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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO 3) 1991

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Social Security
Senator the Hon Graham Richardson)



SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO 3) 1991

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill will give effect to a number of measures most of which were announced in the 1991-92 Budget.

The legislation primarily involved is the Social Security Act 1991, the Health Insurance Act 1973, the National Health Act 1953 and the Income Tax Assessment Act 1936.

Unless otherwise indicated the measures involve amendment of the Social Security Act 1991.

SOLE PARENTS

- . An education entry payment of \$200 will be introduced from 1 January 1992. The lump sum payment will be available to persons who make a proper claim for the payment, who are in receipt of sole parent pension and who are qualified for an education supplement under the AUSTUDY scheme. Only one education entry payment will be available to a person each calendar year.

Estimated program costs of this measure are \$0.90m in 1991-92 and \$1.00m in 1992-93.

BENEFITS

- . From 1 January 1992, 16-17 year olds in substitute care who do not receive or attract a substitute care or similar allowance from the relevant State/Territory Government will be eligible for the independent rate of job search allowance or sickness allowance.

Estimated program costs of this measure are \$0.50m in 1991-92 and \$0.90m in 1992-93.

- . Job search allowance and sickness allowance will be available to persons under 16 years of age who meet the requirements of job search allowance or sickness allowance apart from age, who are above minimum school leaving age or over 15 years of age with a formal exemption from attending school, who have an employment history and who are not living with or being supported by a parent or parents. This measure will commence on 1 January 1992.

Estimated program costs of this measure are \$0.06m in 1991-92 and \$0.12m in 1992-93.

Qualification conditions for the independent rate of job search allowance or sickness allowance will be modified so that 16 and 17 year olds must have been either employed full-time (current requirement) or registered with the CES as seeking full-time work (new alternative requirement) for at least 13 weeks in the last 6 months before the independent rate of job search allowance or sickness allowance is payable. This measure will commence on 1 January 1992.

Estimated program costs of this measure are \$0.90m in 1991-92 and \$1.90m in 1992-92.

From the day of Royal Assent, neither job search allowance nor newstart allowance will be payable to persons receiving income that is paid by a community or group from funds provided under a Commonwealth funded employment program. If the person's partner is receiving such income, the person will not be entitled to an additional payment in respect of the partner.

Estimated program savings from this measure are \$1.62m in 1991-92 and \$10.32m in 1992-93.

FAMILIES

Child disability allowance will be increased by \$2.15 a week to \$62.05 a week. This measure will restore child disability allowance to its value in real terms at the time of its introduction in 1987.

The increase will also apply to disability support pensioners who are under 21 years and who attract the youth disability supplement.

These measures will operate from 2 January 1992.

Estimated program costs of these measures are \$2.70m in 1991-92 and \$5.70m in 1992-93.

A person will be allowed 13 weeks from the date of birth of a child in which to claim family allowance, family allowance supplement or double orphan pension to have the claim backdated to the date of birth. This measure will commence on 1 January 1992.

Estimated program costs of this measure are \$0.80m in 1991-92 and \$1.60m in 1992-93.

- . From 1 January 1992, a person's family allowance supplement will be recalculated where the person's income increases to 125% of his or her base tax year income even though the increase was not related to a notifiable event.

Estimated program savings from this measure are \$8.45m in 1991-92 and \$10.56m in 1992-92.

- . A family assets test of \$600,000 (taking into account the assets of parents and their dependent children but excluding the family home and net of debts) will be introduced for family allowance.
- . The family allowance supplement parental assets test will be replaced by a new family assets test which takes into account the assets of parents and their dependent children. The assets limit will remain at \$347,500 as at present.
- . A hardship test will be introduced to protect families with assets above the family allowance and family allowance supplement thresholds where those assets are producing very low income.

These measures will commence on 1 January 1992 with the hardship provisions applying until 31 December 1993.

Estimated program savings from these measures are \$12.75m in 1991-92 and \$25.50m in 1992-93.

- . The income threshold at which full rate family allowance supplement is payable to a person will be increased and aligned with the AUSTUDY threshold (currently \$19,300 but increasing to \$20,700 on 1 January 1992). Subsequently, the threshold amount will be indexed in accordance with movements in Average Weekly Earnings on each 1 January.
- . The threshold amount will continue to be increased by \$624 (not indexed) for each child after the first.

This measure will commence on 1 April 1992.

Estimated program costs of these measures are \$20.00m in 1991-92 and \$79.10m in 1992-93.

- . From 1 January 1992, health care card entitlement will be limited to existing family allowance supplement recipients and new recipients of full rate family allowance supplement.

- . This measure will involve amendment of the Social Security Act 1991, the Health Insurance Act 1973 and the National Health Act 1953.

Estimated program savings from this measure are \$5.20m in 1991-92 and \$11.44m in 1992-93.

- . This Bill will also effect a number of minor changes, from 1 January 1992, in the area of families administration.

These measures have no financial implications.

ASSETS

- . The assets test will be modified to allow primary producers to deduct liabilities which relate to the carrying on of primary production from the value of assets used in that production. This measure will commence on 1 January 1992.

Estimated program costs of this measure are \$0.40m in 1991-92 and \$0.40m in 1992-93.

- . From the day of Royal Assent, the rules for assessing notional ordinary income within the hardship provisions will be modified so that owners of residential premises that are occupied by family members in certain situations will not be penalised because the premises are not attracting commercial rates of rent.

This measure has negligible financial impact.

EXCLUDED SECURITIES

- . With effect from the day of Royal Assent, the value of a person's asset will be taken to be reduced by the value of a charge or encumbrance on the asset only if the person or the person's partner gets the direct benefit of a loan secured by the charge or encumbrance.

This measure has no financial implications.

BEREAVEMENT

- . If a child died on or after 17 August 1991, the parent may be eligible for special assistance by way of payment for 4 weeks of family allowance, child disability allowance or double orphan pension.

This measure will give effect to the Minister's commitment, following the Strathfield tragedy, to assist bereaved families.

Estimated program costs of this measure are \$0.05m in 1991-92 and \$0.15m in 1992-93.

- . From 26 March 1992, widowed person allowance will be payable for 14 weeks (instead of the current 12 weeks) from the death of the partner.
- . From 1 July 1992, bereavement measures will extend to long term social security recipients and their partners.

Estimated program costs of these measures are \$0.05m in 1991-92 and \$0.52m in 1992-93.

RENT ASSISTANCE

- . The rent assistance waiting period for recipients of job search allowance, newstart allowance, sickness allowance or special benefit who have no children and who are aged between 18 and 60 years, and for disability support pensioners aged between 18 to 20 years, will be reduced from 26 weeks to 18 weeks. This measure will commence on 20 March 1992.

Estimated program costs of this measure are \$2.60m in 1991-92 and \$9.30m in 1992-93.

- . Also from 20 March 1992, eligibility for rent assistance will be extended to under 18 year olds who receive the homeless/independent rate of job search allowance, sickness allowance, disability support pension or special benefit and who have been receiving social security income support for at least 18 weeks.

Estimated program costs of this measure are \$0.70m in 1991-92 and \$2.80m in 1992-93.

DISABILITY REFORM PACKAGE

- . Minor consequential amendments arising as a result of the implementation of major reforms to restructure income support for the disabled and the sick will also be made to the Data-matching Program (Assistance and Tax) Act 1990, the Defence (Re-establishment) Act 1965, the Health Insurance Act 1973, the National Health Act 1953, the Re-establishment and Employment Act 1945, the Social Security Act 1991, the Veterans' Entitlements Act 1986 and the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986.

These consequential measures have no financial impact.

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO 3) 1991

PART 1 - INTRODUCTORY

Part 1 of the Bill sets out how the amending Act is to be cited [clause 1], when various Parts, Divisions or sections of the Act are to commence [clause 2] and, where necessary, the application dates of some of the changes [clause 3].

Part 1 also provides that, for convenience, the Social Security Act 1991 is referred to in the amending Act as the "Principal Act". [Clause 1]

PART 2 - AMENDMENT OF THE SOCIAL SECURITY ACT 1991

DIVISION 1 - SPECIAL CHILD BEREAVEMENT PAYMENTS

1. Summary of the proposed changes

Bereavement payments of family allowance (FA), child disability allowance (CDA) and double orphan pension (DOP) will be paid for four weeks to certain persons whose child dies on or after 17 August 1991.

2. Background

Bereavement provisions basically allow for the continuation of payments where the death of a person would otherwise cause those payments to cease. The Principal Act currently allows for the continuation of FA, CDA and DOP for 14 weeks where a child dies, but this is subject to a number of limitations.

For example, with some FA bereavement payments, not only must the child who was previously attracting FA have died, but in addition, the child must have been the only FA child and also attracting either a dependent child add on, a guardian allowance or FAS.

