

1985

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND REPATRIATION (BUDGET MEASURES)

AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

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

OUTLINE

This is an omnibus Bill which would deal primarily with Budget measures requiring amendments to existing legislation within the portfolios of the Ministers for Community Services, Social Security and Veterans' Affairs. The Bill would also deal with some other matters. The Budget measures, and some significant other matters, are outlined below.

Aged or Disabled Persons Homes Act 1954

Under this Act, the Commonwealth currently pays a personal care subsidy and a hostel care subsidy to eligible organisations providing hostel type accommodation for aged or disabled people. The hostel care subsidy is paid for all residents of eligible hostels at a rate of \$11 a week. The personal care subsidy is paid in respect of hostel residents assessed as requiring, and receiving assistance in the performance of daily living tasks. The subsidy is payable at a rate of \$55 a week.

The Commonwealth also provides a respite care bed subsidy to encourage the provision of respite care beds in hostels. This subsidy is aimed at assisting those families and individuals who care for elderly people in their homes but who require a facility to allow short breaks from the demands of care at home. Respite care bed subsidy of \$11 per week is payable in respect of an approved respite care bed where that bed is occupied for 14 days or less during a 28 day period or \$55 per week where the bed is occupied for at least 15 days during the 28 day period. However, this arrangement has tended to cause distortions in availability of respite care beds to take advantage of the differential subsidy levels. Accordingly, as a means of addressing this and other anomalies relating to the method of payment of subsidy on a 28 day basis, the Government has decided that hostel care, personal care and respite care subsidies will be paid on a daily basis as from 1 January 1986 .

The daily rates to apply are \$1.80 per day for hostel care, \$7.80 per day for personal care and \$7 per day for respite care.

The revised arrangements are estimated to add \$1.3m to outlays in 1985-86 and \$2.3m in 1986-87.

Outlays in 1985-86 are estimated to total \$63.8m, consisting of \$39.7m for personal care subsidy, \$22.7m for hostel care subsidy and \$1.4m for respite care subsidy arrangements. This represents an increase of \$8.3m or 15% over total outlays in 1984-85.

In addition, the statement of purposes in the Act would be amended to make it clear that the Act can assist the provision of accommodation at which respite care services only are provided to eligible persons.

National Health Act 1953

Under this Act, benefits are paid by the Commonwealth to approved nursing homes for all qualified patients in such homes. The benefit rates are prescribed in the National Health Regulations, and are reviewed annually. If necessary, adjustments are made with effect from the first pension pay-day in November so that the sum of the benefit together with the statutory minimum patient contribution (which is also prescribed in the National Health Regulations) covers fees charged to 70% of patients in approved non-government nursing homes in each State or Territory at the time of the annual review.

In the "May Statement", measures were announced which are directed to slowing the rapid growth of nursing home outlays that has occurred over the past decade. One of those measures included freezing the level of Commonwealth nursing home benefits in government nursing homes in all States and Territories, except in some government nursing homes run by non-profit charitable or benevolent organisations.

The Bill would amend the Act so as to enable the rates of benefit prescribed by the National Health Regulations to differentiate between classes of approved nursing homes.

Repatriation Act 1920

This Act would be amended in three main respects.

- 1 To increase rates of pension payable to orphans, increase amounts payable to certain amputees and those Veterans suffering loss of vision and increase the rates of attendants allowance, based on the 6.7% CPI increase from 1 July 1984 to 30 June 1985.

Estimated costs would be -

. \$0.121m in 1985/86; and

. \$0.186m in 1986/87.

- 2 To extend the service pension payable to spouse carers to near relatives who personally provide constant care and attention to a severely handicapped service pensioner.
- 3 To clarify the legislation in respect of the recovery of overpayments of pension and to specify the dates from which certain overpayments occur.

Seamen's War Pensions and Allowances Act 1940

This Act would be amended in two main respects.

- 1 To increase rates of pension payable to orphans, increase amounts payable to certain amputees and those seamen suffering loss of vision and to increase the rates of attendants allowance, based on the 6.7% CPI increase from 1 July 1984 to 30 June 1985.

- 2 To clarify the legislation in respect of the recovery of overpayments of pension.

Social Security Act 1947

This Act would be amended in several respects.

- 1 The rate of additional pension or benefit (which is applicable to a pensioner or beneficiary in respect of each dependent child) would be increased from \$14 per week to \$16 per week, as from 1 November 1985.

This will also increase the rate of the family income supplement (FIS) in respect of a dependent child from \$14 per week to \$16 per week.

Estimated costs would be -

. \$58.5m in 1985/86; and

. \$92.0m in 1986/87.

Estimated costs in respect of service pensions under the Repatriation Act 1920 attracting the additional pension would be -

. \$0.6m in 1985/86; and

. \$0.9m in 1986/87.

The increase in the additional pension or benefit applicable as from 1 November 1985 would be withdrawn in respect of a dependent child attracting payments under the Secondary Allowance Scheme (SAS) or the Tertiary Education Assistance Scheme (TEAS), commencing in 1986.

Estimated savings would be -

. \$2.8m in 1985/86; and

. \$6.7m in 1986/87.

- 2 The rate of "mother's/guardian's allowance" (which is applicable to a pensioner or beneficiary who is a sole parent in respect of one or more dependent children) would be increased from \$10 per week to \$12 per week, as from 1 May 1986.

Estimated costs would be -

. \$5.4m in 1985/86; and

. \$28.9m in 1986/87.

- 3 The current spouse carer's pension (which is available to the husband of an age or invalid pensioner requiring constant care and attention at home) would be subsumed in a new carer's pension, which would be available to a person personally providing constant care and attention at home to a near relative, as from 1 November 1985.

Estimated costs would be -

. \$1.0m in 1985/86; and

. \$1.6m in 1986/87,

which take into account savings from those persons currently receiving a special benefit in these circumstances who take up the new pension.

- 4 An increase in family allowance would be applicable to families with multiple births (3 or more children born at the same time), for the first 6 years, of -

- . \$150 per month in the cases of triplets; and
- . \$200 per month in other cases,

as from 15 November 1985.

Estimated costs would be -

- . \$0.2m in 1985/86; and
- . \$0.3m in 1986/87,

which take into account savings from the cessation of current arrangements under which a discretionary "act of grace" payment under the Audit Act 1901 is made in the case of multiple births of 4 or more children.

- 5 Family allowance would be absorbed into payments under the Secondary Allowance Scheme (SAS), and therefore would cease when SAS is paid, as from 15 January 1986.

Estimated savings in family allowance outlays would be -

- . \$11m in 1985/86; and
- . \$23m in 1986/87,

with there being corresponding increases in costs for the SAS.

- 6 A child attracting a handicapped child's allowance (HCA) would be able to temporarily live away from home for up to 28 days, so enabling some measures of respite care to be provided in an institution, without affecting entitlement to HCA, as from 1 November 1985.

During this period of absence from home where the child is an inmate of an institution which receives a nursing home benefit or a handicapped children's benefit (payable under the National Health Act 1953 or the Handicapped Persons Assistance Act 1974, respectively) in relation to the child, there will be a payment of both HCA and that benefit.

Estimated costs would be -

. \$0.065m in 1985/86; and

. \$0.1m in 1986/87.

- 7 The current non-indexed unemployment benefit applicable to a single person without dependants who is under 18 years of \$45 per week, increasing to \$50 per week after 6 months, would become a single non-indexed rate of \$50 per week, as from 1 November 1985.

Estimated costs would be -

. \$6.2m in 1985/86; and

. \$9.5m in 1986/87.

- 8 The current indexed rate of unemployment benefit applicable to a single person without dependants who is over 18 years would be increased and split into two rates -

. a non-indexed rate of \$88.20 per week in the case of a beneficiary who is under 21 years; and

. an indexed rate of \$91.45 per week in the case of a beneficiary who is over 21 years,

as from 1 November 1985.

Estimated costs would be -

. \$39m in 1985/86; and

. \$62.6m in 1986/87.

