a public institution. Paragraph (a) of this clause proposes to delete the reference to supplementary assistance in the definition of "service pension" and is consequential on the proposed repeal of section 98A by clause 50.

The definition of "wife's portion" contains a reference to the income of a person and paragraph (b) proposes that this reference be changed to enable the proposed definition of "married person" in clause 37 to apply the provisions of the income and assets test.

Clause 47: Receipt of income or acquisition  
of property to be notified

Section 96 of the Principal Act provides that a service pensioner is to advise the Secretary of changes to his income or in other specified circumstances which affect the pension level or eligibility.

Paragraphs (a) and (b) of this clause propose amendments to take account of the proposed definition of "married person" in clause 37.

Paragraphs (c) and (d) propose amendments to take account of the proposed definition of "income" in clause 37.

Paragraph (e) proposes the insertion of a new sub-section 96(4). This clause will require a service pensioner to advise the Secretary where he, or his spouse, becomes the owner of, or acquires an interest in, property. It will also require the pensioner to advise the Secretary where he, or his spouse, disposes of income or property.

Paragraph (f) proposes to insert a requirement for a service pensioner who receives an increase in his pension because he pays rent, to advise the Secretary if he ceases to pay rent or has the rate of his rent reduced.

Paragraph (g) proposes to omit paragraph 96(6A)(b) and is consequential on the proposed amendment in paragraph (f).

Clause 48: Service pensioner to furnish  
information when required

Section 97 of the Principal Act provides that a service pensioner shall forward information to the Secretary relating to his income when required to do so by the Repatriation Commission or a Repatriation Board.

Paragraphs (a) and (c) propose to omit the reference to a Board. Clauses 38, 39 and 45 propose that the authority for determining service pension applications rest with the Commission and this amendment is consequential on this change.

Paragraph (b) of this clause proposes that the requirement for the pensioner to provide information relating to his income be extended to include property.

Clause 49: Cancellation or variation of pension

This clause proposes that the Repatriation Commission be the only authority to vary or cancel a service pension and would achieve this by deleting references to a Repatriation Board.

Clauses 38, 39 and 45 propose that the authority for determining service pension applications rest with the Commission.

Clause 50: Repeal of section 98A

Section 98A of the Principal Act provides for the payment of supplementary assistance.

Clause 10 proposes to amend the Social Security Act 1947 to provide for an increase in pension where the pensioner pays rent and to abolish the present, separate provisions for the payment of supplementary assistance.

This clause proposes the repeal of section 98A.

Clause 51: On death of married person, widow, widower or children to receive certain benefits for 12 weeks

Section 98B of the Principal Act provides for the payment of the combined rate of service pension for 12 weeks following the death of one of a pensioner couple.

Paragraph (a) of this clause proposes an amendment to paragraph 98B(2)(a) to take account of the proposed definition of "married person" in clause 37.

Paragraph (b) proposes to delete the reference to supplementary assistance, paid under section 98A, in sub-section 98B(8) and is consequential on the proposed repeal of section 98A by clause 50.

Clause 52: Service pension for South African veterans

Section 120 of the Principal Act provides for the payment of service pensions to veterans of the war in South Africa.

This clause proposes to delete the reference to the payment of supplementary assistance under section 98A and is consequential on the proposed repeal of that section by clause 50.

Clause 53: Prescribed persons

Section 123AB of the Principal Act specifies prescribed persons for the purposes of determining eligibility for "fringe benefits". Fringe benefits include free medical treatment, telephone rental concessions, transport concessions and other concessions provided by the Commonwealth and State Governments as well as Local Government authorities and private organisations.

Paragraphs (a) to (d) of this clause propose amendments to substitute "income and property" for "income" in determining a person's eligibility.

Paragraph (e) proposes to amend sub-sections 123AB(3) and (4) to bring the provisions for the prescribed rate of income and property when a person has the custody, care and control of a child or children, into line with those in the Social Security Act 1947.

Paragraph (g) proposes the correction of a drafting error where the word "not" was omitted from the definition of child in sub-section 123AB(6). The definition should refer to a child who has not attained the age of 16 years.

Paragraph (h) proposes to amend the definitions applying to this section to enable account to be taken of income and property and provide uniformity with the eligibility test for pension.

#### Clause 54: Application of amendments

This clause contains the proposals for the application of amendments in this Part.

Sub-clause (1) proposes that amendments relating to instalments of pension would apply to those due on or after a day fixed by the Minister by notice published in the Gazette, not being a day before 1 November 1984.

Sub-clause (2) proposes that pensions continue to be paid under the present provisions of the Principal Act until a date fixed by the Minister under sub-clause (1).

Sub-clause (3) proposes that, where deprivation of income took place before 24 August 1983, being deprivation that would be taken into account under section 91 of the Principal Act, such income would continue to be deemed to be income following a date set by the Minister in accordance with sub-clause (1).

Sub-clause (4) proposes that, where deprivation of income takes place after 24 August 1983 but before the date set by the Minister in accordance with sub-clause 1, that income would be deemed to be income in accordance with section 91 of the Principal Act until the date set by the Minister. After that date it would come within the application of the proposed section 6AB of the Social Security Act 1947. (See notes to clause 5.)

#### Clause 55: Transitional

The Repatriation Acts Amendment Act 1974 and the Repatriation Acts Amendment Act 1981 amended provisions relating to the payment of supplementary assistance. These Acts also contained transitional provisions which provided that those persons who would receive less by way of supplementary assistance as a result of the amendments would continue to be paid at the higher rate as if the amendments had not been made provided that their circumstances did not change.

This clause proposes that the transitional provisions of those Acts continue unless the person would receive more by virtue of the application of the new provisions for those paying rent in the proposed section 30A of the Social Security Act 1947. (See notes to clause 10.)



