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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL (NO 2) 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 BILL (NO 2) 1990

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill would give effect to a number of measures announced in the 1990-91 Budget.

The legislation involved is the Social Security Act 1947, the Veterans' Entitlements Act 1986, the Seamen's War Pensions and Allowances Act 1940, the Income Tax Assessment Act 1936 and the Taxation Administration Act 1953.

INCOME

The following changes would affect the Social Security Act 1947 and the Veterans' Entitlements Act 1986.

- After 21 August 1990, a minimum interest rate would be deemed on new loans (including debentures and bonds) made or acquired by pensioners and beneficiaries after that date, for the purposes of the income test. An initial interest rate would be set at 10% per annum. Thereafter the Minister for Social Security would be entitled, from time to time, to set a lower minimum interest rate. The rate set by the Minister for Social Security would apply equally to the relevant Veterans' Affairs provisions.

- The annual gifting limit would be increased to $10,000 (single or married combined) before the deprivation provisions would apply. This measure would apply from 1 March 1991.

- After 21 August 1990, income would be deemed on deprived assets for income test purposes at an initial rate of 10% per annum. Thereafter the Minister for Social Security would be entitled, from time to time, to set a lower minimum interest rate. This deeming rule would not apply to new cases of acquired or retained rights to accomodation for life, the value of which would be deemed to be the amount to be paid for the right. The rate set by the Minister for Social Security would apply equally to the relevant Veterans' Affairs provisions.

- From 1 March 1991, deprived assets would be maintained at full value for 5 years only instead of, as at present, progressively reducing to nil value over 10 years.

Estimated program savings from these measures are $0.52m in 1990-91 and $9.75m in 1991-92.

SOCIAL SECURITY AND VETERANS' AFFAIRS AMNESTY

The social security and veterans' affairs amnesty would provide that a person receiving a social security or veterans' affairs payment could voluntarily inform the Department of Social Security or the Department of Veterans' Affairs respectively, during the six week period from 22 August 1990 to 2 October 1990 inclusive, of the person's circumstances and be protected against criminal or civil liability arising from the application of the Social Security Act 1947, the Veterans' Entitlements Act 1986 or the Seamen's War Pensions and Allowances Act 1940.

Estimated net savings from this measure are $54.3m in 1990-91.

TAX FILE NUMBERS

The following changes would affect the Social Security Act 1947, the Veterans' Entitlements Act 1986, the Seamen's War Pensions and Allowances Act 1940, the Income Tax Assessment Act 1936 and the Taxation Administration Act 1953.

From 1 October 1990, persons who claim or are in receipt of sole parent's pension, family allowance or family allowance supplement under the Social Security Act 1947 would be required to supply a tax file number as a precondition to receiving or continuing to receive payment.

Estimated program savings from this measure are $8.9m in 1990-91 and $11.1m in 1991-92.

In respect of payments under the Veterans' Entitlements Act 1986, from the day of Royal Assent, the Secretary may require persons who claim, or are in receipt of, the following payments:

- pensions under Part II, III or IV;
- temporary incapacity allowance;
- loss of earnings allowance;
- allowances under the Veterans' Children Education Scheme; and
- linked allowances and pensions;

to provide a tax file number as a prerequisite to the payment of that pension or allowance.

From the day of Royal Assent, persons who claim, or are in receipt of, payments under the Seamen's War Pensions and Allowances Act 1940 would be required to supply a tax file number as a precondition to receiving, or continuing to receive, a payment.

Estimated program savings from these measures are $5.85m in 1990-91 and $27.0m in 1991-92.

Other amendments would be made to the Income Tax Assessment Act 1936 and the Taxation Administration Act 1953 which would facilitate the abovementioned tax file number changes.

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL (NO 2) 1990

PART 1 - PRELIMINARY

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 (No 2) 1990.

Clause 1 would commence on the day of Royal Assent.

Clause 2 : Commencement

This clause would provide for the commencement of the various clauses in the Bill. The date on which each clause or Part would come into operation is referred to in the notes on each clause or Part in this memorandum.

PART 2 - AMENDMENTS OF SOCIAL SECURITY ACT 1947

Clause 3 : 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 3 would commence on the day of Royal Assent.

Clause 4 : Calculation of value of property

Clause 4 would amend section 4 of the Principal Act. Section 4 contains the rules for the calculation of the value of the property of a person for the purposes of the various assets tests.

Clause 4(a) and clause 4(b) would amend, respectively, subparagraphs 4(1)(a)(i) and (ii) of the Principal Act by inserting references to new subsection 4B(14).

The effect of subparagraphs 4(1)(a)(i) and (ii) is that the value of any right or interest of a person in relation to one residence which is the principal home of the person or of the person's spouse or of both of them is disregarded for the purposes of calculating the value of the person's property.

This rule, however, does not apply to rights or interests of the kind referred to in subparagraph 4(1)(a)(v) of the Principal Act. Subparagraph 4(1)(a)(v) refers to rights to accommodation for life in, or a life interest in, a private residence which is a person's principal home. While the value of such rights or interests is also disregarded under the assets test, the acquisition or retention of such rights may be affected by the special rules in section 6 of the Principal Act. These rules, which were designed to limit the avoidance of the assets test through persons disposing of their property for inadequate or no consideration, are referred to in more detail under Clause 7 which would amend section 6.

New subsection 4B(14) would be inserted by Clause 5 and its effect is explained under that clause.

Clause 4(c) would amend subparagraph 4(1)(a)(v) of the Principal Act by limiting its application to persons who,

before 22 August 1990, acquired for valuable consideration, or retained, a right to accommodation for life in, or a life interest in, a private residence which was their principal home.

Clause 4 would be taken to have commenced on 22 August 1990.

Clause 5 : Special provisions relating to residents of retirement villages or certain residences

Clause 5 would amend section 4B of the Principal Act by adding two new subsections, viz new subsections 4B(14) and (15), to apply to persons who, on or after 22 August 1990, acquired for valuable consideration, or retained, a right to accommodation for life in, or a life interest in, a private residence which was their principal home.

Section 4B contains special provisions relating to residents of retirement villages. Broadly speaking, the size of a person's "entry contribution" (which is, as defined in subsection 4B(13), the amount paid or agreed to be paid by a person for the right to live in a retirement village) will determine whether the person is to be taken to be a "homeowner" for the purposes of the assets test. The significance of this is twofold. First, by virtue of subparagraphs 4(1)(a)(i) and (ii), the value of a "homeowner's" principal home is exempt from the provisions of the assets test. Second, by virtue of sections 8 and 9 of the Principal Act, a "non-homeowner" may own assets of a higher total value than a "homeowner" without affecting the rate of his or her pension, benefit or allowance. This difference is defined as the "extra allowable amount" in subsection 4B(13).

New subsection 4B(14) would provide that where a person has acquired for valuable consideration, or has retained, a right to accommodation for life in, or a life interest in, a private residence which was his or her principal home on or after 22 August 1990, then the value of that right or interest would, in

broad terms, be regarded for the purposes of the assets test as if it were an "entry contribution" paid or agreed to be paid for the right to live in a retirement village. Consequently, the value of that right or interest would determine whether the person is to be taken to be a "homeowner" for the purposes of the assets test.

New subsection 4B(15) would provide that, for the purposes of new subsection 4B(14), the value of a right or interest would be either:

- the amount paid or agreed to be paid for that right or interest; or

- for any special reason in any particular case, such other amount as may be determined by the Secretary.