- 9 The income test applicable to unemployment and sickness benefit would be liberalised by extending the "free area" of income that a beneficiary may have before benefit is affected from \$20 per week to \$30 per week, as from 1 May 1986.

Estimated costs would be -

. \$2.1m in 1985/86; and

. \$12.7m in 1986/87.

- 10 Rent assistance of up to \$10 per week would be extended to an unemployment or special beneficiary over 18 years who pays private rent after 6 months of qualification for benefit, except in the case of a single beneficiary who has no dependants and is under 25 years who is living at home, as from 1 May 1986.

Estimated costs would be -

. \$9.5m in 1985/86; and

. \$58.7m in 1986/87.

- 11 The waiting period which must be undergone by a person qualified to receive an unemployment or a sickness benefit would not apply where a beneficiary was transferring from another social security income support payment or a repatriation service pension. In addition, a waiting period would not apply to the spouse of a person whose rate of social security payment had been increased by reference to the spouse where the spouse commences to qualify for such a payment in his or her own right.

Estimated costs would be -

. \$0.7m in 1985/86; and

. \$1.0m in 1986/87.

- 12 The rules concerning overpayments of social security pensions would be rationalised in several respects. Specific rules would provide for the automatic cessation of a pension where the pensioner ceases to qualify for the pension. In addition, specific rules would provide for the situation where a person fails to comply with a requirement to notify a change in a pensioner's circumstances.

The relationship between social security pensions and benefits and repatriation service pensions would also be rationalised.

Authority for the waiver and write-off of debts arising under the Act would be included to improve administrative efficiency.

SOCIAL SECURITY AND REPATRIATION (BUDGET MEASURES) AMENDMENT
ACT 1985

PART I - PRELIMINARY

Clause 1: Short title

This clause would provide that the amendment Act could be cited as the Social Security and Repatriation (Budget Measures) Amendment Act 1985.

Clause 2: Commencement

This clause would provide for the various dates on which particular provisions of the amendment Act would come into operation.

Amendments made by clauses which do not come into operation on the day on which the amendment Act receives the Royal Assent will be noted in relation to such clauses of the Bill.

PART II - AMENDMENTS OF THE AGED OR DISABLED PERSONS HOMES
ACT 1954

Clause 3: Principal Act

This clause would provide that the Aged or Disabled Persons Homes Act 1954 is referred to as the Principal Act in this Part.

Clause 4: Purpose

Section 3 of the Principal Act is a statement of the purpose of the Principal Act.

This clause would amend section 3 to make it clear that one of the purposes of the Act includes encouraging and assisting the provision of accomodation at which respite care services only may be provided to eligible persons, as well as the provision of long term residential accomodation to such eligible persons.

Clause 5: Interpretation

Section 10A of the Principal Act provides for definitions of terms used in Part III of the Principal Act, which concerns hostel care subsidies payable to an approved eligible organization in respect of eligible persons accomodated by organization.

The subsidy is calculated by reference to a weekly rate specified in section 10C of the Principal Act. In consequence of the proposed change to the calculation of subsidy by reference to a daily rate, section 10A would require changes in respect of definitions.

This clause would omit the definitions of "prescribed date" and "prescribed period", and amend a reference to section 10C in the definition of "respite care".

Clause 6: Payments to approved organisations

Section 10C of the Principal Act specifies the rates of subsidy payable under Part III of the Principal Act.

The current weekly rates are -

- . \$11 per week in respect of a person assessed as requiring hostel care;
- . \$55 per week in respect of a person assessed as requiring hostel care and personal care;
- . \$11 per week in respect of a person occupying a respite care bed for between 1 and 14 days each 28 days; and
- . \$55 per week in respect of a person occupying a respite care bed for more than 14 days each 28 days.

This clause would restructure these rates as daily rates -

- . new paragraph 10C(1)(a): \$1.80 per day in respect of a person assessed as requiring hostel care (ie accomodation) services;
- . new paragraph 10C(1)(b): \$7.80 per day in respect of a person assessed as requiring hostel care services and personal care services; and
- . new paragraph 10C(1)(c): \$7 per day in respect of a person occupying a "respite care" bed (ie a bed made available for eligible persons on a respite care basis).

By clause 2(3), clauses 5 and 6 would come into operation on a day to be fixed by Proclamation (expected to be early in January 1986).

PART III - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 7: Principal Act

This clause would provide that the National Health Act 1953 would be referred to as the Principal Act in this Part.

Clause 8: Interpretation

Section 4 of the Principal Act provides for definitions of terms used in the Principal Act. Paragraph (a) of the definition of "pensioner" in sub-section 4(1) refers to spouse carer's pension.

In consequence of the new carer's pension subsuming spouse carer's pension, this clause would amend paragraph (a) of that definition by omitting "spouse".

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

Clause 9: Recognised days of absence of qualified nursing home patients, &c.

Section 48A of the Principal Act provides for the situation where a patient in a nursing home is temporarily absent from the nursing home.

The arrangements for the fees payable to a nursing home by such a patient were intended to allow the nursing home to charge a lower fee than the maximum fee if the nursing home so chose.

However, provisions in the Principal Act interact such that where a lower fee is charged, the amount of the Commonwealth nursing home benefit is reduced under sub-section 47(2) of the Principal Act.

This clause would amend paragraph 4AA(9)(b) to make it clear that, in conjunction with an amendment to sub-section 47(2), the relationship between sections 4AA and 47 does not involve a reduction of the Commonwealth nursing home benefit in such cases.

By clause 2(2), this clause would be deemed to have come into operation on 1 July 1985, when the arrangements for the temporary absence of a patient from a nursing home came into operation.

Clause 10: Basic benefit payable in respect
of nursing home care

Section 47 of the Principal Act provides for the basic benefit payable to an approved nursing home in respect of a qualified nursing home patient. The basic rates of benefit are prescribed in the National Health Regulations, as authorized by sub-section 47(1). Sub-section 47(2) provides that the Commonwealth nursing home benefit is reduced where the fee charged to a patient is less than the sum of the maximum rate of benefit payable plus the statutory minimum contribution.

Clause 10(1) would insert a new sub-section 47(2A) which would make sub-section 47(2) inapplicable in respect of fees that, for the purposes of section 4AA of the Principal Act, are bed retention fees paid by patients temporarily absent from the nursing home.

As a result of this amendment, sub-section 47(2) would not operate to reduce, or further reduce, the Commonwealth benefit where the bed retention fee, paid by a patient absent in accordance with section 4AA, is less than the maximum fee which may be charged.

By clause 2(2), clause 10(1) would come into operation on 1 July 1985, when the arrangements for the temporary absence of a patient from a nursing home came into operation.

Clause 10(2) would insert a new sub-section 47(4) which would enable different basic rates of benefit to be prescribed by the Regulations.

The effect of the amendment would be to enable the freezing of the level of benefits in government nursing homes, but allow for the level of benefits in non-government nursing homes to be increased, by prescribing different benefit rates in the Regulations for these two classes of approved nursing homes.

This would implement one of the measures announced in the "May Statement" directed to slowing the rapid growth in nursing home outlays.

Clause 11: Interpretation

Section 84 of the Principal Act provides for definitions of terms used in Part VII of the Principal Act, concerning pharmaceutical benefits. Paragraph (a) of the definition of "concessional beneficiary" in sub-section 84(1) contains a reference to spouse carer's pension.

In consequence of the new carer's pension subsuming spouse carer's pension, this clause would amend paragraph (a) of the definition by omitting "spouse".

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

PART IV - AMENDMENTS OF THE REPATRIATION ACT 1920

Clause 12: Principal Act

This clause provides that the Repatriation Act 1920 would be referred to as the Principal Act in this Part.

Clause 13: Repeal of section 85AA and substitution of new section

Section 85AA of the Principal Act provides for the payment of a service pension to a man who personally provides constant care and attention to a severely handicapped service pensioner wife.

Clause 13(1) would substitute a new section 85AA which would provide for the payment of carer's service pension to a near relative who personally provides constant care and attention to a severely handicapped service pensioner. The rate of carer's service pension is to be the same rate that would be payable if the person was qualified to receive a carer's pension under the Social Security Act 1947.

