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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND VETERANS' ENTITLEMENTS

(MAINTENANCE INCOME TEST) AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Social Security,  
the Honourable Brian Howe MP)



SOCIAL SECURITY AND VETERANS' ENTITLEMENTS  
(MAINTENANCE INCOME TEST) AMENDMENT BILL 1988

OUTLINE

This Bill is part of a package of measures which provide for the introduction of the Child Support Scheme. Other measures in the package are the Family Law Amendment Act 1987 and the Child Support Act 1988.

2 This Bill would provide for an income test on maintenance income applicable to pensions, benefits and certain allowances. Maintenance income would include payments of cash maintenance, the provision of maintenance in-kind (such as housing and school fees), the transfer of capital amounts for maintenance purposes and indirect payments of maintenance.

3 There would be a free area of \$15 per week, plus an additional \$5 per week for a second and each subsequent child dependent on the maintenance recipient, in respect of maintenance income. This is lower than the free area that which applies to other income. Maintenance income in excess of the free area would reduce pension, benefit or allowance by fifty cents per dollar.

4 The Bill would limit the reduction in rate of pension, benefit or allowance attributable to the receipt of maintenance income such that no more than 25% of maximum rate would be deducted where maintenance income falls into one of three categories. These would be

All in-kind maintenance paid to a pensioner, beneficiary or allowee in the first six months following separation from spouse or former spouse;

- . In-kind housing maintenance provided in some cases; and
- . Maintenance income provided in relation to expenses arising directly from a disability of a child of the pensioner, beneficiary or allowee.

5 This Bill would provide relief for certain existing pensioners, beneficiaries or allowees who might otherwise lose, or face a reduction in, pension, benefit or allowance as a result of the new maintenance income test.

6 The Bill would also clarify the requirement that those who wish to qualify for widow's pension or supporting parent's benefit must take reasonable action to obtain maintenance where maintenance may be payable.

#### Financial impact statement

7 The effect on revenue of these measures, when taken together with the Family Law Amendment Act 1987 and the Child Support Act 1988, is estimated to be a net gain of \$120.0 million in 1988-89, and \$192.8 million in 1989-90. There would be further savings beyond those financial years.

## PART I - PRELIMINARY

### Clause 1 and 2 - Short title and commencement

8 The first two clauses of the Bill would provide for the short title and commencement of the legislation. The commencement would be on a date (or dates) to be fixed by Proclamation.

## PART II - AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

### Clause 3 - Principal Act

9 This clause would provide that the Social Security Act 1947 is to be referred to as the Principal Act.

### Clause 4 - Interpretation

10 This clause would amend certain definitions in the Principal Act and insert some new definitions.

11 Paragraphs 4(a) and (b) would amend the definition of "income" so as to exempt maintenance income and to define it separately in subsection 3(1) of the Principal Act.

12 Paragraph 4(c) would insert a number of definitions. There would be a new definition, namely the "annual maintenance free area", which would provide for that amount of maintenance income which a person may receive annually without there being any effect on annual rate of pension, or the rate of benefit or certain allowances, to which the person is entitled. This amount would vary depending on whether the person is unmarried or married or, if married, whether or not the spouse also receives maintenance income.

13 The next definition would be of "capitalised maintenance income". This would be maintenance income not received on a periodic basis the value of which would exceed \$1,500. Examples of capitalised maintenance would be the payment of a lump sum of cash, the settlement of shares or securities, or the settlement of a house provided by way of maintenance. Capitalised maintenance income would have been received on or after the date of commencement of the Act for which the Bill provides.

14 The definition of "fortnightly maintenance free area" would provide for a conversion of the annual maintenance free area to a fortnightly basis. It would be of particular relevance to the fortnightly assessment of the fortnightly rate of unemployment benefit, sickness benefit or job search allowance payable.

15 The definition of "in-kind housing maintenance income" would apply to in-kind maintenance income related to the provision of a residence. This definition would be important because in-kind housing maintenance income would be one of the types of special maintenance income receipt of which could reduce pension, benefit or allowance payable by no more than 25% of maximum rate. The definition would be limited to in-kind maintenance income in relation to provision of a residence which is or is to be, the principal residence of the pensioner, beneficiary or allowee. The residence might have been the principal residence of the pensioner, beneficiary or allowee and his or her spouse or former spouse immediately before separation. In the event that the residence had not been the home of the pensioner, beneficiary or allowee and spouse or former spouse any in-kind maintenance for the provision of such a residence might nevertheless fall within the definition. However, if the residence provided should have a value exceeding that of the residence formerly occupied by the pensioner, beneficiary or allowee and spouse or former spouse, the Secretary might disregard a part of the

maintenance, having regard to the excess value of the new residence. In comparing the relative values of the present and former residences the Secretary would consider their relative rental values. The definition would make clear that the in-kind maintenance might go to the provision of a residence by means of the transfer of a right or interest in the property, the payment of mortgage or similar cash instalments to third parties, and the payment of rent.