This means that payments sometimes stop immediately after death. This was highlighted by the death of a child during the Strathfield tragedy. The Act did not authorise payments because all the current qualification provisions for bereavement payments were not satisfied.

Consequently, the Act will be changed to provide special short-term assistance where a child dies. The qualification criteria for this payment will be less stringent than for the other bereavement payments. The provisions will be backdated so that special assistance will be provided as from the day of the Strathfield tragedy.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as 17 August 1991.

Clause 4: amends the heading to Subdivision A of Division 10 of Part 2.17.

Clause 5: adds a Note to section 886 to inform the reader that a person who fails to satisfy paragraph 886(d) might still qualify for FA payments under new section 890AA.

Clause 6: adds a Note to section 887 to inform the reader that a person who fails to satisfy paragraph 887(d) might still qualify for payments under new Subdivision AA of Division 10 of Part 2.17.

Clause 7: provides for special assistance by way of payment for four weeks of FA.

Clause 8: adds a Note to section 991 to inform the reader that a person who fails to satisfy paragraph 991(c) might still qualify for payments under new Subdivision AA of Division 10 of Part 2.19.

Clause 9: provides for special assistance by way of payment for four weeks of CDA.

Clause 10: amends the heading to Subdivision A of Division 10 of Part 2.20.

Clause 11: adds a Note to section 1033 to inform the reader that a person who fails to satisfy paragraph 1033(c) might still qualify for payments under new section 1034AA.

Clause 12: provides for special assistance by way of payment for four weeks of DOP.

4. Explanation of the changes

Special short-term assistance will include FA, CDA and DOP. If a child who was attracting such a payment died, then those payments could continue. To implement this proposal, changes will be made to all the modules of the Principal Act which deal with those payments.

However, since the changes for FA provide a model for all the changes, only the amendments dealing with this payment are explained below.

The 'FA model' [Clause 7]

This is a new payment and involves the addition of a new Subdivision. The most important aspect is the provisions dealing with qualification.

New section 890AA allows a person to qualify for special short term assistance of FA payments for four weeks if:

- . the person is receiving FA for a dependent child; and
- . the child dies; and
- . the child was the only FA child of the person; and

- . the person is not qualified for other bereavement payments under section 886.

This demonstrates how the qualification criteria for this payment are less stringent. In a case where the only FA child dies, short term assistance will be payable without the need for the child to have been attracting a child add on or FAS.

The current bereavement payments are retained but the qualification criteria for the new payment ensure that double payments will not be possible.

New section 890AB allows a person to qualify for bereavement payments of four weeks payment of FA if:

- . the person is receiving FA; and
a dependent child of the person dies;
- . immediately before the child died, the person's rate FA rate included a FA child rate for that child; and
- . the person is not qualified for bereavement payments under Subdivision A of Division 10 of Part 2.17.

New section 890AC sets out how a person's FA rate is to be calculated where he or she is qualified for a payment under new Subdivision AA of Division 10 of Part 2.17.

The other payments (ie CDA and DOP) will have similar qualification provisions allowing payments without the need for the child to have been attracting add ons or FAS. A person can qualify for one or more of these payments depending on his or her circumstances.

5. Commencement

These changes are to be taken to have come into effect on 17 August 1991.

DIVISION 2-EDUCATION ENTRY PAYMENT FOR SOLE PARENT PENSIONERS

1. Summary of the proposed changes

Certain sole parent pensioners will be qualified to receive a \$200 lump sum payment each calendar year to help with education costs.

2. Background

Sole parents face costs on entering education. In order to encourage sole parents to undertake courses of study it has been decided to pay them education entry payments. It will be possible to get only one such payment in respect of each calendar year. A person will qualify for the payment only if he or she is currently receiving sole parent pension, has enrolled in a course of study (either full-time or part-time) and is eligible for payments under the AUSTUDY scheme administered by the Department of Employment, Education and Training (DEET).

3. Clauses involved in the changes

Clause 2: specifies the commencement date as 1 January 1992.

Clause 13: adds a Note to section 269 to inform the reader about education entry payments.

Clause 14: sets out the qualification provisions for payment, the amount and how to make a claim.

4. Explanation of the changes

As from 1 January 1992 new section 665A provides that a person will qualify for an education entry payment if:

- . the person is receiving a sole parent pension; and
- . the person is qualified to receive 'education supplement' under the AUSTUDY scheme; and
- . the person has not already received such a payment for which he or she has made a claim in the current calendar year.

A person will not get an education entry payment unless he or she is enrolled in a course of study (either full or part-time) and the course is the kind which is approved by DEET as being one to which AUSTUDY extends.

No more than one payment will be made in each calendar year in respect of an individual claim. This would mean that if there was a claim in a calendar year 1 and the Department of Social Security was late in making payment (ie paid in calendar year 2) then the person could still get another payment in calendar year 2 but only if he or she made a new claim in that year.

New section 665B provides that the amount of the payment is be \$200.

Under new section 665C, a person will not qualify for the payment unless he or she makes a claim in writing in a form approved by the Secretary. In most cases, the Department will require the person to produce a letter from DEET to say that he or she has been granted AUSTUDY before the delegate could be satisfied that s/he is qualified for payments under the AUSTUDY scheme.[Clause 14]

5. Commencement

The changes will come into effect on 1 January 1992.

DIVISION 3 - EXTENSION OF HARDSHIP PROVISIONS

1. Summary of proposed changes

The rule for working out the notional annual rate of income as set out in subsection 1130(5) will be modified in respect of accommodation provided by a person to another family member in certain situations.

It will mean that the family member's financial situation must be taken into account in working out (under subsection 1130(5)) the notional rent that the accommodation could attract commercially.

2. Background

The financial hardship rules cater for people who have substantial assets that produce little or no income and cannot be readily sold or used as security for a loan but that either prevent a pension being payable or reduce the amount payable under the assets test. A person who qualifies under the hardship rules has the value of those assets disregarded and is subject to a special income test that may allow some pension to be payable or payment at a higher rate than would otherwise be the case.

The special income test involves working out a person's maximum payment rate (eg, see Step 4 of the method statement at point 1064-A1 of the Principal Act) and then deducting the person's adjusted annual rate of ordinary income - subsection 1130(2) refers. Subsection 1130(3) sets out the components of the person's adjusted annual rate of ordinary income, one of which is the greater of the real or notional annual rate of ordinary income from unrealisable assets - paragraph 1130(3)(c) refers. Subsection 1130(5) establishes that the notional annual rate of ordinary income from unrealisable assets is either 2.5% of the value of the person's and partner's unrealisable assets or the annual amount that could reasonably be obtained from a purely commercial application of those assets, whichever is the less.

Subsection 1130(6) modifies the notional annual rate of ordinary income rule in the situation where a family farm is an unrealisable asset of the person. It applies if the family farm is being operated by a family member of the person and it is considered unreasonable for the farm to be used for any other purpose. It is necessary that the overall financial situation of the family member operating the family farm be taken into account in working out the person's notional annual rate of ordinary income from the farm. Subsection 1130(7) makes it clear that subsection 1130(6) doesn't restrict the matters which the Secretary may take into account in assessing the family farm's commercial value.

The change will extend the principle embodied in the family farm situation to owners of residential premises that are occupied by family members in certain situations.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as the date of Royal Assent.

Clauses 15 and 16: transfers the definition of "family member" from section 5A to subsection 23(1).

Clauses 17 and 18: amends the Notes to sections 518 and 597 that will direct the reader to the definition of "family member" in subsection 23(1) instead of section 5A.

Clause 19: amends section 1130 by inserting a new subsection (6A) which contains the substance of the proposal.

Clause 20: inserts a new clause 40 into Schedule 1A of the Principal Act to provide that any determinations made under paragraph 5A(c) (repealed by clause 15) will still have effect because they are taken to have been made under paragraph (c) of the new definition of "family member" in subsection 23(1).

4. Explanation of the changes

Section 23 of the Principal Act will be changed by inserting new definitions. The definition of "family member" that applied for the purposes of the job search and newstart allowance provisions dealing with the effects of a move to an area of lower employment prospects is to be used for this extension of the financial hardship provisions. As the definition will apply in situations relating to social security pensioners as well as beneficiaries, it is to be moved to the general definitional area in section 23.

When will the extension of the hardship provisions apply?

It will apply if the accommodation that is owned by a pensioner or prospective pensioner (or partner) but is occupied by another family member is an unrealisable asset and it is considered unreasonable for the accommodation to be used for any other purpose. The modification will apply in only certain situations as follows:

- . the residential premises owned by the person provide accommodation for a family member who has previously provided substantial care for the person in that accommodation when it was the person's home. For

example, this may apply where the person is now in a nursing home and a family member, who had previously been providing substantial care to the person, is

living in the person's former home. The person still owns the home but cannot get a pension because the value of the former home prevents it being payable under the pensions assets test; or

- . the accommodation is provided for a family member who has resided there for at least 10 years; or
- . the accommodation is provided for a child of the person if the child has a disability and the person is promoting that child's independent living.

