

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION  
AMENDMENT BILL (NO 3) 1989

EXPLANATORY MEMORANDUM

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

15475/89 Cat. No. 89 5181 X

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION  
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OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill would give effect to a number of measures announced in the 1989-90 Budget and effect minor and consequential amendments.

The legislation involved is the Social Security Act 1947, the Veterans' Entitlements Act 1986, the Child Support (Registration and Collection) Act 1988, the Child Support (Assessment) Act 1989, the National Health Act 1953, the Income Tax Assessment Act 1936 and the Taxation Administration Act 1953.

SOCIAL SECURITY ACT 1947

Education Leaver Deferment Period

. Students who re-apply for job search allowance or unemployment benefit within 4 weeks after attempting a return to full-time study would not be required to serve a second 13 week education leaver deferment period. This measure would come into effect on 1 January 1990.

This measure has negligible financial impact.

. From 1 October 1989, the 4 week period of grace for education leavers to register with the CES after leaving study would be abolished.

Estimated program savings from this measure are \$1.58m in 1989-90 and \$2.10m in 1990-91.

## Compensation

. From 1 January 1990, it would be made clear that the Commonwealth would be able to take recovery action against State authorities liable to indemnify a person against the liability of the person to make compensation payments to another person and against employers and insurers where the decision to pay a compensation claim is discretionary.

Estimated program savings from this measure are \$1.00m in 1989-90 and \$2.20m in 1990-91.

. Where an employer or insurer is liable to make a compensation payment to a client and has been notified that the Commonwealth may have an interest in the compensation award because of previous social security payments to the client, the employer or insurer would be required to repay to the Commonwealth any debt arising under the Social Security Act notwithstanding that the compensation money has already been released to the client. This measure would come into effect on 1 January 1990.

Estimated program savings from this measure are \$2.50m in 1989-90 and \$6.40m in 1990-91.

. From 1 January 1990, where a person with continuing entitlement to social security payment incurs a debt to the Commonwealth because of receiving a compensation payment, that debt could be satisfied by the Department withholding an amount from ongoing social security payments until the debt is satisfied.

Estimated program savings from this measure are \$2.00m in 1989-90 and \$5.00m in 1990-91.

. From the day of Royal Assent, periodic payments of compensation would be disregarded when applying the income test to the recipient's spouse. This would correct an anomaly whereby periodic payments can reduce the recipient's pension by direct deduction and the pension of the recipient's spouse under the income test.

This measure has negligible financial impact.

#### Labour Market Initiatives

. A recipient of unemployment benefit or job search allowance who changes residential location and thereby worsens his or her job prospects would have benefit cancelled and, on re-application for benefit, would be subject to a postponement period of 12 weeks. This measure would come into effect on 1 November 1989.

Estimated savings from this measure are \$3.70m in 1989-90 and \$9.00m in 1990-91.

. From 1 November 1989, persons who claim or have claimed unemployment or sickness benefit would be required to supply a tax file number as a precondition to receiving or continuing to receive payment.

Estimated savings from this measure are \$32.80m in 1989-90 and \$48.90m in 1990-91.

#### Family Payments

. Notifiable events which occurred before date of grant of family allowance supplement at any time during the current or previous financial year would be taken into account in assessing entitlement. This measure would come into effect on 1 January 1990.

Estimated program savings from this measure are \$3.90m in 1989-90 and \$7.80m in 1990-91.

. From 1 January 1990 recipients of family allowance would be required to inform the Department of notifiable events which occur during the calendar year and which may affect the rate of payment of family allowance.

Estimated program savings from this measure are \$15.20m in 1989-90 and \$30.40m in 1990-91.

. Low income parents who are also full-time students receiving AUSTUDY or another prescribed education payment, would be entitled to maximum rate of family allowance supplement, subject to the application of the assets test. This measure would come into effect on 1 December 1989.

. Where family allowance supplement is payable under the 25% reduction rule, recipients would be entitled to retain that rate of payment if a subsequent assessment based on the year of income that ended in the preceding calendar year would produce a lesser amount. This measure would come into effect on 1 January 1990.

. From 1 December 1989, family allowance supplement would be assessed on the basis of the current year of income where the current year of income is expected to be below the income threshold, regardless of whether there had been a fall in income of at least 25%.

Estimated program costs of these measures are \$3.80m in 1989-90 and \$5.10m in 1990-91.

. From 1 January 1990, where family allowance supplement is being paid on the basis of income assessed in accordance with a person's tax assessment notice, provision would be made for a re-assessment of the rate of allowance where the tax assessment was amended as a result of an appeal by the person.

This measure has negligible financial impact.

. Also included are minor technical amendments which have negligible financial impact.

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

Marriage-like Relationships

. Where a person claiming or receiving sole parent's pension has shared the same residence with a person of the opposite sex for a period of at least 8 weeks and the two persons have a child living in the same residence, own the home together, have joint assets or liabilities, have been married or have lived together at a previous address, he or she would be required to provide additional information with a view to ascertaining that they are not living in a marriage-like relationship.

This measure would impact only on the Social Security Act 1947.

. Factors for determining whether a marriage-like relationship exists would be set out in the Act. These factors would include financial, household, social, sexual and personal arrangements.

These measures would come into effect on 1 January 1990.

Estimated program savings from these measures are \$8.00m in 1989-90 and \$29.00m in 1990-91.

CHILD SUPPORT (REGISTRATION AND COLLECTION) ACT 1988 AND  
CHILD SUPPORT (ASSESSMENT) ACT 1989

. Amendments would be made to the Child Support (Registration and Collection) Act 1988 to correct minor anomalies and to make some adjustments to the registration, collection and objection processes.

. The Child Support (Assessment) Act 1989 would be amended to ensure that child support agreements and instruments executed pursuant to such agreements and to orders made under the Act are exempt from State and Territory stamp duties.

These measures would come into effect on the day of Royal Assent.

These measures have negligible financial impact.

INCOME TAX ASSESSMENT ACT 1936 AND  
TAXATION ADMINISTRATION ACT 1953

. The Income Tax Assessment Act 1936 would be amended to remove obligations which would otherwise apply in respect of employment declarations made by recipients of unemployment and sickness benefits.

. Amendments would be made to the Taxation Administration Act 1953 to provide authorisation for the collection of tax file numbers as a prerequisite to the payment of unemployment and sickness benefits.

These measures would come into effect on 13 November 1989.

Estimated program costs of these measures are \$14.00m in 1989-90 and \$20.00m in 1990-91.



SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION  
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PART 1 - PRELIMINARY

Clause 1 : Short Title

This clause would provide that the amending Act could be cited as the Social Security and Veterans' Affairs Legislation Amendment Act (No 3) 1989.

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 the clause.

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

Clause 2 would commence on the day of Royal Assent.

Clause 3 : Application

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

Clause 4 : Transitional - unemployment and  
sickness benefits

This clause would preserve the rate of payment of unemployment or sickness benefit to certain persons who have not supplied a tax file number on 13 November 1989. These persons would, prior to 13 November, have claimed benefit without quoting a tax file number and would have been granted a period of grace of 28 days in which to provide the number. During the period of grace benefit is paid on the same basis as if a tax file number has been supplied. At the end of the period of grace, if the person has not provided the Department with a tax file number benefit will no longer be paid.

Clause 4 would commence on 13 November 1989.

PART 2 - AMENDMENT OF CHILD SUPPORT (ASSESSMENT) ACT 1989

Clause 5 : Principal Act

Clause 5 would provide that, in this Part of the amending Act, the Child Support (Assessment) Act 1989 is referred to as the Principal Act.

