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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO. 1) 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Social Security,  
Senator the Hon Jocelyn Newman)

# **SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO. 1) 1996**

## **OUTLINE AND FINANCIAL IMPACT STATEMENT**

This Bill gives legislative effect to a number of non-Budget measures.

The legislation involved is the *Social Security Act 1991*.

### **Schedule 1 - Amendment of the *Social Security Act 1991* to exclude from the value of a person's assets any amounts received from the Mark Fitzpatrick Trust**

Schedule 1 amends the *Social Security Act 1991* to make payments of financial assistance from the Mark Fitzpatrick Trust to persons with medically acquired HIV infection and AIDS (and payments to the dependents and carers of such persons) exempt assets for the purposes of the assets test.

***Date of effect :*** Royal Assent

***Financial implications:*** Negligible.

### **Schedule 2 - Amendment of the *Social Security Act 1991* to preserve the automatic transfer from mature age partner allowance to wife pension when partner is automatically transferred from mature age allowance to age pension**

Schedule 2 amends the *Social Security Act 1991* to allow the continuation of automatic transfer of mature age partner allowance recipients to wife pension when their mature age (pre-1 July 1996) allowance partners transfer to age pension after 30 June 1995.

***Date of effect :*** Royal Assent

***Financial implications:*** Negligible

### **Schedule 3 - Amendment of the Social Security Act 1991 to continue the effect of certain savings provisions**

Schedule 3 amends the *Social Security Act 1991* to continue the effect of savings provisions in Clause 54 of Schedule 1A, by removing references to "additional family payment" and replacing those with references to the new family payment regime, which will ensure that the amount derived from the method statement will provide the correct results. In addition, point 1210-A1 will be amended to ensure that reference is made to the "minimum standard family payment rate", which will correct a technical fault in the Social Security Act.

***Date of effect :*** The amendments in Schedule 3 (apart from those in **item 1**) commence on the date of Royal Assent. The amendments included in **item 1** commence on 1 January 1996, immediately after the commencement of Schedule 2 to the *Social Security Legislation Amendment (Family Measures) Act 1995*.

***Financial implications:*** Negligible.

### **Schedule 4 - Amendment of the Social Security Act 1991 relating to Pension Rate Calculator A**

Schedule 4 amends the *Social Security Act 1991* to correct an error in Pension Rate Calculator A. When the Social Security Act was amended in 1992 by the *Social Security (Family Payment) Amendment Act 1992* to accommodate the integration of (the then) family payments in 1993, inappropriate consequential amendments were made to Table E-2 in point 1064-E10 which dealt with how a person's reduction for ordinary income is worked out. The revised Table failed to address the situation of a person who is a member of a couple and whose partner is receiving a social security or service pension, although it had previously done so before the amendments were made. The amendments made by Schedule 4 merely reinstates the pre-1 January 1993 position.

***Date of effect :*** The amendments in Schedule 4 are taken to have commenced on 1 January 1993, immediately after the commencement of the *Social Security Legislation (Family Payment) Amendment Act 1995*.

***Financial implications:*** Failure to reinstate the pre 1 January 1993 position has the potential to result in additional program outlays of between \$600 - 700 million per annum.



## **PRELIMINARY**

Clause 1 of the *Social Security Legislation Amendment Bill (No.1) 1996* sets out how the amending Act is to be cited.

**Clause 2** specifies when the various clauses and Schedules of the amending Act are to commence.

**Clause 3** says that each Act that is specified in a Schedule to the *Social Security Legislation Amendment Bill (No.1) 1996* (the Amending Act) is amended or repealed as set out in the Schedules.

## SCHEDULE 1

### AMENDMENT OF THE *SOCIAL SECURITY ACT 1991* TO EXCLUDE FROM THE VALUE OF A PERSON'S ASSETS ANY AMOUNTS RECEIVED FROM THE MARK FITZPATRICK TRUST

#### 1. Summary of proposed changes

Schedule 1 amends the *Social Security Act 1991* (the Social Security Act) to make payments of financial assistance from the Mark Fitzpatrick Trust to persons with medically acquired HIV infection and AIDS (and payments to the dependents and carers of such persons) exempt assets for the purposes of the assets test.