16 The term "in-kind maintenance income" as defined would be maintenance income not consisting of a payment received by the pensioner, beneficiary or allowee or a dependent child. Some examples would be payments in respect of rent (usually made to a third party, "the landlord"), provision of a car, free housing, or payment of electricity accounts provided by way of maintenance.

17 Some examples will demonstrate how in-kind maintenance income would be assessed.

- . Should a spouse or former spouse pay school fees in respect of a child of the pensioner, beneficiary or allowee the annual value of those school fees would be taken into account.
- . If the in-kind maintenance income were health insurance premiums the annual rate of those premiums would be assessed.
- . Should in-kind maintenance income be in the form of payment of electricity or gas accounts the Department would estimate a reasonable annual value of that benefit based on all the known facts.
- . Should in-kind maintenance income be in the form of housing much would depend on the ownership of the house.

- The in-kind housing maintenance would be assessed as nil where the house is owned by the pensioner, beneficiary or allowee either alone or as a co-owner.
- Should the house be subject to a mortgage in the names of both pensioner, beneficiary or allowee and spouse or former spouse, then any mortgage payments by the spouse or former spouse in excess of one-half of the total payable would be assessed as maintenance income.
- Should the house be in only the name of the spouse or former spouse and subject to a mortgage in the same name the value of in-kind maintenance would be an amount reflecting the value of the right of occupation by the pensioner, beneficiary or allowee.
- Should the house be leased all rental payments by the spouse or former spouse would be assessed as maintenance income.

18 The definition of "maintenance agreement" would cover a written agreement (made within or outside Australia) which provides for the maintenance of a person. (The agreement may also provide for other matters.) An agreement to vary such a maintenance agreement would also be a "maintenance agreement".

19 The definition of "maintenance income" would apply to cash payments, transfers of capital and provision of in-kind benefits provided by way of maintenance (eg rent, education expenses). The payment or transfer might be direct or indirect. Thus maintenance paid via a trust or corporation, for example, would be maintenance income. The maintenance might be paid to the pensioner, beneficiary or allowee, or to a dependent child of the pensioner, beneficiary or allowee. It may be paid by the parent of a dependent child, the former or current spouse of such a parent, or the former or current spouse of the pensioner, beneficiary or allowee. The



definition would explicitly cover maintenance collected and paid under the Child Support Act 1988. The definition would also apply to a benefit received by way of maintenance because of a payment to, or benefit conferred on, a third person. An example of this last variety of maintenance income would be the payment to a medical benefits fund of premiums for the cover of a pensioner and/or dependent child. The cause of the payment or conferral of benefit may be a court order, a registered agreement, or otherwise.

20 A "parent", for a child who has been adopted, would be defined as an adoptive parent of the child.

21 "Special maintenance income" would be specifically defined in Clause 4 because these income items would be limited in the extent to which their receipt by pensioner, beneficiary or allowee could result in a diminution of the pension, benefit or allowance otherwise payable. Any one or more of these types of maintenance income would combine to reduce the pension, benefit or allowance by no more than 25% of the applicable maximum rate. The categories of special maintenance income would be

- . all in-kind maintenance income (except for in-kind housing maintenance income and capitalised maintenance income) in the first six months after the pensioner, beneficiary or allowee and spouse or former spouse separate;
- . maintenance provided for a dependent child of the maintenance recipient in relation to expenses arising directly from the physical, intellectual or psychiatric disability, or a learning difficulty of the child where the disability or difficulty is likely to be permanent or to last for an extended period; and
- . in-kind housing maintenance income paid to the pensioner, beneficiary or allowee or dependant in various forms.

22 Paragraph 4(d) would insert a new subsection 3(5AA). This would be a maintenance income splitting provision. Subject to express contrary intention, it would operate where

- . there is a married person; and
- . a spouse of the married person; and
- . the spouse is in receipt of age, invalid, wife's or carer's pension, or of a supporting parent's benefit, unemployment benefit, sickness benefit, sheltered employment allowance, rehabilitation allowance or various service pensions; and
- . the spouse is in receipt of maintenance income.

In such a case the annual or fortnightly rate of maintenance income of the married person would be 50% of the sum of the annual rates of maintenance income of the person and the person's spouse. Thus, the maintenance income of both married pensioners would be split for the purpose of assessment of annual rate of pension. Such an arrangement already applies for general income.

#### Clause 5 - Apportionment of capitalised maintenance income

23 This clause would introduce a new section 4A into the Principal Act. The section would provide a mechanism whereby capitalised maintenance income would be apportioned over a period of time. During that period the person would be taken to receive the apportioned maintenance income in fortnightly instalments. Its effect on assessment of the annual rate of pension or allowance payable, or on the amount of benefit payable in a period, would be determined by clause 6 or 12 of this Bill.