Clause 5 would commence on the day of Royal Assent.

~~Clause 6 : Certain instruments not liable to duty~~

Clause 6 would insert a new section 163A in the Principal Act to ensure that child support agreements and instruments executed pursuant to such agreements and to orders made under that legislation are exempt from State and Territory stamp duties.

This would be consistent with section 90 of the Family Law Act 1975 which gives such exemption to maintenance agreements approved or registered under that Act and to instruments executed pursuant to such agreements or pursuant to orders made under Part VII (child maintenance orders) or Part VIII (orders and agreements relating to property and maintenance matters between spouses).

Clause 6 would commence on the day of Royal Assent.

PART 3 - AMENDMENTS OF CHILD SUPPORT (REGISTRATION AND  
COLLECTION) ACT 1988

Clause 7 : Principal Act

This clause would provide that, in this part of the amending Act, the Child Support (Registration and Collection) Act 1988 is referred to as the Principal Act.

Clause 7 would commence on the day of Royal Assent.

Clause 8 : Deputy Child Support Registrars

Clause 8 would amend subsection 12(2) of the Principal Act to provide that a Second Commissioner of Taxation would also be designated a Deputy Child Support Registrar. This amendment corrects an unintended omission in the original Act.

Clause 8 would commence on the day of Royal Assent.

Clause 9 : Registrar to register liability in Child Support  
Register on receipt of notification etc

This clause would amend subsection 24(2) of the Principal Act to provide that the Child Support Registrar may register a maintenance liability in circumstances where the payee of the maintenance liability cannot be located and an application has not been received in accordance with section 23 of the Principal Act.

This amendment would enhance the operational efficiency of the registration process.

Clause 9 would commence on the day of Royal Assent.

Clause 10 : Day on which liability first becomes  
enforceable under Act

This clause would amend paragraph 28(b) to provide that where a liability is registered under subsection 24(1) the liability would become enforceable from the day on which the liability arose under, was varied or otherwise affected by, the court order or maintenance agreement by virtue of which the liability was registered under subsection 24(1).

This clause would also insert a new paragraph 28(baa) to provide that where a liability registered under subsection 24(2) the liability would become enforceable from a day determined in writing by the Child Support Registrar, being a day not earlier than the day on which the liability arose and r, was varied or otherwise affected by, the court order or maintenance agreement by virtue of which the liability was registered under subsection 24(2).

Clause 10 would commence on the day of Royal Assent.

Clause 11 : General rule of collection by automatic  
withholding in case of employees

Clause 11 would amend section 43 of the Principal Act to enhance the collection and enforcement processes by providing that arrears of child support and penalties for non-payment or late payment can be collected by deduction from the salary or wages of a payer.

Clause 11 would commence on the day of Royal Assent.

Clause 12 : Cases in which automatic withholding not  
applicable

This clause would amend subsection 44(1) of the Principal Act to improve the effectiveness of the collection process by providing that where a maintenance liability arose before 1 June 1988 a payer has up to 28 days after the date of the registration of the maintenance liability to elect not to have deduction of child support from his or her salary or wages (automatic withholding). A payer in receipt of salary or wages who fails to make an election before that time had expired would then be required to seek an order from the court under subsection 44(2) of the Principal Act that automatic withholding has not to apply if he or she did not want automatic withholding to apply.

Clause 12 would commence on the day of Royal Assent.

Clause 13 : Notification to be given to employer and  
employee

Clause 13 would amend section 45 of the Principal Act to enhance the collection and enforcement processes by providing that the Child Support Registrar may, for the purposes of collecting arrears of child support, notify an employer in writing that he or she is required to deduct an amount representing arrears of child support from the salary or wages of an employee. The Child Support Registrar would be required to give a copy of the notice to the payer.

Clause 13 would commence on the day of Royal Assent.

Clause 14 : Additional duties of employers

Clause 14 would make a minor drafting correction to section 47 of the Principal Act.

Clause 14 would commence on the day of Royal Assent.

Clause 15 : Discharge of payer's liability to Registrar  
and employer's liability to pay

Clause 15 would amend section 49 of the Principal Act, consequent upon the amendments to the Principal Act, to provide for the collection of arrears of child support by deduction from the salary or wages of a payer. This amendment would ensure that where an employer deducts an amount in respect of arrears of child support from the salary or wages of a payer, the payer is discharged from his or her liability to make payments to the Child Support Registrar to the extent of the amount deducted.

Clause 15 would commence on the day of Royal Assent.

Clause 16 : Repeal of section 90

Clause 16 would repeal section 90 of the Principal Act. The repeal of section 90 would improve the efficiency of the objection process. The rights of a payee or payer to support or oppose an objection made under Principal Act by the other party would not be affected.

Clause 16 would commence on the day of Royal Assent.

Clause 17 : Consideration of applications for extension of  
time for lodging objections

Clause 17 would amend section 91 of the Principal Act. This amendment is consequent on the repeal of section 90.

Clause 17 would commence on the day of Royal Assent.



PART 4 - AMENDMENTS OF INCOME TAX ASSESSMENT ACT 1936

Clause 18 : Principal Act

Clause 18 would provide that, in this Part of the amending Act, the Income Tax Assessment Act 1936 would be referred to as the Principal Act.

Clause 18 would commence on 13 November 1989.

Clause 19 : 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 employer 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.

Clause 19 would insert a new subsection 202CB(6) into the Principal Act to remove the application of the above provisions from employment declarations given to the Secretary to the Department of Social Security by applicants for and recipients of unemployment benefits and sickness benefits. Amendments to the Social Security Act 1947 included in this Bill would provide for the treatment of employment declarations given to the Secretary which include a statement that a tax file number application/enquiry is pending. In effect, the employee would be taken to have quoted a tax file number until such time as the Commissioner informed the Secretary either of the tax file number or the fact that the application/enquiry was refused or withdrawn.

Clause 19 would commence on 13 November 1989.

Clause 20 : 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)).

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 (subsection (6)). The effect of such treatment requires the employer to tax the salary or wage of the employee at the highest rate plus Medicare levy.

Clause 20 would insert a new subsection 202CE(7) to provide that subsection 6 would not apply to the employment declarations given to the Secretary to the Department of Social Security by applicants for and recipients of unemployment benefits and sickness benefits. Where the Commissioner notified the Secretary to the Department of Social Security of the quotation of an incorrect tax file number, the Secretary would not be obliged to deduct tax from the benefit. Amendments to the Social Security Act 1947 would provide that the person becomes ineligible to receive benefit.

PART 5 - AMENDMENTS OF SEAMEN'S WAR PENSIONS AND  
ALLOWANCES ACT 1940

Clause 21 : 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 21 would commence on the day of Royal Assent.

Clause 22 : Interpretation

Clause 22 would provide for the use of codified guidelines for the determination of whether a marriage-like relationship exists for the purposes of the Principal Act.

In Lambe v Director-General of Social Services (1981) 4 ALD 362, the Federal Court held that all facets of the interpersonal relationship of the two persons need to be taken into account in determining whether they are living with each other as husband and wife on a bona fide domestic basis although not legally married to each other. The Court held that, in Re Lambe and the Director-General of Social Services (1981) 3 ALN N44, the Administrative Appeals Tribunal was correct when it held that the financial, household, social, sexual and personal arrangements of the two persons were relevant matters to be taken into account.

Clause 22(a) would replace the phrase "as her husband on a bona fide domestic basis" with "in a marriage-like relationship".

Clause 22(b) would insert new subsections 3(1D) and (1E) into the Principal Act.