Clause 13(2) would ensure that a person who has been previously granted a spouse carer's pension under the current section 85AA of the Principal Act would continue to receive a carer's pension under the new section 85AA.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 14: Restrictions as to dual pensions

Section 86 of the Principal Act provides that a person is not entitled to receive more than one service pension at the same time, or a service pension and a pension, supporting parents benefit or rehabilitation allowance under the Social Security Act 1947 or a service pension and a pension under the Tuberculosis Act 1948.

This clause would amend section 86 to provide also that a person may not receive an unemployment or sickness benefit or a sheltered employment allowance at the same time as the person receives a service pension. Restrictions on the dual payment of service pension and these benefits are currently contained in the Social Security Act 1947.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 15: Variation of rate of service pension

Section 87 of the Principal Act specifies the rates of pensions payable to service pensioners by reference to provisions of the Social Security Act 1947.

This clause would amend section 87 in consequence of spouse carer's pension becoming carer's pension.

This clause would also amend section 87 to enable the Repatriation Commission to determine that a child is a "prescribed student child" for the purposes of section 28 of the Social Security Act 1947 as it applies for the purposes of the Principal Act.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 16: Receipt of income, &c., to be notified

Section 96 of the Principal Act requires a person in receipt of a service pension to notify the occurrence of certain events which may affect the rate of pension payable.

This clause would amend section 96 to omit references to spouse carer's pension and require a carer who receives a service pension to notify relevant changes in circumstances, ie upon permanently ceasing to provide constant care and attention to a severely handicapped member, or upon the member ceasing to be severely handicapped.

This clause would also amend sub-section 96(7A) to omit the reference to a matrimonial home because of the changed eligibility for carer's service pension.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 17: Payments received under the New Enterprise Incentive Scheme - effect where recipient is in receipt of a service pension and spouse of recipient is not receipt of a pension by reason of being the spouse of the recipient

Section 97 of the Principal Act provides that, where a service pensioner receives a payment under the New Enterprise Incentive Scheme, a direct deduction from service pension is made on a dollar for dollar basis where the service pensioner is single or, if married, the spouse is not in receipt of a service pension.

This clause would amend sub-section 97(1) to reflect the change from spouse carer's service pension to carer's pension.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 18: Payments received under New Enterprise Incentive Scheme - effect where spouse of recipient is in receipt of a pension by reason of being the spouse of the recipient

Section 97A of the Principal Act provides that, where a service pensioner receives a payment under the New Enterprise Incentive Scheme and the spouse also receives a service pension, a direct deduction from each service pension is made at the rate of 50 cents in the dollar.

This clause would amend sub-section 97A(1) to reflect the change from spouse carer's pension to carer's pension.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 19: Cancellation, suspension or
variation of service pension

Section 98 of the Principal Act provides for the Repatriation Commission to cancel, suspend or vary a service pension for reasons specified in the section and makes provision for the dates of effect of such decisions.

This clause would amend section 98 to avoid possible conflict with the cessation of entitlement provisions of proposed new section 98AAA.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 20: Insertion of new section

This clause would insert a new section 98AAA in the Principal Act.

New sub-section 98AAA(1) would provide that, where a person in receipt of a service pension notifies the Department of a change in circumstances which would result in a loss of eligibility to receive the pension, the pension would cease to be payable from the day after the last day of the period within which the person was required to notify the Department.

New sub-section 98AAA(2) would provide that, where a person in receipt of a service pension or rent assistance fails to notify a change in circumstances which would result in a loss of eligibility or a reduction in the rate of pension or allowance, the pension or allowance would cease to be payable, or become payable at the lower rate from the day after the day on which the change in circumstances occurred.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 21: Extension of application of Division 5 to members
of Forces of a Commonwealth country

Section 98C of the Principal Act applies the service pension provisions contained in Division 5 of the Principal Act to members of the Forces of the Commonwealth country and to wives and spouse carers of such members.

This clause would change provisions relating to spouse carers to reflect the new carer's service pension.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 22: Extension of application of Division 5 to members
of Forces of an allied country

Section 98G of the Principal Act applies the service pension provision contained in Division 5 of the Principal Act to members of the Forces of an allied country and to wives and spouse carers of such members.

This clause would change the provisions relating to spouse carers to reflect the new carer's service pension.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 23: Extension of application of Division 5
to Australian mariners

Section 98L of the Principal Act applies the service pension provisions contained in Division 5 of the Principal Act to Australian mariners and to wives and spouse carers of such mariners.

This clause would change the provision relating to spouse carers to reflect the new carer's service pension.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 24: Extension of application of Division 5
to Commonwealth mariners

Section 98P of the Principal Act applies the service pension provisions contained in Division 5 of the Principal Act to Commonwealth mariners and to wives and spouse carers of such mariners.

This clause would change the provisions relating to spouse carers to reflect the new carer's service pension.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 25: Extension of application of Division 5
to allied mariners

Sections 98R of the Principal Act applies the service pension provisions contained in Division 5 of the Principal Act to allied mariners and to wives and spouse carers of such mariners.

This clause would change the provisions relating to spouse carers to reflect the new carer's service pension.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 26: Recovery of overpayments

Section 120AA of the Principal Act provides that overpayments of pensions, allowances or benefits paid in consequence of a false statement or representation or a failure or omission to comply with a provision of the Principal Act or the Repatriation Regulations are recoverable in a court of competent jurisdiction.

This clause would amend section 120AA to impose an obligation on the Commission to recover the overpayment unless the Commission determines in writing that the amount be written off, waived, deferred or repaid by instalments, as provided for in new section 120AB (see clause 27).

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 27: Insertion of new section

This clause would insert a new section 120AB in the Principal Act.

New sub-section 120AB(1) would enable the Repatriation Commission to write off, waive or defer the right of the Commonwealth to recover debts arising under, or as a result of, the Principal Act or to allow repayments by instalments. These powers are similar to those in section 70C of the Audit Act 1901.

New sub-section 120AB(2) would limit the right of the Commonwealth to commence proceedings to recover an overpayment to a period within 6 years of the day on which the amount became payable to the Commonwealth.

New sub-section 120AB(3) would provide for a period within which the Commonwealth could commence proceedings to recover an overpayment which arose because of a false statement or representation or a failure or omission to comply with a provision of the Principal Act. This period would be 6 years from the day on which an officer of the Department became aware of the false statement or representation or of the non-compliance with a provision of the Act.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 28: Deduction from pensions, allowances
or benefits of certain amounts

Section 120B of the Principal Act provides a mechanism whereby overpayments may be deducted from continuing payments of pension, allowance or benefits.

This clause would amend sub-section 120B(1) to ensure that, where a person receives a pension or allowance, or an increase in pension, retrospectively and such a grant or increase results in an overpayment of another repatriation or social security pension or benefit, such an overpayment could be recovered by deduction from a payment to the person.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 29: Schedule 2

Schedule 2 to the Principal Act provides for the rate of attendant allowance payable to a member of the Forces who, as a result of war service, has suffered a specified incapacity. There are two rates of the allowance. This clause would amend Schedule 2 to increase those rates.

In the case of a member who has been blinded or who has suffered an incapacity of the cerebro-spinal system or similar, the allowance would be increased by \$3.60, from \$53.80 to \$57.40 per fortnight.

In the case of a member who has been blinded and suffered a loss of speech or hearing, the allowance would be increased by \$7.20, from \$107.60 to \$114.80 per fortnight.

Clause 30: Schedule 3

Schedule 3 of the Principal Act provides, in Table A, for rates of pensions payable on the death of a member of the Forces. These pensions include pensions payable to a child of a member, at one of two rates depending on whether the child is being maintained by a parent, step-parent or adoptive parent.

Where the member is deceased and the child is not being maintained by a parent, the rate of pension is currently \$76.80 per fortnight. This clause would increase the rate by \$5.20, to \$82.00 per fortnight. In any other case, the rate is \$38.40 per fortnight. This clause would increase the rate by \$2.60, to \$82.00 per fortnight.

