1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Social Security
Senator the Hon Graham Richardson)

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SOCIAL SECURITY AND VETERANS' AFFAIRS
LEGISLATION AMENDMENT ACT 1990

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill would give effect to a number of initiatives announced as Government policy in the 1990 election campaign and effect other measures in the portfolios of Social Security and Veterans' Affairs.

The legislation involved is the Social Security Act 1947 and the Veterans' Entitlements Act 1986.

SOCIAL SECURITY ACT 1947

Labour Market Initiatives

. The rules relating to postponement and similar non-payment periods would be tightened. The period of non-payment would be increased in respect of the second and subsequent 'offences' against subsection 126(1) of the Social Security Act 1947. In addition, failure to respond to Departmental correspondence or failure to attend interview would be included as events which attract a period of non-payment. These measures would commence on 20 September 1990.

Estimated program savings from these measures are $3.2m in 1990-91 and $6.5m in 1991-92.

. The benefits assets test would be extended to beneficiaries under 25 years of age and recipients of job search allowance who meet the independence criteria. A parental assets test would be applied to recipients of job search allowance who do not meet the independence criteria. These measures would commence on 20 September 1990.

Estimated program savings from these measures are $4.1m in 1990-91 and $5.1m in 1991-92.

. Beneficiaries and job search allowance recipients who are under 21 years of age and who have no dependent children would be paid the same rate whether they are single or married. Spouses of these beneficiaries would be required to qualify in their own right before payment could be made. The rate of benefit would still be subject to the income test applicable to married beneficiaries. These measures would commence on 20 September 1990. Married persons under 21 without dependent children, who were in receipt of benefit or job search allowance at the married rate immediately before 20 September 1990, will not be affected by this change for as long as they remain continuously qualified for the benefit or allowance.

Estimated program savings from these measures are $0.6m in 1990-91 and $1.6m in 1991-92.

. An "at home" rate of $69.20 a week would be payable to unmarried persons aged 18-21 years without dependants who live at a parent's home. The rate of $105.15 a week would be payable to persons in similar circumstances who do not live at a parent's home. This measure would commence on 20 September 1990 and would apply to persons who lodge claims on or after that date.

Estimated program savings from this measure are $30.2m in 1990-91 and $63.6m in 1991-92.

. Unemployment beneficiaries would be required to attend an office of the CES when requested to do so. Should a beneficiary fail to comply with such a request, payment of benefit would cease. This measure would commence on 20 September 1990.

Estimated program savings from this measure are $2.2m in 1990-91 and $2.8m in 1991-92.

. From 20 September 1990, the rate payable to a married beneficiary or recipient of job search allowance with a spouse in receipt of an AUSTUDY allowance would be limited to half the combined married rate.

Estimated program savings from this measure are $1.1m in 1990-91 and $1.4m in 1991-92.

From 20 September 1990, an additional 'free area' of up to $30 a fortnight would be allowed for a beneficiary couple so that each member of the couple would be able to disregard an extra $30 a fortnight of income from personal exertion.

Estimated program costs of this measure are $0.8m in 1990-91 and $1.0m in 1991-92.

Maintenance

From 20 September 1990 the requirement currently applying to sole parents pensioners to seek reasonable maintenance would be extended to all other pensioners and beneficiaries. Where the pensioner or beneficiary fails to take the required maintenance action, payment of additional pension or additional benefit may cease.

Estimated program savings from this measure are $6m in 1990-91 and $13m in 1991-92.

Portability of Pensions

From 1 July 1990, portability of class B widow's pension and wife's pension would be restricted to 12 months. Payment would cease after 12 months' absence where a person leaves Australia on or after 1 July 1990. Where the person left Australia before 1 July 1990, payment would cease on 30 June 1991.

Estimated program savings from this measure are $29.0m in 1990-91 and $28.7m in 1991-92.

Sickness benefit

From 20 September 1990, the education leaver deferment period would apply to persons who claim sickness benefit in the same way as it currently applies in relation to persons claiming unemployment benefit or job search allowance.

Estimated program savings from this measure are $0.1m in 1990-91 and $0.1m in 1991-92.

Double payment of benefit

Persons affected by the Newcastle earthquake and other 'major disasters' declared to be so by the Minister for Social Security would be entitled to one week of double payment of benefit. This measure would be taken to have commenced on 28 December 1989, the date of the Newcastle earthquake, and would apply to claims for benefit made on or after that date.

Future program costs cannot be ascertained.

Family Payments

In cases of multiple births of three or more children, where a person has claimed family allowance and family allowance supplement within 13 weeks of the multiple births, the person would be entitled to payment of family allowance and family allowance supplement from the date of the births. This measure would be taken to have commenced on 1 November 1989.

Estimated program costs of this measure are negligible.

Compensation

From 1 November 1990, a person who has a work related accident or illness would be required to make a compensation claim as a pre-condition to eligibility for payment under the Social Security Act 1947.

Estimated program savings from this measure are $0.6m in 1990-91 and $0.8m in 1991-92.

Other

Other minor and technical amendments with no cost implications.

BOTH THE SOCIAL SECURITY ACT 1947
AND THE VETERANS' ENTITLEMENTS ACT 1986

Income

In assessing the income of a person under the Social Security Act 1947, amounts paid by way of compensation by the Republic of Austria to persons who were victims of National Socialist persecution would be exempt. This measure would be taken to have commenced on 4 December 1989.

Estimated program costs of this measure are $0.35m in 1989-90, $0.57m in 1990-91 and $0.54m in 1991-92.

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1990

PART 1 - INTRODUCTION

Clause 1 : Short Title

This clause would provide that the amending Act is referred to as the Social Security and Veterans' Affairs Legislation Amendment Act 1990.

Clause 1 would commence on the day of Royal Assent.

Clause 2 : Commencement

This clause would provide that the dates of commencement of the clauses of the Bill would be shown by note in italics at the foot of each clause.

The date on which a clause would come into operation is indicated in this memorandum at the foot of the notes on the relevant clause.

Clause 2 would commence on the day of Royal Assent.

Clause 3 : Application

This clause would provide for the application of the various clauses in the Bill. The effect of each clause is referred to in the notes on each relevant clause in the memorandum.

PART 2 - AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Clause 4 : Principal Act

This clause would provide that, in this part of the amending Act, the Social Security Act 1947 is referred to as the Principal Act.

Clause 4 would commence on the day of Royal Assent.

Clause 5 : Interpretation

This clause would amend section 3 of the Principal Act which provides general definitions of terms used throughout the Act.

Clause 5(a) would amend subsection 3(1) of the Principal Act by inserting paragraph (kb) after paragraph (ka) of the definition of "income" in that subsection to provide that any payments made by the Republic of Austria as compensation for Nazi persecution would be disregarded from a person's income when calculating a person's entitlement to Australian income-tested pensions or benefits. This would be consistent with the treatment afforded restitution payments made by the Federal Republic of Germany.

Clause 5(a) would be taken to have commenced on 4 December 1989 and would apply in relation to payments that fall due on or after that date.

Clause 5(b) would insert a definition of "AUSTUDY allowance" into subsection 3(1) of the Principal Act. This definition is relevant for the purpose of amendments made by clauses 9 and 13 to sections 118 and 122 respectively of the Principal Act.

"AUSTUDY allowance" would be defined as meaning a benefit paid under the AUSTUDY scheme.

Clause 5(b) would commence on 20 September 1990 and would apply in relation to payments that fall due on or after that date.