What is the effect of the extension to the hardship provisions?

Pensioners to whom this change will apply may have their rate of pension increased. If their rate is currently being assessed under the financial hardship provisions and the rate includes a component to reflect existing subsection 1130(5) (ie, the component reflects the rental return that could be expected from a purely commercial application of the residential premises), then that component might be reduced as a result of the Secretary having to take into account the family member's financial situation. It follows that if the person's notional annual rate of ordinary income is reduced, then the person's rate should increase.

The changes may also allow some people to get a pension whereas previously no pension was payable to them either owing to the application of the assets test or under the special ordinary income test applicable to the financial hardship provisions.

5. Commencement

The changes will come into effect on the day of Royal Assent.

DIVISION 4 - EXTENSION OF JOB SEARCH ALLOWANCE AND SICKNESS ALLOWANCE QUALIFICATION

1. Summary of the proposed changes

The changes will:

- (a) provide that for an independent young person, 13 weeks registration with the CES will be interchangeable with the requirement to have been employed;
- (b) extend the independent rate of Job Search Allowance (JSA), Sickness Allowance (SA) and Special Benefit (SpB) to 16 or 17 year old persons in substitute care (care by a person other than the natural or adoptive parent in the carer's own home) under the law of a State or Territory for whom no substitute care or similar allowance is being paid for the upkeep of that person by an authority of the State or Territory; and
- (c) extend qualification for JSA to 15 year olds who meet the requirements of JSA apart from age, who are above the minimum school leaving age or have a formal exemption from attending school, who have an employment history and who are not living with or being supported by a parent.

2. Background

Independent young person

The current JSA and SA provisions relating to young people aged 16 to 17 years (based on a definition of "independent young person") have helped to improve the circumstances of many young people. However, many face hardship because, although they have lived away from home for a substantial period, they are precluded from JSA or SA as they do not meet the employment requirement set down in this definition.

Extension of JSA/SA to certain persons in substitute care

At present, 16 to 17 year old persons in substitute care for whom no substitute care or similar allowance is being paid for their upkeep by an authority of the State or Territory receive the basic rate of JSA/SA unless they qualify for the independent rate under other criteria. From 1 January 1992, DSS arrangements will be in line with AUSTUDY entitlements for 16 to 17 year old persons in substitute care.

Extend JSA/SA to certain 15 year olds

There are currently unemployed and sick 15 year olds who receive special benefit on the ground that they would, apart from age, qualify for JSA or SA respectively. These special beneficiaries are required to comply with all the usual JSA or SA qualification and payability conditions but are subject to more rigorous income testing, ie, dollar for dollar reduction in benefit for each dollar of income earned.

Persons in this category are not eligible for transition-to-work incentives such as the employment entry payment and are not generally eligible, under Department of Employment, Education and Training guidelines, for the labour market assistance available for 16 and 17 year old JSA recipients. This places 15 year olds who are essentially in the same position as their 16 and 17 year old JSA counterparts at a distinct disadvantage.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as 1 January 1992.

Clause 21: amends section 5 (Family relationships definitions - children).

Clause 22: amends section 513 (Qualification for job search allowance).

Clause 23: amends section 666 (Qualification for sickness allowance).

Clause 24: amends section 1067, Table B of point 1067-B1 (Rate of job search allowance (under 18) and sickness allowance (under 18)-Module B: Maximum Basic Rates).

4. Explanation of the changes

Independent young person

Section 5 of the Principal Act provides the definitions of family relationships which are used to establish particular elements of the eligibility criteria for JSA/SA.

The definition of an independent young person in section 5 will be changed to include, from 1 January 1992, a 13 week registration with the Commonwealth Employment Service in the last 6 months as being a condition of eligibility for independent JSA and SA as an alternative to the current requirement to have worked full-time for at least 13 weeks during the last 6 months. [Clause 21 (a)]

A note will be added at the end of the definition of "independent young person" to refer the reader to the explanation of "allowance category" in subsection 23(4A). [Clause 21(b)]

Extension of JSA/SA to certain persons in substitute care

A new definition of "substitute care" is to be inserted into section 5. This definition will cover the situation where the person is being cared for by a carer (other than the natural or adoptive parent of the person) in the carer's home under the law of a State or Territory; and where no substitute care allowance or other allowance for the upkeep of that person is being paid to the carer by an authority of the State or Territory. [Clause 21(c)]

This definition is relevant to section 1067 of the Principal Act, Table B of point 1067-B1 where two new sub paragraphs (c) have been inserted in Items 1 and 2 of Table B which will extend the independent rate of JSA/SA to 16 to 17 year old persons in substitute care under the law of the State or Territory.

This extension of JSA/SA to persons in this category will improve:

- (a) the overall level of income support to families who do not receive a substitute care allowance by the relevant State or Territory authority.
- (b) incentives for the substitute care of young persons in this age group which will assist young persons who may otherwise be at some risk of homelessness. [Clause 24]

Extend JSA/SA to certain 15 year olds

Section 513 sets out the qualification criteria for JSA.

A new subsection 513(2) will be inserted in the Principal Act to enable a new class of persons to qualify for JSA. The new subsection will incorporate all of the qualifications conditions set out in section 513 except for the age requirement. In addition, the person must:

- . be 15 years of age;
- . be above the minimum school leaving age or be exempt by the relevant State/Territory education authority from the requirement to attend school;
- . have an employment history involving full-time employment that was either on a permanent or regular casual basis; and
- . not be living with or receiving regular support from either parent. [Clause 22]

Subsection 666(1) sets out the basic qualification criteria for SA.

A new subsection 666(1A) will be inserted in the Principal Act to enable a new class of persons to qualify for SA. The new subsection will incorporate all of the qualifications conditions set out in subsection 666(1) except for the age requirements. In addition, the person must:

- . be 15 years of age;
- . be above the minimum school leaving age or be exempt by the relevant State/Territory education authority from the requirement to attend school;
- . have an employment history involving full-time employment that was either on a permanent or regular casual basis; and
- . not be living with or receiving regular support from either parent. [Clause 23]

5. Commencement

The changes will come into effect on 1 January 1992.

DIVISION 5 - RENT ASSISTANCE

1. Summary of the proposed changes

These changes provide that:

- (a) eligibility for rent assistance (RA) will be extended, on the same basis as it is currently available to 18 to 24 year old persons, to persons under 18 who:
 - (i) receive the homeless/independent rate of job search allowance, sickness allowance, disability support pension or special benefit; and
 - (ii) have been receiving social security income support for at least 18 weeks; and
- (b) the RA waiting period will be reduced from 26 to 18 weeks for persons who are without dependent children and:
 - (i) are aged between 18 and 60 years and are receiving job search allowance, newstart allowance, sickness allowance or special benefit; or
 - (ii) are aged between 18 and 20 years and are receiving disability support pension.

Note: On 12 November 1991, under the Social Security (Disability and Sickness Support) Amendment Bill 1991, disability support pension and sickness allowance will replace invalid pension and sickness benefit.

2. Background

Currently, RA is payable to persons under 18 only if they are married or in a de facto relationship or have a dependent child. Those persons who are single without dependent children cannot currently receive RA even though they may be paying high rents for accommodation. Additionally, there is evidence that the length of the RA waiting period is causing hardship.

These measures will help to provide further financial support to clients without dependent children in private rental accommodation (clients with dependent children do not serve a waiting period for RA) as well as resulting in a greater consistency of treatment for social security income support recipients who are under 18.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as 20 March 1992.

Clause 25: amends section 1066A [Rate of disability support pension (people under 21 who are not blind)].

Clause 26: amends section 1066B [Rate of disability support pension (people under 21 who are blind)].

Clause 27: amends section 1067 [Rate of job search allowance (under 18) and sickness allowance (under 18)].

Clause 28: amends section 1068 [Rate of job search allowance (18 and over) and sickness allowance (18 and over)].

4. Explanation of the changes

The changes to section 1066A and 1066B will provide for persons who are under 21, are without children and are receiving disability support pension (if they are under 18, at the homeless/independent rate):

(a) to be eligible for RA; and

(b) to serve a waiting period of 18 weeks only (reduced from 26 weeks). [Clauses 25 and 26]

The changes to section 1067 will provide for persons who are under 18, are without dependent children and are receiving the homeless/independent rate of job search allowance, sickness allowance or special benefit:

(a) to be eligible for RA; and

(b) to serve a waiting period of 18 weeks only (reduced from 26 weeks). [Clause 27]

The changes to section 1068 will provide for persons who are between 18 and 60, are without dependent children and are receiving job search allowance, newstart allowance, sickness allowance or special benefit, to serve a waiting period of 18 weeks only (persons with dependent children or those who are over 60 do not serve a waiting period). [Clause 28]

5. Commencement

The changes will come into effect on 20 March 1992.