24 In setting the capitalisation period which would apply to the apportionment, reference would be made to the court order or registered agreement regulating the transfer of capitalised maintenance. Should it specify a period capable of reasonably certain ascertainment the capitalisation period may be the nominated period. The Secretary of the Department of Social Security may substitute another or no period, as considered appropriate, where the specified period is considered inappropriate.

25 Should the order or agreement specify no period and should the income relate to the maintenance of a dependent child of the pensioner, beneficiary or allowee who is under 18 years of age on the day when the amount is received, the capitalisation period would commence on the day of receipt and conclude on the day before the child attains 18 years of age. Again, the Secretary might opt for another or no period if that is appropriate given the circumstances. This might occur, for example, where there is a very short capitalisation period under the primary rule. The Secretary might then select an extended period.

26 The value of a transfer of capitalised maintenance income to the pensioner, beneficiary or allowee by the spouse or former spouse would be apportioned from the date it is received to the date when the recipient attains age 65.

#### Clause 6 - Rate of age or invalid pension

27 Clause 6 would amend subsection 33(12) of the Principal Act. This subsection sets the applicable income test for a pensioner. It refers to the annual rate of pension payable under subsection 33(1) and then to the annual rate of income which will result in a reduction from that annual rate. Paragraph (c) of Clause 6 of the Bill would allow for the additional reduction in annual rate of pension which results from the receipt of maintenance income.

28 This clause would also amend paragraph 33(7)(a) of the Principal Act. Subsection (7) of the Principal Act applies to a married person in receipt of a pension whose spouse also receives age, invalid, wife's or carer's pension, supporting parent's benefit, sheltered employment or rehabilitation allowance or any of various Veterans' service pensions. Where this married person has one or more children who may attract additional pension under subsections 33(3) or (4), the maximum rate of pension is reduced by the amount per annum by which the annual rate of income of the person exceeds \$1,820. The new paragraph 33(7)(a) provides for an additional reduction which is the amount by which the pensioner's annual rate of maintenance income exceeds the annual maintenance free area.

29 Paragraph (b) of clause 6 of the Bill would amend subsection 33(8) of the Principal Act. That subsection refers to the situation where a pensioner receives more income, or maintenance income, than the free areas prescribed in subsection 33(7) and pension is thereby reduced. There will then be a reduction (reduction A). It refers also to the applicable increased rate of pension in respect of dependent children provided for in subsections 33(3) and (4) (increase A). By means of the version of paragraph 33(8)(a) which this Bill would insert, where reduction A is less than increase A no amount of income per annum would be applicable to the pensioner or spouse under paragraph 33(12)(a) of the Principal Act.

30 Paragraph 33(8)(b), as amended, in the Principal Act would provide that where reduction A equals increase A, the aggregate income set by paragraph 33(12)(a) would be reduced by the same amount as reduction A.

31 Paragraph 33(8)(c) of the Principal Act, to be inserted by Clause 6 of the Bill, would make it clear that, regardless of the application of paragraph 33(8)(a) or (b), no amount is to be held against a pensioner or spouse in respect of the application of the assets test. The rules in subsection 33(8) would aim to achieve a balance between additional amounts of pension payable in respect of dependent children and excess income, maintenance and otherwise, received by the pensioner.

32 The introduction of subsection 33(12A) is proposed for the Principal Act. This subsection would limit the effect which special maintenance income may have on the annual rate of pension payable to a person. Subsection 33(12A) would provide that any special maintenance income in excess of

- . 50% of the maximum rate of age or invalid pension applicable to the person; plus
- . 50% of any incentive allowance (if applicable); plus
- . the annual maintenance free area of the person

would be disregarded for the purposes of reducing the annual rate of pension payable under subsection 33(12) of the Principal Act. As a consequence, the effect of the receipt of special maintenance income by a pensioner is limited in so far as it can operate to decrease the annual rate of pension payable.

Clause 7 - Calculation of income in respect of children

33 Clause 7 would amend subsection 35(1) of the Principal Act. This subsection provides for certain reductions in the income to be attributed to a pensioner. Under paragraph 35(1)(a) an unmarried pensioner or a married pensioner (whose spouse is not in receipt of certain specified pensions or benefits under the Principal Act, or a service pension) with

one or more dependent children may deduct \$624 for each dependent child from the annual rate of income. By paragraph 35(1)(b) a married pensioner whose spouse is in receipt of one of the specified pensions or benefits with one or more dependent children may deduct \$312 for each dependent child from the annual rate of income. However, the sums of \$624 and \$312, respectively, are reduced by payments received in respect of the child or children. Certain payments in respect of the child or children are exempt from this reduction. These are

- . payments under the Principal Act;
- . payments under the Veterans' Entitlements Act 1986; and
- . a payment in the nature of family allowance.