Clause 6 : Rate of pension

Clause 6 would insert new subsections 33(4A) and (4B) which would require certain persons to take maintenance action.

New subsection 33(4A) would provide that:

- where the person is entitled to claim maintenance in respect of a child or children; and
- the Secretary considers it reasonable to have taken that action; and
- the person has not taken reasonable action;

then mother's guardian's allowance is not payable to the person.

New subsection 33(4B) would make the same provision with respect to additional pension payable in respect of children.

The provisions do not impose an obligation to take action for spousal maintenance.

Clause 6 would commence operation on 20 September 1990 and would apply in relation to payments that fall due on or after that date.

Clause 7 :Insertion of new section 60C - Entitlement to receive certain other pensions ceases after 12 months' absence

Clause 7 would insert a new section 60C into the Principal Act. This section would restrict the portability of wife's and certain class B widow's pensions.

The provisions would restrict portability no matter which country the person moved to after leaving Australia. However, there would be a power for the Minister to specify a country to which the provisions do not apply. A person who moves to a specified country from Australia, and who then moves only within specified countries, would not be affected by the provisions.

The Minister's decision to specify such a country would be subject to Parliamentary disallowance.

New subsection 60C(1) would provide that where:

- a person leaves Australia on or after 1 July 1990; and
- before leaving, the person received a wife's pension or a class B widow's pension; and
- the person is absent from Australia for longer than 12 months,

the person is no longer qualified for that payment whilst the person remains absent from Australia.

New subsection 60C(2) would provide for circumstances where the limitation on portability would not apply.

If a person moves from Australia to a specified country; or from Australia, and then from specified country to specified country (without living in a non-specifed country), the person would not be subject to portability restrictions.

If, however, the person moves from Australia to a non-specified country the portability restrictions in subsection (1) would apply.

If the person moved from a specified to a non-specified country the person would be subject to the new restriction. If that move takes place more than 12 months from the time the person left Australia, the person's payments would cease. If the move took place within 12 months of leaving Australia, then payments would cease 12 months from the time when the person left Australia.

If the person moved from a non-specified country to live in a specified country within 12 months of departure from Australia, the portability provisions in subsection (1) would not apply. However, if the move from non-specified to specified country took place later than 12 months from the original departure from Australia, then payments would cease.

New subsection 60C(3) would provide for the application of the restrictions on portability. The restrictions would apply to a person outside Australia on 1 July 1990 as if the person had left Australia on that day.

New subsection 60C(4) would provide that an absence from Australia would end if the person returns (even if only temporarily) from any country.

New subsection 60C(5) would ensure that a person who would otherwise enjoy the benefit of the savings provision, would not lose the benefit of that provision by stopping on transit between countries.

New subsection 60C(6) would provide for the Minister to specify (by notice in the Gazette) a foreign country for the purposes of the section.

New subsection 60C(7) would provide that the above notice would be subject to Parliamentary disallowance.

New subsection 60C(8) would define 'specified foreign country' as a country in respect of which a notice under new subsection 60C(6) is in force.

Clause 7 would commence on 1 July 1990.

Clause 8 : Payment of allowance

Clause 8 would amend subsection 76(3) of the Principal Act and insert subsection 76(4). Subsection 76(3) of the Principal Act provides for the payment of arrears of family allowance supplement to the date of birth of the child where a claim is lodged within 4 weeks of birth. Clause 8 would provide that where 3 or more children are born during the same multiple birth and a claim is lodged within 13 weeks of the multiple birth the claim will be taken to have been lodged on the date of the births. This will mean that where a claim is lodged within this period arrears will be paid from the date of the multiple birth.

Clause 8 would be taken to have commenced on 1 November 1989 and would apply in relation to births on or after that date.

Clause 9 : Rate of unemployment and sickness benefit

Section 118 of the Principal Act sets out the rates payable to persons qualified for unemployment and sickness benefit and, by virtue of subsection 117A(1) of that Act, job search allowance.

Clause 9(1)(a) would provide for changes to the rates of benefit and job search allowance payable to some people under 21 years of age. The new rules would be as follows:

- For a married beneficiary who is aged under 18 years and who does not have any dependent children, new paragraph 118(1)(b) would provide for a rate of benefit of $57.60 per week. This is the same rate of benefit currently payable to a beneficiary who is an unmarried person aged under 18 years and who does not have any dependent children. This compares to $117.70 per week currently payable.

- For a married beneficiary who is aged 18 to 20 years and who does not have any dependent children, new paragraph 118(1)(ba) would provide for a rate of benefit of $105.15 per week. This compares to $117.70 per week currently payable.

- For an unmarried beneficiary who is aged 18 to 20 years, who does not have any dependent children and who lives at a home of his or her parent or parents, new paragraph 118(1)(bb) would provide for a rate of benefit of $69.20 per week. This rate is in line with AUSTUDY rates payable to persons in comparable circumstances. This compares to $105.15 per week currently payable.

- For an unmarried beneficiary who is aged 18 to 20 years, who does not have any dependent children and who does not live at a home of his or her parents, new paragraph

118(1)(bc) would preserve the rate of benefit of $105.15 per week currently payable to unmarried 18 to 20 year old beneficiaries regardless of where they live. This is consistent with AUSTUDY rates payable to persons in comparable circumstances.

Clause 9(1)(b) would amend paragraph 118(1A)(c) of the Principal Act to ensure that the same rate of benefit would be payable to a married beneficiary irrespective of whether the beneficiary's spouse is in receipt of an AUSTUDY allowance or a prescribed pension (as defined in subsection 3(1) of the Principal Act) where the couple incur, or are likely to incur, greater living expenses because they have to live apart indefinitely due to one or both of them suffering from an illness or infirmity.

Clause 9(1)(c) would omit existing subsection 118(2), substitute a new subsection 118(2) and insert a new subsection 118(2AA). These amendments would ensure that a married beneficiary receives the same rate of benefit irrespective of whether, on the one hand his or her spouse is in receipt of an AUSTUDY allowance or of a prescribed pension, or would on the other hand, apart from section 153 of the Principal Act, be eligible to receive a prescribed pension.

New subsection 118(2) would provide that a married beneficiary who is aged 21 years or more and has no dependent children would be entitled to have his or her rate of benefit increased by an amount equal to the rate specified in paragraph 118(1)(f) of the Principal Act - currently $117.70 per week if certain circumstances are satisfied. Those circumstances are satisfied where the spouse of the beneficiary:

- is at least 21 years old;
- is an Australian resident living in Australia; and

is not in receipt of:

- an AUSTUDY allowance;
- a prescribed pension; or
- apart from section 153 of the Principal Act, eligible to receive a prescribed pension.

The Secretary to the Department of Social Security must also consider that the spouse is substantially dependent on the beneficiary. The rate of benefit can be increased by an amount not exceeding the rate specified in paragraph 118(1)(f) where a spouse is not substantially dependent.

New subsection 118(2AA) is similar in operation to new subsection 118(2) except that it would apply to married beneficiaries or to married recipients of job search allowance regardless of their age if they have a dependent child.

Subsection 118(4) of the Principal Act currently provides that, subject to sections 121 and 122 of that Act, if the rate of benefit payable to a married beneficiary whose spouse is not getting a prescribed pension would be less than the rate payable if the beneficiency was single, then the equivalent single rate of benefit is payable. This provision would currently apply where the beneficiary's spouse receives an AUSTUDY allowance.