DIVISION 6 - COMMONWEALTH FUNDED EMPLOYMENT PROGRAMS

1. Summary of proposed changes

Under these changes:

- . job search allowance (JSA) or newstart allowance (NSA) will not be payable to a person who is receiving income that is paid by a group or community from funds provided under a Commonwealth funded employment program; and
- . a recipient of JSA or NSA will not be entitled to an additional amount in respect of his or her partner if the partner is receiving income that is paid by a group or community from funds provided under a Commonwealth funded employment program.

A Commonwealth funded program will mean a Commonwealth program of funding to a community or group where the funding is based, either wholly or partly, on the number of people in that community or group who are, or who are likely to be, qualified for JSA or NSA.

2. Background

Sections 532 and 614 of the Principal Act are the multiple exclusion provisions applying to JSA and NSA respectively. These provisions prevent dual payment of JSA/NSA and a range of other specified payments (eg, a service payment or a payment under a prescribed education scheme).

Another potential situation of dual payment has come to light. Neither section 523 nor 614 prevents dual payment of JSA/NSA and payments made through a Commonwealth funded employment program. Under such a program, the Commonwealth funds communities or groups (who in turn make payments to persons working in these communities or groups) and the funding is based, either wholly or in part, on the number of people in the community or group who are, or are likely to be, qualified for JSA/NSA.

It follows that a person receiving payments through a Commonwealth funded employment program should not be qualified for JSA/NSA. Equally, if the partner of a person receiving JSA/NSA is receiving payments through a Commonwealth funded employment program, the JSA/NSA recipient should not be entitled to an additional amount in respect of the partner.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as the date of Royal Assent.

Clause 29: amends section 23 (General definitions).

Clause 30: amends section 526 (Job search allowance not payable in certain situations).

Clause 31: inserts new section 532A (Commonwealth funded employment programs exclusion).

Clause 32: amends section 608 (Newstart allowance not payable in certain situations).

Clause 33: inserts new section 614A (Commonwealth funded employment programs exclusion).

Clause 34: amends point 1067-C2 of Benefit Rate Calculator A (No additional amount if partner getting pension or benefit).

Clause 35: amends point 1068-C3 of Benefit Rate Calculator B (No additional amount if partner getting pension or benefit).

4. Explanation of the changes

Section 23 of the Principal Act lists a series of general definitions for the purposes of the Act.

This provision will be changed to insert the definition of "Commonwealth funded employment program". A Commonwealth funded employment program will mean a Commonwealth program of funding to a community or group where the funding is based, either wholly or partly, on the number of people in that community or group who are, or who are likely to be, qualified for JSA or NSA.

This definition will be relevant to sections 526, 532A, 608 and 614A and points 1067-C2 and 1068-C3. [Clause 29]

Section 526 lists the situations in which JSA is not payable to a person for a period during which the person is qualified for JSA. This is a descriptive rather than substantive provision.

To this list will be added another category of person receiving income that is paid by a community or group from funds provided under a Commonwealth funded employment program. [Clause 30]

After section 532 (the multiple exclusion provision) will be added a new section 532A which will prohibit the receipt of both JSA and income that is paid under a Commonwealth funded employment program. JSA will not be payable to a person for a period if the person is receiving, or may receive, income for that period that is paid by a community or group from funds provided under a Commonwealth funded employment program.

The reference to "or may receive" will cover the situation where payments through a Commonwealth funded employment program are not received by a person on a regular basis (fortnightly or less) but rather are received in a lump sum at the end of a period (eg at the end of each month).

The note to the new section will refer the reader to the definition of Commonwealth funded employment program in subsection 23(1) of the Principal Act. [Clause 31]

Section 608 lists the situations in which NSA is not payable to a person for a period during which the person is qualified for that payment. It is a descriptive rather than substantive provision.

To this list will be added another category of person receiving income that is paid by a community or group from funds provided under a Commonwealth funded employment program. [Clause 32]

After section 614 (the multiple exclusion provision) will be added a new section 614A which will prohibit the receipt of both NSA and income that is paid under a Commonwealth funded employment program. NSA will not be payable to a person for a period if the person is receiving, or may receive, income for that period that is paid by a community or group from funds provided under a Commonwealth funded employment program.

The reference to "or may receive" will cover the situation where payments through a Commonwealth funded employment program are not received by a person on a regular basis (fortnightly or less) but rather are received in a lump sum at the end of a period (eg at the end of each month).

The note to the new section will refer the reader to the definition of Commonwealth funded employment program in subsection 23(1) of the Principal Act. [Clause 33]

Point 1067-C2 of Benefit Rate Calculator A outlines the situations in which a recipient of JSA is not entitled to an amount in respect of his or her partner, that is, where the person's partner is receiving a social security or service pension or a social security benefit, where a social security pension or benefit would be payable to the partner but for the application of the compensation preclusion provisions or the person's partner is receiving an AUSTUDY allowance.

To this list will be added another category of partner receiving income that is paid by a community or group from funds provided under a Commonwealth funded employment program.

This change will ensure that a recipient of JSA will not be entitled to an additional amount in respect of his or her partner if the partner is receiving income that is paid by a community or group from funds provided under a Commonwealth funded employment program.

The note will be added at the end of point 1067-C2, referring the reader to the definition of Commonwealth funded employment program in subsection 23(1) of the Principal Act. [Clause 34]

Point 1068-C3 of Benefit Rate Calculator B outlines the situations in which a recipient of NSA is not entitled to an amount in respect of his or her partner, that is, where the person's partner is receiving a social security or service pension or a social security benefit, where a social security pension or benefit would be payable to the partner but for the application of the compensation preclusion provisions or the person's partner is receiving an AUSTUDY allowance.

To this list will be added another category of partner receiving income that is paid by a community or group from funds provided under a Commonwealth funded employment program.

This change will ensure that a recipient of NSA will not be entitled to an additional amount in respect of his or her partner if the partner is receiving income that is paid by a community or group from funds provided under a Commonwealth funded employment program.

The note will be added at the end of point 1068-C3, referring the reader to the definition of Commonwealth funded employment program in subsection 23(1) of the Principal Act. [Clause 35]

5. Commencement

The changes will come into effect on the day of Royal Assent.

**DIVISION 7 - ASSETS AND INCOME TESTS CHANGES FOR
FAMILY ALLOWANCE AND FAMILY ALLOWANCE SUPPLEMENT
PAYMENTS**

1. Summary of the proposed changes

Under these changes:

- (a) on 1 January 1992, the existing parental assets test of \$347,500 (indexed each 1 January) for family allowance supplement (FAS) will be replaced by a family assets test;
- (b) also on 1 January 1992, a family assets test of \$600,000 (indexed from 1 January 1993), on the same general basis as the test for FAS, will be introduced for family allowance (FA);
- (c) during the period from 1 January 1992 to 31 December 1993, low-income families with limited available funds may continue to qualify for FA or FAS under a special financial hardship test, even though they may have assets above \$600,000 or \$347,500; and
- (d) on 1 April 1992, the income threshold at which full rate FAS is payable (currently \$18,000 a year) will be increased and aligned with the AUSTUDY income threshold (currently \$19,300 and, from 1 January 1992, \$20,700 a year, indexed each 1 January).

2. Background

The existing assets test for FAS is based on parental assets only. This can be avoided by rearranging assets among family members to ensure parental assets fall below the test threshold. As a result of the changes this possible avenue of avoidance will be closed.

There is no assets test on FA at present. In fact, FA is the only major social security payment that is not assets tested. Introducing an assets test will achieve greater consistency in the means testing of family payments and improve targeting of assistance.

Currently, the parental assets test on FAS removes entitlement when the value of net assets (excluding the family home) exceeds \$347,500. In the prevailing economic circumstances, especially the rural downturn, there are concerns about the welfare of children in families with assets above the test threshold but where those assets are returning very low incomes.

By introducing a special financial hardship test, the changes will protect these families by allowing them to continue to receive FAS if the value of their net assets does not exceed \$600,000. If the value of their net assets exceeds \$600,000, they may continue to receive FA only.

Finally, the increase in the FAS income threshold will increase both the number of families eligible for FAS and the entitlements of families receiving less than the maximum rate of FAS. It will also achieve greater consistency between the AUSTUDY and FAS income tests.

3. Clauses involved in the changes

Clause 2: specifies the commencement dates, ie 1 January 1992 for the FA and FAS family assets and hardship tests and 1 April 1992 for the increase in the FAS income threshold.

Clause 36: amends section 14A (Social security liquid assets test definition).

Clause 37: inserts new section 19A (Financial hardship provisions liquid assets test definition).

Clause 38: amends section 838 (Qualification for individual family allowance).

Clause 39: amends section 895 (Qualification for family allowance supplement).