Clause 31: Schedule 5

Schedule 5 of the Principal Act provides for the payment of an addition to disability pension for a member of the Forces who has suffered a specified amputation or loss of vision.

The amounts specified in the first six items in Column 1 of Schedule 5 are such that when added to the 100% General Rate pension, a total amount equal to the Special (TPI) Rate is payable. These amounts are adjusted under automatic indexation arrangements and are not, therefore, amended.

The remaining items in Column 1 are also paid as additions to the 100% General Rate but are not automatically adjusted. The following table indicates the effect of the proposed amendments in this clause -

	<u>Old Rate</u>	<u>New Rate</u>
	\$	\$
	(per fortnight)	
One leg amputated above, and one leg amputated below the knee	71.80	76.60
Two legs amputated below the knee	48.50	51.70

One arm amputated and one eye destroyed	41.70	44.50
One leg amputated and one eye destroyed	41.70	41.70
One leg amputated above the knee	20.70	22.10
One leg amputated below the knee	11.00	11.70
One arm amputated above the elbow	20.70	22.10
One arm amputated below the elbow	11.00	11.70
Loss of vision in one eye	16.10	17.20

Clauses 31(g) and (h) would amend the rates of attendant allowance in the first three items of Column 3 of Schedule 5. The amendments would increase the amounts by \$7.20 per fortnight and \$3.60 per fortnight, to \$114.80 per fortnight and \$57.40 per fortnight, respectively.

Clause 32: Application of amendments

This clause would provide that clauses 29, 30 and 31 would come into operation on 7 November 1985, the first pension pay-day in November 1985. This clause would apply the amendments made by these clauses to each instalment or payment of pension or allowance falling due on or after 7 November 1985.

By clause 2(4), clauses 29, 30, and 31 would come into operation on 7 November 1985, the first pension pay-day in November 1985.

PART V - AMENDMENTS TO THE SEAMEN'S WAR PENSIONS AND ALLOWANCES
ACT 1940

Clause 33: Principal Act

This clause would provide that the Seamen's War Pensions and Allowances Act 1940 would be referred to as the Principal Act in this Part.

Clause 34: Rates of pension on death or total incapacity

Section 18 of the Principal Act provides for the rates of pension payable under the Principal Act.

This clause would increase the rates of pension payable to the child of a deceased Australian mariner. There are two rates.

In the case where both the Australian mariner and the child's mother are deceased, the rate payable would increase by \$5.20 per fortnight, from \$76.80 to \$82.00 per fortnight. The rate payable in any other case would be increased by \$2.60 per fortnight, from \$38.40 to \$41.00 per fortnight.

Clause 35: Deduction from pensions and
allowances of certain amounts

Section 55A of the Principal Act provides a mechanism whereby overpayments may be deducted from continuing payments of pensions and allowances.

This clause would omit sub-section 5AA(2) as the proposed amendments to section 120B of the Repatriation Act 1920 would apply to all other Acts administered by the Minister.

Clause 36: Insertion of new section

This clause would insert a new section 55B in the Principal Act.

New sub-section 55B(1) would enable the Repatriation Commission to write off, waive or defer the right of the Commonwealth to recover debts arising under or as a result of the Principal Act or to allow repayments by instalments. These powers are similar to those in section 70C of the Audit Act 1901.

New sub-section 55B(2) would limit the right of the Commonwealth to commence proceedings to recover an overpayment to 6 years from the day on which the amount became payable to the Commonwealth.

New sub-section 55B(3) would provide for a period within which the Commonwealth could commence proceedings to recover an overpayment which arose because of a false statement or representation or a failure or omission to comply with a provision of the Principal Act. This period would be six years from the day on which an officer of the Department became aware that a statement or representation was false or of the non-compliance with a provision of the Act.

Clause 37: Schedule 2

Schedule 2 of the Principal Act provides for the rates of attendant allowance payable to an Australian mariner who, as a result of war services has suffered a specified disability. There are two rates of allowance payable. This clause would amend Schedule 2 to increase those rates.

In the case of an Australian mariner who is blind or who has suffered a specified loss or incapacity other than the loss of both arms, the allowance would be increased by \$3.60 per fortnight, from \$53.80 to \$57.40.

In the case of an Australian mariner who has lost both arms, the allowance would be increased by \$7.20 per fortnight, from \$107.60 to \$114.80.

Clause 38: Application of amendments

This clause would apply the amendments made by clauses 34 and 37 to each instalment or payment of pension or allowance falling due on or after 7 November 1985.

By clause 2(4), clauses 34 and 37 would come into operation on 7 November 1985, the first pension pay-day in November 1985.

PART VI - AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Clause 39: Principal Act

This clause would provide that the Social Security Act 1947 would be referred to as the Principal Act in this Part.

Clause 40: Repeal of section 4

Section 4 of the Principal Act is the remnant of an original "savings" provision concerning the approval of charitable institutions or organisations and the approval of friendly societies before 1947.

The provision achieved its savings purpose upon enactment in 1947, and it has no prospective effect.

This clause would repeal section 4.

Clause 41: Interpretation

Section 6 of the Principal Act provides for definitions of terms used in, and rules of interpretation for, the Principal Act.

Clause 41(1)(a) would insert a definition of "carer's pension" in sub-section 6(1) in consequence of the subsuming of spouse carer's pension in the new carer's pension.

Clause 41(1)(b) would insert a definition of "prescribed child" in sub-section 6(1) which refers to a child in respect of whom a determination under a new sub-section 6(9) is in force.

Clause 41(1)(c) would omit the definition of "spouse carer's pension" in consequence of the subsuming of that pension in the new carer's pension.

Clause 41(1)(d) would add a new sub-section 6(9), which would enable the Secretary to declare a dependent child (being a student child) of a person to be a "prescribed student child" where the Secretary is satisfied that the dependent child attracts payments under the Tertiary Education Assistance Scheme (TEAS) or the Secondary Allowance Scheme (SAS).

Such a declaration would take effect only after 1 January 1986, but such a declaration could be made after that date which has a retrospective effect.

The effect of such a declaration would be that the additional pension or benefit payable to a pensioner or beneficiary in respect of a dependent child would be reduced from the rate of \$832 per annum, or \$16 per week, which would be applicable on 1 January 1986, to the rate of \$728 per annum, or \$14 per week. (The relevant provisions dealing with additional pension or benefit are being amended to provide for these rate differentials in the Bill.) A declaration which has a retrospective effect can generate an overpayment which is recoverable under the normal recovery rules

Clause 41(2) would provide that clause 41(1) would apply in relation to payments falling due on or after 1 November 1985.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 42: Pension loans scheme

Section 6AB of the Principal Act provides for the pension loans scheme which applies to pensioners subject to the assets test. Sub-section 6AB(15) provides for the waiver or deferral of a debt arising under the pension loans scheme or the release of property from the statutory charge under the scheme.

In consequence of the insertion of a new section 146 by this Bill concerning waiver, etc, dealing with this matter, sub-section 6AB(15) would become unnecessary. This clause would omit the sub-section.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 43: Certain persons to be disregarded
for certain purposes

Section 6A of the Principal Act operates to require a person to be disregarded for the purposes of the Principal Act in determining the pension, benefit or allowance payable under the Principal Act to another person. The exception to this rule concerns spouses.

The main purpose of the provision is to prevent a dependent child in receipt of an income security payment being taken into account in determining the income security payment of another person, eg an invalid pensioner who is a dependent child of a pensioner or beneficiary cannot be taken into account under the provisions concerning additional pension or benefit for dependent children.

With the introduction of the new carer's pension, the provision requires modification. This clause would amend sub-section 6A(1) so that an age or invalid pensioner will not be disregarded in determining whether a carer's pension is payable under the Principal Act as amended by this Bill.

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

Clause 44: Heading to Part III

The heading to Part III of the Principal Act refers to spouse carer's pension. In consequence of the new carer's pension subsuming the current spouse carer's pension, this clause would amend the heading to change the reference to carer's pension by omitting "spouse".