Clause 9(1)(d) would provide that subsection 118(4) would not apply if the beneficiary's spouse is in receipt of an AUSTUDY allowance. This brings treatment of a married beneficiary whose spouse receives AUSTUDY into line with the treatment of a married beneficiary whose spouse receives a prescribed pension.

Clauses 9(1)(e) and 9(1)(f) would insert new subsections 118(5A) and (11A) which would require certain persons to take maintenance action in order to qualify for payment of guardian's allowance or additional benefit in respect of children.

Clause 9(1)(e) would provide that:

- where the person is entitled to claim maintenance in respect of a child or children; and

- the Secretary considers it reasonable to have taken that action; and

- the person has not taken reasonable action;

then guardian's allowance is not payable to the person.

Clause 9(1)(f) would make the same provision with respect to additional benefit in respect of children.

The provisions do not impose an obligation to take action for spousal maintenance.

Clause 9(1) would commence on 20 September 1990 and would apply in relation to payments that fall due on or after that date.

Clause 9(2) would amend paragraph 118(5)(b) of the Principal Act. Section 118 of the Principal Act provides for the rate of benefit payable to a beneficiary. Subsection 118(5) provides for an addition to the rate of benefit where the beneficiary is a sole parent who has one or more children who fulfil a number of qualification criteria listed in paragraphs 118(5)(a) and 118(5)(b).

When paragraph 118(5)(b) was enacted in section 59 of the Social Security and Veterans' Affairs Legislation Amendment Act (No.4) 1989 it required that a child, who attracted payment because he or she was, among other things, a person to whom a benefit under Part XIII of the Principal Act was payable, had to be living with the sole parent beneficiary. This was erroneously included as a criterion and is a requirement that cannot be administered by the Department of Social Security.

Clause 9(2) would provide for the repeal of the erroneously included criterion.

Clause 9(2) would be taken to have commenced on 1 January 1990 and would apply in relation to payments that fall due on or after that date.

Clause 9(3) would provide that, where a person who:

- is married; and
- has not turned 21; and
- has no dependent child, and

was in receipt of an unemployment benefit, job search allowance or a sickness benefit at the normal married rate immediately before 20 September 1990, his or her benefit rate is not to be reduced to either of the new married rates specified by new paragraphs 118(1)(b) and (ba) (see clause 9(1)(a) of this Bill) for as long as the person remains qualified for that benefit.

Clause 9(3) would commence on 20 September 1990.

Clause 10 : Indexation of unemployment and sickness benefits etc

Section 119 of the Principal Act provides for the indexation of the various rates of unemployment and sickness benefit payable to a person qualified to receive payment.

Clause 10 would insert a reference to (b), (ba), (bb) and (bc) after (a) in the definition of "junior or intermediate rate" in subsection 119(1) of the Principal Act.

This amendment would enable the rate specified in new paragraphs 118(1)(b), (1)(ba), (1)(bb) and (1)(bc) (inserted by clause 9(1)(a)) to be indexed on 1 January of each year, commencing on 1 January 1991, in line with movements in the Consumer Price Index.

Clause 10 would commence on 20 September 1990 and would apply in relation to claims lodged on or after that date.

Clause 11 : Parental assets and income tests

Clause 11 would amend section 121A of the Principal Act to introduce a parental assets test for job search allowance recipients and sickness beneficiaries under 18 who do not satisfy certain criteria relating to independence from parental support. Clause 11(a) would insert new subsections 121A(2A) and (2B). New subsection 121A(2A) would limit the rate payable to $26.90 if the value of the parent's property exceeds a certain indexed amount, currently set at $322,750. This is the same property threshold value that applies for the purposes of the family allowance supplement assets test. New subsection 121A(2B) would provide that the remaining $26.90 is still to be subject to the normal income test. Clauses 11(b), (c) and (d) would amend subsections 121A(3) and (4) of the Principal Act to

ensure that the new parental assets test would be applied before the parental income test and the normal income test where they are also applicable.

Clause 11 would commence on 20 September 1990 and would apply in relation to payments that fall due on or after that date.

Clause 12 : Indexation of parental assets test threshold

Clause 12 would insert section 121AA into the Principal Act. This would provide for the indexation of the amount specified in new subsection 121A(2A). The indexation rules would provide for the automatic increase of that amount by reference to movements in the Consumer Price Index over previous June quarters.

The amount specified in subsection 121A(2A) of the Principal Act would be indexed on 1 January 1990 and each succeeding period of 12 months.

Clause 12 would commence on 20 September 1990.

Clause 13: Income and assets test

Section 122 of the Principal Act provides for the income and assets tests applicable to recipients of benefits under Part XIII of that Act.

Clause 13(1) would amend subsection 122(2) of the Principal Act by inserting the words "an AUSTUDY allowance or" after "in receipt of".

The effect of this amendment would be to ensure that where the spouse of a married beneficiary is in receipt of an AUSTUDY allowance the rate of benefit payable to a beneficiary will be reduced by only one half of what would otherwise be the case

when applying the benefit income test. This brings treatment of a married beneficiary whose spouse receives AUSTUDY into line with the treatment of a married beneficiary whose spouse is in receipt of a prescribed pension (as defined in subsection 3(1) of the Principal Act).

Clause 13(1) would commence on 20 September 1990 and would apply in relation to payments that fall due on or after that date.

The main effect of Clause 13(2) would be to provide for beneficiary couples to have up to an extra $30 per fortnight disregarded for the purposes of the income test, where both partners have earnings from personal exertion. The effective maximum amount which may be disregarded (known as the "free area") would therefore be $60 in a fortnight where neither spouse had income from personal exertion, $90 where only one had such income and $120 where both had such income.

Clause 13(2)(a) would make a technical amendment to subsection 122(4) of the Principal Act to make it clear that income of a married person includes income of the person's spouse other than receipt of an AUSTUDY allowance for the purposes of the definition of 'threshold rate' in subsection 122(11). This would ensure that the definition works correctly for the purposes of the remaining amendments to be made by this clause.

Clause 13(2)(b) would substitute a new definition of 'threshold rate' for that in subsection 122(11) of the Principal Act. This definition effectively sets the income test free area for a married person, that is, the amount of his or her income that may be disregarded. 'Threshold rate' would now mean, in relation to a married person who has an income, $60 per fortnight. This flat rate would replace the previous threshold rate which incorporated a basic component of $60 as well as an additional component of $30 for beneficiary couples whose

income in a particular fortnight included income from the personal exertion of either or both partners. The $30 additional component of the former definition would be absorbed into and increased in the new subsection 122(12) to be inserted by clause 13(2)(c).

Clause 13(2)(c) would insert new subsection 122(12) to provide for increases to a married person's threshold rate which, as provided by clause 13(2)(b), would now be a flat $60 per fortnight.

New paragraph 122(12)(a) would provide that, where either the person or his or her spouse (but not both) has income in a fortnight from personal exertion, the person's threshold rate is increased by so much of that income as does not exceed $30 per fortnight. The maximum free area, therefore, would be $90 per fortnight.

New paragraph 122(12)(b) would provide that, where both the person and his or her spouse have income from personal exertion, the person's threshold rate is increased by the sum of so much of the person's income from personal exertion as does not exceed $30 per fortnight and so much of the spouse's income from personal exertion as does not exceed $30 per fortnight. The maximum free area, therefore, would be $120 per fortnight. However, the income of each partner disregarded for this purpose would be strictly limited to $30 - any remaining 'credit' against the earnings of one partner could not be used to offset the earnings of the other.