New subsection 3(1D) would provide that, when determining whether a marriage-like relationship exists, the Repatriation Commission or Seamen's Pensions and Allowances Committee would be required to have regard to all the circumstances of the relationship including, in particular, those indicia referred to in Re Lambe which would be codified in the new section 11A of the Veterans' Entitlements Act by clause 53.

New subsection 3(1E) would provide that 2 persons are not to be taken to be living in a marriage-like relationship if they are within a prohibited relationship for the purposes of section 23B of the Marriage Act 1961. Thus, where a brother and sister, or persons of another close blood relationship described in section 23B of the Marriage Act 1961, are living together, they could not be taken to be in a marriage-like relationship for the purposes of the Principal Act.

Clause 22 would commence on 1 January 1990.

PART 6 - AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Clause 23 : 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 23 would commence on the day of Royal Assent.

Clause 24: Interpretation

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

Clauses 24(a) and 24(b) would amend the definitions of "de facto spouse" and "married person".

As amended, the term "de facto spouse" would mean a person who is living with a person of the opposite sex, to whom he or she is not legally married, in a relationship that, in the opinion of the Secretary, is a marriage-like relationship. The term "married person", as amended, would not include a legally married person (not being a de facto spouse) who, in the opinion of the Secretary, is living separately and apart from the spouse of the person on a permanent basis.

As provided by new section 3A of the Principal Act, inserted by clause 25, in forming an opinion whether:

- . the relationship between two people is a marriage-like relationship; or
- . a legally married person (not being a de facto spouse) is living separately and apart from his or her spouse on a permanent basis,

the Secretary would have to have regard to all the circumstances of the relationship including, in particular, the matters specified in new section 3A. Broadly speaking, these matters are financial, household, social, sexual and personal arrangements of the kind referred to by the Federal Court in Lambe v Director-General of Social Services (1981) 4 ALD 362. The new scheme will provide greater certainty and guidance for Departmental clients and decision-makers.

Clauses 24(a) and 24(b) would commence on 1 January 1990.

Clause 24(c) would amend subsection 3(1) of the Principal Act by providing for insertion of a term "Assessment Act" and for its definition. It would be the Income Tax Assessment Act 1936. This definition would be of immediate benefit in relation to the income test on family allowance supplement. Amendments to the Principal Act proposed in clause 32 of this Bill would utilise this definition.

Clause 24(c) would commence on the day of Royal Assent.

Clause 24(d) would insert into subsection 3(1) of the Principal Act a definition of "compensation debt" which would mean an amount a person is liable to pay to the Commonwealth because of a determination by the Secretary under section 153 of the Principal Act.

The term "compensation debt" is used in clauses 46(a) and (b) which amend section 246 of the Principal Act to enable the Department to withhold an amount of pension, benefit or allowance from the continuing entitlement of the person indebted to the Commonwealth as a result of a "compensation debt".

Clause 24(d) would commence on 1 January 1990.

Clause 24(e) would insert a definition of "joint ownership" into subsection 3(1) of the Principal Act. The term would include ownership as joint tenants or as tenants in common. When co-owners hold property as joint tenants, they are all entitled to possession of the whole of the property but when one dies, the survivor(s) automatically own the deceased's share (notwithstanding any contrary provision in his or her will). Tenants in common, on the other hand, each hold a discrete interest in a part of the property - these parts may but need not be equal in size. For the death of a tenant in common there is no right of ownership. In other words, tenants in common can leave their share to others in their will.

Clause 24(e) would commence on 1 January 1990.

Clause 24(f) would insert definitions of "account", "building society" and "credit union" into subsection 3(1) of the Principal Act. These definitions are relevant for the purposes of new section 248A of the Principal Act, inserted by clause 47.

"Account" would be defined as an account maintained by a person with a credit union or building society to which are credited moneys received on deposit by the credit union or building society from that person.

"Building society" would be defined as an organisation registered as a permanent building society under a law of a State or Territory.

"Credit union" would be defined as an organisation registered as a credit union under a law of a State or Territory.

Clause 24(f) would commence on 1 January 1990.



Clause 24(g) would omit subsections 3(8), (8A), (8B) and (9) and insert a new subsection 3(8). These subsections currently provide, broadly speaking, that previously married people living at the same address are to be treated, after a defined period, as married persons for the purposes of the Principal Act. The changes to be introduced by clause 25 (inserting new section 3A) and clause 28 (inserting new section 43A) would make the abovementioned arbitrary rule no longer necessary.

New subsection 3(8) would provide that a person is not to be taken to be a "de facto spouse" for the purposes of the Principal Act because he or she is living with another person if the two persons are within a "prohibited relationship" for the purposes of section 23B of the Marriage Act 1961. This means, for example, that where a brother and sister are living together they could not be taken to be living in a marriage-like relationship for the purposes of the Principal Act.

Clause 24(g) would commence on 1 January 1990.

#### Clause 25 : Marriage-like relationships

This clause would insert new section 3A into the Principal Act.

New section 3A would provide that, in forming an opinion about the relationship between two persons for the purposes of the definition of "de facto spouse" or "married person" in subsection 3(1) of the Principal Act, in effect whether:

- . the relationship between two people is a marriage-like relationship; or
- . a legally married person (not being a de facto spouse) is living separately and apart from his or her spouse on a permanent basis,

the Secretary is to have regard to all the circumstances of the relationship including, in particular, the matters specified in the section.

Broadly speaking, these matters are:

- . the financial aspects of the relationship;
- . the nature of the household;
- . the social aspects of the relationship;
- . any sexual relationship between the people; and
- . the nature of the people's commitment to each other.

It should be noted that this is a non-exhaustive list and that the weight to be given to any individual factor, whether specified in the section or not, may vary from case to case. Also, absence in a particular case of one or more of the matters specified in the section does not necessarily mean that a marriage-like relationship does not exist. In the end, the Secretary must look at the whole relationship.

The term "indefinitely" in new subparagraph 3A(e)(iii) is not to be taken to mean "forever" but, rather, undefined as to duration. In other words, "whether the people consider that the relationship is likely to continue indefinitely" is to be taken to mean whether the people consider that the relationship is likely to continue for an undefined period (and as opposed to whether they consider that the relationship is either not likely to continue or is likely to continue for a finite period only).

New section 3A was framed to reflect the matters thought relevant by the Federal Court in Lambe v Director-General of Social Services (1981) 4 ALD 362 and with a view to providing greater certainty and guidance for Departmental clients and decision-makers.

Clause 25 would commence on 1 January 1990.

Clause 26 : Calculation of value of property

This clause would amend section 4 of the Principal Act by inserting a reference to new section 43A (to be inserted by clause 28). The effect of this amendment would be to ensure that assets disregarded for the purposes of the assets test would not be disregarded for the purposes of determining whether a person is living in a marriage-like relationship.

Clause 26 would commence on 1 January 1990.

Clause 27 : Rate of pension

Section 33 of the Principal Act provides for the rate of payment of age and invalid pensions.

Clause 27 would insert a new subsection 33(12B).

New subsection 33(12B) would provide that a person cannot benefit from the application of the concession for special maintenance income under subsection 33(12A) of the Principal Act under certain conditions. The first of these would be where child support is not currently payable under the Child Support (Assessment) Act 1989 (the "Assessment Act") to the person for a child but the person is entitled to make an application for assessment of child support under Part 5 of the Assessment Act. The person would not have properly applied nor have properly applied under Part 6 of the Assessment Act for acceptance of an agreement in relation to a child. Alternatively, the person may have properly made an application of either kind but withdrawn the application or, after child support has become payable under the Assessment Act, ended the entitlement to child support for the child (paragraph 33(12B)(a)).