Clause 5 would be taken to have commenced on 22 August 1990.

Clause 6 : Insertion of new section
New section 4C : Income from loans

Clause 6 would insert a new section 4C into the Principal Act which would generally enable interest at a rate of 10% to be deemed to have been received on loans which return less than 10% interest per annum.

New subsection 4C(1) would define "interest" and "loan rate" for the purposes of new section 4C.

"Interest" would be defined to include any payment for the use of money lent. This definition is broad and would include the situation where payment of interest has been deferred.

"Loan rate" would mean 10% or another rate determined by the Minister under new subsection 4C(7).

New subsection 4C(2) would provide that a "loan" can include debentures, bonds and other securities as well as those transactions which would commonly be identified as loans. According to new subsection 4C(3), however, there is no "loan" for the purposes of new section 4C where a person has deposited money in an account with a bank, building society or credit union.

New subsection 4C(4) would provide that where there is a loan by a person, the person is paid interest on the loan and the annual rate of interest on the loan is less than the loan rate (defined in new subsection 4C(1) to be 10% or such lesser rate as determined, from time to time, by the Minister), then the annual rate of interest is taken to be the loan rate.

New subsection 4C(5) deals with the situation where interest on a loan which has been in existence for over 12 months is not payable, or accounted for, to the lender at least as frequently as each anniversary of the making of the loan (the deferred interest situation). The higher of the interest on the loan or the loan rate would be taken to have been received by the lender at the end of each 12 month period.

New subsection 4C(6) would enable annual interest at the loan rate to be deemed to have been received on loans by a person where no interest is payable on the loan.

New subsection 4C(7) would provide that the Minister can, from time to time, determine a loan rate which is less than 10%. Such a determination must be by written notice and would be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901 (new subsection 4C(8) refers). A disallowable instrument is one which must be gazetted and laid before both Houses of Parliament within a prescribed period.

New subsection 4C(9) would provide that where both new section 4C and Division 2 of Part 1 of the Principal Act apply to a loan, new section 4C would prevail.

New section 4C would be taken to have commenced on 22 August 1990 and would apply to loans entered into, or acquired, by a person after 21 August 1990.

Clause 7 : Disposal of income or property

Clause 7 would amend section 6 of the Principal Act. Section 6 contains special rules designed to limit the avoidance of the assets test by the disposal of income or property. Under these rules a person who disposes of property above certain limits is treated for assets test purposes as if he or she still has that property. In this context a person is taken to have disposed of property where, in broad terms, the value of his or her property is reduced for inadequate or no consideration or where the purpose of the reduction was to enable the person or the person's spouse to obtain a prescribed pension or a higher rate of that pension. "Prescribed pension" is defined in subsection 3(1) of the Principal Act.

Subsection 6(1) however allows a married person or his or her spouse or both of them to dispose of property worth up to $4,000 in a year without affecting the rate of their prescribed pension. Similarly, under subsection 6(2), an unmarried person may dispose of property worth up to $2,000 in a year without affecting the rate of his or her prescribed pension. Also, where under these rules an amount is included in the value of a person's property for the purposes of the assets test as if he or she had not disposed of it, by virtue of subsection 6(3) that amount is reduced by 10% on each anniversary of the day on which the disposition took place. Consequently, the amount involved is completely disregarded after 10 years.

Clause 7(a) would amend subsection 6(1) of the Principal Act to the effect that a married person or his or her spouse or both of them would be allowed to dispose of property worth up to $10,000 in a year without affecting the rate of their prescribed pension. Clause 7(b) would amend subsection 6(2) of the Principal Act to the effect that an unmarried person may also dispose of property worth up to $10,000 in a year without affecting the rate of his or her prescribed pension. Clauses 7(a) and (b) would commence on 1 March 1991 and would apply to cases where a person has disposed of property on or after that date.

Clauses 7(c), (d) and (e) would amend subsection 6(3) of the Principal Act. Clause 7(c) would limit its application to persons who disposed of their property before 1 March 1991. Clause 7(d) would provide that such persons would continue to be subject to that subsection, ie to the 10% reduction rule, for 5 years only. Clause 7(e) would provide that the balance of the amount involved, viz 50%, would be completely disregarded after 5 years. Clauses 7(c), (d) and (e) would commence on 1 March 1991.

Clause 7(f) would insert new subsection 6(3A). The new subsection would apply to persons who dispose of their property on or after 1 March 1991. The effect of the new subsection would be that where a person disposes of his or her property on or after that date and the value of his or her property is, for the purposes of the assets test, increased by the amount of the disposition, the amount involved would not be gradually reduced over 10 years. Instead, it would be maintained in full but for 5 years only. Clause 7(f) would commence on 1 March 1991.

Clause 7(g) would insert new subsection 6(10A). The new subsection would be somewhat similar in effect to the existing subsection 6(12) which provides that the value of a right or interest referred to in subparagraph 4(1)(a)(v), viz a right to accommodation for life in, or a life interest in, a private

residence which is a person's principal home, would not be taken to be "consideration" for the purposes of the disposal of income or property provisions. By virtue of clause 4(c), subparagraph 4(1)(a)(v) and, consequently, subsection 6(12) would continue to apply to persons who acquired such a right or interest before 22 August 1990.

New subsection 6(10A) would provide that where, under new subsection 4B(15) to be inserted by clause 5, the value of a right to accommodation for life in, or a life interest in, a private residence which is a person's principal home is taken to be less than the amount paid or agreed to be paid for such a right or interest, then the difference (ie so much of the amount paid or agreed to be paid for the right or interest as exceeds its deemed value) would not be taken to be "consideration" for the purposes of the disposal of property provision in subsection 6(10). By virtue of clause 2(2), clause 7(g) and, consequently, new subsection 6(10A) would be taken to have commenced on 22 August 1990 and would apply to persons who acquired such a right or interest on or after that date.

Clause 8 : Insertion of new section
New section 6A : Income from deprived property

Clause 8 would insert new section 6A into the Principal Act.

New section 6A would provide that where, because of section 6, the value of a person's property for the purposes of the Principal Act includes the value of property disposed of on or after 22 August 1990, the person shall, for the purposes of the income test, be taken to receive income from that property at whichever is the higher of:

- the "property rate" as defined in new subsection 6A(1); or

- the actual rate of return from the disposed of property prior to its disposal, ie the amount calculated in accordance with subsection 6(8).

The "property rate" would mean 10% a year or such lower rate as may be determined by the Minister for Social Security from time to time by a notice in writing. Such notices by the Minister would be disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901. Consequently, such notices would be published in the Gazette and tabled in each House of the Parliament within 15 sitting days after the date of determination.

Clause 8 would be taken to have commenced on 22 August 1990.

Clause 9: Insertion of new sections
New section 52A: Provision of tax file numbers

New section 52A would require a sole parent pensioner to supply a tax file number as of 1 October 1990 in order to receive or to continue to receive pension. At present there is no similar requirement.

New subsection 52A(1) would lay down the fundamental proposition: a sole parent's pension that a person is qualified to receive would not be paid to the person unless he or she has given the Secretary, in writing:

- a statement of his or her tax file number; and

- in the case of a married person, a statement of the person's spouse's tax file number.

This would not be required where the person or person's spouse cannot obtain a tax file number because he or she is absent overseas.