Because of the operation of existing subsection 122(2) of the Principal Act, the effect of the changes under clause 13(2) would be the same for couples composed of two beneficiaries in their own right as for a married beneficiary with a non-beneficiary dependent spouse.

Clause 13(2) would commence on 20 September 1990.

Clause 13(3) would amend subsection 122(10) of the Principal Act and insert a new subsection 122(10A) into the Principal Act to provide that an assets test would be applied to all beneficiaries except those unmarried beneficiaries who are under 18 years of age, without any dependent children and who are not independent young persons or homeless persons.

Clause 13(3) would commence on 20 September 1990 and would apply in relation to any payments that fall due on or after that date.

Clause 14 : Insertion of new section 122BA - Special arrangements for victims of major disasters

Clause 14 would insert a new section 122BA into the Principal Act.

New section 122BA would generally provide for one week of double payment of benefit for persons who qualify for unemployment, sickness or special benefit as a result of a "major disaster". The new provision would sanction the payment of a double amount of benefit to persons affected by the Newcastle earthquake and any future disasters declared by the Minister for Social Security to be "major disasters".

New subsection 122BA(1) would define the terms used in the new provision. "Major disaster" would be defined to mean the Newcastle earthquake or a disaster declared by the Minister by notice in the Gazette in accordance with new subsection 122BA(2). A declaration could be made where a disaster has caused a significant number of deaths, injuries or illness or very significant damage to property, whether occurring naturally or caused by humans. "Newcastle earthquake" is defined as the earthquake that caused severe damage to parts of Newcastle on 28 December 1989.

New subsection 122BA(3) would provide that where a person is qualified to receive unemployment or sickness benefit, the person claims benefit as a result of a major disaster and the person is entitled to immediate payment of benefit without having to serve a waiting period because of the operation of paragraphs 125(1)(b), (1)(e) or (3)(b) of the Principal Act, the amount of benefit payable to the person in the first week of entitlement is twice the amount which would normally be payable to the person.

Clause 14 would be taken to have commenced on 28 December 1989 and would apply to claims for benefit lodged on or after that date.

Clause 15 : Unemployment benefit not payable in certain circumstances

Clause 15 would amend section 126 of the Principal Act. Section 126 provides for periods in which unemployment benefit is not payable. Such a period may apply when a person first claims benefit or it may apply to a person in receipt of benefit. It usually applies because of some misconduct by the claimant or beneficiary. Examples are:

- where a person brings about his or her own unemployment by a voluntary act without good reason, eg resignation; or

- where a person is not taking reasonable steps to find employment; or

- where a person's registration with the Commonwealth Employment Service ceases.

Clause 15 would amend section 126 of the Principal Act to increase the period of non payment which can be imposed on a person to whom subsection 126(1) of the Principal Act applies and to introduce non payment for failure to attend an interview

or to respond to Departmental correspondence without good reason. Sections 163 and 164 of the Principal Act enable the Secretary to request information or to require a client or claimant to attend an interview.

Clause 15(a) would amend paragraph 126(1)(ca) by inserting a reference to section 163 and 164 of the Principal Act. The effect of the insertion is to enable a non payment period under section 126 of the Principal Act to be applied to a person who fails to comply with a notice given to the person under section 163 or 164.

Clauses 15(b) and (d) would effect technical changes to ensure that non payment periods could be applied to persons who fail to comply with a section 163 or 164 notice.

Clauses 15(c), (e) and (f) would increase the period of non payment which may be applied to a person. The progression of non payment periods which could be applied to a person would run as follows - 2 weeks for the first occasion on which subsection 126(1) of the Principal Act applies to a person, 6 weeks for the second which would be further increased by 6 weeks for each subsequent occasion on which subsection 126(1) of the Principal Act applies to the person.

Clause 15 would commence on 20 September 1990 and would apply in relation to payments that fall due on or after that date.

Clause 16 : Education Leavers

Section 127 of the Principal Act generally imposes an education leaver deferment period of 6 or 13 weeks on persons who cease full time education and who subsequently apply for unemployment benefit or job search allowance.

Clause 16 would amend various subsections in section 127 to insert references to sickness benefit where each respective provision refers to unemployment benefit.

The effect of these amendments would be to extend the application of the education leaver deferment period to persons who claim sickness benefit after ceasing full-time study.

Clause 16(k) would insert a new subsection 127(9) into the Principal Act. New subsection 127(9) would provide that, for the purposes of the education leaver deferment period and subsection 125(3) of the Principal Act (which allows a person claiming sickness benefit 5 weeks from the date of incapacity in which to claim), the claimant is taken to have become incapacitated for work on the last day on which the person was undertaking a course of education.

New subsection 127(9) is the equivalent for sickness benefit of subsection 127(8) of the Principal Act that applies to persons claiming unemployment benefit or job search allowance.

Clause 16 would commence on 20 September 1990 and would apply in relation to claims lodged on or after that date.

Clause 17 : Rate of special benefit

Section 130 of the Principal Act outlines the rate of special benefit which may be paid to a person qualified to receive that payment.

Clause 17(a) would amend section 130 of the Principal Act by inserting new subsection 130(2A) which would provide that where a person lodges a claim for special benefit as a result of a "major disaster" (defined in new subsection 122BA(1) inserted by clause 14), the Secretary may determine that the rate of special benefit payable to the person in respect of the first

week of payment would be an amount not exceeding twice the rate of unemployment or sickness benefit which, disregarding new section 122BA, would be payable to the person if the person were qualified to receive it.

New subsection 130(2A) would also enable double payment of benefit to be made to persons affected by a major disaster who are not qualified to receive unemployment or sickness benefit because of the application of a waiting period, where those persons otherwise meet the qualification criteria for special benefit.

Clause 17(b) would insert into subsection 130(3) of the Principal Act a definition of "major disaster" which has the same meaning as in new section 122BA (see clause 14).

Clause 17 would be taken to have commenced on 28 December 1989 and would apply to claims for special benefit lodged on or after that date.

Clause 18 :Insertion of new section 152A - Secretary may require persons to take action to obtain compensation

Clause 18 would insert a new section 152A into the Principal Act.

New subsection 152A(1) would provide that the Secretary may require a person who is in receipt of a pension, or is eligible or qualified to receive a pension who, in the opinion of the Secretary, is or may be entitled to a payment by way of compensation and who has not taken reasonable action to claim or obtain such a compensation payment, to take reasonable action to claim or obtain such payment.

New subsection 152A(2) would provide that pension will cease to be payable or will not be granted, as the case may be, if the person does not comply with a request made by the Secretary under new subsection 152A(1).

New subsection 152A(3) would provide that where a person complies with a request made by the Secretary under new subsection 152A(1), that person will be taken to have been eligible or qualified to receive pension before the request was made.

Clause 18 would commence on 1 November 1990 and would apply in relation to claims lodged on or after that day.

Clause 19 : Making and lodging of claims etc

Clause 19 would amend subsection 159(4A) of the Principal Act and insert subsection 159(4AA). Subsection 159(4A) of the Principal Act provides for the payment of arrears of family allowance to the date of birth of the child where a claim is lodged within 4 weeks of birth. Clause 19 would provide that where 3 or more children are born during the same multiple birth and a claim is lodged within 13 weeks of the multiple birth, the claim will be taken to have been lodged on the date of the multiple birth. This will mean that where a claim is lodged within this period arrears will be paid from the date of the multiple birth. Subsection 88(7) of the Principal Act provides for a special rate of family allowance payable in respect of the children of a multiple birth.