Clause 40: inserts new sections 1132A (Access to financial hardship rules - family allowance), 1132B (Access to financial hardship rules - family allowance supplement), 1132C (Date of effect of favourable decision under section 1132A or 1132B) and 1132D (Date of effect of adverse decision under section 1132A or 1132B).

Clause 41: amends point 1070-D14 (Taxable income free area limit) of the FAS Rate Calculator in section 1070.

Clause 42: amends section 1190 (Indexed and adjusted amounts).

Clause 43: amends section 1191 (CPI Indexation Table).

Clause 44: amends section 1195 (AWE Indexation Table).

4. Explanation of the changes

Section 14A provides for a social security benefit liquid assets test. The introduction of a liquid assets test for FA and FAS requires minor technical amendments to that section to avoid confusion between the 2 tests. [Clause 36]

Low-income families with limited available funds, ie limited "liquid assets" (as defined), may continue to qualify for FA or FAS under a special financial hardship test even though their total net assets (excluding the family home) may exceed \$600,000 or \$347,500. New section 19B defines "liquid assets" for the purposes of that test. [Clause 37]

The family assets test of \$600,000 (indexed from 1 January 1993) for FA will be implemented by amending section 838 (Qualification for individual family allowance). In this context, the term "family assets" includes the assets of a person, the person's partner (if any) and the person's FA child or FA children [for "FA child" see subsection 6(1)]. [Clause 38]

The existing parental assets test of \$347,500 (indexed each 1 January) for FAS will be replaced by a family assets test, on the same general basis as the test for FA, by amending section 895 (Qualification for family allowance supplement). [Clause 39]

New sections 1132A (Access to financial hardship rules - family allowance), 1132B (Access to financial hardship rules - family allowance supplement), 1132C (Date of effect of favourable decision under section 1132A or 1132B) and 1132D (Date of effect of adverse decision under section 1132A or 1132B) provide for a special financial hardship test for FA and FAS. Under the test, low-income families with limited available funds, ie limited "liquid assets" (as defined in new section 19B, to be inserted by clause 37), may continue to qualify for FA or FAS. [Clause 40]

Specifically, the effect of new section 1132A is that a person otherwise qualified for FA with net "family assets" above \$600,000 would still be able to receive FA if:

- (a) the person's estimate of the sum of his or her taxable income and that of his or her partner (if any) for the current financial year is less than the sum of:
 - (i) the maximum basic pension rate for 2 partnered persons applying at 1 January last occurring (in present terms, \$13,078 - item 3 in Table B, point 1064-B1 in Pension Rate Calculator A in Part 3.2 of the Principal Act refers); and
 - (ii) \$624 for each FA child of the person; and
- (b) the Secretary is satisfied that the estimate is reasonable; and

- (c) the family's [ie the person's, the person's partner's (if any) and the person's FA child's or FA children's] "liquid assets" are below:

- (i) \$10,000, if the person is a member of a couple; or
- (ii) \$6,000, in any other case. [Clause 40]

In relation to FAS, new section 1132B will provide that a person otherwise qualified for FAS with net "family assets" above the FAS threshold (currently \$347,500, indexed) but not above the proposed FA threshold (initially \$600,000, indexed) would still be able to receive FAS if he or she could meet the same criteria in relation to:

- (a) his or her taxable income and that of his or her partner; and
- (b) the family's "liquid assets";

as those that are to apply in relation to FA. [Clause 40]

New sections 1132C and 1132D will provide for the date of effect of a decision under section 1132A or 1132B.

Under new section 1132C, if a decision is favourable (ie the Secretary decides that that a person is qualified for payment under the special financial hardship test), the decision will take effect:

- (a) generally, on the day on which the person requested to be exempted from the FA or FAS family assets test; or
- (b) if that decision is made where:
 - (i) the person had previously applied for exemption from the test and was rejected; and
 - (ii) the person then successfully appealed against the previous decision, within 3 months of being told about that decision or, if he or she was not told about that decision, at any time later;

on the day on which the previous adverse decision took effect; or

- (c) if that decision is made where:
 - (i) the person had previously applied for exemption from the test and was rejected; and
 - (ii) the person then successfully appealed against the previous decision, more than 3 months after being told about that decision;

on the day on which the person appealed against the previous decision. [Clause 40]

Under new section 1132D, if a decision is adverse (ie the Secretary decides that a person is not qualified for payment under the special financial hardship test), the decision will take effect on the day on which the person requested to be exempted from the FA or FAS family assets test. [Clause 40]

The income threshold at which full rate FAS is payable (currently \$18,000 a year, indexed each 1 January in accordance with CPI increases) is specified in Table D in point 1070-D14 of the Family Allowance Supplement Calculator in section 1070 of the Principal Act. Under this proposal, on 1 April 1992, that threshold will be increased to \$20,700 (indexed each 1 January in accordance with AWE increases). [Clauses 41, 43(a) and 44(b)]

The new FA family assets test threshold of \$600,000 is to be indexed, from 1 January 1993, on the same basis as the existing assets test for FAS, ie each 1 January in accordance with CPI increases. [Clauses 42 and 43(b)]

The AWE Indexation Table in section 1195 of the Principal Act is to be amended to provide that when working out, under section 1197, the indexed amount as at, say, 1 January 1992, the reader will have regard to the "November earnings average" [defined in subsection 20(1)] for 1989 and 1990 (instead of 1990 and 1991). This is necessary because the "November earnings average" is normally not available as at 1 January. [Clause 44(a)]

5. Commencement

The FA and FAS family assets and hardship tests will come into effect on 1 January 1992. The amendment of the AWE Indexation Table is to come into effect on the same day. The increase in the FAS income threshold will come into effect on 1 April 1992.

DIVISION 8 - CHILD DISABILITY ALLOWANCE AMENDMENTS

1. Summary of the proposed changes

The rate of child disability allowance (CDA) and youth disability supplement (YDS) will be increased by \$2.15 a week from 1 January 1992 after the annual indexation of CDA and YDS has occurred.

2. Background

CDA aims to provide special assistance to children with disabilities and to encourage family rather than institutional care of disabled children.

From 12 November 1991 new recipients of disability support pension who are aged 16-20 will receive YDS at the same rate as CDA.

Increasing the amount of CDA and YDS will help to redress the effects of inflation and to restore CDA to the same value it had (in real terms) when introduced in 1987.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as 1 January 1992. The increase will apply after the annual indexation of CDA and YDS has occurred.

Clause 45: provides for the \$2.15 a week increase.

Clause 46: adds an additional Note to section 967 to inform the reader that the \$4.30 a fortnight (\$2.15 a week) increase in the rate of CDA is in addition to any increase resulting from the annual CPI indexation applying on 1 January 1992.

Clause 47: adds an additional Note to section 967 to inform the reader that the \$111.80 increase in the annual rate of YDS (\$2.15 a week) is in addition to any increase resulting from the annual CPI indexation applying on 1 January 1992.

4. Explanation of the changes

A Table sets out the payment types to be increased and by how much. [Clause 45]

The changes ensure that the rate of CDA and YDS (each of which might have been increased by the annual CPI indexation that will occur on 1 January 1991) will each be increased by a further \$2.15 a week. These increased rates will subsequently be indexed on 1 January of each year. [Clauses 46 and 47]

5. Commencement

The changes will come into effect on 1 January 1992 after the annual indexation of CDA and YDS has occurred.

**DIVISION 9 - EXTENSION OF LODGMENT PERIOD FOR CLAIMS
FOR FAMILY PAYMENTS**

1. Summary of the proposed changes

Family payments will be back-paid to the child's date of birth if the claim is lodged within 3 months (13 weeks) of the date of birth where the child was born on or after 1 January 1992.

2. Background

The extension of the lodgment period from 4 to 13 weeks assists families at critical periods and recognises the difficulties experienced by parents who are seriously ill or living in remote areas.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as 1 January 1992.

Clause 3: specifies the application provision. The changes will apply to children born on or after 1 January 1992.

Clause 48: repeals and substitutes section 844 to provide for the 13 week rule for claims for family allowance (FA).

Clause 49: amends section 899 to provide for the 13 week rule for claims for family allowance supplement (FAS).

Clause 50: inserts new section 1002A to provide for the 13 week rule for claims for double orphan pension (DOP).

4. Explanation of the changes

The provisional commencement day for a person claiming FA, FAS and DOP will be the day the child is born if the claim for those payments is lodged within 13 weeks of the birth. This will be an exception to the general rule that a person's provisional commencement day is the day the claim is lodged. A person's provisional commencement day is important because family payments are generally payable from that day if the person is qualified and no other provision of the Principal Act makes the payment not payable to the person.

The effect of these changes is to enable back-payment of FA, FAS and DOP to the child's date of birth if the claim is lodged within 13 weeks of the date of birth.