New subsection 52A(2) would demonstrate how a person is to satisfy new subsection 52A(1). Where the relevant tax file number or numbers are known this could be:

- by provision of an employment declaration containing the person's tax file number; and

- by provision of a declaration of a spouse's tax file number in a form approved by the Secretary.

Where the relevant tax file number is not known new paragraphs 52A(2)(b) to (f) would provide a mechanism whereby the person could authorise the Commissioner of Taxation to pass to the Secretary the number as soon as possible, if one already exists, or following issue if a number does not already exist. Provision would also be made for the Commissioner of Taxation to inform the Secretary where the Commissioner refuses to issue a number or a person withdraws an application for a tax file number.

New section 52B: Tax file numbers

New subsection 52B(1) would authorise the Secretary to request a person to quote his or her tax file number for the purpose of enabling payment of sole parent's pension without the Secretary thereby breaching section 8WA of the Taxation Administration Act. Section 8WA would otherwise be infringed as it is a general provision which forbids a person to request another person to quote his or her tax file number.

New subsection 52B(2) would permit the Commissioner of Taxation to communicate to the Secretary information about a person's tax file number. This would otherwise place the Commissioner of Taxation in breach of section 8WB of the Taxation Administration Act. The information could be:

- whether the person has a tax file number; or

- what is the person's tax file number; or

- whether the person's application for a tax file number has been refused or withdrawn.

New subsection 52B(3) would permit the Secretary to record a tax file number which he receives from the person or from the Commissioner of Taxation. Again, section 8WB of the Taxation Administration Act would otherwise be breached by the Secretary.

These provisions would be reinforced by amendments in Part 7 of this Bill.

Clause 9 would commence on 1 October 1990 and would apply to all instalments of sole parent's pension that fall due on or after that date.

Clause 10: Insertion of new sections
New section 77: Provision of tax file numbers

New section 77 would require a recipient of family allowance supplement to supply a tax file number as of 1 October 1990 in order to receive or to continue to receive payment. At present there is no similar requirement.

New subsection 77(1) would lay down the fundamental proposition: a family allowance supplement that a person is qualified to receive would not be paid to the person unless he or she has given the Secretary, in writing:

- a statement of his or her tax file number; and

- in the case of a married person, a statement of the person's spouse's tax file number.

There would be provision for the Secretary to waive the requirement in respect of the spouse where the spouse is absent from Australia and so unable to obtain a tax file number.

New subsection 77(2) would demonstrate how a person is to satisfy new subsection 77(1). Where the relevant tax file number or numbers are known this could be:

- by provision of a declaration in a form approved by the Secretary containing the person's tax file number; and

- by provision of a declaration in a form approved by the Secretary containing the spouse's tax file number.

Where the relevant tax file number is not known new paragraphs 77(2)(b) to (f) would provide a mechanism whereby the person could authorise the Commissioner of Taxation to pass to the Secretary the number as soon as possible, if one already exists, or following issue if a number does not already exist. Provision would also be made for the Commissioner of Taxation to inform the Secretary where the Commissioner refuses to issue a number or a person withdraws an application for a tax file number.

New section 77A: Tax file numbers

New subsection 77A(1) would authorise the Secretary to request a person to quote his or her tax file number for the purpose of enabling payment of family allowance supplement without the Secretary thereby breaching section 8WA of the Taxation Administration Act. Section 8WA would otherwise be infringed as it is a general provision which forbids a person to request another person to quote his or her tax file number.

New subsection 77A(2) would permit the Commissioner of Taxation to communicate to the Secretary information about a person's tax file number. This would otherwise place the Commissioner of Taxation in breach of section 8WB of the Taxation Administration Act. The information could be:

- whether the person has a tax file number; or
- what is the person's tax file number; or
- whether the person's application for a tax file number has been refused or withdrawn.

New subsection 77A(3) would permit the Secretary to record a tax file number which he receives from the person or from the Commissioner of Taxation. Again, section 8WB of the Taxation Administration Act would otherwise be breached by the Secretary.

These provisions would be reinforced by amendments in Part 7 of this Bill.

Clause 10 would commence on 1 October 1990 and would apply to all payments of family allowance supplement that fall due on or after that date.

Clause 11: Insertion of new sections
New section 91A: Provision of tax file numbers

New section 91A would require certain recipients of family allowance to supply a tax file number as of 1 October 1990 in order to receive or to continue to receive payment. At present there is no similar requirement.

New subsection 91A(1) would lay down the fundamental proposition: a family allowance that a person is qualified to receive, being an allowance the claim for which was lodged after 30 September 1990, would not be paid to the person unless he or she has given the Secretary, in writing:

- a statement of his or her tax file number; and

- in the case of a married person, a statement of the person's spouse's tax file number.

There would be provision for the Secretary to waive the requirement in respect of the spouse where the spouse is absent from Australia and therefore unable to obtain a tax file number.

New subsection 91A(2) would demonstrate how a person is to satisfy new subsection 91A(1). Where the relevant tax file number or numbers are known this could be:

- by provision of a declaration in a form approved by the Secretary containing the person's tax file number; and

- by provision of a declaration of a spouse's tax file number in a form approved by the Secretary.

Where the relevant tax file number is not known new paragraphs 91A(2)(b) to (f) would provide a mechanism whereby the person could authorise the Commissioner of Taxation to pass to the Secretary the number as soon as possible, if one already exists, or following issue if a number does not already exist. Provision would also be made for the Commissioner of Taxation to inform the Secretary where the Commissioner refuses to issue a number or a person withdraws an application for a tax file number.

New section 91B: Tax file numbers

New subsection 91B(1) would authorise the Secretary to request a person to quote his or her tax file number for the purpose of enabling payment of family allowance without the Secretary thereby breaching section 8WA of the Taxation Administration Act. Section 8WA would otherwise be infringed as it is a general provision which forbids a person to request another person to quote his or her tax file number.

New subsection 91B(2) would permit the Commissioner of Taxation to communicate to the Secretary information about a person's tax file number. This would otherwise place the Commissioner of Taxation in breach of section 8WB of the Taxation Administration Act. The information could be:

- whether the person has a tax file number; or
- what is the person's tax file number; or
- whether the person's application for a tax file number has been refused or withdrawn.

New subsection 91B(3) would permit the Secretary to record a tax file number which he receives from the person or from the Commissioner of Taxation. Again, section 8WB of the Taxation Administration Act would otherwise be breached by the Secretary.

These provisions would be reinforced by amendments in Part 7 of this Bill.

Clause 11 would commence on 1 October 1990 and would apply to all payments of family allowance that fall due on or after that date.

PART 3 - AMNESTY IN RELATION TO CERTAIN LIABILITIES UNDER THE SOCIAL SECURITY ACT 1947

This Part would provide for the social security amnesty.

Clause 12 : Interpretation

This clause would provide rules for the interpretation of Part 3.

Clause 12(1) would provide a number of definitions of terms used in Part 3.

"Amnesty period" would provide that the amnesty is to operate from 22 August 1990 to 2 October 1990.

"Child allowance" would provide that the term applies to:

- family allowance supplement; and
- family allowance; and
- double orphan's pension; and
- child disability allowance.

This would be relevant to clause 13 discussed below.

"Event" would mean a change of circumstances. It would not extend to the making of a false or misleading statement to an officer of the Department of Social Security. This would be relevant to clause 15 discussed below.