Clause 7 would add to this list of exemptions

- . a payment of maintenance income;
- . a payment under the AUSTUDY scheme; and
- . a payment under the Assistance for Isolated Children Scheme.

#### Clause 8 - Condition of entitlement to widow's pension

34 Clause 8 would repeal section 47 of the Principal Act and substitute a new provision. The new provision would apply where the Secretary to the Department of Social Security considers that it is reasonable that the widow should have taken action to obtain maintenance from another person, but the Secretary considers that the widow has not taken action considered reasonable to obtain appropriate maintenance from that other person. The effect of this determination would be to disqualify the widow from receiving widow's pension.

35 Whereas the existing section 47 of the Principal Act forbids only the grant of pension in such a case, and is unclear as to whether the maintenance in question is for the widow only, or for the widow and any dependent child or children, the proposed substitute section would clarify that

- . the obligation to take reasonable action to obtain maintenance would be a continuing obligation - failure to fulfil the obligation resulting in cancellation of pension; and
- . the obligation would apply to action for maintenance for both spouse and child.

#### Clause 9 - Rate of widow's pension

36 Clause 9 proposes the amendment of section 48 of the Principal Act. Section 48 provides for the assessment of the annual rate of pension payable to a widow. It applies the same principles as section 33 does in respect of unmarried age and invalid pensioners. The proposed amendments to section 48 would have the same effect as those proposed in Clause 6 for paragraph 33(12)(a) and would provide an equivalent to the proposed subsection 33(12A). Thus they would provide for the application of a maintenance income test with a free area in addition to the traditional income test, and there would be provision in the proposed subsection 48(3A) for a limitation on the effect of special maintenance income similar to that in the proposed subsection 33(12A).

#### Clause 10 - Calculation of income in respect of children

37 Clause 10 would provide a new subsection 49(1) in the Principal Act. Section 49 in relation to widow's pension is equivalent to section 35 as regards age and invalid pension. The proposed amendments perform the same function in respect of widow's pension as those proposed in Clause 7 of the Bill.

Clause 11 - Condition of entitlement to supporting parent's benefit

38 Clause 11 would repeal section 55 of the Principal Act and replace it by a provision which, as far as possible, repeats the proposed section 47.

Clause 12 - Maintenance income test

39 Clause 12 would provide for the insertion of section 122A in the Principal Act. This section would impose a maintenance income test in respect of unemployment benefit, sickness benefit and job search allowance. There would be reference to the "fortnightly maintenance free area" as discussed in paragraph 14 above. The proposed subsection 122A(1) states that the maintenance income test would be additional to the existing income test in section 122 of the Principal Act. The impact of the maintenance income test in subsection 122A(1) would be the same as in subsections 33(12) and 48(3) as amended by Clauses 6 and 9 of the Bill. Thus, once the fortnightly maintenance income exceeded the fortnightly maintenance free area of the person the rate per fortnight of the benefit or allowance would be reduced by fifty cents in each dollar of the excess.

40 The proposed subsection 122A(2) of the Principal Act would provide for the splitting of maintenance income as between a married person and the person's spouse.

41 Subsection 122A(3) would provide for the pro rata assessment, on a fortnightly basis, of maintenance income received in intervals longer than a fortnight.



42 Subsection 122A(4) would deal with special maintenance income in the assessment of fortnightly rate of unemployment benefit, sickness benefit or job search allowance in the same way as subsection 33(12A) and subsection 48(3A) in relation to age, invalid and widow's pension and supporting parent's benefit.

#### Clause 13 - Cancellation, suspension or variation of pension etc

43 Subsection 168(4) of the Principal Act regulates when a determination to increase a pension, benefit or allowance should take effect. Among its provisions the subsection contemplates situations where the determination is made following advice to the Department of Social Security of a change in circumstances. The general rule established by paragraph 168(4)(c) is that where a determination to raise the rate of pension, benefit or allowance is triggered by advice of a change in circumstances, the determination takes effect on the day on which the advice is received, or on the day of the change in circumstances, whichever is later. The effect of the amendment to paragraph 168(4)(c) proposed in Clause 13 of the Bill would be to permit the determination to raise the rate of pension, benefit or allowance to take effect from the date of the decrease in maintenance income although advice of the decrease was provided after that day. This dispensation ensures that where maintenance payments fail to materialise, pension, benefit or allowance could be recalculated accordingly.

#### PART III - AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

##### Clause 14 - Principal Act

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

#### Clause 15 - Interpretation

45 Subsection 35(1) of the Principal Act contains, inter alia, a definition of "income" for the purposes of Part III of the Act and specifies those payments, amounts and receipts that are excluded as income for the purposes of assessing service pension.

46 Paragraphs 15(a) and (b) would add "maintenance income" to the list of exclusions; this exclusion is necessary because maintenance income is to be subject to a separate test and, if it were not excluded from the definition of "income", the result would be that maintenance income would be counted twice in pension assessment.