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

Clause 45: Rate of age or invalid pension

Section 28 of the Principal Act provides for the component parts of age or invalid pension applicable to an age or invalid pensioner.

Sub-section 28(1B) provides for the rate of additional pension applicable to such a pensioner in respect of each dependent child of the pensioner.

Clause 45(1)(a) would substitute a new sub-section 28(1B) which would increase the rate of additional pension applicable to a pensioner from \$728 per annum (\$14 per week) to \$832 per annum (\$16 per week) in respect of each dependent child of the pensioner.

The new sub-section would provide for the rate of additional pension applicable to a pensioner to be \$728 per annum (\$14 per week) in respect of each dependent child of a pensioner who is a "prescribed student child", as that term would be defined in sub-section 6(1) of the Principal Act.

Sub-section 28(1D) applies to a blind pensioner who is eligible for additional pension under sub-section 28(1B). Although the base rate of age or invalid pension is non-income or assets tested, sub-section 28(1D) effectively subjects the rate of pension, as increased by additional pension under sub-section 28(1B), to the income or assets test, such that the base rate of pension will only be increased under sub-section 28(1B) by the amount remaining after the notional application of the income or assets test.

However, sub-section 28(1F) then operates to ensure that a pensioner subject to sub-section 28(1D) will receive an amount which is at least equal to the amount of additional pension in respect of one dependent child.

Clause 45(1)(c) would amend sub-section 28(1F) to change the reference to \$728 per annum (\$14 per week), which is the rate of additional pension, to \$832 per annum (\$16 per week), which is the proposed rate.

However, the proposed rate of \$832 per annum (\$16 per week) will be reduced to \$732 per annum (\$14 per week) early in 1986 in respect of a dependent child who is a "prescribed student child". To reflect this, the operation of sub-section 28(1F) will be modified as indicated below.

Clause 45(1)(b) would make sub-section 28(1F) subject to a new sub-section 28(1FA).

Clause 45(1)(d) would insert a new sub-section 28(1FA) which would require the references to \$832 in sub-section 28(1F) to be treated as references to \$728 where a pensioner to whom sub-section 28(1F) applied does not have a dependent child who is not a "prescribed child". What this would mean is that, if such a pensioner has at least one dependent child who is not a prescribed dependent child, the pensioner would continue to receive the higher rate of additional pension.

By clause 2(5), clause 45(1) would come into operation on 1 November 1985.

Clause 45(4) would provide that clause 45(1) would apply to payments of pension falling due on or after 1 November 1985.

Sub-section 28(1AA) provides for the rate of "mother's/guardian's allowance" by which an age or invalid pension is increased where the pensioner is a sole parent with one or more dependent children. The rate is \$520 per annum (\$10 per week).

Sub-clause 45(2) would increase the rate to \$624 per annum (\$12 per week).

By clause 2(8), clause 45(2) would come into operation on 1 May 1986.

Clause 45(5) would provide that clause 47(2) would apply to payments of pension falling due on or after 1 May 1986.

Clause 45(3) would omit sub-section 28(1), and amend sub-section 28(1A) in consequence, so that the base rates of all age and invalid pensions will be fixed at the maximum rate.

Sub-section 28(1) enables the Secretary to fix a base rate of age or invalid pension in respect of each pensioner which is "reasonable and sufficient, having regard to all the circumstances of the case", but not exceeding the maximum rate fixed in accordance with subsequent provisions of section 28.

The provision is an anachronism. In practice, the base rates of virtually all age and invalid pensions are fixed at the maximum rate.

By clause 2(3), clause 45(3) would come into operation on a day to be fixed by Proclamation, so that appropriate administrative arrangements can be made.

Clause 46: Variation of certain rates

Section 28A of the Principal Act provides for the indexation of the rates of the rates of pension applicable to age, invalid, wife's, spouse carer's and widow's pension and supporting parent's benefit.

In consequence of the new carer's pension subsuming the current spouse carer's pension, this clause would amend section 28A to change the reference to spouse carer's pension to a reference to carer's pension by omitting "spouse".

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 47: Rate of wife's pension

Section 32 of the Principal Act provides the rate of wife's pension.

This clause would amend sub-section 32(1), and sub-section 32(1A) in consequence, to remove the power to determine the base rate of wife's pension, so that the base rate of all wives' pensions would be fixed at the maximum rate.

Sub-section 32(1) enables the Secretary to fix a base rate of wife's pension in respect of each pensioner which is such rate as the Secretary determines, but not exceeding the maximum rate specified in paragraph 28(1A)(b) of the Principal Act.

The provision is an anachronism. In practice, the base rates of virtually all wives' pension are fixed at the maximum rate.

By clause 2(3), this clause would come into operation on a day to be fixed by Proclamation, so that appropriate administrative arrangements can be made.

Clause 48: Heading to Division 6 of Part III

Division 6 of Part III of the Principal Act refers in its heading to the current spouse carer's pension.

In consequence of the proposed carer's pension subsuming the current spouse carer's pension, this clause would amend the heading by omitting "Spouse".

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

Clause 49: Repeal of section 33 and substitution of new section

Section 33 of the Principal Act provides for the qualification criteria concerning the spouse carer's pension. This pension is available to a husband who is personally providing constant care and attention on a long-term basis to his severely handicapped age or invalid pensioner wife.

This clause would replace section 33 with a new provision which provides for the qualification criteria concerning the proposed carer's pension.

The significant change in arrangements would be that a carer's pension would be available to a person who is personally providing constant care and attention on a long-term basis to a severely handicapped "relative" who is an age or invalid pensioner. The classes of eligible relative cover a wide range, but a person caring for a severely handicapped aged or invalid pensioner not falling within the range may still qualify for special benefit.

Approximately 2,000 persons caring for near relatives are currently receiving special benefit under Part VII of the Principal Act. Many of these persons would be able to take up a carer's pension, with the consequence of eligibility to further assistance. The carer's pension is subject to the normal pension income and assets test but the special benefit income test is stricter, and carer's pension attracts eligibility to pensioner fringe benefits whereas special benefit does not.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 74 would provide for transitional arrangements relating to the extension of spouse carer's pension to carer's pension.

Clause 50: Repeal of section 34 and substitution of new section

Section 34 of the Principal Act provides for the rate of spouse carer's pension.

In consequence of the proposed carer's pension subsuming the current spouse carer's pension, this clause would substitute a recast section 34 to reflect the change in arrangements.

The new section 34 would provide that the rate of carer's pension would be equivalent to the rate of age pension under section 28 of the Principal Act if the carer's pensioner were an age pensioner who was not permanently blind and were under the age of 70 years (and therefore subject to the normal income or assets test).

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

Clause 51: Rate of widow's pension

Section 63 of the Principal Act provides for the rate of widow's pension.

Sub-section 63(1) enables the Secretary to fix a base rate of widow's pension in respect of each pensioner which is "reasonable and sufficient, having regard to all the circumstances of the case", but not exceeding the maximum rate fixed in accordance with section 28 of the Principal Act.

The provision is an anachronism. In practice, the base rates of virtually all widows' pensions are fixed at the maximum rate.

This clause would amend sub-section 63(1) so that the base rate of a widow's pension would be fixed at the maximum rate.

By clause 2(3), this clause would come into operation on a day to be fixed by Proclamation, so that appropriate administrative arrangements can be made.

Clause 52: Funeral benefit payable to pensioner

Section 83B of the Principal Act provides for a funeral benefit to be payable to a pensioner in respect of a deceased person. Sub-section 83B(2) refers to a spouse carer's pension.

In consequence of the new carer's pension subsuming spouse carer's pension, this clause would amend sub-section 83B(2) to omit "spouse".

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

Clause 53: Interpretation

Sub-section 94(1) of the Principal Act provides definitions of terms used in Part VI of the Principal Act, which concerns family allowance.

Clause 53 would amend the definition of "prescribed educational scheme" in sub-section 94(1).

A dependent child attracting a payment under a prescribed educational scheme is disregarded for the purposes of family allowance under section 95A or 95B of the Principal Act.