#### 2. Background

The Mark Fitzpatrick Trust (the Trust) was established by the (then) Government to provide financial assistance to persons with medically acquired HIV infection and AIDS and to the dependents and carers of such persons. To be eligible to receive payments from the Trust, the person in respect of whom the payments are made must have acquired the HIV infection in the course of medical treatment received between 1 January 1979 and 1 May 1985.

When the Trust was established, it was intended that payments from the Trust would not affect any income support payment being received by persons to whom payments were made. On the understanding that payments from the Trust were for medical treatment, pain and suffering, the Trust was advised that the compensation provisions of the Social Security Act would not operate to affect the social security entitlements of a person receiving payments (as long as the payments contained no element relating to loss of earnings or loss of the capacity to earn). In addition, an amendment was made to the income test definition contained in section 8 of the Social Security Act. The effect of the amendment was to make payments from the Trust "exempt income" for the purposes of the Social Security Act (see section 49(a) of the *Social Security Legislation Amendment Act 1992*).

At the time, no amendment was made to the assets test provisions. A commitment to make an amendment to the assets test provisions was, however, subsequently given by the (then) Minister for Social Security, the Hon Dr Neal Blewett. The amendments contained in Schedule 1 honour that commitment.

The previous Minister for Social Security, the Hon Peter Baldwin, wrote to the Chairman of the Trust on 28 September 1995, advising that payments from the Trust would be exempted in anticipation of this amendment being passed by the Parliament. This being so, the amendments have retrospective effect (ie to the date of Mr Baldwin's advice to the Chairman of the Trust). In particular, the social security payments of social security customers affected by the assets testing of their payments from the Trust will be able to be adjusted from the date that they apply for a review of their payment rate. Other than paying the higher rate of pension, allowance or benefit from the date that a person applies for a review, however, no arrears will be payable. The date of effect of the relevant rate determination will be the first pension payday after the review was sought (in the case of pensions) or the date of the next instalment (in the case of benefits and allowances).

Further, on the issue of the effect of the amendments, the amendments differentiate between payments that are received after the date of effect of the amendments (ie the date that a person applies for a review) and payments received in the past (ie before the date of effect).

### **3. Clauses involved in the changes**

**Clause 2:** provides that the amendments made by Schedule 1 commence from the date of Royal Assent.

**Clause 3:** provides that the Social Security Act is amended in accordance with Schedule 1.

#### **Schedule 1**

**Item 1:** inserts a new section 1118AA into the Social Security Act.

### **4. Explanation of the changes**

Part 3.12 of the Social Security Act sets out the general provisions relating to the assets test. Division 1 of that Part provides for the calculation of the value of a person's assets. Section 1118 (which is contained in Division 1) provides that certain assets are to be disregarded in calculating the value of a person's assets.

**Item 1 of Schedule 1** inserts, immediately after section 1118, a new section 1118AA into Division 1 of Part 3.12. That new section provides for the exemption from the operation of the assets test of payments of financial assistance from the Mark Fitzpatrick Trust to persons with medically acquired HIV infection and AIDS (and payments to the dependents and carers of such persons).

New subsection 1118AA(1) defines "application day" in relation to a person who was a recipient of a social security payment immediately before 28 September 1995 - the date that the amendments come into effect. It provides that "application day" means the day on which the person applies (or applied) for a review of the rate of his or her social security payment, in anticipation of this amendment being made. The definition also makes it clear that the "application day" cannot be before 28 September 1995.

New subsection 1118AA(2) provides that (subject to subsection (3) and for the purposes of the Social Security Act) the value of a person's assets is reduced by the sum of any amounts received by the person from the Mark Fitzpatrick Trust. The operation of subparagraph 263(1)(d)(iv) and sections 1124A, 1125, 1125A and 1126 are specifically exempted from this reduction in the value of a person's assets.

Section 263(1) of the Social Security Act allows the Secretary, in certain specified situations, to require claimants for sole parent pension to provide information about their domestic circumstances. Subparagraph 263(1)(d)(iv) specifies that one of the relevant factors is that the person is (in simple terms) one of 2 persons of the opposite sex who are sharing a residence and have joint assets in excess of \$4,000. The non-application of the reduction in assets to this provision is consistent with the non-application of the exemption of various items under section 1118.