Clause 19 would commence on 1 November 1989 and would apply in relation to births on or after that date.

Clause 20 : Secretary may impose certain requirements

Section 170 of the Principal Act permits the Secretary to impose any of a range of requirements on specified classes of

social security recipient. Subsection 170(3) permits the Secretary to request a job search allowee to attend an office of the CES. Failure to do so results in cessation of payability of the allowance.

Clause 20 would amend subsection 170(3) so that it applies to all unemployment beneficiaries, not only to job search allowees as at present. The purpose of requiring attendance at the CES is to have an endorsement provided in respect of the beneficiary's job search activity. Not all unemployment beneficiaries would necessarily be referred to the CES for an endorsement but, should policy change the provision would permit the Secretary to impose such a requirement. Where a person does not comply with subsection 170(3) a period of non-payment applies under section 126 of the Principal Act.

Clause 20 would commence on 20 September 1990 and would apply in relation to payments that fall due on or after that date.

Clause 21 : Some decisions are not reviewable by the Social Security Appeals Tribunal

Clause 21 would amend section 178 of the Principal Act by inserting a new paragraph 178(aa).

Section 178 of the Principal Act excludes decisions made under specified provisions from review by the Social Security Appeals Tribunal. Clause 21 would include in this list of provisions a declaration made by the Minister under new subsection 122BA(2) (inserted by clause 14) that a certain occurrence is a "major disaster" for the purposes of new section 122BA and new subsection 130(2A) (inserted by clause 17).

Clause 21 would be taken to have commenced on 28 December 1989.

Clause 22: Insertion of Schedule 5

Reciprocal Agreement on Social Security between Australia and Spain

Clause 22 would insert a new Schedule 5 into the Principal Act. Schedule 5 would be the Reciprocal Agreement on Social Security between Australia and Spain, set out at the end of this Bill.

The Schedule to this explanatory memorandum contains the explanatory notes relevant to the reciprocal agreement with Spain.

Clause 22 would commence on the day of Royal Assent.

PART 3 - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Clause 23 : Principal Act

Clause 23 would provide that, in this Part of the amending Act, the Veterans' Entitlements Act 1986 is referred to as the Principal Act.

Clause 23 would commence on the day of Royal Assent.

Clause 24 : Interpretation

This clause would amend the definition of "income" in subsection 35(1) of the Principal Act by providing that, for the purposes of Part III of the Principal Act, "income" would not include amounts paid by way of compensation by the Republic of Austria to persons who were victims of National Socialist persecution.

Clause 24 would be taken to have commenced on 4 December 1989 and would apply in relation to payments that fall due on or after that date.

PART 4 - AMENDMENTS OF THE SOCIAL SECURITY AND VETERANS AFFAIRS LEGISLATION AMENDMENT ACT (NO 4) 1989

Clause 25 : Principal Act

Clause 25 would provide that, in this Part of the amending Act, the Social Security and Veterans' Affairs Legislation Amendment Act (No 4) 1989 is referred to as the Principal Act.

Clause 25 would commence on the day of Royal Assent.

Clause 26 : Savings

Clause 26 would amend section 4 of the Principal Act. Section 4 of the Principal Act provides for the saving of current entitlements of certain pensioners and beneficiaries who would otherwise have lost part of their social security payment. This was because certain provisions of the Principal Act provided for the cessation of entitlement to certain additional payments in respect of most student children aged between 18 and 24 years dependent on pensioners and beneficiaries. The intention was to preserve these entitlements for anyone receiving them in respect of a student child aged 18 to 24 years on the day when the new provision took effect.

Section 4, however, preserved the entitlement of all receiving this additional amount on the date of commencement no matter how old the student child was on that date. This would have the effect of saving many more entitlements for much longer than was intended.

Clause 26 would amend section 4 to restrict the savings provision to social security recipients receiving an additional amount in respect of a student child aged 18 to 24 years on the date of commencement.

Clause 26 would commence on the day of Royal Assent and would apply in relation to payments that fall due on or after the date of commencement.

SCHEDULE

RECIPROCAL AGREEMENT

on

SOCIAL SECURITY

between

AUSTRALIA and SPAIN

EXPLANATORY MEMORANDUM

INTRODUCTION

The Agreement between Australia and Spain on Social Security (hereinafter referred to as "the Agreement") serves to co-ordinate the social security schemes of both countries to ensure that adequate social security cover is provided to people who have moved between both countries.

Many people who have lived in more than one country find that when they claim a pension or benefit they do not meet the statutory residence requirements and/or have not made adequate contributions to the social security scheme to enable them to qualify for the pension or benefit claimed.

To alleviate this problem, a network of social security agreements (both bilateral and multilateral), has been put in place within the international community of states. The agreements comprising the network are usually documents of treaty status and have the effect of covering gaps in social security cover for people have resided in more than one country.

A major element of such agreements is the requirement for the signatories to share responsibility for both coverage and related costs. A person who has resided in the relevant countries may receive pensions or benefits from each country in order to obtain total social security coverage over working life.

As a country whose population comprises many migrants, Australia has a vested interest in implementing its own network of social security agreements.

The Agreement with Spain is the third in this form entered into by Australia - the earlier two were concluded with Italy and Canada.

PART 1 - GENERAL PROVISIONS

ARTICLE 1 - DEFINITIONS

Paragraph 1 - defines key terms which are used both frequently and consistently throughout the Agreement. Such terms are defined either because their meaning differs from that of normal parlance or because their technical meaning may be different in Australia and Spain.

The effect of the Agreement for Australia is to extend application of the Social Security Act 1947 to classes of persons not previously covered. Throughout these notes the legislation is referred to as **"the Act"**.

The majority of the definitions are self explanatory and do not require further elaboration. Clarification of the following may be of assistance:

"Carer's Pension" means a pension under Division 6 of Part IV of the Act. It is normally paid to a person who personally provides constant care and attention to a pensioner who is severely handicapped pensioner. By virtue of the Agreement payment of such a pension is limited to a spouse.

It should be noted that under the relevant Spanish legislation there is no directly equivalent pension however certain elements of invalidity pensions embrace a degree of comparability.

Carer's pensions are not payable outside Australia except under reciprocal agreements because of the difficulty of ensuring that the person receiving the pension is still eligible. As the Agreement provides for each country to assist the other in paying their benefits, Australia has agreed to pay Carer's Pension to eligible spouses in Spain.

"legislation" means the laws specified at Article 2 of the Agreement which, in respect of Australia, means those parts of the Act which cover the benefits to be paid by Australia by virtue of the Agreement and, in respect of Spain, those elements of the Spanish Social Security Legislation concerning the General Scheme and the Special Scheme as they relate to the benefits to be paid by Spain by virtue of the Agreement

"period of residence in Australia" means the period, or aggregate of the periods, during which a person has been a resident of Australia, being for a man between the age of 16 years and 65 years and for a woman between the age of 16 years and 60 years (defined at Section 59 (1) of the Act). Such periods are normally held to embrace the period of "working life residence". This matches "Spanish creditable period" in the totalisation provisions of the Agreement.

It should be distinguished from the phrase **"period as an Australian resident"** used at Article 8 of the Agreement which covers periods outside the specified age limits.

"widow" under the Act includes a dependent female (a woman who was a partner in a de facto marriage), a deserted wife, a divorcee and a woman whose husband has been imprisoned. In the context of the Agreement however, a widow means, in relation to Australia, only a woman whose legal husband has died (de jure widow) but does not include a women who is the de facto spouse of a man.