"Pension" would mean virtually all types of payments made under the Social Security Act. The amnesty would apply to the full range of payment types.

"Pension Act" would mean the Social Security Act 1947.

"Transgression period" would mean the period commencing when the person first began to receive the pension he or she receives on 22 August 1990, or when the person first began to receive a related pension to that received on 22 August 1990. This could be a broken period. Thus, for example, where a person received unemployment benefit from 4 January 1987 to 30 June 1987 and was in receipt of sole parent's pension from 4 January 1990 to 22 August 1990 the transgression period would operate from 4 January 1987.

Clause 12(2) would provide that the expressions used in Part 3 have the same meaning as in the Pension Act. This would be subject to clause 12(1).

Clause 13 : Related pensions

This clause would define "related pensions" for the purposes of Part 3. Pensions would be "related" where:

(a) both pensions are child allowances; or

(b) neither pension is a child allowance.

This definition would be vital to the operation of the amnesty. The basic scheme of the amnesty is that a person who has been overpaid and qualifies under clause 15 or clause 16 for application of the amnesty must come forward between 22 August 1990 and 2 October 1990. Because of the definition of "transgression period" in clause 12(1) the person may claim the amnesty in respect of overpayments incurred since he or she first received that pension or a related pension.

By defining related pension in such a way as to preclude the mixing of child allowance with other pensions in calculating a transgression period the resulting transgression period is less likely to be of excessive length.

Clause 14 : Effect on the Pension Act

This provision would enable the provisions of the Part to have the effect of modifying provisions of the Social Security Act.

Clause 15 : Persons not to be liable under the Pension Act in certain cases of failure to notify

Clause 15 would deal with the case of a person who fails to comply with an obligation under the Act to notify the occurrence of an event or a change in circumstances.

Where such a person subsequently informs the Department of Social Security between 22 August 1990 and 2 October 1990 of that event or the correct state of affairs, and the person is still in receipt of a social security payment, the person will not be guilty of a criminal offence under the Act and will not be liable to refund any overpayment made to him or her during the transgression period.

An example of such a case is where a person claims a sole parent's pension and is properly granted that pension, but the person subsequently marries or enters into a de facto relationship and fails to notify that fact.

If the person voluntarily informs the Department of the change in circumstances between 22 August 1990 and 2 October 1990 the person will not be liable for any offence concerning the failure to notify and will not have to repay any pension.

Clause 15(2) would provide for the situation where, although the person informs of the occurrence of the event or change in circumstances, the amnesty does not apply. This would occur where before the person informs the Department he or she had

been charged with an offence in respect of the failure to notify or where, before the person informs the Department, he or she had been informed in writing by an officer of the Department or by the Director of Public Prosecutions that:

- proceedings had been, or would be, instituted in respect of such an offence; or

- an amount paid because of the failure is recoverable by the Commonwealth.

Clause 15(3) would provide that subsection (1) does not apply where, before 22 August 1990, the person notified the Department of the possibility of payment to the person of an amount of pension which should not have been paid because of the event.

Clause 16 : Persons not to be liable under Pension Act in certain cases of false or misleading statements

Clause 16 would deal with the case of a person who has made a false statement (ie has misrepresented the person's circumstances) and as a result has been overpaid.

Where such a person subsequently informs the Department of Social Security between 22 August 1990 and 2 October 1990, and the person is still in receipt of a social security payment, the person will not be guilty of a criminal offence under the Act and will not be liable to refund any overpayment. However, this will only be so where the misrepresentation was made unknowingly, in cases where the misrepresentation resulted in the payment being made or the payment being made at a higher rate.

An example of such a case is where a person says, in making a claim for an unemployment benefit, that the person is not married, believing that he or she is not married, but is nevertheless a married person for the purposes of the Act by reason of having a de facto marriage partner.

Clause 16(2) would preclude application of the amnesty to a person who confesses to having made a false or misleading statement during his or her transgression period where the person, before informing the Department of Social Security, had been charged with an offence in respect of the statement, or where he or she had been informed in writing by a departmental officer or by the Director of Public Prosecutions that criminal proceedings had been or would be instituted in respect of the offence or that an amount paid because of the statement is recoverable by the Commonwealth.

Clause 16(3) would provide that subsection (1) does not apply where, before 22 August 1990, the person notified the Department of the possibility of payment to the person of an amount of pension which should not have been paid because of the statement.

Clause 17 : Part not to affect liability of officers

Clause 17 would provide that the amnesty does not apply to a person who was an employee in the Department when the criminal or civil liability of the person arose.

Although no specific provision would be made for persons to seek reviews of or to appeal against decisions made under Part 3 it is considered that Part XIX of the Social Security Act 1947 applies to any person aggrieved by a decision made under this Part. Thus specific provision is not considered necessary.

Part 3 would commence on the day of Royal Assent.

PART 4 - AMENDMENT OF VETERANS' ENTITLEMENTS ACT 1986

Clause 18 : Principal Act

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

Clause 18 would commence on the day of Royal Assent.

Clause 19: Calculation of value of property

Clause 19 would amend section 50 of the Principal Act. Section 50 contains the rules for the calculation of the value of the property of a person for the purposes of the assets test.

Clause 19(a) and clause 19(b) would amend, respectively, subparagraphs 50(1)(a)(i) and (ii) of the Principal Act by inserting references to new subsection 50A(14).

The effect of subparagraphs 50(1)(a)(i) and (ii) is that the value of any right or interest of a person in relation to one residence which is the principal home of the person or of the person's spouse or of both of them is disregarded for the purposes of calculating the value of the person's property.

This rule, however, does not apply to rights or interests of the kind referred to in subparagraph 50(1)(a)(iv) of the Principal Act. Subparagraph 50(1)(a)(iv) refers to rights to accommodation for life in, or a life interest in, a private residence which is a person's principal home. While the value of such rights or interests is also disregarded under the assets test, the acquisition or retention of such rights may be affected by the special rules in section 52 of the Principal Act. These rules, which were designed to limit the avoidance

of the assets test through persons disposing of their property for inadequate or no consideration, are referred to in more detail under Clause 22 which would amend section 52.

New subsection 50A(14) would be inserted by Clause 20 and its effect is explained under that clause.

Clause 19(c) would amend subparagraph 50(1)(a)(iv) of the Principal Act by limiting its application to persons who, before 22 August 1990, acquired for valuable consideration, or retained, a right to accommodation for life in, or a life interest in, a private residence which was their principal home.

Clause 19 would be taken to have commenced on 22 August 1990.

Clause 20: Special provisions relating to residents of retirement villages or certain residences

Clause 20 would amend section 50A of the Principal Act by adding two new subsections, viz new subsections 50A(14) and (15), to apply to persons who, on or after 22 August 1990, acquired for valuable consideration, or retained, a right to accommodation for life in, or a life interest in, a private residence which was their principal home.

Section 50A contains special provisions relating to residents of retirement villages. Broadly speaking, the size of a person's "entry contribution" (which is, as defined in subsection 50A(13), the amount paid or agreed to be paid by a person for the right to live in a retirement village) will determine whether the person is to be taken to be a "homeowner" for the purposes of the assets test.