47 Paragraph 15(c) would insert a number of new definitions, as follows. The first, "annual maintenance free area", would be that amount of maintenance income which a person may receive annually without there being any effect on the annual rate of service pension to which the person is entitled. This amount would vary:

- (a) where the person is unmarried or is married to a person who does not receive a relevant pension (later defined) the free area would be \$30 per fortnight plus \$10 per fortnight for the second child and each subsequent child;
- (b) where the person's spouse receives a relevant pension but does not receive maintenance income in his or her own right, the free area would be a lower rate - \$15 per fortnight plus \$5 per fortnight for the second child and each subsequent child; and
- (c) where the person's spouse receives a relevant pension and maintenance income in his or her own right, the free area would be \$30 per fortnight plus \$5 per fortnight for the second child and each subsequent child.

48 "Capitalised maintenance income" would be maintenance income not provided on a periodic basis, the amount or value of which exceeds \$1,500. Examples of capitalised maintenance would be the payment of a lump sum of cash, the settlement of shares or securities and the settlement of a house provided by way of maintenance. Those non-periodic amounts which would be excluded because they are \$1,500 or below would usually be treated by apportionment over one year or a shorter period. If apportioned over one year the amount would be divided by 26 and applied equally as maintenance income over 26 fortnightly paydays. Capitalised maintenance income would only be taken into account if received on or after the date of commencement of the Act for which the Bill provides.

49 The definition of "in-kind housing maintenance income" would apply to in-kind maintenance income related to the provision of a residence. This definition is important because in-kind housing maintenance income would be one of the types of special maintenance income, receipt of which could reduce service pension payable by no more than 25% of maximum rate. The definition would limit in-kind housing maintenance income to the provision of a residence which is or is to be, the principal residence of the service pensioner. The residence might have been the principal residence of the service pensioner and his or her spouse or former spouse immediately before separation. In the event that the residence had not been the home of the service pensioner and spouse or former spouse, any in-kind maintenance for the provision of such a residence may nevertheless fall within the definition. However, if the residence provided should have a value exceeding that of the residence formerly occupied by the service pensioner and spouse or former spouse, the Repatriation Commission would be empowered to disregard a part of the maintenance, having regard to the excess value of the new residence. In comparing the relative values of the present and former residences the Commission would consider their relative rental values. The definition would make clear that the

in-kind maintenance would include the provision of a residence by means of the transfer of a right or interest in the property, the payment of mortgage or similar cash instalments to third parties, and the payment of rent.

50 The clause would then define "in-kind maintenance income". This would be any maintenance income other than a payment received by the service pensioner or a dependent child. Examples would be payments by way of maintenance made in respect of rent (usually made to the landlord), provision of a car, free housing or payment of electricity accounts. The assessment that would be applied to in-kind maintenance income is illustrated by examples given at paragraph 17 of this Memorandum.

51 The definition of "maintenance agreement" would cover a written agreement (made within or outside Australia) which provides for the maintenance of a person, including a child. The agreement may provide for other matters in addition to maintenance, and still fall within the definition. An agreement to vary an earlier maintenance agreement would also be a "maintenance agreement".

52 "Maintenance income" would be defined to include cash payments, transfers of capital and provision of in-kind benefits provided by way of maintenance (refer to paragraphs 49 and 17 above for examples of "in-kind maintenance income"). The payment or transfer may be direct or indirect. Thus maintenance paid indirectly via a trust or corporation, for example, or in any other way from the assets of the person required to pay maintenance, would be maintenance income. The maintenance may be paid to the service pensioner or to the spouse of the service pensioner or to a dependent child of the service pensioner. It may be paid by the parent of a dependent child, the former or current spouse of such a parent, or the former or current spouse of the pensioner. The definition would explicitly cover maintenance collected and paid under

subsection 76(1) of the Child Support Act 1988. The definition would also apply to a benefit received by way of maintenance because of a payment to, or benefit conferred on, a third person. An example of this last variety of maintenance income would be the payment to a medical benefits fund of premiums for the cover of a pensioner and/or dependent child. The cause of the payment or conferral of benefit may be a court order, a registered agreement, or otherwise.

53 A "parent", for a child who has been adopted, would be defined as an adoptive parent of the child.

54 A definition of a "relevant pension" is included for the purposes of new subsection 35(12A) proposed to be inserted by paragraph 15(d) of the Bill. A "relevant pension" is defined as a service pension under Part III of the Principal Act, or an age, invalid, wife's or carer's pension, unemployment or sickness benefit or a sheltered employment or rehabilitation allowance under the Social Security Act 1947.