Paragraph 2 provides for a rule of interpretation in respect of terms not defined in the Agreement.

ARTICLE 2 - LEGISLATIVE SCOPE

The legislation in respect of both Australia and Spain is that which is in force at the date of signing of the Agreement and includes any changes to such legislation made after the Agreement comes into force.

Paragraph 1 sets out the legislation of both countries to which the Agreement applies.

For Australia the relevant legislation is the Act as it applies to the following benefits:

- age pensions
- invalid pensions
- wive's pensions
- carer's pensions
- widow's pensions

For Spain the relevant legislation is the General Scheme and the Special Scheme of the Social Security Legislation as they apply to the following benefits:

- temporary incapacity for work in cases of common illness, maternity and non-industrial accidents
- invalidity
- old age
- death and survivors
- unemployment

Paragraph 1 of Article 21 of the Agreement requires each country to notify the other of any changes to the relevant legislation

Paragraph 2 excludes the application of any laws made prior to or after signing of the Agreement which give effect to any reciprocal agreement including that between Australia and Spain.

In Australia, social security agreements are incorporated into the Act as Schedules. In some instances such agreements have provisions which have the effect of converting residence or mandatory contributions in the other country into periods of residence in Australia so that claimants under the agreement are able to meet minimum residence qualifications to receive benefits from Australia. **Paragraph 2** operates to prevent such converted periods from other agreements from being used as actual periods as an Australian resident under the Agreement.

The purpose of specifically excluding the Agreement is to avoid circularity that would result from the laws that would give effect to the Agreement operating on themselves.

Paragraph 3 makes provision for the application of laws extending the relevant legislation of either country to new categories of beneficiaries by mutual agreement to be made the subject of a Protocol to be entered into between both countries pursuant to the Agreement.

ARTICLE 3 - PERSONAL SCOPE

Article 3 describes the broad group of people to whom the Agreement applies.

These are people who have been or are Australian residents and people who have been or are subject to the legislation of Spain. By virtue of the provisions of **Article 3** the spouse, dependant or survivor of such persons may also be considered persons to whom the Agreement applies.

Article 3 does not confer any entitlement to a benefit rather, it allows such people to be considered for payment of a benefit within the terms of the Agreement and the relevant legislation of the two countries.

ARTICLE 4 - EQUALITY OF TREATMENT

The effect of **Article 4** is to ensure that persons to whom the Agreement applies are not treated in a discriminatory way by either Australia or Spain under their legislation or under the Agreement.

An example of possible discrimination would be if one country decided unilaterally to make eligibility for a benfit dependent upon the holding of citizenship of that country. The Agreement serves to ensure that such a rule would not be applied against persons who fall within the scope of the Agreement.

Under the existing laws of each country, neither Spain nor Australia apply citizenship as a mandatory requirement for the granting of a benefit. The provisions of **Article 4** are largely a reflection of the intention of each country with respect to the application of the Agreement within the context of their domestic legislation.

It is a standard provision for a social security agreement and is included to formalise each country's adoption of the widely accepted concept of non-discrimination.

ARTICLE 5 - APPLICATION OF SPANISH LEGISLATION

Article 5 is unilateral and serves to ensure continuity of coverage under the legislation of Spain in those instances where a person would ordinarily be covered under such legislation by virtue of being a resident of Spain but, because of a requirement to work in Australia, no longer resides and works in Spain. Such period of residence in Australia is held to be a continuation of the persons residency in Spain for the purposes of maintaining coverage under the Spanish legislation.

Persons to whom **Article 5** applies would not therefore accrue eligibility for Australian benefits during the period of residency in Australia. This would not be the case if a person had sought to reside and work in Australia for reasons outside the scope of **Article 5** and that person had chosen not to continue contributions to the Spanish system. Such a person would be looking to the achievement of eligibilty for benefits under the Australian system by virture of his/her residency in Australia.

A five year limitation period is imposed in respect of persons falling within the ambit of **Article 5** however, the period may be extended at the descretion of the Spanish Competent Authority.

PART II - PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 6 - RESIDENCE OR PRESENCE IN SPAIN OR A THIRD STATE

This is a unilateral provision for Australia to overcome lodgement requirements of the Act. Normally, only people who live in Australia can lodge a claim for an Australian pension. People who leave Australia to return to their countries of origin prior to being granted a pension are unable to lodge a claim for a pension.

Under an agreement those people in Spain and other nominated countries will be treated as if they were resident in Australia for the purposes of lodging a claim.

Apart from Spain, other countries in which a claim can be validly lodged are those with which Australia has an agreement providing for mutual administrative assistance.

Paragraph 1 contains the deeming provision which puts people residing in Spain or a third country on the same footing as those residing in Australia for the purpose of lodging a claim.

Paragraph 2 is a limiting provision which has the effect of preventing lodgement of claims for a wife's pension or a carer's pension if the claimant has never resided in Australia. The limitation is necessary because no historical residence is required for these claimants; only the. requirement that a claimant should be a resident of Australia and in Australia at the time of lodgement of a claim. In the absence of paragraph 2 and by virtue of the provisions of paragraph 1 both pensions could be paid to a person who has never resided in Australia.

ARTICLE 7 - SPOUSE RELATED AUSTRALIAN BENEFITS

As entitlement to wives' and carers' pensions under the Act arises from the claimant being the spouse of an age or invalid pensioner and not from any particular residence qualifications, a wife's or carer's pension could be claimed in Australia by a person without the assistance of this Agreement. This would be the case even if the spouse was receiving the age or invalid pension by virtue of the Agreement.

To ensure that these wife's or carer's pensioners are subject to the same payment rules as their spouses under the Agreement, **Article 7** deems them also to receive their pensions by virtue of the Agreement.

ARTICLE 8 - TOTALISATION FOR AUSTRALIA

Qualification for most Australian benefits depends, inter alia, on a claimant having certain minimum periods as an Australian resident, eg 10 years for age pension.

People who have lived in another country eg Spain during the course of their working life may find, when the time comes to claim a pension, that their period as an Australian resident is too short for them to qualify.

Article 8 assists claimants to qualify by allowing them to count periods of insurance under the other country's social security scheme as periods as an Australian resident. The claimant adds these 'deemed' periods to "periods of residence in Australia" to meet the minimum requirement.

This principle is typical of reciprocal social security agreements and is known as **"totalisation"**".

Paragraph 1 describes the mechanics of this process: where a person does not have enough residence in Australia to claim a pension, but the person has accumulated some periods of insurance in Spain ie Spanish creditable period, such insurance periods will be added to periods of residence in Australia to meet minimum qualification periods.

The Act requires claimants for some Australian pensions to have a minimum continuous period as an Australian resident. For example, a claimant for age pension must have had a continuous period of 5 years as an Australian resident included in the general minimum of 10 years' residence.

Such a requirement can pose problems for people who are using paragraph 1 to count periods of insurance in the other country as periods as an Australian resident. Insurance contributions in Spain are usually only made during periods of employment. Absences from the workforce can cause a disruption to the insurance record. This problem is peculiar to contributory systems.

To overcome this, paragraph 2 enables discontinuous periods of insurance in Spain to be deemed continuous.

Paragraph 3 deals with periods when residence in Australia and insurance periods in Spain have occurred at the same time, for example, when a person beginning to reside in Australia continues to pay contributions to Spain's social security scheme.