New subsection 50A(14) would provide that where a person has acquired for valuable consideration, or has retained, a right to accommodation for life in, or a life interest in, a private residence which was their principal home on or after 22 August 1990, then the value of that right or interest would, in broad terms, be taken for the purposes of the assets test as if it were an "entry contribution" paid or agreed to be paid for the right to live in a retirement village. Consequently, the value of that right or interest would determine whether the person is to be taken to be a "homeowner" for the purposes of the assets test.

New subsection 50A(15) would provide that, for the purposes of new subsection 50A(14), the value of a right or interest would be either:

- the amount paid or agreed to be paid for that right or interest; or

- for any special reason in any particular case, such other amount as may be determined by the Secretary.

Clause 20 would be taken to have commenced on 22 August 1990.

Clause 21: Insertion of new section: New section 50B: Income from loans

Clause 21 would insert a new section 50B into the Principal Act.

New section 50B would provide that, for income test purposes, income from loans made by a person would be assessed at a statutory minimum rate, or the actual rate, whichever is the greater.

New subsection 50B(1) would provide definitions for the purposes of new section 50B. "Interest" would be defined to include any payment made for the use of the money lent. "Loan rate" would be defined to be 10% or, where a determination has been made by the Minister for Social Security under the provisions of section 4C of the Social Security Act 1947 determining a lower rate, that rate.

New subsection 50B(2) would provide that, for the purposes of this section, debentures, bonds or other securities are to be treated as loans.

New subsection 50B(3) would provide that, for the purposes of this section, money in an account with a bank, building society or credit union is not to be treated as a loan.

New subsection 50B(4) would provide that, for the purposes of the Principal Act, where there is a loan by a person and that person is paid interest on that loan at a rate less than the loan rate (initially to be 10%), the person would be deemed to be receiving interest on that loan at the loan rate.

New subsection 50B(5) would provide that for the purposes of the Principal Act, where there is a loan by a person for which there is no interest paid to that person they would be taken to receive interest on that loan on each anniversary of making the loan. The interest would be taken to be the loan rate per year.

New subsection 50B(6) would provide that for the purposes of the Principal Act, where there is a loan by the person for which they receive no interest payment, the person will be taken to have received interest at the loan rate.

New subsection 50B(7) would provide that where, but for this subsection, the provisions of this section and Division 1A of Part III (Investment income), would apply to a loan, this section would be taken to apply.

New section 50B would apply to loans entered into, or acquired by a person, after 21 August 1990

Clause 22 : Disposal of income or property

Clause 22 would amend section 52 of the Principal Act. Section 52 contains special rules designed to limit the avoidance of the assets test by the disposal of income or property. Under these rules, a person who disposes of property above certain limits is treated for assets test purposes as if he or she still had that property. In this context, a person is taken to have disposed of property where, in broad terms, the value of his or her property is reduced for inadequate or no consideration or where the purpose of the reduction was to enable the person or the person's spouse to get a prescribed pension or a higher rate of that pension.

The same rules, however, allow a married person or his or her spouse or both of them to dispose of property worth up to $4,000 in a year without affecting the rate of their prescribed pension. An unmarried person may dispose of property worth up to $2,000 in a year without affecting the rate of his or her prescribed pension. Also, where under these rules an amount is included in the value of a person's property for the purposes of the assets test as if he or she had not disposed of it, that amount is reduced by 10% on each anniversary of the day on which the disposition took place. Consequently, the amount involved is completely disregarded after 10 years.

Clause 22(a) would amend subsection 52(1) of the Principal Act to the effect that a married person or his or her spouse or both of them would be allowed to dispose of property worth up to $10,000 in a year without affecting the rate of their prescribed pension.

Clause 22(b) would amend subsection 52(2) of the Principal Act to the effect that an unmarried person may also dispose of property worth up to $10,000 in a year without affecting the rate of his or her prescribed pension. Clauses 22(a) and (b) would commence on 1 March 1991 and would apply to cases where a person has disposed of property on or after that date.

Clauses 22(c), (d) and (e) would amend subsection 52(3) of the Principal Act. Clause 22(c) would limit its application to persons who disposed of their property before 1 March 1991. Clause 22(d) would provide that such persons would continue to be subject to that subsection, ie to the 10% reduction rule, for 5 years only. Clause 22(e) would provide that the balance of the amount involved, viz 50%, would be completely disregarded after 5 years. Clauses 22(c), (d) and (e) would commence on 1 March 1991.

Clause 22(f) would insert new subsection 52(3A). The new subsection would apply to persons who disposed of their property on or after 1 March 1991. The effect of the new subsection would be that where a person disposed of his or her property on or after that date and the value of his or her property was, for the purposes of the assets test, increased by the amount of the disposition, the amount involved would not be gradually reduced over 10 years. Instead, it would be maintained in full but for 5 years only. Clause 22(f) would commence on 1 March 1991.

Clause 22(g) would insert new subsection 52(10A). The new subsection would be somewhat similar in effect to the existing subsection 52(12) which provides that the value of a right or interest referred to in subparagraph 50(1)(a)(iv), viz a right to accommodation for life in or a life interest in a private residence which is a person's principal home, would not be taken to be "consideration" for the purposes of the disposal of income or property provisions. By virtue of clause 22(c),

subparagraph 50(1)(a)(iv) and, consequently, subsection 52(12) would continue to apply to persons who acquired such a right or interest before 22 August 1990.

New subsection 52(10A) would provide that where, under new subsection 50A(15) to be inserted by clause 20, the value of a right to accommodation for life in or a life interest in a private residence which is a person's principal home is taken to be less than the amount paid or agreed to be paid for such a right or interest, then the difference (ie so much of the amount paid or agreed to be paid for the right or interest as exceeds its deemed value) would not be taken to be "consideration" for the purposes of the disposal of property provision in subsection 52(10). By virtue of clause 2(2), clause 22(g) and, consequently, new subsection 52(10A) would be taken to have commenced on 22 August 1990 and would apply to persons who acquired such a right or interest on or after that date.

Clause 23: Insertion of new section
New section 52A : Income from deprived property

Clause 23 would insert new section 52A into the Principal Act.

New section 52A would provide that where, because of section 52, the value of a person's property for the purposes of the Principal Act includes the value of property disposed of on or after 22 August 1990, the person shall, for the purposes of the income test, be taken to receive income from that property at whichever is the higher of:

- the "property rate" as defined in new subsection 52A(1); or

- the actual rate of return from the disposed of property prior to its disposal, ie the amount calculated in accordance with subsection 52(8).

The "property rate" would mean 10% a year or such lower rate as may be determined by the Minister for Social Security from time to time by a notice in writing. Such notices by the Minister would be disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901. Consequently, such notices would be published in the Gazette and tabled in each House of the Parliament within 15 sitting days after the date of determination.

Clause 23 would be taken to have commenced on 22 August 1990.

Clause 24 : Insertion of new sections
New section 128A : Provision of Tax File Numbers
New section 128A : Tax file numbers

Clause 24 would insert two new sections into the Principal Act. These sections would provide that, where the Secretary requests a person to do so, a person would not be eligible for payment under the Principal Act unless the person has given or has taken steps to give the Secretary his or her tax file number.

New subsection 128A(1) would specify the payments to which this provision would apply. It would apply to all payments of temporary incapacity allowance, loss of earnings allowance, pension under Part II, Part III and Part IV of the Principal Act.and to allowances payable to a person in receipt of a pension These would be defined as "income payments".