New paragraph 33(12B)(b) would provide that a person could not benefit from the application of the special maintenance income concession under subsection 33(12A) of the Principal Act if the person is entitled to make an application under section 128 of the Assessment Act but no such application is in force.

Clause 27 would commence on the day of Royal Assent.

Clause 28 : Obligation to provide information about  
domestic circumstances

This clause would insert new section 43A into Part V (Sole Parent's Pension) of the Principal Act.

Department of Social Security officers must often form an opinion whether a marriage-like relationship exists in order to determine entitlement to a payment under the Principal Act. The sole parent's pension, which is aimed at helping people who are bringing up children alone, cannot be paid if a person is living in a marriage-like relationship.

New section 43A is a part of a scheme aimed at providing greater certainty and guidance for Departmental clients and officers alike. It would provide that where a person applying for or in receipt of sole parent's pension has shared his or her principal home, for a period of at least eight weeks, with a person of the opposite sex (other than a person within a "prohibited relationship" for the purposes of section 23B of the Marriage Act 1961 - new subsection 3(8) to be inserted by clause 24(e) refers) and:

- . a natural or adopted child of both persons lives in the same residence; or
- . they own the shared residence together; or

- . they have joint assets with a total value of more than \$4,000; or
- . they have joint liabilities totalling more than \$1,000; or
- . they have been married to each other; or
- . they have shared another residence with each other previously;

then he or she would be obliged, on request by the Secretary, to provide information about their domestic circumstances ie their relationship with the other person (new subsections 43A(1), (2), (3) and (4) refer). These provisions would apply where the persons concerned were either:

- . not legally married to each other; or
- . legally married to each other but were, or were claiming to be, living separately and apart from each other on a permanent basis for the purposes of the Principal Act.

Requests for information by the Secretary, ie "notices" under new subsections 43A(3) or (4), would indicate that if the requested information was not given within 14 days after they received the notice from the Secretary:

- . where the person to whom the notice was given was a claimant for sole parent's pension (a "claimant"), the claim would be taken not to have been lodged; or
- . where the person to whom the notice was given was in receipt of sole parent's pension (a "pensioner"), the pension would be suspended.

New subsection 43A(5) and (7) would provide that where a "claimant" or "pensioner" provided the Secretary with the

information about his or her relationship with another person as requested by a notice under subsection (3) or (4), the Secretary would have to form an opinion whether the applicant or the pensioner was living with the other person in a marriage-like relationship.

New subsections 43A(6) and (8) would provide that the Secretary must not form an opinion that the pensioner or claimant is either:

- . where not legally married to the other person, not living with that person in a marriage-like relationship; or
- . where legally married to the other person, is separated from that other person,

unless, having regard to all of the matters specified in new section 3A (to be inserted by clause 25), the weight of evidence supports the formation of such an opinion. The matters specified in new section 3A are, broadly speaking, financial, household, social, sexual and personal arrangements of the kind referred to by the Federal Court in Lambe v Director-General of Social Services (1981) 4 ALD 362. In other words, if the weight of evidence did not support such a conclusion, the Secretary would have to form the opinion that the pensioner or claimant was either living with the other person in a marriage-like relationship (where he or she was not legally married to that person) or was not separated from the other person (where he or she was legally married to that person).

New subsections 43A(9), (10), (11) and (12) would deal with the circumstances where a pensioner or claimant failed to provide the Secretary with the information required by a notice under subsection (3) or (4) as appropriate within the prescribed period.

Where a pensioner failed to give the Secretary the information required by a notice under new subsection 43A(3) within the prescribed time, new subsection 43A(9) would provide that his or her pension would be suspended and the pensioner would be given a second notice to provide the required information. Where, following such suspension the pensioner failed to give the Secretary the required information within a further 14 days after the second notice was given to him or her, the pension would be cancelled (new subsection 43A(10) refers). On the other hand, where following suspension a pensioner provided the Secretary with the required information within the prescribed period and the Secretary formed the opinion that the pensioner either (as the case required):

- . was not living with the other person in a marriage-like relationship; or
- . was separated from the other person,

the pensioner would be entitled to be paid such amounts of sole parent's pension as he or she would have been entitled to be paid had his or her pension not been suspended (new subsection 43A(11) refers).

Where a claimant failed to give the Secretary the information required by a notice under new subsection 43A(4) within the prescribed time (14 days after the giving of the notice), his or her claim would be deemed not to have been lodged (new subsection 43A(12) refers). In effect, the claimant would need to lodge a fresh claim if he or she wanted to re-test eligibility for sole parent's pension.

New subsections 43A(13) and (14) would provide for the circumstances in which a decision that a person:

- . was not living with the other person in a marriage-like relationship; or

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- . was separated from the other person,

as the case required, could be reviewed.

Broadly speaking, where a pensioner or claimant had given the Secretary all the information about his or her relationship with another person required by a notice under new subsection 43A(3) or (4), subject to one exception such a decision would stand for at least 12 weeks during which the Secretary would not be able to take any further action to investigate the pensioner's or claimant's relationship with the other person. The exception to this rule would be where the Secretary had reason to believe that the person's domestic circumstances had changed so that a circumstance set out in new subsection 43A(1) that either:

- . did not previously apply to the person, now applied; or

- . previously applied to the person, now applied to the person for a different reason.

In other words, where a pensioner or claimant had given the Secretary all the information about his or her relationship with another person required by a notice under new subsection 43A(3) or (4), the relationship could be re-investigated and, if necessary, the decision varied before the expiration of the 12 weeks period where, for example, the two persons concerned became joint owners of their shared residence or their natural or adopted child or children moved in with them.

On the other hand, where a pensioner or claimant had not given the Secretary all the information about his or her relationship with another person required by a notice under new subsection 43A(3) or (4), the abovementioned 12 weeks period provided for by new subsection 43A(14) would not apply. Instead, where the person concerned was a pensioner, he or she would be subject to section 168 of the Principal Act. That section contains



general rules regarding circumstances in which the Secretary may cancel, or vary the rate of, a pension. Where the person concerned was a claimant, he or she would be subject to new subsection 43A(12), ie his or her claim would be deemed not to have been lodged.

In this context, where a person gave the Secretary, in purported compliance with a notice under new subsection 43A(3) or (4), information that was false, misleading or incomplete, he or she would be regarded as not having given the Secretary "all the information" required by the notice.

There would be a penalty for knowingly or recklessly giving false or misleading information in response to a notice under new subsection 43A(3) or (4): \$2000 or imprisonment for 12 months or both (new subsection 43A(15) refers).

The effect of new subsections 43A(16), (17) and (18) is referred to in the introductory paragraphs dealing with this clause.

Clause 28 would commence on 1 January 1990 and would apply to periods of eight weeks finishing after that date.

#### Clause 29 : Interpretation

Clause 29(a) would amend section 72 of the Principal Act by inserting a definition of "notional notifiable event". The content and relevance of this definition are discussed in the material below relating to clause 31.

Clause 29(a) would commence on 1 January 1990 and would apply in relation to payments that fall due on or after that date.

Clause 29(b) would amend subsection 72(2) of the Principal Act so that the contents of that subsection are expressed to apply to the whole of that Part of the Principal Act concerning

family allowance supplement. At present the subsection applies only to section 72 of the Principal Act. This subsection provides rules for ascertaining a person's taxable income for the purposes of the income test for family allowance supplement.

Clause 29(b) would commence on the day of Royal Assent.

