

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (No. 1) 1995

FURTHER SUPPLEMENTARY EXPLANATORY MEMORANDUM

Request for an amendment to be moved on behalf of the Government

**(Circulated by authority of the Hon Janice Crosio MP,
Parliamentary Secretary to the Minister for Social Security,
representing the Minister for Social Security)**

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (No. 1) 1995**OUTLINE AND FINANCIAL IMPACT STATEMENT**

This request affects the *Social Security Act 1991* (the Principal Act).

Italian international social security agreement

This request for an amendment relates to Schedule 3 of the Principal Act.

On 13 September 1993, the Government of Australia and the Government of the Republic of Italy signed an international social security Agreement (the new Agreement). This Agreement is intended to replace the Agreement signed on 23 April 1986 (the former Agreement).

Section 31 of Part 10 of the *Social Security Legislation Amendment Act 1994* (the 1994 Act) provided for the repeal of the former Agreement and the insertion of the new Agreement, from the day of Royal Assent.

Article 23 of the new Agreement provides that it enters into force when the parties to the Agreement (ie, the respective Governments) ratify it by an exchange of instruments of ratification (clause 1 of Article 23). In addition, Article 23 provides that the former Agreement does not terminate until the new Agreement enters into force (clause 2 of Article 23). The Parties to the new Agreement have not, as yet, ratified it due essentially to delays in the Italian legislative process. The effect of this is that the former Agreement remains in force but is no longer a scheduled international social security agreement under section 1208 of the Principal Act.

The effect of the repeal of the former Agreement and the fact that the new Agreement has not entered into force has meant that social security payments made by virtue of the Agreement have not been made validly. Social security payments are made out of the Consolidated Revenue Fund appropriated under section 83 of the Constitution. The payments of social security entitlements made since the repeal of the former Agreement have therefore been made contrary to that section.

The Government of Australia has an existing obligation under International Law to fulfil its requirements under the former Agreement and although retrospective validation of payments cannot be enacted, the Commonwealth can extinguish any right it has to recover any or all of the payments.

Date of effect: Royal Assent

Financial impact: The request for amendment has arisen because of a technical drafting problem and the proposed request for amendment restores the position at law to the underlying policy position and honours Australia's international obligations. There is no additional cost to the Commonwealth.

NOTES ON REQUEST FOR AMENDMENT***Italian international social security agreement***

The **amendment** requests an amendment to the Principal Act by inserting a new section 2A to the Bill.

New subsection 2A(1) of the Bill would provide for the former Agreement to continue in force despite the 1994 Act. Subsection 2A(1) of the Bill will also provide that the new Agreement will not come into force until it enters into force in accordance with Article 23 of that Agreement.

New subsection 2A(2) of the Bill will extinguish any right of the Commonwealth to recover a valid payment made to a person had subsection 2A(1) of the Bill been in force when the payment was made.



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