New subsection 128A(2) would provide that an income payment that a person would otherwise be eligible to receive is not to be paid unless the person has given the Secretary a written statement of his or her tax file number and a statement of the person's spouse's tax file number. This would apply where the Secretary has requested that these tax file numbers be provided.

New subsection 128A(3) would provide that a person eligible to receive an allowance under the Veterans' Children Education Scheme will not be paid that allowance unless the person has given the Secretary a written statement of his or her tax file number and a statement of the person's spouse's tax file number. This would apply where the Secretary has requested that these tax file numbers be given.

New subsection 128A(4) would detail what a person must do in order to be considered to have given the Secretary the tax file numbers. The person would complete an employment declaration, or a declaration in a form approved by the Secretary, which either;

- includes the tax file number;

- indicates that they have a tax file number but do know what it is, and they have requested the Taxation Commissioner to inform them of the number; or

- indicates that an application for a tax file number is pending.

Where the person has applied for a tax file number or is to be advised of their existing number the person may provide the Secretary with a document authorising the Taxation Commissioner to provide the result of the application directly to the Secretary.

New subsection 128B of the Principal Act would be paramount over section 8WA of the Taxation Administration Act 1953. Section 8WA of that Act prohibits a person from requiring or requesting another person to quote his or her tax file number except in stated circumstances. By new subsection 128B(1), the Secretary could request a person to quote his or her tax file number for the purposes of enabling payment to the person.

New subsection 128A(4) would make equivalent provision for situations where new paragraph 120A(4)(c) applies to a person who has no, or does not know his or her, tax file number.

Section 8WB of the Taxation Administration Act 1953 would provide explicit authority for the Secretary to record a person's tax file number given to the Secretary by the person or by the Taxation Commissioner.

Clause 24 would commence on the day of Royal Assent.

PART 5 - AMNESTY IN RELATION TO CERTAIN LIABILITIES UNDER THE VETERANS' ENTITLEMENTS ACT 1986

This Part would provide for the veterans' affairs amnesty.

Clause 25 : Interpretation

This clause would provide rules for the interpretation of Part 5.

Clause 25(1) would provide a number of definitions of terms used in Part 5.

"Amnesty period" would provide that the amnesty is to operate from 22 August 1990 to 2 October 1990 inclusive.

"Entitlements Act" would mean the Veterans' Entitlements Act 1986.

"Event" would mean a change of circumstances. It would not extend to the making of a false or misleading statement to an officer of the Department of Veterans' Affairs. This would be relevant to clause 27 discussed below.

"Pension" would mean virtually all types of payments made under the Veterans' Entitlements Act. The amnesty would apply to the full range of payment types.

"Transgression period" would mean the period commencing when the person first began to receive the pension he or she receives on 22 August 1990. This could be a broken period.

Clause 25(2) would provide that the expressions used in Part 5 have the same meaning as in the Entitlements Act. This would be subject to clause 25(1).

Clause 26 : Effect on the Entitlements Act

This provision would enable the provisions of the Part to have the effect of modifying provisions of the Veterans' Entitlements Act.

Clause 27 : Persons not to be liable under the Entitlements Act in certain cases of failure to notify

Clause 27 would deal with the case of a person who fails to comply with an obligation under the Act to notify the occurrence of an event or a change in circumstances.

Where such a person subsequently informs the Department of Veterans' Affairs between 22 August 1990 and 2 October 1990 of that event or the correct state of affairs, and the person is still in receipt of a Veterans' Affairs payment, the person will not be guilty of a criminal offence under the Act and will not be liable to refund any overpayment made to him or her during the transgression period.

An example of such a case is where a person claims a service pensioner as an unmarried and is properly granted pension at the appropriate rate, but the person subsequently marries or enters into a de facto relationship and fails to notify that fact.

If the person voluntarily informs the Department of the change in circumstances between 22 August 1990 and 2 October 1990 the person will not be liable for any offence concerning the failure to notify and will not have to repay any pension.

Clause 27(2) would provide for the situation where, although the person informs of the occurrence of the event or change in circumstances, the amnesty does not apply. This would occur where before the person informs the Department he or she had

been charged with an offence in respect of the failure to notify or where, before the person informs the Department, he or she had been informed in writing by an officer of the Department or by the Director of Public Prosecutions that:

- proceedings had been, or would be, instituted in respect of such an offence; or

- an amount paid because of the failure is recoverable by the Commonwealth.

Clause 27(3) would provide that the amnesty provision in clause 27(1) would not apply to those cases where, before 22 August 1990, the person notified the Department of the possibility that payment of an amount of pension or allowance should not have been paid because of the event.

Clause 28 : Persons not to be liable under Entitlements Act in certain cases of false or misleading statements

Clause 28 would deal with the case of a person who has made a false statement (ie has misrepresented the person's circumstances) and as a result has been overpaid.

Where such a person subsequently informs the Department of Social Security between 22 August 1990 and 2 October 1990, and the person is still in receipt of a social security payment, the person will not be guilty of a criminal offence under the Act and will not be liable to refund any overpayment. However, this will only be so where the misrepresentation was made unknowingly, in cases where the misrepresentation resulted in the payment being made or the payment being made at a higher rate.

An example of such a case is where a person says, in making a claim for a pension, that the person is not married, believing that he or she is not married, but is nevertheless a married person for the purposes of the Act by reason of having a de facto marriage partner.

Clause 28(2) would preclude application of the amnesty to a person who confesses to having made a false or misleading statement during his or her transgression period where the person, before informing the Department of Veterans' Affairs, had been charged with an offence in respect of the statement, or where he or she had been informed in writing by a departmental officer or by the Director of Public Prosecutions that criminal proceedings had been or would be instituted in respect of the offence or that an amount paid because of the statement is recoverable by the Commonwealth.

Clause 28(3) would provide that the amnesty provision in subsection (1) would not apply where, before 22 August 1990, the person notified the Department of the possibility that payment to the person of an amount of pension should not have been made because of the statement.

Clause 29 : Part not to affect liability of officers

Clause 29 would provide that the amnesty does not apply to a person who was an employee in the Department when the criminal or civil liability of the person arose.

Although no specific provision would be made for persons to seek reviews of or to appeal against decisions made under Part 5 it is considered that existing review provisions under the Veterans' Entitlements Act 1986 applies to any person aggrieved by a decision made under this Part. Thus specific provision is not considered necessary.

Part 5 would commence on the day of Royal Assent.

PART 6 - AMENDMENTS OF SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

Clause 30 : Principal Act

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

Clause 30 would commence on the day of Royal Assent.

Clause 31 : Insertion of new sections
New section 32AA : Provision of tax file numbers
New section 32AB : Tax file numbers

Clause 31 would insert two new sections into the Principal Act. These sections would provide that, where the Secretary requests a person to do so, a person would not be eligible for payment under the Principal Act unless the person has given or has taken steps to give the Secretary his or her tax file number.

New subsection 32AA(1) would provide that a pension that a person would otherwise be eligible to receive is not to be paid unless the person has given the Secretary a written statement of his or her tax file number and a statement of the person's spouse's tax file number. This would apply where the Secretary has requested that these tax file numbers be given.

New subsection 32AA(2) would detail what a person must do in order to be considered to have given the Secretary the tax file numbers. The person would complete a declaration in a form approved by the Secretary, which either:

- includes the tax file number;

- indicates that they have a tax file number but do know what it is, and they have requested the Taxation Commissioner to inform them of the number; or

- indicates that an application for a tax file number is pending.