Sections 1124A, 1125, 1125A and 1126 of the Social Security Act deal with the disposal of assets for the purposes of the assets test. In general terms, they limit the capacity of a social security recipient (or a would-be recipient) to dispose of assets in order to maximise their entitlement to receive a social security payment. The non-application of the reduction in assets to these provisions is consistent with the non-application of the exemption of various items under section 1118.

## **5. Commencement**

The amendments made by Schedule 1 commence on the date of Royal Assent.

## SCHEDULE 2

# AMENDMENTS TO THE *SOCIAL SECURITY ACT 1991* TO PRESERVE THE AUTOMATIC TRANSFER FROM MATURE AGE PARTNER ALLOWANCE TO WIFE PENSION WHEN PARTNER IS AUTOMATICALLY TRANSFERRED FROM MATURE AGE ALLOWANCE TO AGE PENSION

### 1. Summary of proposed changes

This Schedule contains amendments to the *Social Security Act 1991* (the Social Security Act) preserving automatic transfer of mature age partner allowance recipients to wife pension when their partners are automatically transferred after 30 June 1995 from mature age (pre-1 July 1996) allowance (mature age allowance under Part 2.12A of the Social Security Act) to age pension.

### 2. Background

As part of the 1994 White Paper initiative to phase out wife pension from 1 July 1995, persons who claimed wife pension before or on 30 June 1995 and qualified for that pension before or on that date were "saved" and continue to receive wife pension after 1 July 1995. As a result, when, for example, a disability pensioner who turns 65 years of age is automatically transferred to age pension (under subsection 48(3)), his wife pension partner continues to qualify for wife pension.

Mature age partner allowance was also phased out from 1 July 1995 with mature age partner allowance recipients at 1 July 1995 (those who lodged claims for mature age partner allowance and qualified for that pension before or on 30 June 1995) being saved. However, unlike wife pensioners, the saved mature age partner allowance recipients lose qualification for mature age partner allowance when their mature age allowance partners are automatically transferred to age pension. This is because mature age partner allowance is only payable to a person whose partner receives mature age allowance. As wife pension provisions (section 146V) do not allow a grant of wife pension after 30 June 1995, mature age partner allowance recipients who lose their entitlement to that allowance after that date cannot be granted wife pension. While most women affected by this change would be able to qualify for another social security payment, a small group would be unable to do so.

Under current legislation, the mature age partner allowance recipients referred to above receive inequitable treatment when compared with partners of disability support pensioners or disability wage supplement recipients whose pension entitlement is unaffected by their partner's automatic transfer from those pensions to age pension.

These amendments will remedy that unintended effect of the decisions to phase out wife pension and mature age partner allowance and will allow the automatic grant of wife pension (without the need for a wife pension claim) to the affected women.

Currently, women in that situation are paid an equivalent to wife pension by way of ex-gratia payments.

### **3. Clauses involved in the changes**

- Clause 2(1):** specifies the commencement date as the day of Royal Assent.
- Clause 3:** says that each Act that is specified in a Schedule to the Social Security Legislation Amendment Bill (No.1) 1996 is amended or repealed as set out in the Schedules.
- Schedule 2:** amends paragraphs 146V(1)(a), 146V(1)(b) and 152(3)(a).

### **4. Explanation of the changes**

Under paragraphs 146V(1)(a) and (b), a woman can be granted wife pension if her claim for the pension is lodged on or before 30 June 1995 and she qualifies for the pension on or before 30 June 1995.

**Item 1** repeals paragraphs 146V(1)(a) and (b) and substitutes new paragraphs 146V(1)(a) and (b). New paragraph 146V(1)(a) allows for the grant of wife pension to a woman who can be granted that pension under the current provisions (that is to a woman who qualifies for wife pension on or before 30 June 1995 and lodges a wife pension claim on or before that date). New paragraph 146V(1)(b) allows for the grant of wife pension to a woman who began to receive mature age partner allowance on or before 30 June 1995 and received that allowance continuously since she began to receive it until her partner was automatically transferred, after 30 June 1995, from mature age allowance under Part 2.12A of the Social Security Act to age pension.