55 "Special maintenance income" would be specifically defined for the purpose of new subsections 47(5A) and 48(4A) proposed to be inserted by paragraphs 18(d) and 19(b) of the Bill. These subsections provide that these income items would be limited in the extent to which their receipt by a service pensioner could result in a reduction of the rate of service pension. Special maintenance income could not reduce the service pension by more than 25% of the applicable maximum rate, including any increases in respect of children or rent. The categories of special maintenance income would be:

- . in-kind housing maintenance income of the service pensioner or of a dependent child;
- . all in-kind maintenance income (except for in-kind housing maintenance income and capitalised maintenance income) in the first six months after the service pensioner and spouse or former spouse separate; or

maintenance provided in relation to expenses arising directly from the physical, intellectual or psychiatric disability, or a learning difficulty of a dependent child of the maintenance recipient, where the disability or difficulty is likely to be permanent or to last for an extended period. This proviso would operate to exclude expenses arising from a temporary illness or injury.

56 Subsection 35(12) of the Principal Act is an income-splitting provision; it specifies that the value of a married person's property and his or her annual rate of income is for the purposes of Part III, to be half of the married couple's total.

57 A similar concept would be applied also to maintenance income. Paragraph 15(d) would insert a new subsection 35(12A) which would operate where there is a married person and the person's spouse receives a relevant pension (see paragraph 54) and/or maintenance income in their own right. In such a case the annual rate of maintenance income of the married person would be one-half of the sum of the annual rates of maintenance income of the person and the person's spouse. Thus, the maintenance income of both married pensioners would be split for the purpose of assessment of the annual rate of service pension.

#### Clause 16 - Method of calculation of income

58 Clause 16 would amend subsection 37(1) of the Principal Act. This subsection provides that a veteran's assessable income for income test purposes will be reduced by an amount per year in respect of each dependent child where that child is wholly or substantially dependent on the veteran. The amount of the reduction depends on whether the veteran is unmarried or married or, if married, whether the spouse is in receipt of a service pension or certain specified payments under the Social

Security Act 1947. However the amount of the reduction is reduced by payments in respect of the child or children. Certain payments in respect of the child or children are exempt from this reduction. These are

- . a payment under Part III of the Principal Act;
- . a payment under the Social Security Act 1947; and
- . a payment in the nature of family allowance.

Clause 16 would add to this list of exemptions

- . a payment of maintenance income;
- . a payment under the AUSTUDY scheme; and
- . a payment under the Assistance for Isolated Children Scheme.

59 The amended provision would also replace reference to Part III of the Principal Act with a reference to that Act generally to clarify that payments under the Veterans' Children Education Scheme (established under Part VII of the Act) are also to be excluded. Such payments are excluded under the corresponding provision of the Social Security Act 1947 and this amendment would restore consistency with that Act.

60 All of the excluded payments are provided in recognition of the need to ensure adequate income support to help defray the costs of maintaining a child. Their exclusion is designed to protect that measure of income support.

#### Clause 17 - Apportionment of capitalised maintenance income

61 As defined in paragraph 15(c) of the Bill, "capitalised maintenance income" is maintenance income that is not provided on a periodic basis and the value of which exceeds \$1,500.

Clause 17 would introduce into the Principal Act a new section 37A to provide a mechanism for apportioning capitalised maintenance income over a period of time. The effect of apportioned income on assessment of the annual rate of service pension payable would be determined by the amendments proposed to be made to sections 47 and 48 of the Principal Act by clauses 18 and 19 of the Bill.

62 New subsection 37A(1) would provide a formula whereby capitalised maintenance income is taken to be received over the course of a capitalisation period the length of which is determined by rules set out in the remaining provisions of the section.

63 New subsection 37A(2) would provide that in determining a period, reference is to be made to any court order or registered agreement regulating the transfer of capitalised maintenance. Should the order or agreement specify a period capable of being ascertained with reasonable certainty, the capitalisation period may be the nominated period.

64 Should there be no order or agreement or if the order or agreement does not specify a period, new subsections 37A(3) and (4) would provide for alternative methods of determining a capitalisation period. In relation to income for the maintenance of a dependent child who is under 18 years of age on the day when the amount is received, new subsection 37A(3) would provide that the capitalisation period would commence on the day of receipt of the maintenance and end on the day before the child's eighteenth birthday.

65 Where the income relates to the maintenance of a service pensioner, new subsection 37A(4) would provide for apportionment from the date it is received until the day before the recipient reaches the age of 65 years.



66 Where no capitalisation period or an inappropriate period would result from the application of the rules contained in new subsections 37A(2), (3) and (4), new subsection 37A(5) would enable the Repatriation Commission to select such a period as it considers appropriate in the circumstances of the case. For example, where the period until a child's eighteenth birthday or until a service pensioner attains age 65 is very short, the Commission might choose to apply a longer period to avoid a sudden, severe reduction of the rate of service pension payable.