This situation is not uncommon at a time when people are moving between countries and is usually handled under a reciprocal social security agreement by 'overlapping periods' provisions. The classic solution, which is adopted here, is to allow the period of overlap to be counted only once by the country applying its legislation - in this Article, by Australia. Spain's matching provision is in Article 10(2).

Subparagraph 4a provides that the totalisation rules of paragraph 1 cannot be used by people overseas unless they have accumulated the stated periods of actual residence in Australia.

Subparagraph 4b provides that for a person living in Australia no minimum period of Australian working-life residence is required to use these totalisaton rules. A person with enough period/s of insurance can qualify for pension in Australia on this basis alone.

ARTICLE 9 - CALCULATION OF AUSTRALIAN BENEFITS

Article 9 contains provisions which, when read with the Act, fix the rate of pensions paid by Australia under the Agreement, both inside and outside Australia.

Paragraph 1 provides that an Australian pension for persons living abroad is paid "according to the legislation of Australia" i.e. on a proportional basis. This means that any pension received is in direct proportion to the length of time spent in Australia during a person's working-life (between ages of 16 and 60 for women and 16 and 65 for men). Unlike the proportional portability provisions for cases granted without the agreement, proportionality is applicable immediately the pensioner leaves Australia.

A full means-tested rate is paid to someone who has had 25 years working life residence in Australia, but a person with 10 years' residence, for example, would receive only 10/25ths of a pension from Australia.

Pensioners who have not had the full 25 years' residence in Australia have generally spent some time working in and contributing to the pension scheme of another country. When a reciprocal agreement between Australia and that country eg

Spain is in effect, the person would receive a part pension from that country for those years of work and contributions The foreign pension is counted as income by Australia in its income test.

Paragraph 2 describes the formula by which the income of the claimant will be assessed for the purpose of determining the Australian pension payable overseas and places a limitation on the extent to which any Spanish benefits being paid shall be included within a persons assessable income.

Paragraph 3 makes provision for people in receipt of an Australian proportionalised pension without the benefit of the Agreement to be brought within the scope of the Agreement. The effect of which is to facilitate the application of **paragragh 2** in the future assessment of the pension payable ie the application of the concessional income in the assessment of their pension and therefore avoid inequities in the treatment of autonomous and agreement cases abroad.

Paragraph 4 fixes the pension rate for a person who is in Australia and whose pension is payable only by virtue of the Agreement. This would be a person, who without the totalization provided for in **Article 8**, cannot fulfil the residence requirements for Australian pension.

The methodology is as follows:

(a) Firstly, the amount of the person's income is identified in accordance with the Australian legislation, except that any pension received by the person from Spain is excluded; and,

(b) then, the amount of that excluded foreign pension is subtracted from the income-tested rate of pension applicable to the person leaving a rate to be paid under the Agreement.

Effectively, the claimant's pension from Spain is topped-up to the amount of the Australian pension that would be payable if the claimant were eligible for a pension without the help of the Agreement and did not have that Spanish pension. This method of assessment pertains only for as long as the pensioner requires the assistance of the Agreement to qualify for an Australian pension. Once the necessary amount of Australian residence has been accrued, the pension will be assessed by the usual method provided for in the Act.

Paragraph 5 As it is common for a husband and a wife to receive different amounts of an overseas pension, **paragraph 4** could result in each receiving different rates of the Australian pension.

Such an outcome could give rise to some difficulties in rate assessment, particularly when one of a couple receives so much pension from the other country that his or her Australian pension rate is reduced to zero. **Paragraph 5** specifies that for the calculations in **paragraph 4**, a husband and wife will be deemed to receive half each of their combined overseas pension. This produces a uniform rate of Australian pension for the couple. A similar rule applies under the Act, combining the income of married pensioners and allowing identical rates to be paid to each spouse.

Paragraph 6 Where one of a married couple is eligible for a nil rate of an Australian pension under **Paragraph 4** (because of the deduction provisions in that paragraph) or chooses not to claim an Australian pension, and the other is eligible for an autonomous pension or some other benefit (eg unemployment benefit or sickness benefit) under the Act, the other's benefit would be assessed at the single rate instead of the married rate but for the provisions of this paragraph and **paragraph 7**.

Paragraph 7 defines the payments to a spouse in paragraph 5 as all payments under the Act, whether payable by virtue of the Act or under the Agreement.

PART III - PROVISIONS RELATING TO SPANISH BENEFITS

ARTICLE 10 - TOTALISATION FOR SPAIN

To qualify for benefits payable from Spain a claimant must have accumulated certain minimum periods of insurance, depending upon which benefit is being claimed.

People who have lived for part of their working lives in Australia may find on retirement that they did not contribute long enough in Spain to qualify for that country's benefits.

By means of **Article 10**, this problem is overcome in the usual way for agreements of this kind: claimants for Spanish benefits who do not have enough insurance periods to qualify them for payment, can count periods of residence in Australia during their working life as insurance periods.

The adding together of the Spanish creditable period and periods of Australian residence is known as **"totalisation"**.

Paragraph 1 sets out the basic principle of totalisation for Spain's benefits ie Spanish creditable period and periods of residence in Australia.

Paragraph 2 provides that where Spanish creditable periods and periods of Australian residence overlap, the period of overlap can be used only once by the person when claiming a benefit from Spain - matching Article 8(3).

Paragraph 3 sets out the minimum Spanish creditable period that allows a person to use the totalisation provisions ie one year. Where the Spanish creditable period and period of residence in Australia are below the agreed minimum periods, paragraph 3 allows them to be combined to gain access to a benefit from Spain which requires.

Paragraph 4 addresses the relevant period of residence in Australia for women. Under the Act, that period is from age 16 to age 60. As age pension age for women under Spanish legislation is 65, this paragraph is a concession by Spain to allow periods of residence in Australia from age 60 to 65 to be equaled with contributions for totalization which requires a minimum period of one year.

ARTICLE 11 - SICKNESS BENEFITS

Article 11 deals with sickness benefit under Spanish law. Only sickness benefits under Spanish legislation come within the legislative scope of the Agreement. Entitlement to Australia sickness benefit will flow to Australian residents under Australia domestic law. Entitlement to Spanish sickness benefit requires a minimum contribution period of 180 days so totalization may be needed. However, the minimum contribution period is less than the minimum period of 1 year established in Article 10(3) and Article 11 removes the restriction.

ARTICLE 12 - OLD AGE, INVALIDITY AND SURVIVOR'S PENSIONS

Article 12 sets out the under calculation of Spanish benefits to be made under the Agreement.

Paragraph 1 requires that Spain first access entitlement solely on actual contributions made and then on a theoretical basis, counting the actual periods and the periods deemed

(through equating Australian residence with contributions) and applying a pro-rata in which the final amount to be paid would be calculated by multiplying the theoretical base by the number of actual contributions and dividing the result by the total of actual and deemed contributions. The denominator cannot exceed the maximum contribution period under Spanish law (35 years).

Paragraph 2 ensures that the higher of the domestic rate and the theoretical pro-rata is to be paid. The domestic rate may sometimes be higher because of transitional provisons contained in Spanish legislation.

ARTICLE 13 - SPECIAL SCHEME BENEFITS

Paragraph 1 ensures that benefits under Spain's special schemes, which normally require work activity in a particular employment sector, will only be assessed with regard to residence in Australia when that residence coordinates with activity in a equivalent sector.

ARTICLE 14 - DETERMINATION OF REGULATING BASE

Article 14 is required because of Spain's references for calculating contributory pension entitlement. Actual contributions have a nominal value related to salary - deemed contributions do not. Article 14 ensures that deemed contributions (through equivalence with Australian residence) shall be given a nominal value in line with the minimum salaries available in Spain for the equivalent professional category.