The changes also omit the rules that provided specifically for a 13 week claim lodgment period for FA and FAS where there was a multiple birth. These cases will fall within the new rules. [Clauses 48, 49 and 50]

5. Commencement

The changes will come into effect on 1 January 1992 and are to apply to children born on or after that date.

DIVISION 10 - CALCULATION OF FAMILY ALLOWANCE SUPPLEMENT
PAYMENTS

1. Summary of the proposed changes

Under these changes, from 1 January 1992:

- (a) family allowance supplement (FAS) payment to a person who had a significant increase in income will be able to be reassessed even though the increase may not be due solely to a "FAS notifiable event", ie an event about which, if it occurred or was likely to occur, the person was required to notify the Secretary;
- (b) the Secretary will be able to reject, for FAS assessment purposes, a person's estimate of his or her income, if there is a good reason to question the accuracy of the estimate;
- (c) if a FAS notifiable event (or a FAS assumed notifiable event) occurs in the first half of a calendar year, the effect of the event will be able to be carried over to the tax year covering the second half of that calendar year (currently, an event has effect only in the tax year in which it occurs);
- (d) the rules for calculating FAS overpayments will be brought into line with the rules applying to reassessments, namely an overpayment of FAS to a person would occur only if the person's taxable income for the tax year in which a FAS notifiable event occurred:
 - (i) was 25 per cent greater than the person's taxable income for the "base tax year" (ie the tax year that ended on 30 June in the previous calendar year); and
 - (ii) was 25 per cent above the FAS income threshold (currently, \$18,000 a year but clauses 41, 43(a) and 44(b) provide for this threshold to be increased, on 1 April 1992, to \$20,700 and indexed each 1 January in accordance with AWE increases);
- (e) while FAS payments are assessed on a calendar year basis, FAS overpayments will be able to be calculated on a tax year basis only (ie on the same basis as that used for assessment of taxable incomes); and
- (f) the amount of pension, benefit or allowance that a person is required to refund following the receipt of a lump sum compensation payment will be reduced by the amount of FAS that, in the opinion of the Secretary,

the person or the person's partner may have been entitled to over the period for which payment of pension, benefit or allowance was precluded because of the person's compensation entitlement.

2. Background

These changes will meet a number of concerns about aspects of the family payments system. They will allow for more certainty about FAS entitlement, reduce the chances of people being overpaid, simplify administrative processes for both clients and staff and improve the targeting of FAS payments.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as 1 January 1992.

Clause 3: specifies the application provisions. The changes will apply to instalments of FAS that fall due on or after 1 January 1992 and to compensation received on or after 1 January 1992.

Clause 51: amends section 893 (Qualification for family allowance supplement).

Clause 52: amends section 912 (Notice estimating taxable income).

Clause 53: amends section 915 (Recalculation if failure to notify FAS notifiable event).

Clause 54: amends section 947 (Failure to notify FAS notifiable event - date of effect of section 915 determination).

Clause 55: amends section 1070 (Rate of family allowance supplement).

Clause 56: amends section 1166 (Person may have to repay amount where both lump sum and pension, benefit or allowance payments have been received).

Clause 57: amends section 1223 (Overpayments arising under this Act).

4. Explanation of the changes

Subsection 895(3) provides that a person is not qualified for FAS if the taxable income of a person for the appropriate tax year for the FAS period is unknown. Given that, under these changes, the Secretary will be able to reject a person's estimate of his or her taxable income if there is a good reason to question the accuracy of the estimate, the person's taxable

income will be effectively "unknown" until the person provides an acceptable estimate. New subsection 895(5) will provide that when the Secretary makes a decision to accept a person's estimate, subsection 895(3) is to be disregarded in working out the date of effect of that decision. Consequently, section 941 (Date of effect of favourable determination) or section 944 (Date of effect of adverse determination), as appropriate, will apply to that decision. [Clause 51]

Section 912 specifies the conditions in which the Secretary is to accept a person's estimate of the person's taxable income. New paragraph 912(2)(c) will add a condition that the Secretary has to be satisfied that the person's estimate is a reasonable estimate. [Clause 52]

Section 915 specifies the basis on which a person's FAS rate is to be recalculated if the person fails to notify the Secretary of a FAS notifiable event. Under this change:

- (a) new paragraph 915(d) will add a requirement that the person's taxable income for the tax year in which the event occurred be 25% above the FAS income threshold (ie the person's "taxable income free area limit" as defined in point 1070-D14 of the Family Allowance Supplement Rate Calculator); and
- (b) the requirement, currently in paragraph 915(e), that more than 25% of the difference between the person's taxable incomes for the 2 tax years concerned be directly attributable to the FAS notifiable event, will be omitted. [Clause 53]

Section 947 provides, in broad terms, that if a person fails to notify a FAS notifiable event and the Secretary then makes a decision cancelling the person's FAS, or varying the person's FAS rate, to give effect to the recalculation required by section 915, the day of effect of that decision is the day on which the event occurred. New subsection 947(2) will provide that if 2 or more such events occur in one tax year, the day of effect of that decision will be the day on which the event occurs that results in the person's taxable income for that year:

- (a) being 25% greater than the person's taxable income for the base tax year; and
- (b) being 25% above the FAS income threshold. [Clause 54]

Section 1070 provides that a person's FAS rate is to be calculated in accordance with the FAS Rate Calculator contained in that section. The effect of the changes to section 1070 is to provide that:

- (a) if a FAS notifiable event occurs in the first half of a calendar year, the effect of the event may be carried over to the tax year after the tax year in which the event occurred [new point 1070-D7A refers]; or
- (b) if a FAS assumed notifiable event occurs after the end of the base tax year and before the beginning of the relevant calendar year, the effect of the event may be carried over to the tax year after the tax year in which the event occurred [new point 1070-D6A refers];

The effect of the event may be carried over to the tax year after the tax year in which the event occurred (ie that year is to be the "appropriate tax year" for the purposes of the FAS Rate Calculator) only if:

- (a) the conditions for recalculation, as currently applying under point 1070-D6 or point 1070-D7, as appropriate, are not met in the tax year in which the event occurred; and
- (b) it is likely that they will be met in the tax year after the tax year in which the event occurred.
[Clause 55]

Section 1166 provides that if a person receiving specified social security income support payments receives a lump sum compensation payment, he or she may have to repay to the Commonwealth an amount specified by the Secretary. New subsections 1166(5) and (6) will provide that the amount that a person may be required to repay is to be reduced by the amount of FAS that, in the opinion of the Secretary, the person or the person's partner may have been entitled to during the relevant period if the person or the person's partner had not been receiving social security income support payments. [Clause 56]

Section 1223 specifies the circumstances in which an amount paid under the Principal Act is a debt due to, and recoverable by, the Commonwealth. The effect of new subsection 1223(2A) will be to provide that, while FAS payments are assessed on a calendar year basis, FAS overpayments are to be calculated on a tax year basis. In other words, the earliest time that an amount of FAS paid to a person during a tax year will be able to be held to be an overpayment (and therefore a debt due to, and recoverable by, the Commonwealth) will be after the end of that tax year. The reason for this change is that a person's taxable income for a tax year cannot be verified until after the end of that year. [Clause 57]

5. Commencement

These changes will come into effect on 1 January 1992 and are to apply to instalments of FAS that fall due on or after that date or to compensation received on or after that date.

DIVISION 11 - BEREAVEMENT PAYMENTS

1. Summary of the proposed changes

The bereavement provisions will be extended to long-term social security recipients and their partners. The bereavement period for widowed persons will be increased from 12 to 14 weeks.

2. Background

The bereavement provisions generally work by allowing the survivor of a pensioner couple to get paid more for a period of 14 weeks (the bereavement period). In some cases a lump sum may be payable. The rate at which the survivor is paid in the bereavement period is generally the amount that would have been payable if the deceased partner had not died. However, at present the bereavement provisions do not extend to beneficiary couples.

The bereavement period for widowed persons is shorter than for other payments.

3. Clauses involved in the changes

Clause 2: specifies the commencement dates, i.e. 26 March 1992 for widowed persons and 1 July 1992 for the extension of the bereavement provisions to long-term social security recipients and their partners.

Clause 58: amends section 23 (General Definitions).

Clauses 59, 64, 69, 75, 77, 78, 79, 81, 83, 84, 85, 88, 89, 90, 92, 94 and 95: make technical amendments to reflect the extension of the bereavement provisions.

Clauses 60-63, 65-68 and 70-73: change the qualification provisions for age, disability support pension and special needs pension so that such a pensioner whose long-term recipient partner has died will be entitled to bereavement payments.

Clause 74: extends the bereavement period for widowed persons from 12 to 14 weeks.

Clauses 76 and 80: change the module on job search allowance so that a recipient of job search allowance whose long-term recipient partner has died will qualify for bereavement payments. This provides a model for changes to all the payment modules which do not, at present, contain provisions for couples. These are newstart and sickness allowance and special benefit.