The amendment would include a payment under the Secondary Allowance Scheme (SAS) as such a prescribed educational scheme.

By clause 2(7), this clause would come into operation on 15 January 1986, which is the first day of the family allowance period beginning in January 1986.

Clause 54: Family allowance

Section 95 provides for the rate of family allowance payable to a person in respect of a dependent child or dependent children.

This clause would insert two new sub-sections which would provide for an increase in the rate of family allowance where there has been a multiple birth of three or more children.

New sub-section 95(4) provides that the family allowance payable in respect of such children shall be increased by -

. where there are three children (ie triplets) - \$150 per month; and

. where there are four children or more (ie quadruplets and higher multiples) - \$200 per month.

This increase is made on 15 November 1985, which is the first day of the family allowance period commencing in November 1985.

New sub-section 95(5) provides that an increase ceases on the last day of the family allowance period in which the children reach six years of age, which is the 14th day of a month. This means that if the children reach six years of age on the 17th day of a month, family allowance will not cease to be payable until the 14th day of the following month.

Clause 55: Repeal of section 95A and substitution of new section

Section 95A of the Principal Act provides that family allowance is not to be granted in respect of a child receiving payments under a prescribed education scheme. Section 95B of the Principal Act provides that where a child is to attract payments under such a scheme, and the Department of Education notifies a date for the first payment, family allowance will cease to be payable from a date not earlier than that date.

Clause 55(1) would substitute a new section 95A to replace both sections 95A and 95B which is more flexible than the current provisions and is consistent with the current administrative practice in relation to the payments of family allowance in respect of student children.

Section 95B depends upon a notice being received from the Department of Education. If the person receiving the family allowance provides the information that the child is attracting payments under a prescribed education scheme, payment of family allowance cannot be discontinued without receipt of the formal notice from the Department of Education. This is anomalous and administratively cumbersome.

The new section 95A would not require a formal notice from the Department of Education, although administrative arrangements between Departments will be maintained.

Although no-one should be disadvantaged by the new provision, there would be some cases where undue payments of family allowance under current arrangements will be avoided.

Clause 55(2) provides for transitional arrangements under which a family allowance cannot be granted between the date on which the new section 95A is enacted and 15 January 1986, when the new section 95A can have effect.

Clause 56: Repeal of section 95B

This clause would repeal section 95B of the Principal Act in consequence of its replacement by the new section 95A.

By clause 2(7), this clause would come into operation on 15 January 1986, when the new section 95A can have effect.

Clause 57: Family allowance not payable in respect of certain student children over the age of 18 years

This clause would correct some drafting deficiencies in respect of the "savings" provision to sub-section 98(1) of the Principal Act, which precludes payment of family allowance to most student children over 18 years. It would also make that provision subject to the new section 95A.

One of the categories where family allowance was intended to be unaffected by the preclusion concerned a pensioner or beneficiary who was eligible for additional pension or benefit in respect of a student child over 18 years.

Paragraph 98(2)(b) does not cover the whole of this category, and this clause would insert a new paragraph 98(2)(aa) which would clearly cover this category.

Paragraph 98(2)(b) was intended to apply the family income supplement income test to certain persons but is deficient in this regard. This clause would substitute a recast paragraph 98(2)(b) which would remove the deficiency so that the provision can operate as intended.

Clause 57(3) would provide that clause 57(1) would apply in respect of payment of family allowance on or after 1 November 1985, when section 98 commences to operate.

By clause 2(5), clause 57(1) would come into operation on 1 November 1985.

Clause 57(2) would formally change the reference to the "Aboriginal Secondary Grants Scheme" to the "Aboriginal Secondary Assistance Scheme".

By clause 2(6), clause 57(2) would come into operation on 1 January 1986, when this change is to occur.

Clause 58: Date from which family allowance payable

Section 102 of the Principal Act provides for the date from which family allowance is payable in respect of a dependent child following lodgment of a claim for the allowance. Sub-section 102(2) provides for the special case where one person had been receiving family allowance for the dependent child and that child subsequently becomes a dependent child of another person.

This clause would recast sub-section 102(2) to make its operation clearer without changing its effect.

Clause 59: Family allowance to cease in certain circumstances

Section 103 of the Principals Act provides for the cessation of payment of family allowance upon the occurrence of certain events or in certain circumstances.

Paragraph 103(1)(b) provides for the cessation of family allowance in respect of a child where the child becomes an inmate of an institution. This is the case even where the institution does not claim family allowance in respect of the child. The relationship between family allowance and handicapped child's allowance under Part VIB of the Principal Act is such that although handicapped child's allowance can be payable where a child becomes an inmate on a temporary basis, family allowance must cease. This is anomalous.

This clause would substitute a new paragraph 103(1)(b) to mitigate this effect, by providing for the cessation of family allowance where a child becomes an inmate of an institution only if family allowance becomes payable to the institution in respect of that child. This can occur only if the institution claims family allowance, which is not usual in cases where a child is a temporary inmate.

Clause 60: Temporary absences from home

Sub-section 105KA(1) of the Principal Act provides for the situation where a child attracting a handicapped child's allowance under Part VIB is temporarily absent from the family home. But for this provision, the person who was being paid the allowance would cease to qualify to receive the allowance.

Sub-section 105KA(2), however, provides that sub-section 105KA(1) does not apply where the child temporarily absent from the family home is an inmate of an institution which receives a nursing home benefit (NHB) under Part VA of the National Health Act 1953 or a handicapped children's benefit (HCB) under Part VII of the Handicapped Persons Assistance Act 1974.

This clause would substitute new sub-sections 105KA(1) and (2).

New sub-section 105KA(1) will provide a special rule that a child may be temporarily absent from the family home for up to 28 days in any period of 12 months without affecting the entitlement of a person to a handicapped child's allowance in respect of the child.

This 28 day period is mainly intended to allow for the respite care of the child in an institution (ie to give the person receiving the allowance, and the person's family, a break from providing constant care and attention to the child) without removing entitlement to the allowance. The provision does not require the child to become an inmate of an institution during the 28 days. Accordingly, the child could be absent from the family home while the child, or the family, is on holidays.

New sub-section 105KA(2) will enable a period of temporary absence of the child from the family home over and above the 28 day period provided by the new sub-section 105KA(1) to be disregarded on a case-by-case basis.

The current bar in sub-section 105KA(2) to the disregarding of a period of absence from the family home where NHB or HCB is payable would no longer apply.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 61: Repeal of section 105M and
substitution of new section

Section 105M of the Principal Act provides that a handicapped child's allowance payable to a person in respect of the child is reduced, on a daily basis, by any amount of NHB or HCB payable in respect of the child, on a daily basis, where the child becomes an inmate of an institution.

The daily rates of NHB and HCB are greater than the daily rate of handicapped child's allowance.

This clause would substitute a new section 105M which would provide that handicapped child's allowance is not payable in respect of a child, on a daily basis, where NHB or HCB is payable in respect of the child on particular days, after the expiration of the 28 day "respite care" period.

By clause 2(5), this clause would come into operation on 15 November 1985.

Clause 62: Cessation of handicapped child's allowance by reason of child ceasing to be a dependent child

Section 105QB of the Principal Act provides for the cessation of payment of handicapped child's allowance in certain circumstances. Sub-section 105QB(3) refers to a direction under sub-section 105KA(1) of the Principal Act.

In consequence of the restructuring of sub-sections 105KA(1) and(2) by this Bill, this clause would change the reference to sub-section 105KA(1) to sub-section 105KA(2)

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 63: Rate of unemployment or sickness benefit

Section 112 of the Principal Act provides for the rate of unemployment or sickness benefit applicable to a beneficiary.

Clause 64(1)(a) would restructure the current rates of benefit under sub-section 112(1) applicable to beneficiaries who are aged from 16 to 21 years, are single and are without children. The new rates would be -

- . new paragraph 112(1)(a): a "junior rate" of benefit applicable to beneficiaries aged from 16 to 18 years - \$50 per week;
- . new paragraph 112(1)(aa): an "intermediate rate" of unemployment benefit applicable to beneficiaries aged from 18 to 21 years - \$88.20 per week; and
- . new paragraph 112(1)(b): an "adult rate" of unemployment benefit applicable to beneficiaries aged over 21 years - \$91.45 per week.