#### Clause 18 - Rate of veteran's service pension

67 Section 47 of the Principal Act provides for the calculation of the rate of service pension payable to a veteran. In part, it provides for an addition to service pension for each dependent child of the veteran and for the reduction of the maximum rate of service pension payable where the veteran has income in excess of specified limits.

68 Subsection 47(4) contains mechanisms for reducing the additional service pension for a child payable to a married veteran whose spouse also receives a service pension or one of a number of specified payments under the Social Security Act 1947. In such a case, the service pension addition is reduced on a dollar for dollar basis by the amount by which the veteran's income exceeds \$1,820 per year. At the same time, paragraph 47(4)(b) provides for any amount by which the service pension addition has been reduced to be disregarded thereafter for the purposes of the service pension income test.

69 Paragraph 18(a) would substitute a new subparagraph 47(4)(a)(i) in the Principal Act to reduce the service pension addition for a child by the aggregate of income in excess of \$1,820 per year and any maintenance income in excess of the veteran's maintenance free area. The amount of any special maintenance income to be taken into account as part of maintenance income would be limited by the provisions of new subsection 47(5A) (as proposed to be inserted by paragraph 18(d) of the Bill).

70 Paragraph 18(b) would substitute new subparagraphs 47(4)(b)(i), (ii) and (iii) to ensure that where a combination of other income and maintenance income have operated to reduce the amount of additional service pension for children, that combined income is not again taken into account under new subsections 47(5) and 48(4) to reduce the total amount of service pension payable. New subparagraph 47(4)(b)(ii) would ensure that where additional service pension has been reduced to nil under new subparagraph 47(4)(a)(i), the amount of the reduction will be deducted from the incomes and maintenance incomes of both the veteran and spouse before these are applied to the assessment of pension under new paragraphs 47(5)(a) and 48(4)(a).

71 New subparagraph 47(4)(b)(i) would introduce a new provision into the Principal Act to clarify that where the total amount of income plus maintenance income in excess of the limits specified in new subparagraph 47(4)(a)(i) is less than the maximum rate of additional service pension for the veteran's child or children, that total amount is disregarded in other assessment of the rate of service pension payable.

72 New subparagraph 47(4)(b)(iii) would clarify that, regardless of the application of new subparagraphs 47(4)(b)(i) or (ii), no amount is to be held against the veteran or spouse under the assets test provisions of paragraphs 47(5)(b) and 48(4)(b) of the Principal Act.

73 Paragraph 47(5)(a) of the Principal Act provides a mechanism for reducing the maximum rate of service pension by \$1 for every \$2 by which the veteran's income exceeds \$1,820 per year (married) or \$2,080 per year (unmarried or with a spouse who does not receive a specified pension, benefit or allowance).

74 Paragraph 18(c) would substitute a new paragraph 47(5)(a) to provide for service pension to be further reduced by maintenance income in excess of the veteran's maintenance free area, on a \$1 for every \$2 basis. The aggregate service pension reduction under the income test and new maintenance income test would then be compared with the assets test reduction (calculated under paragraph 47(5)(b)) in the usual way.

75 Paragraph 18(d) would insert a new subsection 47(5A) in the Principal Act to limit the effect which special maintenance income may have on the annual rate of service pension payable to a veteran. A definition of special maintenance income is proposed to be inserted by clause 15 of the Bill. New subsection 47(5A) would provide that any special maintenance income in excess of specified limits would be disregarded for the purposes of reducing the amount of any pension addition for a child under new sub-subparagraph 47(4)(a)(B)(i) or the annual rate of service pension payable under new paragraph 47(5)(a) of the Principal Act.

76 For an unmarried veteran or a married veteran without dependent children or whose spouse does not receive a service pension or a specified pension, benefit or allowance under the Social Security Act 1947 the limit would be:

- . one-half of the maximum rate of service pension applicable to the veteran (including any additions for children or rent); plus

- . the annual maintenance free area of the veteran.

77 For a married veteran with dependent children whose spouse receives a pension, benefit or allowance, the limit would be:

- . one quarter of the combined maximum rates of pension, benefit or allowance payable to the veteran and the spouse (including any additions for children or rent); plus

. the annual maintenance free area of the veteran.

Clause 19 - Rate of wife's service pension

78 Section 48 of the Principal Act provides for the calculation of the rate of service pension payable to a person eligible for a wife's service pension. Paragraph 48(4)(a) provides a mechanism by which the maximum rate of service pension (including any additions for children or rent) is reduced by \$1 for every \$2 by which the person's annual income exceeds \$1,820.

79 The proposed amendments to section 48 contained in paragraphs 19(a) and (b) have the same effect as those proposed for paragraph 47(5)(a) and provide an equivalent (in proposed new subsection 48(4A)) to the proposed new subsection 47(5A) contained in paragraph 18(d). Thus they would provide for the application of a maintenance income test with a free area, in addition to the existing income test.