As a rule, a woman who wants to be granted wife pension must make a claim for that pension (subsection 152(1) refers). Subsection 152(3) exempts from that rule a woman who *is receiving* mature age partner allowance if she becomes qualified for wife pension and the Secretary determines that she is to be automatically transferred to wife pension. **Item 2** extends that exemption to a woman who *was receiving* mature age partner allowance immediately before her partner was automatically transferred after 30 June 1995 from mature age allowance to age pension.

The **Item 1 and 2** amendments enables the grant of wife pension to mature age partner allowance recipients who after 30 June 1995 lost qualifications for that payment due to automatic transfer of their partners from mature age allowance to age pension, regardless of whether the loss of qualification occurred before or after the commencement of these amendments. If the Secretary determines that a woman who may be granted wife pension under the new paragraph 146V(1)(b) is to be

automatically transferred to wife pension, she will not be required to make a claim for that pension.

## **5. Commencement**

The amendments included in Schedule 2 commence on the day of Royal Assent.

## SCHEDULE 3

### AMENDMENT OF THE *SOCIAL SECURITY ACT 1991* TO CONTINUE THE EFFECT OF CERTAIN SAVINGS PROVISIONS

#### 1. Summary of proposed changes

The amendments in Schedule 3 will remove references to "additional family payment" in clause 54 of Schedule 1A of the *Social Security Act 1991* (the Social Security Act) and replace those with references to the new family payment regime, which will ensure that the amount derived from the method statement will provide the correct results. In addition, point 1210-A1 will be amended to ensure that reference is made to the "minimum standard family payment rate", which will correct a technical fault in the Social Security Act.

#### 2. Background

##### Amendments to Schedule 1A

The *Social Security Legislation Amendment (Family Measures) Act 1995* (the Family Measures Act) implemented a new family payment regime, with effect from 1 January 1996. This Act replaced the existing family payment regime (incorporating family payment and additional family payment) with a new single family payment. However, these amendments had an unintended, and undesirable, interaction with the provisions of clause 54 of the Savings and Transitional Provisions in Schedule 1A to the Social Security Act.

Clause 54 of Schedule 1A provides a series of savings provisions which applied to maintain the status quo of various groups of family allowance recipients who were overseas when the family payment regime commenced operation on 1 January 1993. If not for these savings provisions, these people, who formerly received an add-on for dependent children as a component of their pension, would not have been qualified for the new family payment. Clause 54 provided a series of method statements which were designed to continue qualification for these people, by providing the person with a "notional family payment rate".

However, subclauses 54(1), (2) and (5) of Schedule 1A make reference to "additional family payment", which ceased to exist on 1 January 1996. Accordingly, the "notional family payment rate" to be used in the calculations in the method statements in each subclause will not provide the correct rate of payment for these people. While subclauses 54(3) and (4) also make reference to "additional family payment", these provisions are subject to a sunset clause which ensured that they ceased to operate on 31 December 1995. Therefore, the repeal of additional family payment does not impact on these provisions.

## Amendments to point 1210-A1

The amendments in Schedule 3 also correct a problem in the International Agreement Portability Rate Calculator at point 1210-A1. Clause 1210 of the Social Security Act includes the International Agreement Portability Rate Calculator at the end of the clause, which is used in working out the rate of pension or allowance for a person under an international agreement where the person is outside Australia and the agreement provides for the rate to be in line with Australia's social security laws.

In particular, Point 1210-A1 sets out an overall rate calculation process, for working out a person's international agreement portability rate. The method statement establishes the overall rate calculation process including references to the modules that provide the means for working out the component parts used in that process.

A person's "notional family payment rate" is calculated under step 5 of this method statement. This is then added to the person's "notional agreement pension rate" to derive the person's total notional rate which is then multiplied by the person's "residence factor". The end result is the person's international agreement portability rate.

However, the current wording of step 5 of the method statement does not provide the correct rate of "notional family payment rate". This then impacts on the person's final international agreement portability rate.

Under the former family payment regime, the "notional family payment rate" was calculated by adding the amount of additional family payment and guardian allowance that would be payable to the person if the person were in Australia.