Clauses 63(1)(b) and (c) would make formal amendments to paragraphs 112(1)(c) and (d) to up-date the indexed rates in those provisions.

Clause 63(3) would provide that clause 63(1) would apply to payments of benefit falling due on or after 1 November 1985.

Clause 63(1)(d) would substitute a new sub-section 112(5). Sub-section 112(5) provides for an increase in the base rate of benefit applicable to a person by way of additional benefit in respect of each dependent child of a beneficiary.

New sub-section 112(5) would increase the rate of additional benefit in respect of a dependent child from \$14 per week to \$16 per week.

However, the new provision would provide that the rate would be \$14 per week in respect of a dependent child who is a "prescribed student child" (see notes to clause 41(1)(d) concerning this term).

Clause 63(1)(e) would amend sub-section 112(6) in consequence of the amendment to sub-section 112(5), to reflect the increase in the rate of additional benefit from \$14 per week to \$16 per week in respect of a dependent child, except in the case of a dependent child who is a "prescribed student child".

Clause 63(3) would provide that clause 63(1) would apply in respect of payments of benefit falling due on or after 1 November 1985.

By clause 2(5), clause 63(1) would come into operation on 1 November 1985.

Clause 63(2)(a) would amend sub-section 112(4B), which provides for "mother's/guardian's allowance", ie an increase in the base rate of benefit applicable to a beneficiary who is a sole parent with one or more dependent children.

The amendment would increase "mother's/guardian's allowance" from \$10 per week to \$12 per week.

Clause 63(2)(b) would amend sub-section 112(4D) in consequence of the amendments to sub-section 114(4B).

Clause 63(4) would provide that the amendments made by clause 63(2) would apply to each payment of benefit falling due on or after 1 May 1986.

By clause 2(8), clause 63(3) would come into operation on 1 May 1986.

Clause 63(5) would prevent each of the rates of benefit specified in paragraphs 112(1)(b), (c) and (d) becoming a "substituted rate" for the purposes of section 112AA of the Principal Act on 1 November 1985, but would enable indexation to resume on 1 May 1986. Section 112AA provides for indexation of some rates of benefit and such an indexed rate becomes a substituted rate. This clause would ensure that section 112AA will operate as intended.

Clause 64: Rent assistance

Section 112A of the Principal Act provides for an allowance by way of rent assistance of up to \$15 per week, payable to a sickness beneficiary after the first 6 weeks of receipt of benefit. The allowance is subject to a strict income test, which reduces the allowance by 50% of the income of a beneficiary.

This clause would amend section 112A to extend rent assistance to certain unemployment and special beneficiaries.

Clause 64(1)(d) would substitute a new sub-section 112A(3) which would extend rent assistance to certain unemployment and special beneficiaries. The unemployment and special beneficiaries concerned are -

- . those aged over 25 years;
- . those who are married or have dependants; and
- . those who are over 18 years and under 25 years who are single and have no dependants and who are living away from a parent's home on a permanent or indefinite basis.

Clause 64(1)(a) would insert a definition of "parent" in sub-section 112A(1) for this purpose, which would include a step-parent or a guardian.

Clause 64(1)(c) would extend the definition of "prescribed period" in sub-section 112A(1). This definition specifies the period for which rent assistance is payable, and currently applies only to sickness benefit and excludes the first six months of payment, unless transferring from another Commonwealth income support payment which includes rent assistance.

The extension of the definition, by new paragraphs (c) and (d), specifies the period in which rent assistance is payable to an unemployment or special beneficiary so as to exclude the first 6 months in which the beneficiary is qualified to receive that benefit or a similar payment, unless transferring from another Commonwealth income support payment which includes rent assistance.

Clause 64(1)(b) would make a consequential amendment to the definition of "prescribed period".

Clause 64(1)(e) would amend sub-section 112(3A) which provides that the rate of rent assistance for which a sickness beneficiary is eligible (before the application of the income test) is the lesser of \$15, or 50% of the weekly rent in excess of \$10. The amendment would continue these arrangements for a sickness beneficiary.

An unemployment or special beneficiary would be eligible for a rate of rent assistance of up to \$10 per week. The rate would be the lesser of \$10, or 50% of the weekly rent in excess of \$10.

Clause 64(2) would provide that the amendments to section 112A would apply to payments of unemployment or sickness benefit falling due on or after 1 May 1986.

By clause 2(8), clause 64(1) would come into operation on 1 May 1986.

Due to the way in which the definition of "prescribed period" would be defined for the purposes of section 112A, an unemployment or special beneficiary who was eligible under the new arrangements for rent assistance on or after 1 May 1985 could be entitled to rent assistance upon the expiration of 6 months of eligibility. This means that such a beneficiary could become entitled to payment of the allowance immediately if the 6 month rule is satisfied. An unemployment or special beneficiary who had, before 1 May 1986, transferred from another Commonwealth income security payment which included rent assistance could be entitled to the allowance on the same basis.

Clause 65: Income test

Section 114 of the Principal Act provides for the income test applicable to unemployment or sickness benefit. Sub-section 114(1) provides that the rate of benefit is reduced -

- . where the income of the beneficiary is \$70 per week or less - by 50% of the amount of income over \$20 per week; and
- . where the income of the beneficiary is over \$70 per week - by \$25 plus the amount of income over \$70 per week.

The effect of these rules is that there is a "free area" of income of \$20 per week which a beneficiary may receive before the income test applies.

This clause would amend sub-section 114(1) to extend the "free area" to \$30 per week before the income test applies.

Clause 65(2) would provide that clause 65(1) would apply to payments of benefit falling due on or after 1 May 1986.

By clause 2(8), clause 65(1) would come into operation on 1 May 1986.

Clause 66: Waiting period

Section 119 of the Principal Act provides for a waiting period in most cases before a sickness or an unemployment benefit becomes payable to a beneficiary.

This clause would amend section 119 so that two additional classes of beneficiary would not have to undergo a waiting period. The first category comprises beneficiaries who were in receipt of a "prescribed pension" immediately before becoming qualified to receive an unemployment or sickness benefit. The second category comprises beneficiaries who were married to persons who were in receipt of a "prescribed pension" immediately the beneficiary became qualified to receive an unemployment or sickness beneficiary, where the prescribed pension had been increased by reference to the beneficiary (ie where the beneficiary was a dependent spouse and the husband or wife of the beneficiary had been receiving a "prescribed pension" at the combined married rate).

The result of the amendments is that a person who has been dependent upon an income security payment will not have the continuance of their income security payments disrupted by undergoing a waiting period.

Clauses 66(1)(c) and (d) would amend sub-paragraph 119(1)(c)(ii), and would insert a new paragraph 119(1)(d), which would have this effect in relation to a person described above who has become qualified to receive an unemployment benefit, provided the claim is lodged within 14 days.

Clause 66(1)(e) would substitute a new sub-section 119(5) which would have this effect in relation to a person described above who has become qualified to receive a sickness benefit, provided the claim is lodged within 13 weeks.

Clauses 66(1)(a) and (b) would make consequential amendments to sub-section 119(1).

Clause 66(2) would provide that clause 66(1) would apply to payments of benefit falling due on or after 1 November 1985.

By clause 2(5), clause 66(1) would come into operation on 1 November 1985.

Clause 67: Payment and calculation of instalments
of certain pensions

Section 135TBA of the Principal Act provides for rules concerning the payment and calculation of instalments of pensions.

Sub-section 135TBA(10) is a special provision which affects the age or invalid pension payable to a blind pensioner who is receiving a war pension (other than a repatriation service pension). There is no bar to the dual payment of such pensions, but this provision limits the amount of the age or invalid pension otherwise payable.

The limitation formula refers to the amount per fortnight of additional pension applicable to an age or invalid pensioner, which is currently \$28 per fortnight (\$14 per week).