Clause 29(c) would provide for a new paragraph 72(2)(a) of the Principal Act in substitution for the existing paragraph with the same designation. Paragraph 72(2)(a) currently provides that a person's taxable income for a year of income is to be taken at any particular time to be a tax assessment, or amended tax assessment by the Taxation Commissioner, if such an assessment has been issued. The new paragraph 72(2)(a) would provide for a tax assessment as amended also by a court or tribunal to have the same status as an assessment by the Commissioner. This would fill a gap in the current legislation.

Clause 29(c) would commence on 1 January 1990 and would apply in relation to assessments of taxable income amended on or after that date.

#### Clause 30 : Qualification to receive allowance

This clause would amend section 73 of the Principal Act to remove an ambiguity. Subparagraph 73(1)(a)(ii) would operate to preclude payment of family allowance supplement to a person where the person or his or her spouse is receiving any periodic payment (other than compensation payment) under a law of the Commonwealth that provides for an increased rate in respect of a child of the person, or a periodic payment under a scheme administered by the Commonwealth which provides for an increased rate in respect of a child of the person. Although subparagraph 73(1)(a)(ii) has always been taken to operate in this way it can at present be read to include a reference to a periodic payment under a law of the Commonwealth which does not provide for a higher rate in respect of a person's child. This would no longer be a feasible interpretation.

Clause 30 would commence on 1 December 1989 and would apply in relation to payments that fall due on or after that date.

Clause 31 : Reduction of rate by reference to taxable income

Section 74B of the Principal Act provides for the income test on family allowance supplement. The test is, in general terms, based on the relevant taxable income in the year of income of the person claiming allowance. The relevant taxable income at any particular time is that applicable to the base year of income. The base year of income is the year of income of the person that ended in the preceding calendar year. The year of income is a financial year. Section 74B of the Principal Act recognises that this measure of income can become dated and can generate a rate of family allowance supplement which is out of step with the current needs of the family. In such circumstances subsections 74B(2) and (3) provide for reassessments of the rate of allowance based on the person's income in the current year of income.

Clause 31(a) would fill a gap in section 74B as currently drafted. Subsection 74B(2) currently provides for a reassessment of the rate of allowance where a notifiable event occurs in relation to a person and this event generates an increase in income. Such events are changes of job or a change in marital status. The definition of "notifiable event" in subsection 72(1) currently requires that these events are to be specified in a notice given to a person under subsection 163(1) of the Principal Act. Such notices can be given only to a person who is being paid an allowance and in respect of events occurring while a person is being paid. Should an event occur between the date on which the base year of income ended and the date on which a person claims allowance there is no obligation to notify the Department of the event and there is no provision for a reassessment of the rate of allowance.

Clause 31(a) would provide for a new subsection 74B(1A) of the Principal Act which would provide for an assessment of the rate of family allowance supplement where a notional notifiable

event has occurred since the end of the base year of income and where more than 25% of any resulting increase in taxable income of the person is directly attributable to the notional notifiable event.

Clause 29(a) would define a "notional notifiable event" as an event specified by the Secretary in writing for the purposes of the definition provided it is an event that is specified in some or all notices given under subsection 163(1) to those who are granted allowances.

The new subsection 74B(1A) would apply where:

- . a person has lodged a claim for family allowance supplement and is qualified to receive an allowance; and
- . since the end of the base year of income of the person a notional notifiable event has occurred in relation to the person; and
- . the relevant taxable income for the person for the year of income in which the notional notifiable event occurred (called the "event year of income") exceeds 125% of each of:
  - the relevant taxable income of the person for the base year of income; and
  - the income threshold in relation to the person.

The rate payable would then be ascertained in accord with the formula set out in new subsection 74B(1A) which takes account of taxable income in the year in which the event occurred.

Clause 31(a) would also provide for a new subsection 74B(1B) which would regulate the assessment of the rate of family allowance supplement payable in a new calendar year when there has been a reassessment of the rate payable in the immediately preceding calendar year under subsection 74B(3) because of a fall of sufficient magnitude in relevant taxable income in that year compared to taxable income in the base year of income.

Under the new subsection 74B(1B) if the person's taxable income in the current year of income is less than the person's income threshold he or she is to be paid at the maximum rate. In other cases an assessment is to be made on the basis of the normal rules in subsection 74B(1). This is to be compared to the figure arrived at using relevant taxable income in the current year of income. The person would then be paid whichever rate is the higher.

Clause 29(a) and clause 31(a) would commence on 1 January 1990 and would apply in relation to payments that fall due on or after that date.

Clause 31(b) would insert a new paragraph 74B(2)(c). Subsection 74B(2) currently provides for a reassessment of the rate of allowance payable where a notifiable event occurs in relation to an allowance and the allowee's relevant taxable income for the year of income in which the notifiable event occurs has increased by a sufficient magnitude. The new paragraph 74B(2)(c) would permit a reassessment only where the Secretary is satisfied that more than 25% of the amount by which the relevant taxable income of the person for the current year of income exceeds the relevant taxable income of the person for the base year of income is directly attributable to the notifiable event.

Clause 31(b) would commence on 1 January 1990 and apply in relation to payments that fall due on or after that date.

Clause 31(c) would amend subsection 74B(3) by repealing paragraph 74B(3)(c) and replacing it with a new provision. Subsection 74B(3) currently provides for a reassessment of the rate of allowance payable because of a decline in the allowee's relevant taxable income. Paragraph 74B(3)(c) requires that relevant taxable income must have fallen by at least 25% in the current year of income by comparison to the base year of income. The new paragraph 74B(3)(c) would liberalise the opportunity for a reassessment by providing for a reassessment where there has been an eligible reduction in the person's income for the year of income in which the allowee requests a reassessment. Clause 31(e) would in turn provide for a new subsection 74B(6A) which would define an "eligible reduction in a person's income". This would occur when one of the following applies:

- . the allowee's taxable income for the current year of income is at least 25% less than the allowee's relevant taxable income for the base year of income; or
- . the allowee's relevant taxable income for the current year of income is less than the allowee's income threshold.

Clauses 31(c) and (e) would commence on 1 December 1989 and would apply in relation to requests made under paragraph 74B(3)(b) on or after that date.

Clause 31(d) would amend paragraph 74B(6) of the Principal Act. Subsection 74B(6) provides for recoverable overpayments which arise when an allowee fails to notify the Department of a notifiable event and there is an overpayment of family allowance supplement. At present paragraph 74B(6)(d) requires that the whole amount overpaid must be directly attributable to the notifiable event in order that it may be recoverable.

The proposed amendment would require that the Secretary is to be satisfied that more than 25% of the amount overpaid is to be directly attributable to the notifiable event.

Clause 31(d) would commence on 1 January 1990 and would apply in relation to notifiable events occurring on or after 29 December 1988.

Clause 31(f) would provide for a new subsection 74B(6B) of the Principal Act. This would exempt from the family allowance supplement income test those who qualify for the allowance and who also receive payments under the listed education schemes. Such allowees would still be subject to the assets test for which section 74A of the Principal Act provides.

Clause 31(f) would commence on 1 December 1989 and would apply in relation to payments that fall due on or after that date.

Clause 32 : Effect of amended assessment of taxable income

This clause would provide for new section 74BA. New section 74BA would regulate the effect of an amended assessment of taxable income on the rate of family allowance supplement payable to a person. The basic rule is that the prospective rate of allowance would be recalculated on the basis of the amended assessment. However, the following specific rules would apply:

- . If the amended assessment increases the person's taxable income by 25% or less the person is taken not to have been overpaid (new subsection 74BA(3)).
- . If the amended assessment increases the person's taxable income by more than 25% then an overpayment is generated (new subsection 74B(4)).