Clause 20 - Cancellation, suspension or variation of service pension

80 Section 58 of the Principal Act provides for the cancellation, suspension or variation of service pension in certain circumstances.

81 Subsection 58(3) provides that where the Commission is satisfied that the rate of service pension is less than it should be, it may increase the rate of pension payable.

82 Subsection 58(3A) of the Principal Act regulates when a determination to increase a service pension should take effect. Among its provisions the subsection contemplates situations where the determination is made following advice to the Department of Veterans' Affairs of a change in circumstances. The general rule established by paragraph

58(3A)(a) is that where a determination to raise the rate of service pension is triggered by advice of a change in circumstances, the determination takes effect on the first pension payday after receipt of the advice, or from the day of the change in circumstances, whichever is later. The effect of the amendment to paragraph 58(3A)(a) proposed in clause 20 of the Bill would be to permit the determination raising the rate of service pension to take effect from the date of the decrease in maintenance income even though advice of the decrease was provided after that day.

#### PART IV - TRANSITIONAL PROVISIONS

##### Clause 21 - Saving for existing pensions, etc

83 The purpose of this clause would be to protect the total income situation of a qualifying pensioner, beneficiary or allowee so that the application of the maintenance income test would not reduce the total income of the pensioner, beneficiary or allowee as at the date of commencement of operation of the Act for which this Bill would provide.

84 The Bill would provide for the assessment of the 'total income' of the pensioner, beneficiary or allowee in the 'final pre-amendment period'. Subclause 21(1) of the Bill would define the 'final pre-amendment period' as the fortnight ending on the day immediately before the day on which the Act for which the Bill provides comes into operation. The 'total income' to be taken into account would be the aggregate of the income and the maintenance income of the pensioner, beneficiary or allowee and the amount of any pension, benefit or allowance paid under the Social Security Act 1947 or Part III of the Veterans' Entitlements Act 1986. There would be a definition of 'income', ie subclause 21(1), which would expressly exclude any payment for remunerative work which came within subsection

12A(3) of the Social Security Act 1947, or subsection 498(3) of the Veterans' Entitlements Act 1986, which permit earnings to be offset against an accrued earnings credit, and so not result in a reduction in the rate of pension.

85 Subclause 21(4) would provide for preservation of the total income of the pensioner, beneficiary or allowee where the total income would fall below that which was received in the final pre-amendment period. This preservation may be achieved by increasing a payment under the Social Security Act 1947 or Veterans' Entitlements Act 1986. However, subclause 21(5) would prevent the payment of a pension, benefit or allowance at a rate higher than was paid in the final pre-amendment period. Subclause 21(4) would apply, for example, where the rate of pension paid in the final pre-amendment period fell because of casual earnings. Should these earnings cease or decline subclause 21(4) would permit the payment of additional pension, benefit or allowance to return the pensioner, beneficiary or allowee to the total income received in the final pre-amendment period. There would, however, be a cap on the increased payment of pension. That cap would be the rate paid in the final pre-amendment period.

86 Subclause 21(2) would define the population which may benefit from the transitional provisions. In essence the pensioner, beneficiary or allowee must have been receiving a pension, benefit or allowance under the Social Security Act 1947 or under Part III of the Veterans' Entitlements Act 1986 in the final pre-amendment period, must have had maintenance income, and must have notified the Department of Social Security or the Department of Veterans' Affairs of receipt of maintenance income in the final pre-amendment period if required by or under the Social Security Act 1947 or Veterans' Entitlements Act 1986 to do so. The clause would apply to a pensioner, beneficiary or allowee until qualification to receive a pension, benefit or allowance under the Social

Security Act 1947 under Part III of the Veterans' Entitlements Act 1986 should cease. The pensioner would not have to continue to receive the same category of pension, benefit or allowance, so long as payment of a series of different types of benefit were continuous. The various pensions, benefits or allowances might be paid by either the Department of Social Security or the Department of Veterans' Affairs exclusively, or by both serially, in any order.

87 Paragraph 21(2)(d) of the Bill would provide that the transitional provisions cease to apply to a pensioner, beneficiary or allowee when total income rises above that received in the final pre-amendment period.

88 Subclause 21(6) is designed to permit the assessment of a benefit or allowance paid by the Department of Social Security, or a service pension paid by the Department of Veterans' Affairs and received in the final pre-amendment period on a pro rata basis where it is less because it was paid in respect of a qualification period shorter than a fortnight. This subclause could be relevant, for example, where an unemployment beneficiary was paid benefit in respect of only several days of the final pre-amendment period because benefit was granted part of the way through the period. The rate actually paid would be multiplied by a factor reflecting that number of days in the fortnight for which benefit was not payable. The problem would not arise in the case of Social Security pensions which are paid on a set day fortnightly and for which there is no provision for pro-rata payment but can arise in respect of service pensions which are granted from the date of receipt of the claim.