Where the person has applied for a tax file number or is to be advised of their existing number the person may provide the Secretary with a document authorising the Taxation Commissioner to provide the result of the application directly to the Secretary.

New subsection 32AB of the Principal Act would be paramount over section 8WA of the Taxation Administration Act 1953. Section 8WA of that Act prohibits a person from requiring or requesting another person to quote his or her tax file number except in stated circumstances. By new subsection 32AB(1) the Secretary could request a person to quote his or her tax file number for the purposes of enabling payment to the person.

New subsection 32AA(2) would make equivalent provision for situations where new paragraph 32AA(2)(c) applies to a person who has no, or does not know his or her, tax file number.

Section 8WB of the Taxation Administration Act 1953 would provide explicit authority for the Secretary to record a person's tax file number given to the Secretary by the person or by the Taxation Commissioner.

Clause 31 would commence on the day of Royal Assent.

PART 7 - AMNESTY IN RELATION TO CERTAIN LIABILITIES UNDER THE SEAMEN'S WAR PENSIONS AND ALLOWANCES ACT 1940

This Part would provide for the veterans' affairs amnesty.

Clause 32 : Interpretation

This clause would provide rules for the interpretation of Part 7.

Clause 32(1) would provide a number of definitions of terms used in Part 7.

"Amnesty period" would provide that the amnesty is to operate from 22 August 1990 to 2 October 1990 inclusive.

"Event" would mean a change of circumstances. It would not extend to the making of a false or misleading statement to an officer of the Department of Veteran's Affairs. This would be relevant to clause 34 discussed below.

"Pension" would mean a pension or allowance under the Seamen's Act. The amnesty would apply to the full range of payment types.

"Seamen's Act" would mean the Seamen's War Pensions and Allowances Act 1940.

"Transgression period" would mean the period commencing when the person first began to receive the pension he or she receives on 22 August 1990, or when the person first began to receive a related pension to that received on 22 August 1990. This could be a broken period.

Clause 32(2) would provide that the expressions used in Part 7 have the same meaning as in the Seamen's Act. This would be subject to clause 32(1).

Clause 33 : Effect on the Seamen's Act

This provision would enable the provisions of the Part to have the effect of modifying provisions of the Seamen's War Pensions and Allowances Act.

Clause 34 : Persons not to be liable under the Seamen' Act in certain cases of failure to notify

Clause 34 would deal with the case of a person who fails to comply with an obligation under the Seamen's Act to notify the occurrence of an event or a change in circumstances.

Where such a person subsequently informs the Department of Veteran's Affairs between 22 August 1990 and 2 October 1990 of that event or the correct state of affairs, and the person is still in receipt of a pension or allowance, the person will not be guilty of a criminal offence under the Seamen's Act and will not be liable to refund any overpayment made to him or her during the transgression period.

An example of such a case is where a person's circumstances change in such a way as to affect entitlement to a pension or allowance and the person fails to notify the fact of the changed circumstances.

If the person voluntarily informs the Department of the change in circumstances between 22 August 1990 and 2 October 1990 the person will not be liable for any offence concerning the failure to notify and will not have to repay any pension.

Clause 34(2) would provide for the situation where, although the person informs of the occurrence of the event or change in circumstances, the amnesty does not apply. This would occur where before the person informs the Department he or she had been charged with an offence in respect of the failure to notify or where, before the person informs the Department, he or she had been informed in writing by an officer of the Department or by the Director of Public Prosecutions that:

- proceedings had been, or would be, instituted in respect of such an offence; or

- an amount paid because of the failure is recoverable by the Commonwealth.

Clause 34(3) would provide that the amnesty provision in clause 34(1) would not apply to those cases where, before 22 August 1990, the person notified the Department of the possibility that payment of an amount of pension or allowance should not have been paid because of the event.

Clause 35 : Persons not to be liable under Seamen's Act in certain cases of false or misleading statements

Clause 35 would deal with the case of a person who has made a false statement (ie has misrepresented the person's circumstances) and as a result has been overpaid.

Where such a person subsequently informs the Department of Veterans' Affairs between 22 August 1990 and 2 October 1990, and the person is still in receipt of a 'pension', the person will not be guilty of a criminal offence under the Act and will not be liable to refund any overpayment. However, this will only be so where the misrepresentation was made unknowingly, in cases where the misrepresentation resulted in the payment being made or the payment being made at a higher rate.

Clause 35(2) would preclude application of the amnesty to a person who confesses to having made a false or misleading statement during his or her transgression period where the person, before informing the Department of Social Security, had been charged with an offence in respect of the statement, or where he or she had been informed in writing by a departmental officer or by the Director of Public Prosecutions that criminal proceedings had been or would be instituted in respect of the offence or that an amount paid because of the statement is recoverable by the Commonwealth.

Clause 35(3) would provide that the amnesty provision in subsection (1) would not apply where, before 22 August 1990, the person notified the Department of the possibility that payment to the person of an amount of pension should not have been made because of the statement.

Clause 36 : Part not to affect liability of officers

Clause 36 would provide that the amnesty does not apply to a person who was an employee in the Department when the criminal or civil liability of the person arose.

Although no specific provision would be made for persons to seek reviews of or to appeal against decisions made under Part 7 it is considered that Part 6 of the Seamen's War Pensions and Allowances Act 1940 applies to any person aggrieved by a decision made under this Part. Thus specific provision is not considered necessary.

Part 7 would commence on the day of Royal Assent.

PART 8 - AMENDMENTS OF INCOME TAX ASSESSMENT ACT 1936

Clause 37 : Principal Act

This clause would provide that, in this Part of the amending Act, the Income Tax Assessment Act 1936 is referred to as the Principal Act.

Clause 37 would commence on the day of Royal Assent.

Clause 38 : Quotation of tax file number in employment declaration

Under section 202CB of the Principal Act, an employment declaration is not valid if the tax file number of the employee is not stated in the declaration (subsection (1)). Where an employee has not quoted a tax file number the employee is required to deduct tax from the employee,s salary or wage at the highest marginal rate plus Medicare levy.

However, an employee shall be taken to have provided a tax file number in an employment declaration if either :

- the declaration includes a statement that the employee has applied to the Commissioner of Taxation for notification of his or her tax file number or for allocation of a number (subsection (2)); or

- the Commissioner has notified the employer to treat the employee as having quoted a tax file number for the time specified in the notice (subsection (4)).

An employee who states that a tax file number application or enquiry has been made has 28 days to quote a tax file number to the employer (subsection (3)). Where quotation is not made by

the end of that time, or by the end of the time specified in the Commissioner's notice, the employer will commence to deduct tax from the employee's salary or wages at the highest rate plus the Medicare levy.

Subsection 202CB(6) provides, however, that these provisions do not apply to employment declarations given to the Secretary to the Department of Social Security by applicants for, and recipients of, unemployment benefits and sickness benefits. The Social Security Act 1947 treats an employment declaration given to the Secretary, which includes a statement that a tax file number application or enquiry is pending, as if a tax file number has been quoted in the declaration. This treatment continues until such time as the Commissioner informs the Secretary of the tax file number or of the fact that the application or enquiry has been refused or withdrawn.