- . If the amended assessment has reduced the person's taxable income then arrears of allowance are payable if the allowee sought the amended assessment (new subsection 74BA(5)).
- . If the amended assessment has reduced the person's taxable income but the allowee did not request the amendment the rate of family allowance supplement is to be adjusted upwards only from the time the allowee notifies the Department of the amendment (new subsection 74BA(6)).

New subsection 74BA(7) would define "overpayment" for the purposes of the section.

Clause 32 would commence on 1 January 1990 and would apply in relation to assessments of taxable income amended on or after that date.

Clause 33 : No allowance payable where taxable  
income is unascertainable

This clause would provide for the addition of new subsection 74C(2) of the Principal Act. Subsection 74C provides for the consequences where a person's taxable income is unascertainable. Family allowance supplement is not payable to such a person.

The proposed subsection 74C(2) would exclude from the operation of this subsection those persons who receive family allowance supplement free of the income test.

Clause 33 would commence on 1 December 1989 and would apply in relation to payments that fall due on or after that date.



Clause 34 : Income test for family allowances

Section 85 of the Principal Act provides for the family allowance income test. In general terms this is the person's taxable income for the last year of income. The last year of income is the financial year ending in the previous calendar year. Once a rate is set it cannot at present be reduced if taxable income increases in the current year of income.

Clause 34 would amend section 85 to require an allowee to notify the occurrence of events specified in a notice under subsection 163(1) and to permit a reassessment of the rate of allowance payable.

Clause 34(a) would define a "notifiable event" as an event specified in a subsection 163(1) notice relating to family allowance given to a person. The event would have to be described as a notifiable event. The events specified would include a change in marital status and a job change.

Clause 34(b) would provide for a new subsection 85(3) which would reproduce the income test for which the existing subsection 85(3) provides except that in its new formulation it explicitly anticipates the possibility of a reassessment.

The same clause would provide for new subsection 85(3A). This subsection would provide for a reassessment of the rate of allowance following the occurrence of a notifiable event. The occurrence of a notifiable event would generate a reassessment only if the allowee's taxable income in the current year exceeds the relevant income threshold and 125% of the allowee's taxable income for the last year of income.

Clause 34(c) would amend subsection 85(4) to insert a reference to the new subsection 85(3A). Subsection 85(4) provides for the rounding of the amount of allowance worked out by applying the income test.

Clause 34(d) would repeal subsection 85(5) and insert a new subsection 85(5).

At present subsection 85(5) of the Principal Act provides in effect for exemption from the base rate of family allowance taken to be payable in respect of some children for the purposes of the family allowance income test in subsection 85(3). These children are those in the following classifications

- . a child not in receipt of an allowance under a prescribed educational scheme who would attract, if not aged over 18 years, payment of
  - family allowance supplement, or
  - double orphan's pension, or
  - child disability allowance, or
  - additional pension, or
  - additional benefit, or
  - mother's/guardian's allowance; or
- . a child aged over 18 years who is not in receipt of an allowance under a prescribed educational scheme but who is in a family where a parent would be able to claim and be paid family allowance supplement despite application of the family allowance supplement income test.

New subsection 85(5) would apply the same principles in respect of the newly constructed family allowance income test for which new subsection 85(3) would provide.

Clause 34(e) would amend subsection 85(7) of the Principal Act by providing for a reference to new subsection 85(3A). Subsection 85(7) provides the mechanism whereby an allowee who has sustained a reduction in taxable income since the last year of income may request a reassessment of the rate of family allowance payable with a view to having the rate increased. The reference to new subsection 85(3A) would permit such a request to be made even if a person's rate of allowance had been reduced under subsection (3A) following the occurrence of a notifiable event.

Clause 34(f) would provide for a new subsection 85(8) which would put beyond doubt that a rate of allowance once set may remain in force indefinitely unless the allowee makes a request for a reassessment under subsection 85(7) or unless subsection 85(3A) applies because of the occurrence of a notifiable event.

Clause 34(g) would repeal subsection 85(9) of the Principal Act. At present that subsection provides for the effect of the allowee's marriage on measuring of an allowee's taxable income. Although the spouse's taxable income is to be taken into account under subsection 85(2) for the purposes of the family allowance income test, by subsection 85(9) this does not occur until the commencement of the next calendar year following marriage.

The repeal of subsection 85(9) would permit the allowee's taxable income for the purposes of the family allowance income test to be adjusted from the date of marriage to include the new spouse's taxable income. This is consistent with the purpose of introducing the notifiable events provision (new subsection 85(3A)) and its expectation of a reassessment where a rise in income follows a notifiable event. A change in marital status would be a notifiable event.

Clause 34 would commence on 1 January 1990 and would apply in relation to payments that fall due on or after that date.

#### Clause 35 : Interpretation

This clause would provide for the insertion of two new definitions in subsection 115(1) of the Principal Act for the purposes of unemployment and sickness benefits. The new definitions, "employment declaration" and "tax file number" would borrow from definitions of the same terms in the Income Tax Assessment Act 1936 and would be required to support the initiative whereby a person, in order to be paid unemployment and sickness benefit on or after 13 November 1989, must provide the Department with his or her tax file number.

Clause 35 would be taken to have commenced on 13 November 1989.

#### Clause 36 : Unemployment benefits

Section 116 of the Principal Act provides the qualification criteria for payment of unemployment benefit. This clause would provide for new subsection 116(6A) by which a person would not be qualified to receive unemployment benefit on a day on which he or she reduces his or her employment prospects by moving to a new place of residence without sufficient reason for the move. The Secretary would cancel the person's benefit pursuant to subsection 168(1) of the Principal Act. The cancellation would take effect from the day of the person's move.

New subsection 116(6B) would prescribe what amounts to a sufficient reason for such a move. This would involve the beneficiary moving to live with or near a family member who is already an established resident of the area. These provisions are intended to be a strengthening of the work test to be met by unemployment beneficiaries.

Clause 36 would commence on 1 November 1989 and would apply in relation to moves occurring on or after that date.

Clause 37 : Maintenance income test

Clause 37 would insert a new subsection 122A(6). New subsection 122A(6) would provide that a person cannot benefit from the application of the concession for special maintenance income under subsection 122A(5) of the Principal Act under certain conditions. The first of these would be where child support is not payable under the Child Support (Assessment) Act 1989 (the "Assessment Act") to the person for a child but the person is entitled to make an application under Part 5 for assessment of child support under the Assessment Act. The person would not have properly applied or have properly applied under Part 6 of the Assessment Act for acceptance of an agreement in relation to the child. Alternatively, the person may have properly made an application of either kind but withdrawn the application or, after child support has become payable under the Assessment Act, ended the entitlement to child support for the child (paragraph 122A(6)(a)).

Paragraph 122A(6)(b) would provide that a person could not benefit from the application of the special maintenance income concession under subsection 122A(5) of the Principal Act if the person is entitled to make an application under section 128 of the Assessment Act but no such application is in force.

Clause 37 would commence on the day of Royal Assent.

Clause 38 : Provision of tax file numbers

This clause would provide for a new section 125A which is required to assist in implementation of the general principle that an unemployment or sickness benefit is not to be paid on or after 13 November 1989 unless the beneficiary has taken steps to provide the Department with his or her tax file number.

New subsection 125A(1) would provide that an unemployment or sickness benefit that a person would otherwise be qualified to be paid is not to be paid unless the beneficiary has given the Secretary a written statement of his or her tax file number.

New subsection 125A(2) would detail what a person must do in order to be taken to have provided the Secretary with the tax file number. He or she could do this in a number of ways.

The person might complete an employment declaration which includes the tax file number.