New step 5 provides a mechanism for calculating the same amount under the new family payment regime. Under this version of step 5 of the method statement, the "notional family payment rate" is obtained by adding the *standard family payment rate* and the *guardian allowance* that would be payable to the person if the person was in Australia, and subtracting from this the *minimum family payment rate* payable to the person. The terms "standard family payment rate", "minimum family payment rate" and so on, are all defined in section 6 of the Social Security Act (family payment definitions). The effect of this approach is that the entire rate of family payment is calculated and, then, an amount equivalent to the basic family payment (under the former regime) is deducted from this amount. These calculations have been necessary due to the different conceptual framework of the new family payment.

However, Step 5 of the method statement should specify that the "minimum **standard** family payment rate" is subtracted to derive the notional family payment rate.

The effect of the current provisions is that the "minimum family payment rate" includes large family supplement and multiple birth allowance, while the "minimum standard family payment rate" only includes the amount derived from applying the formula in point 1069-B6. The effect of including large family supplement and multiple birth allowance in the formula is that a larger amount is subtracted under

step 5 and the person's notional family payment rate is less than that under the former regime.

This problem can be best illustrated by using a practical example, which illustrates the different results obtained under the two regimes, as follows:

In this example, Gertrude has 4 children, all under the age of 13. No multiple birth allowance is payable

**EXAMPLE ONE: Rate derived by applying the provisions as at 31/12/95 (ie, the "additional family payment regime")**

Point 1210-A1:

Notional family payment rate = additional family payment + guardian allowance

Rate of additional family payment =  $\$67.20 \times 4$   
= \$268.80

Rate of guardian allowance = \$30.10

Notional family payment rate =  $\$268.80 + 30.10$   
= \$298.90

**EXAMPLE TWO: Rate derived by applying the provisions as amended at 1/1/96 (ie, "family measures" regime - based on 31/12/95 rates of payment)**

Notional family payment rate = standard family payment rate +  
guardian allowance -  
minimum family payment rate

standard family payment rate = Point 1069-B2 Table B  
=  $\$88.90 \times 4$   
= \$355.60

guardian allowance = Point 1069-F7  
= \$30.10

minimum family payment rate = minimum standard family rate +  
large family supplement +  
multiple birth allowance

minimum standard family payment rate = Point 1069-B6  
=  $\$21.70 \times \text{No of children (4)}$   
=  $21.70 \times 4$   
= \$86.80

$$\begin{aligned}
 \text{large family supplement} &= \$7.20 \times (\text{number of children} - 3) \\
 &= \$7.20 \times (4-3) \\
 &= \$7.20
 \end{aligned}$$

$$\begin{aligned}
 \text{Notional family payment rate} &= \$355.60 + \$30.10 - (\$86.80 + \$7.20) \\
 &= \$291.70
 \end{aligned}$$

The issue is further complicated where multiple birth allowance is involved in the scenario. For instance, where 3 of the children qualified the family payment recipient for multiple birth allowance, then an additional amount of \$87.00 would be subtracted under the new formula. This would result in a notional family payment rate of \$204.70, while under the old formula, the approach would remain unchanged.

**EXAMPLE THREE: Rate derived by applying the provisions under the "family measures" regime if amended (based on 31/12/95 rates of payment)**

$$\begin{aligned}
 \text{Notional family payment rate} &= \text{standard family payment rate} + \\
 &\quad \text{guardian allowance} - \\
 &\quad \text{minimum standard family payment rate}
 \end{aligned}$$

$$\begin{aligned}
 \text{standard family payment rate} &= \text{Point 1069-B2 Table B} \\
 &= \$88.90 \times 4 \\
 &= \$355.60
 \end{aligned}$$

$$\begin{aligned}
 \text{guardian allowance} &= \text{Point 1069-F7} \\
 &= \$30.10
 \end{aligned}$$

$$\begin{aligned}
 \text{minimum standard family payment rate} &= \text{Point 1069-B6} \\
 &= \$21.70 \times \text{No of children (4)} \\
 &= 21.70 \times 4 \\
 &= \$86.80
 \end{aligned}$$

$$\begin{aligned}
 \text{Notional family payment rate} &= \$355.60 + \$30.10 - \$86.80 \\
 &= \$298.90
 \end{aligned}$$

### **3. Clauses involved in the changes**

**Clause 2(1):** specifies the commencement date for Schedule 3 (apart from item 1 of this Schedule) will be the date of Royal Assent.