Clauses 9, 10 and 11 would expand the treatment now afforded to employment declarations given to the Secretary to the Department of Social Security by applicants for, or recipients of, unemployment benefits and sickness benefits to other payments made by the Departments of Social Security .

Clauses 24 and 31 would extend the treatment to employment declarations given to the Secretary to the Department of Veterans' Affairs for the purposes of payments made by the Department of Veterans' Affairs.

Clauses 38(a) and (b) would extend subsection 202CB(6) so that it also applies to prevent the application of the provisions of subsections (2) to (4) of section 202CB to employment declarations given to the Secretary to the Department of Social Security by applicants for, or recipients of, sole parent's pension.

Clauses 38(a) and (b) would commence on 1 October 1990.

Clause 38(c) would add a new subsection (7) to section 202CB so that it applies to prevent the application of the provisions of subsections (2) to (4) of section 202CB to employment declarations given to the Secretary to the Department of Veterans' Affairs by applicants for, or recipients of, certain assessable income payments under the Veterans' Entitlements Act 1986.

Clause 38(c) would commence on Royal Assent.

Clause 39 : Effect of incorrect quotation of tax file number

Section 202CE of the Principal Act provides that, where a tax file number has been incorrectly stated in an employment declaration, the Commissioner of Taxation may give an employer notice of the incorrect statement (subsection (1)).

Where the Commissioner is satisfied that the employee has a number, the Commissioner may inform the employer of the correct number. With this advice, the employer continues to treat the employee as having quoted a tax file number - tax is deducted from the employee's salary or wages at the employee's normal rate (subsection (2)).

Where the Commissioner is not satisfied that the employee has a tax file number, the Commissioner may advise the employer of this and send a copy of that advice to the employee (subsections (3) and (5)).

Subsection (6) requires that, from the date specified in the notice (subsection (4)), the employer is to treat the employment declaration of the employee as not stating a tax file number. The employer would then be required to tax the salary or wages of the employee at the highest marginal rate plus Medicare levy.

Subsection (7) states that subsection (6) does not apply to employment declarations given to the Secretary to the Department of Social Security by applicants for, and recipients of, unemployment benefits or sickness benefits.

However, where the Commissioner notifies the Secretary to the Department of Social Security of the quotation of an incorrect tax file number then, under the Social Security Act 1947, the recipient of the benefit becomes ineligible to receive the benefit.

Clauses 9, 10 and 11 expand the treatment afforded to employment declarations given to the Secretary to the Department of Social security by applicants for, or recipients of, unemployment benefits and sickness benefits to other payments made by the Departments of Social Security.

Clauses 24 and 31 would extend the treatment to employment declarations given to the Secretary to the Department of Veterans' Affairs for the purposes of payments made by the Department of Veterans' Affairs.

Clauses 39(a) and (b) would extend subsection 202CE(7) so that it also applies to prevent the application of the provisions of subsection 202CE(6) to employment declarations given to the Secretary to the Department of Social Security by applicants for, and recipients of, a sole parent's pension.

Clauses 39(a) and (b) would commence on 1 October 1990.

Clause 39(c) would add a new subsection (8) to section 202CE so that it applies to prevent the application of the provisions of subsection 202CE(6) to employment declarations given to the Secretary to the Department of Veterans' Affairs by applicants for, or recipients of, certain assessable income payments under the Veterans' Entitlements Act 1986.

Clause 39(c) would commence on Royal Assent.

PART 9 - AMENDMENTS OF TAXATION ADMINISTRATION ACT 1953

Clause 40 : Principal Act

This clause would provide that, in this Part of the amending Act, the Taxation Administration Act 1953 is referred to as the Principal Act.

Clause 40 would commence on the day of Royal Assent.

Clause 41 : Unauthorised requirement etc. that tax file number be quoted

Section 8WA of the Principal Act creates an offence, punishable on conviction by a fine of $10,000 and/or 2 years imprisonment, for a person to require or request the quotation of another person's tax file number for the purposes of establishing that person's identity or for any other purpose, unless the requirement or request is made under authorised circumstances.

Broadly, those authorised circumstances are where a taxation law makes provision for a request of a tax file number in specified circumstances, such as for employment or investment, where a levy relating to the Higher Education Contribution Scheme authorises such a request, or where the person requesting or requiring the quotation is acting on that person's behalf in the conduct of that person's affairs, such as tax agents and legal representatives.

Subsection 8WA(5) provides, however, that section 8WA has effect subject to section 138A of the Social Security Act 1947. That provision provides the Secretary to the Department of Social Security with authorisation to request a person to

quote a tax file number as a prequisite to the payment of unemployment benefit and sickness benefit. Subsection 8WA(5) precludes such a request from being unauthorised under section 8WA of the Principal Act.

Clause 41(a) would amend subsection 8WA(5) of the Principal Act to provide that section 8WA will also operate subject to new sections 52B, 77A and 91B of the Social Security Act 1947 (refer to clauses 9, 10, and 11 of the Bill). Those provisions authorise the Secretary to the Department of Social Security to request a person to quote a tax file number as a prequisite to the payment of sole parent's pension, family allowance supplement and family allowance respectively.

Clause 41(a) would commence on 1 October 1990.

Clause 41(b) would add a new subsection (6) to section 8WA of the Principal Act to provide that section 8WA will also operate subject to section 128B of the Veterans' Entitlements Act 1986 and section 32AB of the Seamen's War Pensions and Allowances Act 1940. Those provisions authorise the Secretary to the Department of Veterans' Affairs to request a tax file number as a prerequisite to the payment of certain pensions and allowances under those Acts.

Clause 41(b) would commence on Royal Assent.

Clause 42 : Unauthorised recording etc. of tax file number

Section 8WB of the Principal Act creates an offence, punishable on conviction by a fine of $10,000 or 2 years imprisonment, or both, for the unauthorised recording, use or divulging of a person's tax file number except under authorised circumstances.

The authorised circumstances are where a taxation law makes provision for a request of a tax file number in specified circumstances, such as for employment or investment, where a law relating to the Higher Education Contribution Scheme authorises such a request, or where the person requesting or requiring the quotation is acting on behalf of the person in the conduct of the person's affairs, such as tax agents and legal representatives.

Subsection 8WB(3) of the Principal Act provides that section 8WB has effect subject to section 138A of the Social Security Act 1947. That provision provides the Secretary to the Department of Social Security with authorisation to request a person to quote a tax file number as a prerequisite to the payment of unemployment benefits and sickness benefits. Subsection 8WB(3) precludes the divulgence and recording of tax file numbers from being unauthorised under section 8WB of the Principal Act.

Clause 42(a) would amend subsection 8WB(3) of the Principal Act to provide that section 8WB will also operate subject to new sections 52B, 77A and 91B. Those provisions would authorise the Secretary to the Department of Social Security to request a person to quote a tax file number as a prequisite to the payment of sole parent's pension, family allowance supplement and family allowance respectively.

Clause 42(a) would commence on 1 October 1990.

Clause 42(b) would add a new subsection (4) to section 8WB of the Principal Act to provide that section 8WB will also operate subject to section 128B of the Veterans' Entitlements Act 1986 and section 32AB of the Seamen's War Pensions and Allowances Act 1940. Those provisions authorise the Secretary to the Department of Veterans' Affairs to request a tax file number as a prerequisite to the payment of certain pensions and allowances under those Acts.

Clause 42(b) would commence on Royal Assent.

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