The person might not know his or her number even though he or she has one. Such a person could complete an employment declaration stating this and that he or she has made the necessary application for a number to the Commissioner. Such a person would in most cases lodge such applications with the Department for forwarding to the Tax Commissioner. Where a person needs to adopt this approach he or she would have to give the Secretary a document authorising the Tax Commissioner to tell the Secretary the results of these applications. Thus the Commissioner would be able to tell the Secretary the person's tax file number, or that an application for a number has been refused, or that the person has withdrawn his or her application. It is anticipated that standard forms authorising the Tax Commissioner to give this information to the Secretary will be available from the Department.

Clause 38 would commence on 13 November 1989.

Clause 39 : Unemployment benefit not payable in certain cases

Section 126 of the Principal Act provides for suspension or deferment of unemployment benefit where certain situations arise. These all relate to the person's capacity to satisfy

the work test for unemployment benefit. To that list clause 39(a) would add, in new paragraph 126(1)(aa), the situation where a person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason for the move. Clause 39(b) would provide for a new subsection 126(5) which explains what would constitute a sufficient reason for the move. This calls in to aid the reasons set out in new subsection 116(6B), discussed above in relation to clause 36.

Clause 39(b) would also provide for new subsection 126(4) which would prescribe a period of suspension or deferment of 12 weeks where new paragraph 126(1)(aa) applies. This period would end earlier if the person improves his or her work prospects by a further move.

Clause 39 would commence on 1 November 1989 and would apply in relation to moves occurring on or after that date.

#### Clause 40 : Education Leavers

Section 127 of the Principal Act outlines the waiting periods to be served by certain education leavers before unemployment benefit can be paid. Where the claimant is a single person with no dependants and is under the age of 21 years, the waiting period is 13 weeks. In any other case, the waiting period is 6 weeks.

Clause 40(a) would insert a new subsection 127(1A) into the Principal Act which would waive the requirement to serve an education leaver deferment period where:

- . a person was in receipt of unemployment benefit or job search allowance immediately prior to recommencing study;
- . the person had been in continuous receipt of unemployment benefit or job search allowance since serving an education leaver deferment period; and

. the person lodged a claim for unemployment benefit or job search allowance within 4 weeks of recommencing study.

Clause 40(b) would omit from subsection 127(1) of the Principal Act the reference to "subsections (2), (3) and (6)" and substitute the words "this section". This amendment is cosmetic in nature and would tidy up the wording of subsection 127(1) of the Principal Act.

Clause 40(c) would insert a new subsection 127(7A) into the Principal Act which would outline the operation of subsection 127(1) in cases where a person recommences study during the education leaver deferment period. In such cases, the education leaver deferment period to be served by the person is calculated by deducting the period served immediately prior to recommencing study from the period which would be applicable to the person under subsection 127(1) of the Principal Act.

Clauses 40(a), (b) and (c) would commence on 1 January 1990 and would apply in relation to claims lodged on or after that date.

Clause 40(d) would omit subsections 127(8) and (9) of the Principal Act and substitute a new subsection 127(8).

The current subsection 127(8) of the Principal Act provides that, where a person registers with the CES within 4 weeks of ceasing study, the person would be regarded as having registered on the day on which the person ceased study. This provision in effect gives education leavers a 4 week period of grace in which to register with the CES to have their date of registration regarded as being the date of cessation of study.

Subsection 127(9) currently provides a special rule for education leavers which affects the day on which a claim can be regarded as having been lodged. This provision also gives education leavers a period of 4 weeks in which to register with the CES and then 2 further weeks in which claim to have the claim deemed to have been made on the day after the person ceased study.



New subsection 127(8) would provide that, where a person, subject to the application of the education leaver deferment period in subsection 127(1) of the Principal Act, registers with the CES before ceasing study, the person would be taken as having registered on the day the person ceased study.

The normal rule outlined in subsection 125(2) of the Principal Act, which allows a claim to be deemed to have been made on the date of registration where a person lodges a claim for unemployment benefit within 2 weeks of registration, would apply to education leavers.

Clause 40(d) would be taken to have commenced on 1 October 1989 and would apply in relation to claims lodged on or after that date.

#### Clause 41 : Special benefit

Section 129 of the Principal Act provides the qualification criteria for special benefit. Subsection 129(2) specifies certain situations where a person is debarred from special benefit. This clause would include in that list of situations a person's failure to qualify for unemployment benefit because of new subsection 116(6A); that is because the person has reduced his or her work prospects by moving to a new residence. The operation of paragraph 129(2)(b) as currently drafted would preclude that person from special benefit for 12 weeks.

Clause 41 would commence on 1 November 1989 and would apply in relation to moves occurring on or after that date.

#### Clause 42 : Tax file numbers

This clause would insert new section 138A in the Principal Act. Section 8WA of the Taxation Administration Act 1953 prohibits a person from requiring or requesting another person to quote his or her tax file number except in stated circumstances. There is a penalty for its breach.

New section 138A of the Principal Act would be paramount over section 8WA of the Taxation Administration Act. By new subsection 138A(1) the Secretary could request a person to quote his or her tax file number for the purpose of enabling payment of unemployment or sickness benefit to the person.

New subsection 125A(2) of the Principal Act would make equivalent provision for situations where new paragraph 125A(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 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 Tax Commissioner.

Clause 42 would commence on 13 November 1989.

Clause 43 : Reduction in rate of pension

Clause 43 would effect a minor amendment to section 153 of the Principal Act. Section 153 deals with reduction in the rate of pension payable to a person who receives or has received a payment or payments by way of compensation.

Clause 43 would amend subsection 153(4) by omitting from subsection 153(4) "or property of the person" and substituting "of the person or of his or her spouse". The effect of this change would be to disregard periodic payments of compensation when applying the income test to the recipient's spouse. This would correct an anomaly whereby periodic payments can reduce the recipient's pension by direct deduction and the pension of the recipient's spouse under the income test.

Clause 43 would commence on the day of Royal Assent.

Clause 44 : Recovery of amounts from person liable to  
make compensation payments

Section 154 of the Principal Act enables the Department to take recovery action against employers liable to make payments by way of compensation to persons who were in receipt of pension during the period covered by the compensation payment and who thereby incurred an overpayment of pension.

Clause 44(a) would omit the reference to "subsection" from subsection 154(1) of the Principal Act and substitute the word "section". This amendment would enable the term "employer" to be used throughout section 154 in the same way as it is used in subsection 154(1) of the Principal Act. The term is used again in new subsection 154(4) inserted by clause 44(b) and new subsection 154(8) inserted by clause 44(c).

Clause 44(b) would omit subsection 154(4) of the Principal Act and substitute new subsections 154(4) and (4A).

New subsection 154(4) would enable the Commonwealth to recover from an employer the "recoverable amount" in cases where the employer, having been given a notice under subsection 154(1), makes a payment by way of compensation covered by the notice. The employer would also be subject to a penalty, prescribed in new paragraph 154(1)(a).

"Recoverable amount" is defined in new subsection 154(8), inserted by clause 44(c), as:

- . the amount specified in a notice of charge issued under paragraph 154(1)(b) of the Principal Act; or
- . in any other case, an amount determined by the Secretary, being an amount not more than the smaller of the 2 amounts worked out under subparagraphs 154(1)(b)(i) and (ii) of the Principal Act.

New subsection 154(4A) would provide that new subsection 154(4) does not apply where the Secretary so decides and the payment is made in accordance with the decision of the Secretary.

Clause 44(c) would insert new subsections 154(8) and (9) into the Principal Act.

New subsection 154(8) would broaden the scope of section 154 of the Principal Act to include situations where an authority of a State or Territory has determined that it will make a payment by way of compensation to another person, whether or not the authority was liable to make the payment.