Item 1 of Schedule 3 will commence on 1 January 1996, immediately after the commencement of Schedule 2 to the *Social Security Legislation Amendment (Family Measures Act 1995)*.

## SCHEDULE 3

- Item 1 :** amends point 1210-A1 of the Social Security Act, to ensure that step 5 of the Method statement in this point makes reference to the correct defined term.
- Items 2 to 4 :** amend clause 54 of Schedule 1A of the Social Security Act, to replace references to "additional family payment" with references to the equivalent term under the new family payment regime.

### 4. Explanation of the changes

**Item 1** amends step 5 of the Method statement in point 1210-A1 of the Social Security Act to insert the word "standard" immediately after the word "minimum". Accordingly, this step will refer to the "minimum standard family payment rate" which will ensure that method statement provides a mechanism for correctly calculating the person's "notional family payment rate".

**Items 2 to 4** amend subclauses 54(1), (2) and (5) by removing references to "additional family payment" and replacing them with references to the rate of family payment which equates to "additional family payment" under the new family payment regime. In order to more easily facilitate this, step 3 of each of these subclauses has been removed from the Social Security Act and replaced with a new step which provides a mechanism for calculating a person's "notional family payment rate".

The person's "notional family payment rate" is worked out on the assumption that the person would have qualified for family payment. On this basis, the person's "standard family payment rate" would be worked out under point 1069-B2. Added to this is an amount equivalent to the amount of guardian allowance that would also be payable to the person if the person were in Australia. Finally, the "minimum standard family payment rate" (as calculated under point 1069-B6) is deducted from this amount.

### 5. Commencement

The amendments in Schedule 3 (apart from those in **item 1**) commence on the date of Royal Assent. The amendments included in **item 1** commence on 1 January 1996, immediately after the commencement of Schedule 2 to the *Social Security Legislation Amendment (Family Measures) Act 1995*.

## **SCHEDULE 4**

### **AMENDMENT OF THE *SOCIAL SECURITY ACT 1991* RELATING TO PENSION RATE CALCULATOR A**

#### **1. Summary of proposed changes**

This Schedule contains amendments to the *Social Security Act 1991* (the Social Security Act) to correct an unintended error in point 1064-E10 in Pension Rate Calculator A and so reinstate the pre-1 January 1993 position for the treatment of reduction for ordinary income of a person who is a member of a couple and whose partner is receiving a social security or service pension.

#### **2. Background**

The Social Security Act was amended in 1992 by the *Social Security (Family Payment) Amendment Act 1992* to accommodate the integration of (the then) family payments in 1993. At that time, inappropriate consequential amendments were made to Table E-2 in point 1064-E10 which dealt with how a person's reduction for ordinary income is worked out. The revised Table failed to address the situation of a person who is a member of a couple and whose partner is receiving a social security or service pension, although it had previously done so before the amendments were made.

#### **3. Clauses involved in the changes**

- Clause 2(3):** specifies the commencement date as 1 January 1993 immediately after the commencement of the *Social Security (Family Payment) Amendment Act 1992*.
- Clause 3:** says that each Act that is specified in a Schedule to the Social Security Legislation Amendment Bill (No.1) 1996 is amended or repealed as set out in the Schedules.
- Schedule 4:** repeals point 1064-E10 and substitutes a new point 1064-E10.

#### **4. Explanation of the changes**

Points 1064-E1 to E12 set out how to work out the effect of a person's ordinary income on the person's maximum payment rate for age, disability support, wife and carer pensions (provided that the person is not blind).

If a person's ordinary income exceeds the person's ordinary income free area, then any excess (the ordinary income excess) will result in a reduction from the person's maximum payment rate.

Point 1064-E10 sets out how the reduction for ordinary income from that maximum payment rate is to be worked out.

The amendment made by **item 1** in Schedule 4 repeals existing point 1064-E10 and substitutes a new point 1064-E10.

The new point 1064-E10, which applies to a person irrespective of their family situation, says that a person's reduction for ordinary income is worked out by dividing the person's ordinary income excess by 2. A person's ordinary income excess is defined in the following point, point 1064-E11.

## **5. Commencement**

The amendments included in Schedule 4 are taken to have commenced on 1 January 1993, immediately after the commencement of the ***Social Security (Family Payment) Amendment Act 1992***.