ARTICLE 15 - SITUACION DE ALTA

Under Spanish legislation, a claimant must be paying contributions at the time of claiming benefit. This is known as a "situacion de alta".

Article 15 serves to ensure that Australian benefit recipients who would be entitled to a Spanish benefit under the Agreement will be deemed to meet this requirement although not actually paying contributions of the time of claim.

ARTICLE 16 - UNEMPLOYMENT BENEFITS

Article 16 deals with unemployment benefits under Spanish law. Australian unemployment benefits are not included in the legislative scope of the agreement as they are available to Australian residents under domestic laws.

Paragraph 1 allows totalization of periods for this benefit under Article 10 but without the restriction of 1 year's minimum contribution as the grant of Spanish unemployment benefits require less than 1 year of contributions.

Paragraph 2 restricts payment of unemployment benefits to Spanish residents.

ARTICLE 17 - EQUIVALENCE OF EVENTS

Article 17 ensures that earlier benefit entitlement depends on a qualifying event occurring in Spain, that qualifying event may also occur in Australia.

PART IV - MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 18 - LODGEMENT OF DOCUMENTS

The Social Security Act provides for the method and place of lodgement of claims.

Paragraph 1 extends those provisions in keeping with the administrative arrangements for the Agreement.

The date on which a claim for benefit, an appeal, or other document is lodged with an authority is very important. It can affect the date from which any payment begins, especially in the case of Australia.

Paragraph 2 ensures that when a person living in Spain or Australia lodges a document with either local social security authority, and that document is to be sent to the social security authority of the Agreement partner, the original date of lodgement retains its legal significance.

For example, this means that a person will not lose any pension arrears by having to lodge the Australian pension claim form with the Spanish social security authority.

Applicants for or people who receive Australian social security benefits can lodge appeals against decisions affecting them to the Department of Social Security. These appeals are considered first by a Review Officer and then, if necessary, by the Social Security Appeals Tribunal. If a person is still not satisfied, they can then appeal to the Administrative Appeals Tribunal.

As the Administrative Appeals Tribunal is regulated by its own Act, the Agreement cannot make any rules which affect its operations.

Paragraph 3 clarifies **paragraph 2**, by stating that the appeals referred to at **paragraph 1** are appeals handled only by the Department of Social Security.

ARTICLE 19 - DETERMINATION OF CLAIMS

Eligibility for most of the benefits payable by Australia and Spain under this Agreement depends on certain events in the life of the claimant or upon the claimant having had certain periods of residence in Australia or contributions in Spain.

Paragraph 1 provides that those events or periods can be used by a claimant in claiming a benefit, whether or not they occurred before or after the Agreement begins to operate.

Paragraph 2 ensures that when a person claims a benefit from either country under the Agreement, payment of that benefit cannot be back-dated to a date prior to the Agreement's commencement.

Paragraph 3 provides a mechanism by which both countries may recover overpayments of benefit(s).

Paragraph 4 enables Australia and Spain to take recovery action where the benefit(s) being paid is one that is not covered by the Agreement, ie in the context of Australia any benefit that is paid under the provisions of the Act and in the context of Spain any benefits etc that may be paid by the relevant competent institution .

ARTICLE 20 - PAYMENT OF BENEFITS

Article 20 addresses portability of benefits.

Paragraph 1 requires each country to make its Agreement payments, as listed, portable anywhere in the world.

Some benefits payable by a country may normally only be payable while the person resides in that country, ie they are basically a domestic payment. An example is Australian carer's pension.

Others may only be portable for restricted periods - eg sole parents' pensions for de jure widows widowed abroad are only portable for up to 12 months.

Paragraph 2 allows this type of restricted payment whether paid by virtue of domestic legislation or the Agreement to be portable to the Agreement partners' country only.

Paragraph 3 serves to overcome any currency controls of a country that prevents portability of its benefits. Australia has no such restrictions.

Paragraph 4 is a standard rule in this kind of Agreement. Neither country will deduct anything for administrative costs from the pensions it pays to people under the Agreement.

Paragraph 5 ensures that a person who is covered by the Agreement is not subject to the rule which would otherwise make him or her wait 12 months in Australia before being able to take the pension overseas.

The Act contains a rule which prevents people who reside overseas from returning to Australia, being granted a pension and then going back overseas to live straight away. The rule stops portability to former residents who have been in Australia for less than 12 months and who have been granted an Australian pension since their arrival. The object of this rule is to ensure that Australian pensions are granted only to people who actually live in Australia.

Under the Agreement, Australian pensions will be granted overseas to people who do not live in Australia. This means that people who are covered by the Agreement need not return to Australia and stay here for 12 months in order to claim a pension which can be paid overseas.

If a person who usually lives in say Spain happens to claim an Australian pension which is covered by the Agreement while visiting Australia, it would be unreasonable to make that person wait 12 months in Australia before the pension became portable.

ARTICLE 21 - EXCHANGE OF INFORMATION AND MUTUAL ASSISTANCE

It is not possible for the Agreement to operate effectively unless the two countries assist each other in handling claims, exchange information and deal with enquiries from the public.

Paragraphs 1 and 2 set out the form of mutual assistance each country seeks from the other in respect of both implementing the Agreement and ensuring its effective operation. Of particular importance is the need to ensure that each country is made aware of changes or amendments to the relevant legislation and that the necessary legislative processes required to make the Agrlement operational are notifed.

Paragraph 3 provides for the help which Spain and Australia give each other under the Agreement to be given free of charge, unless the authorities in the two countries decide otherwise.

An example where expenses might be claimed could be where one country asks the other to arrange specialist medical examinations for a client.

Paragraph 4 Australia has laws which guard the privacy of information collected by its social security authorities about clients.

Under the Agreement, confidential details about clients will be sent from one country's social security authority to that of the other.

Paragraph 5 ensures that neither country will use the Agreement to ask the other to supply administrative assistance which is contrary to its laws or normal practices.

Paragraph 6 serves to ensure that in applying the provisions of Article 21 the restrictive interpretation of the term "legislation" at Article 2 shall not apply.

Paragraph 7 allows either language of the Agreement partners ie Spanish or English, to be used in communications between them.

ARTICLE 22 - ADMINISTRATIVE ARRANGEMENTS

It is usual for countries to make arrangements for applying the Agreement in a separate document.

The document is not part of the main agreement. The working rules for agreements usually need fine-tuning once the agreement has started and also need changing when either or both parties changes their administrative practices. It is much easier to change the working rules if they are kept apart from the main treaty.

Article 22 simply states that both Spain and Australia may draw up whatever administrative rules are necessary to make the Agreement operate effectively.

ARTICLE 23 - REVIEW OF AGREEMENT

Article 23 sets out the way in which one country can initiate discussions with the other country when it wishes to make any changes to the Agreement.

PART V - TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 24 - ENTRY INTO FORCE AND TERMINATION

Once the Agreement has been signed, the necessary laws passed and the two countries have all the forms and other details ready for working the Agreement, the Foreign Ministry of each country will advise the other that the Agreement is ready to start on a particular date. The Agreement then takes effect from that date. **Paragraph 1** sets out the process.

Paragraph 2 describes how the Agreement can be terminated at the request of either country.

Paragraph 3 provides some protection for those people who are receiving benefits under the Agreement, or who are in the process of being granted benefits, when the Agreement is terminated as set out in paragraph 2.