In consequence of the increase in additional pension from \$14 per week (\$728 per annum) to \$16 per week (\$832 per annum) proposed by this Bill, sub-section 135TBA(10) would be amended.

Clauses 67(a) and (b) would amend the sub-section to change the amount of \$28 (twice \$14) to \$32 (twice \$16), and to change the amount of \$2,028 (the pension "free area" of \$1,300 per annum plus the additional pension of \$728 per annum) to \$2,132 (the pension "free area" of \$1,300 per annum plus the increased additional pension of \$832 per annum).

Clause 67(c) would insert a new sub-section 135TBA(10A) which would provide for the case where an age or invalid pensioner does not have a dependent child who is not a "prescribed student child".

In this case, the amounts of \$32 and \$2,132 would, in effect, be regarded as amounts of \$28 and \$2,028, respectively.

Clause 67(2) would provide that clause 67(1) would apply to instalments of pension falling due on or after 1 November 1985.

By clause 2(5), clause 67(1) would come into operation on 1 November 1985.

Clause 68: Insertion of new section

This clause would insert a new section 135TJA in the Principal Act, which would prescribe two new rules in situations when a pension, or a payment based on pension entitlement, ceases to be payable, or becomes payable at a lower rate, without the need for the formal process of a determination under section 135TJ of the Principal Act to cancel the payment or reduce the rate at which the payment is payable .

The consequence of these changes in arrangements would be that any payment after the automatic cancellation, or reduction in rate, would either be wholly or partially recoverable at law. The importance of sub-section 140(1) of the Principal Act, which creates a debt where a person does not comply with a requirement under the Principal Act, would consequently be significantly reduced.

New sub-section 135TJA(1) provides for the case in which a person is required to notify a change in circumstances, or the occurrence of an event, where the person ceases to be qualified or eligible to receive the payment (eg where a widow in receipt of a widow's pension marries and so ceases to qualify for that pension) and the person duly notifies the change in circumstances or the occurrence of the event. This rule will apply only to basic qualification or eligibility criteria, and not to matters affecting the rate of payment to a person who is qualified or eligible for the payment (eg the income or property of the person). In that case, the provisions of section 135TJ of the Principal Act will remain applicable.

Where the new provision applies, payment ceases to be payable immediately after the period allowed (normally 14 days) for notification of the change in circumstances or the occurrence of the event.

New sub-section 135TJA(2) provides for the case in which a person does not duly notify a change in circumstances, or the occurrence of an event, where the person ceases to be qualified or eligible to receive the payment or where the rate of payment should be reduced (eg where the income or property of the person increases sufficiently to affect the rate of payment).

In such a case, the payment ceases to be payable on the day after the day of the change in circumstances or the occurrence of the event.

A person complying with the notification requirements in the Principal Act will as a result continue to be treated more liberally than a pensioner not complying with those requirements. There is, accordingly, an incentive for a person to comply with the notification requirements.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 69: Payments received under the New Enterprise Incentive Scheme - effect where recipient is in receipt of a particular pension, benefit or allowance and spouse of recipient is not in receipt of wife's pension or carer's pension

Section 139A of the Principal Act provides for special arrangements which restrict the dual receipt of Commonwealth payments where a married person is receiving payments under the New Enterprise Incentive Scheme and the spouse of the person is not in receipt of a wife's pension or a spouse carer's pension.

In consequence of the new carer's pension subsuming spouse carer's pension, this clause would amend section 139A to reflect that change in arrangements.

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

Clause 70: Payments received under the New Enterprise Incentive Scheme - effect where spouse of recipient is in receipt of wife's pension or carer's pension

Section 139B of the Principal Act provides for special arrangements which restrict the dual receipt of Commonwealth payments where a married person is receiving payments under the New Enterprise Incentive Scheme and the spouse of the person is a wife's pensioner or a spouse carer's pensioner.

In consequence of the new carer's pension subsuming spouse carer's pension, this clause would amend section 139B to reflect that change in arrangements.

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

Clause 71: Recovery of overpayments

Section 140 of the Principal Act provides for the recovery of certain overpayments made under the Principal Act.

Decisions of the Federal Court of Australia have shown weaknesses in section 140. The decisions, Director-General of Social Services v. Hangan (1982) 45 ALR 23 and Director-General of Social Services v. Hales (1983) 47 ALR 281, have interpreted section 140 in such a way as to create discretions in relation to the application of section 140. This result is not wholly satisfactory.

Clauses 71(a) and (b) would amend section 140 so as to make the application of section 140 mandatory, unless the proposed new "waiver" provision (see notes to clause 73, new section 146) is applied, and these two decisions will no longer be applicable to that provision.

The intention is that where there is an overpayment under the Principal Act, the overpayment must either be -

- . recovered by a refund or by legal proceedings in a court;
- . recovered by direct deduction from continuing social security payments; or
- . dealt with under the "waiver" provision.

Clause 71(c) would omit sub-section 140(5), which provides for the waiver of an overpayment of mobility allowance under Part VIIIB of the Principal Act, in consequence of the introduction of the proposed new "waiver" provision.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 72: Repeal of section 143A

This clause would repeal section 143A of the Principal Act in consequence of its relocation as a new section 145 (see notes to clause 73).

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 73: Insertion of new sections

This clause would insert new sections 145 and 146 in the Principal Act.

New section 145 will relocate the current section 143A, and clarify the relationship between social security income support payments and repatriation pensions (and other payments).

A particular difficulty arises in this area in consequence of some repatriation payments being made, or increased, on a retrospective basis. Under current arrangements, where the result of such payments is that a social security payment would have been made at a lower rate if the repatriation payment had been made other than retrospectively, the effective overpayment of the social security payment can be recovered from the arrears of the retrospective repatriation payment under section 120B of the Repatriation Act 1920.

This effective overpayment is currently, however, not a legally recoverable overpayment.

Section 145 will create a legally recoverable overpayment of the social security payment in those circumstances.

New section 146 provides for a "waiver" provision which covers the area of section 70C of the Audit Act 1901 in relation to social security payments and also provides for a uniform limitation of actions rule for social security overpayments.

Sub-section 146(1) is the "waiver" provision, and corresponds to section 70C of the Audit Act 1901. The insertion of this provision in the Principal Act will improve administrative efficiency within the Department of Social Security.

Sub-sections 146(2) and (3) provide for a uniform limitation of actions period in social security matters.

As a general rule, sub-section 146(2) provides for a limitation period of 6 years. This means that legal proceedings for the recovery of an overpayment or other debt arising under the Principal Act cannot be commenced after 6 years from the creation of the overpayment or debt.

The period of 6 years is the common period in which legal proceedings for the recovery of debts are statute-barred under State and Territory laws in Australia. However, there are important exceptions and differences between these laws, and it is desirable that persons in receipt of social security payments be treated on a uniform basis throughout Australia. The general rule will provide such a uniform basis in respect of the limitation of actions.

It is common in State and Territory laws in Australia to provide for the extension of the limitation period where there has been some element of misrepresentation or fraud, whether innocent or otherwise.

Sub-section 146(3) would provide for such circumstances.

Sub-section 146(4) will enable debts arising due to the operation of section 86 of the Repatriation Act 1920 to be dealt with under sub-section 146(1) in appropriate cases.

By clause 2(5), this clause would come into operation on 1 November 1985.

Clause 74: Transitional provisions relating to carer's pension

Clause 74(1) would provide for the customary period of grace in which a claimant for the new carer's pension can lodge a claim for the pension and be paid arrears of pension. The concession cuts out on 1 February 1986, 3 months after the new pension comes into being on 1 November 1985.

The concession would apply only in respect of claimants for the new pension who would not have been eligible for a spouse carer's pension if that pension had continued.

Clause 74(2) would provide that a person qualified to receive a spouse carer's pensioner immediately before 1 November 1985 would be qualified to receive a carer's pension after that date.

By clause 2(5), this clause would come into operation on 1 November 1985, the date of introduction of the new carer's pension.

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