This amendment would ensure that discretionary payments of compensation made by authorities of a State or Territory which are not strictly liable to make compensation payments are covered by section 154 of the Principal Act.

New subsection 154(9) would define "recoverable amount" as already indicated.

Clause 44 would commence on 1 January 1990 and would apply in relation to payments made as mentioned in subsection 154(4) on or after that date.

#### Clause 45 : Notice to insurers

Section 155 of the Principal Act enables the Department to take recovery action against insurers liable to indemnify a client against the liability of the client to make a compensation payment to another person who was in receipt of pension during a period covered by the compensation payment and who thereby incurred an overpayment.

Clause 45(a) would omit subsection 155(4) of the Principal Act and substitute new subsections 155(4) and (4A).

New subsection 155(4) would enable the Commonwealth to recover from an insurer the "recoverable amount" in cases where a notice has been issued to the insurer under subsection 155(1) of the Principal Act and the insurer nevertheless makes a payment to a client under a contract of insurance indemnifying the client against the liability of the client to make a payment by way of compensation covered by the notice. The insurer would also be subject to the penalty prescribed in new paragraph 155(4)(a).

"Recoverable amount" is defined in new subsection 155(10), inserted by clause 45(b), as:

- . the amount specified in the notice of charge under paragraph 155(1)(b) if given; or
- . in any other case, an amount determined by the Secretary, being an amount no more than the smallest of the 3 amounts worked out under paragraphs 155(1)(b)(i), (ii) and (iii) of the Principal Act.

New subsection 155(4A) would provide that new subsection 155(4) does not apply where the Secretary so decides and the payment is made in accordance with the decision of the Secretary.

Clause 45(b) would insert into section 155 of the Principal Act new subsections 155(8), (9) and (10).

The new subsection 155(8) would provide that a reference to an insurer who is liable to indemnify a client against the liability of the client to make a payment by way of compensation to a person includes a reference to an authority of a State or Territory that is liable to indemnify a client against the liability of the client to make such a payment, whether the authority is so liable under a contract, a law or otherwise.

This amendment would make it clear that the Commonwealth has the power to pursue recovery action against State and Territory authorities who indemnify a client against the liability of the client to make a compensation payment to a person.

A new subsection 155(9) would provide that a reference in section 155 of the Principal Act to an insurer who is liable to indemnify a client against the liability of a client to make a payment by way of compensation to a person includes a reference to an authority of a State or Territory that determines to make a payment to indemnify a client in respect of a liability of the client to make a payment by way of compensation to a person, whether or not the authority is liable to make the indemnity payment.

This amendment would enable the Commonwealth to pursue recovery action against State or Territory authorities who have determined to indemnify a client in respect of a liability of a client to make a compensation payment to a person, despite the fact that the authority is not liable to make the indemnity payment.

New subsection 155(10) of the Principal Act would define "recoverable amount" as indicated above.

Clause 45 would commence on 1 January 1990 and would apply in relation to payments made as mentioned in subsection 155(4) on or after that date.

#### Clause 46 : Recovery of overpayments

Section 246 provides rules for recovery of overpayments.

Clause 46(a) would insert the words "or a compensation debt" after "assurance of support debt" in paragraph 246(2A)(a) of the Principal Act. This amendment would enable the Secretary

to take action to recover the amount of the "compensation debt" by withholding an amount of pension, benefit or allowance from the continuing entitlement to social security payment from the person owing the debt.

"Compensation debt" is defined in subsection 3(1) of the Principal Act, as amended by clause 7.

Clause 46(b) would insert the words "or a compensation debt" after "assurance of support debt" in subparagraph 246(3)(a)(ii) of the Principal Act. This amendment would enable the Commonwealth to impose a prescribed penalty in cases where a person owes a compensation debt and the debt is not discharged within 3 months after the person has been given notice advising the person of the amount of the debt.

Clause 46 would commence on 1 January 1990 and would apply in relation to payments made as mentioned in subsections 154(4) and 155(4) on or after that date.

Clause 47 : Pension, benefit or allowance may be paid  
to bank etc

Clause 47 would insert a new section 248A into the Principal Act.

New subsection 248A(1) would enable the Secretary to direct that the whole or part of the amount of pension, benefit or allowance be paid to the credit of an account nominated by the client with a bank, credit union or building society.

This amendment would clarify the power of the Secretary to direct that payment of pension, benefit or allowance be made by direct deposit into the account of a client by giving the Secretary that specific power.

New subsection 248A(2) would provide definitions of "pension" and "pensioner" for the purposes of new subsection 248A(1). Additional definitions of "account", "building society" and "credit union" for the purposes of new subsection 248A would be inserted into subsection 3(1) of the Principal Act by clause 7.

Clause 47 would commence on the day of Royal Assent.



PART 7 - AMENDMENTS OF THE TAXATION ADMINISTRATION ACT 1953

Clause 48 : 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 48 would commence on 13 November 1989.

Clause 49 : 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 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 that person's behalf in the conduct of that person's affairs, such as tax agents and legal representatives.

Clause 49 would insert a new subsection 8WA(5) into the Principal Act to provide that section 8WA has effect subject to section 1348A 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

benefit and sickness benefit. New subsection 8WA(5) would in effect preclude such a request from being unauthorised under section 8WA of the Principal Act.

Clause 49 would commence on 13 November 1989.

Clause 50 : 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.

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 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.

Clause 50 would insert a new subsection 8WB(3) into the Principal Act which would provide 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.

New subsection 8WB(3) would in effect preclude such divulgence and recording of tax file numbers from being unauthorised under section 8WB of the Principal Act.

Clause 50 would commence on 13 November 1989.

PART 8 - AMENDMENTS OF VETERANS' ENTITLEMENTS ACT 1986

Clause 51 : 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 51 would commence on the day of Royal Assent.

Clause 52 : Interpretation

Clause 52(a) would insert in subsection 5(1) of the Principal Act a definition of "joint ownership" which would include ownership as joint tenants or tenants in common.

Clause 52(b) would insert new subsections 5(7A) and (7B) into the Principal Act.

New subsection 5(7A) would provide that a reference in the Principal Act to persons of the opposite sex living together as husband and wife on a bona fide domestic basis is a reference to those persons living together in a marriage-like relationship.

A new subsection 5(7B) would provide that 2 persons are not to be taken to be living together as husband and wife on a bona fide domestic basis if they are within a prohibited relationship for the purposes of section 23B of the Marriage Act 1961. Thus, where a brother and sister, or persons of another close blood relationship described in section 23B of the Marriage Act 1961, are living together, they could not be taken to be in a marriage-like relationship for the purposes of the Principal Act.

Clause 52 would commence on 1 January 1990.

Clause 53 : Marriage-like relationships

Clause 53 would insert a new section 11A into the Principal Act which would provide guidelines for determining the existence of a marriage-like relationship.

In Lambe v Director-General of Social Services (1981) 4 ALD 362, the Federal Court held that all facets of the interpersonal relationship of two persons need to be taken into account in determining whether they are living with each other as husband and wife on a bona fide domestic basis although not legally married to each other. The Court held that, in Re Lambe and the Director-General of Social Services (1981) 3 ALN N44, the Administrative Appeals Tribunal was correct when it held that the financial, household, social, sexual and personal arrangements of the two persons were relevant matters to be taken into account.

This new section would codify those indicia and provide that, when determining whether a marriage-like relationship exists, the Repatriation Commission would be required to have regard to all the circumstances of the relationship including, in particular, those indicia referred to in Re Lambe.

Clause 53 would commence on 1 January 1990.