Clauses 82 and 86, 88 and 91: change the modules on newstart allowance and sickness allowance respectively.

Clause 93 and 96: change the module on special benefit.

4. Explanation of the changes

A change is made to section 23 of the Principal Act to insert a new definition of 'payday' which will apply to all the bereavement provisions.[Clause 58]

The first major change extends the current bereavement period for widowed persons from 12 to 14 weeks.[Clause 74]

The second group of changes are more extensive and enable bereavement payments to be paid to a new limited class of long-term social security recipients. A person will be a 'long-term social security recipient' if he or she:

- . is receiving a social security benefit; or
- . is a benefit increase partner; and

during the previous twelve months was continuously receiving:

- . a social security pension; or
- . a social security benefit; or
- . a service pension; or
- . was a benefit increase partner.

A person would still be considered to have been continuously in receipt if he or she has had 46 out of the 52 weeks as a long-term recipient.

If a prospective recipient of a bereavement payment, ie the survivor, is a pensioner or a long-term recipient, and before the partner died, the partner was either a pensioner or long-term recipient, then the survivor will be entitled to bereavement payments.

Specific amendments will be made to all the relevant modules to provide for the extension of bereavement payments. To avoid duplication, explanation will be given of two typical models.

Since bereavement provisions already exist for pensioners, the current provisions for pensions require only minor changes. **Clauses 60 to 63** are a typical model: - The existing qualification criteria will be extended to allow the surviving pensioner spouse of a long-term recipient to get bereavement payments.

The second model is for those payments which currently have no bereavement provisions - they are job search, newstart and sickness allowances and special benefit. Provisions for these payments will follow the model adopted for job search allowance (JSA). [Clauses 76 to 80]

New Subdivision AA [Clause 76] sets out the qualification criteria for bereavement payments of JSA.

The survivor will qualify for bereavement payments if he or she is:

- . receiving JSA; and
- . a long-term social security recipient; and
- . a member of a couple; and
- . a person whose partner dies; and

immediately before the partner died, the partner was:

- . receiving a social security pension; or
- . receiving a service pension; or
- . a long-term social security recipient.

It will allow a person who is qualified for partner bereavement payments to choose not to get these payments if the payments that the person would otherwise receive during the bereavement period would be higher. For example, if the JSA recipient's new rate (ie as a single person rather than as a member of a couple) would not be reduced because of the income test and would be higher than the combined income test reduced rate(s) paid before the partner's death.

If the person qualifies for bereavement payments the person could choose not to take those payments. This election would have to be made in writing and could not be withdrawn. If no election is made, the amount payable is governed by the legislation (new subsections 589A(1)-(4)).

New subsections 589A(5)-(6) insert a definition of 'long-term social security recipient' and ensures that a person who was receiving one or other of the specified payments or who had the status of a benefit increase partner for 46 out of the 52 weeks will qualify as a 'long-term social security recipient'.

A qualified person would get paid (for the bereavement rate continuation period) the amount that would have been payable to the partner if the partner had not died (new subsection 589B).

A lump sum will be payable in certain cases. There will be a calculator to work out the amount (new subsection 589C). It will have five steps:

- step 1 - involves adding up the amount that would be payable both to the person and the partner as if the partner had not died - this would produce the 'combined rate';
- step 2 - produces the 'person's individual rate';
- step 3 - deducts the 'person's individual rate' from the 'combined rate' to get the 'partner's instalment component';
- step 4 - ascertains the number of paydays in the bereavement lump sum period;
- step 5 - involves multiplying the instalment component by the number of paydays arrived at in step 4.

New section 589D will set out the rate payable to a qualified person during the bereavement period if the person has not made an election.

The amount will be:

- . in the bereavement rate continuation period - the rate that would have been payable to the person if the partner had not died;
- . in the bereavement lump sum period - the rate that would be payable if the person was not entitled to bereavement payments.

New section 589E sets out provisions which apply if the survivor dies. In such cases the survivor's entitlements are payable to whomever the Secretary considers should receive the payment. Again, there is a calculator to work out how much is to be paid. This is modelled on the previous calculator.

There will be provisions to give authority for the Secretary to recover amounts already paid by way of continuation payments if they exceed the total amount payable to a person under the bereavement provisions and to prevent double payments (new subsection 589F).

There will be provisions which cater for the death of a recipient and allow for the payment of one instalment to ~~whomever the Secretary thinks should receive the payment.~~ Once such a payment is made, the Commonwealth is absolved of further liability to any other person. [Clause 80 - new section 592A]

5. Commencement

The extension of the bereavement period for widowed persons will come into effect on 26 March 1992.

The extension of bereavement payments to long-term social security recipients and their partners will come into effect on 1 July 1992.

DIVISION 12 - ASSETS TEST (PRIMARY PRODUCTION ASSETS)

1. Summary of the proposed changes

This Division contains two proposals. The first proposal relates to primary producers. It will allow primary producers to offset certain liabilities from the value of assets used for the purposes of carrying on primary production.

The second relates to 'excluded securities' and will close a 'loophole' highlighted by the Federal Court case of Clayton whereby mortgages taken out for the benefit of others can be deducted from asset values.

2. Background

Assets test changes for primary producers

There are a number of farmers who are 'asset rich and income poor'. As a result, they may receive reduced payments or none at all. This may be the case even though they have considerable liabilities.

The problem is that, at present, the assets test works by compartmentalising debts so that they can be offset only against that particular asset which provides primary security for the debt and then only if the owner of the asset and the primary debtor are the same person.

An example of the problems this causes is where the value of a person's farm is included in the person's assets thus precluding payments. Assume there is also farm machinery valued at \$100,000 but is subject to a bank lien of \$150,000. Effectively the machinery has a negative value of \$50,000. At present the liability of \$50,000 cannot be offset against the value of the farm to allow the person to qualify for payments.

Excluded securities

Currently, the assets test works by assuming all property is assessable. However, the value of certain charges or encumbrances (charge/s) can be offset.

The original intention of Parliament was that only if a charge (such as a mortgage) is of direct benefit to the asset owner, can its value be offset against the assessable asset. For that reason, the Act currently says that charges are not deductible if given for the benefit of a 'non-party'.

The Clayton case highlights a loophole whereby a third person also signs his or her name to a mortgage. In this way the third person technically becomes 'party' to the charge. The asset owner can still deduct the value of the charge even though the benefit of the charge is going to someone else.

3. Clauses involved in the changes

Assets test changes for primary producers

Clause 2: specifies the commencement date as 1 January 1992.

Clause 97: inserts some new definitions into section 11 (Assets Test Definitions).

Clause 99: amends section 1121 (Effect of Charge or Encumbrance on Value of Assets) by allowing the deduction of related liabilities from primary production assets.

Excluded securities

Clause 2: specifies the commencement date as the day of Royal Assent.

Clause 98: inserts a Note to section 1121 (Effect of Charge or Encumbrance on Value of Assets) and will close the loophole highlighted by the Clayton case.

4. Explanation of the changes

Definitions of 'fishing operations' and 'forest operations' and a reference to the 'value of a liability of a person' are inserted in section 11 of the Principal Act. Other changes define those persons who will be able to take advantage of the proposal. They are 'primary producers'. A primary producer will be someone whose principal occupation is 'primary production'.

The definition of primary production is to be similar to that already used in the Income Tax Assessment Act 1936. It will mean the cultivation of land, maintenance of animals, fishing or forest operations. [Clause 97]

The second main part of the changes sets out when and how deductions can be made.

The provisions apply if a person:

- . is a primary producer or family member of a primary producer; and

- . has assets which are used for the purposes of primary production; and
- . has liabilities which, in the Secretary's opinion, are related to carrying on primary production.

If so, the assets are taken to be a single asset called the 'primary production asset' and the other provisions in the Act which say how charges or encumbrances are treated will be excluded in calculating the asset's value.

Family member will be defined in section 23 of the Principal Act to mean a partner, father, mother, sister, brother or child of the person, or anyone the Secretary considers should be treated as a family member.

There will be a calculator to work out the value of the primary production asset as follows:

- Step 1 - add together the value of the assets used for primary production - 'unencumbered value';
- Step 2 - add together the value of the liabilities related to carrying on primary production - 'total liability';
- Step 3 - deduct the total liability from the unencumbered value.

If the result is less than nil, the asset is given a nil value.
[Clause 99]

Excluded securities

New subsection 1121(2) states that a charge or encumbrance is not deductible to the extent it is given for the benefit of a third person. [Clause 98]

5. Commencement

The assets test changes for primary producers will come into effect on 1 January 1992. The changes relating to excluded securities will come into effect on the day of Royal Assent.

PART 3 - AMENDMENT OF THE HEALTH INSURANCE ACT 1973

1. Summary of the proposed changes

Under these changes, entitlement to health care cards will generally be restricted to persons in receipt of family allowance supplement (FAS) at the full-rate.

Current recipients of FAS (whether at full or part rate) will retain their health care cards for as long as they continue to receive FAS, regardless of any FAS rate changes.

2. Background

Health care cards are currently available to "disadvantaged persons" within the meaning of the Health Insurance Act 1973 and certain "concessional beneficiaries" as defined in section 84 of the National Health Act 1953.

FAS recipients, irrespective of the rate of FAS payable to the recipient, are entitled to a health care card by virtue of paragraph (ab) of the definition of "concessional beneficiary" in section 84 of the National Health Act 1953.

In order to bring entitlement to health care cards for FAS recipients more into line with the income test arrangements for eligibility for health care cards for low income earners, health care cards will be available only to full-rate FAS recipients from 1 January 1992.

So that no current FAS family loses because of this measure, those currently receiving either full or part rate FAS will retain their entitlement to a health care card for as long as they continue to receive FAS, regardless of any FAS rate changes.

3. Clauses involved in the changes

Clause 2: specifies the commencement date as 1 January 1992.

Clause 100: indicates that the Principal Act in Part 3 of the Act is the Health Insurance Act 1973.

Clause 101: inserts new section 5EA (Disadvantaged persons (persons receiving family allowance supplement)).

Clause 102: amends section 5F (Review of decisions under sections 5 to 5EA).

Clause 103: amends section 5G (Declarations of person to be disadvantaged person not to overlap).

4. Explanation of the changes

Sections 5 to 5J of the Health Insurance Act 1973 generally allow for the declaration of a persons as "disadvantaged persons" for the purposes of that Act. Among other things, disadvantaged persons are entitled to the benefits attached to holding a health care card.

A new section 5EA will be inserted into the Health Insurance Act 1973 which will define another category of disadvantaged person.

Under new subsection 5EA(1), the Secretary must declare a person to whom FAS was payable on 31 December 1991 and remains payable on 1 January 1992 to be a disadvantaged person. This change ensures that all persons who are currently receiving for FAS and who continue to receive FAS in 1992 are disadvantaged persons entitled to health care cards.

New subsection 5EA(2) will provide that if a person is declared to be a disadvantaged person under new subsection 5EA(1), the person remains so until FAS ceases to be payable to the person. The effect of this provision is that all current FAS recipients will remain entitled to a health care card until FAS ceases to be payable, regardless of any FAS rate changes.

New subsection 5EA(3) will provide that once FAS ceases to be payable to a person, subsection 5EA(1) will not be applicable to the person again.

New subsection 5EA(4) will deal with the situation where a FAS was not payable to a person on 31 December 1991 but becomes payable to the person on 1 January 1992. In this situation, the Secretary must declare the person to be a disadvantaged person only if FAS is payable to the person at the maximum rate. Under new subsection 5EA(5), a person ceases to be a disadvantaged person on the day on which FAS ceases to be payable to the person at the maximum rate.

New subsection 5EA(6) will define some relevant terms and concepts used in new section 5EA.

"Secretary" will mean the Secretary to the Department of Social Security.

"Family allowance supplement" will mean a family allowance supplement under the Social Security Act 1991.

"Maximum payment rate" will mean a rate of family allowance supplement that has not been reduced under the taxable income test referred to in section 1070 of the Social Security Act 1991. [Clause 101]

Section 5F of the Health Insurance Act 1973 currently provides that sections 5 to 5E inclusive are reviewable under Division 6 of the Social Security Act 1991.

This provision will be changed by inserting a reference to section 5EA. This will have the effect of making decisions under section 5EA also reviewable under Division 6 of the Social Security Act 1991. [Clause 102]

Consequential amendments will also be made to the Social Security Act 1991 to allow decisions under section 5EA to be reviewable by the Secretary and the Tribunals (see Part 3 of the Schedule to this Bill). This will be achieved by inserting a reference to section 5EA in the following provisions:

- . paragraph 1239(1)(b) (Decisions which Secretary may review);
- . paragraph 1240(1)(b) (Persons affected may apply for review); and
- . paragraph 1247(1)(b) (Application for review by SSAT).

Section 5G of the Health Insurance Act 1973 ensures that a person is declared to be a disadvantaged person under only one of sections 5, 5B, 5D, 5E or 4C.

This provision will be changed by inserting a reference to section 5EA. This will mean that if a person has already been declared to be a disadvantaged person under one of the abovementioned provisions, a declaration under section 5EA is not to be made. [Clause 103]

5. Commencement

The changes will come into effect on 1 January 1992.

PART 4 - AMENDMENT OF THE NATIONAL HEALTH ACT 1953

1. Summary of the proposed changes

Under these changes, paragraph (ab) of the definition of "concessional beneficiary" in section 84 of the National Health Act 1953 will be omitted. Paragraph (ab) refers to persons who are qualified to receive family allowance supplement (FAS).

2. Background

Persons who fall within paragraph (ab) of the definition of "concessional beneficiary" in section 84 of the National Health Act 1953 are entitled to a health care card. The current effect of this provision is that all persons qualified for FAS, irrespective of the rate of FAS payable to the person, are entitled to a health care card.

In order to bring entitlement to health care cards for FAS recipients more into line with the income test arrangements for eligibility for health care cards for low income earners, health care cards will be available only to full-rate FAS recipients from 1 January 1992.

This change will be primarily dealt with by amendment of the Health Insurance Act 1973 referred to above.

A necessary consequential change will be to remove paragraph (ab) from section 84 of the National Health Act 1953 and, therefore, the reference to persons qualified for FAS.

3. Clauses involved in the changes

Clause 2: specifies the relevant commencement date as 1 January 1992.

Clause 104: indicates that the Principal Act in Part 4 of the Act is the National Health Act 1953.

Clause 105: omits paragraph (ab) of the definition of "concessional beneficiary" in section 84 of the National Health Act 1953 (Interpretation).

4. Explanation of the changes

Subsection 84(1) of the National Health Act 1953 provides the definition of "concessional beneficiary". A person who is qualified to receive FAS is a concessional beneficiary by virtue of paragraph (ab) of that definition with the result that the person is entitled to a health care card.

Paragraph (ab) will be omitted. The effect of this change will be that persons qualified for FAS will no longer be a concessional beneficiary and entitled to a health care card on that basis. [Clause 105]

However, the Health Insurance Act 1973 will be changed to give certain categories of FAS recipient an entitlement to a health care card.

5. Commencement

The changes will come into effect on 1 January 1992.

PART 5 - CONSEQUENTIAL AMENDMENTS

1. Summary of and background to the proposed changes

Minor consequential amendments will be made to a number of Acts as a result of the implementation of major reforms to restructure income support for the disabled and the sick that will come into operation on 12 November 1991.

Other minor consequential amendments will be made to the Social Security Act 1991 as a result of the implementation of other initiatives set out in this Bill.

2. Clauses involved in the changes

Clause 2: specifies the commencement dates for changes made in the Schedule.

Clause 106: specifies that Acts referred to in the Schedule to the Bill are amended as set out in the Schedule.

3. Explanation of the changes

Part 1 of the Schedule amends the Data-matching Program (Assistance and Tax) Act 1990, the Defence (Re-establishment) Act 1965, the Health Insurance Act 1973, the National Health Act 1953, the Re-establishment and Employment Act 1945, the Social Security Act 1991, the Veterans' Entitlements Act 1986 and the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 to make minor consequential amendments to those Acts as a result of the implementation of major reforms to restructure income support for the disabled and the sick that will come into operation on 12 November 1991.

Part 2 of the Schedule makes some minor consequential amendments to the Social Security Act 1991 necessary as a result of the implementation of the changes set out in Division 1 of the Bill.

Part 3 of the Schedule makes some minor consequential amendments to the Social Security Act 1991 necessary as a result of the implementation of the changes set out in Division 9 and Part 3 of the Bill.

Part 4 of the Schedule makes a minor consequential amendment to the Social Security Act 1991 immediately after the Social Security (Disability and Sickness Support) Act 1991 comes into operation on 12 November 1991.

Part 5 of the Schedule makes some minor consequential amendments to the Health Insurance Act 1973 on 12 November 1991 or such later date that section 4 of the Health Insurance Amendment Act 1991 comes into operation.

4. Commencement

Part 1 of the Schedule will come into effect on 12 November 1991.

Part 2 of the Schedule will be taken to have come into effect on 17 August 1991, the date of the Strathfield tragedy.

Part 3 of the Schedule will come into effect on 1 January 1992.

Part 4 will come into effect on 12 November 1991 immediately after the changes made by the Social Security (Disability and Sickness Support) Amendment Act 1991 to the Social Security Act 1991 commence.

Part 5 will come into operation on 12 November 1991 or such later date that section 4 of the Health Insurance Amendment Act 1991 commences. If section 4 of the Health Insurance Amendment Act 1991 never commences, Part 5 will not commence.

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