

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

SOCIAL SECURITY AMENDMENT BILL 1988

TABLE OF PROVISIONS

Section

1. Short title etc.
2. Commencement
3. Interpretation
4. Rate of age or invalid pension
5. Qualifications for widow's pension
6. Interpretation
7. Interpretation
8. Payment of allowance
9. Reduction for periods in institution
10. Sickness benefits
11. Rate of unemployment and sickness benefit
12. Rent assistance
13. Parental income test
14. Income test
15. Waiting period
16. Benefit not payable to full-time students
17. Sheltered employment
18. Interpretation
19. Reduction in rate of pension
20. Cancellation, suspension or variation of pension etc.
21. Rates of certain pensions affected where certain education payments are made
22. Application of amendments
23. Transitional—Part XVII of the *Social Security Act 1947*
24. Determinations under section 168 of the *Social Security Act 1947*

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 13 April 1988

(Minister for Social Security)

A BILL

FOR

An Act to amend the *Social Security Act 1947*, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

5 **1. (1)** This Act may be cited as the *Social Security Amendment Act 1988*.

(2) In this Act, "Principal Act" means the *Social Security Act 1947*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

10 **(2)** Paragraph 3 (a) shall be taken to have commenced on 30 November 1987.

(3) Paragraph 3 (b), subsections 4 (1), 7 (1), 8 (1) and 11 (2) and sections 16 and 21 shall be taken to have commenced on 1 January 1988.

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(4) Paragraphs 3 (e), (f), (g) and (h) and 10 (a), subsection 11 (1) and section 12 shall be taken to have commenced on 1 October 1987.

(5) Subsections 4 (2), 8 (2) and 11 (3) commence on 1 January 1989.

(6) Subsections 5 (1) and 6 (1) shall be taken to have commenced on 1 September 1987. 5

(7) Subsections 5 (2) and 6 (2) and section 9 shall be taken to have commenced on 15 November 1987.

(8) Subsection 7 (2) and sections 13, 14 and 20 shall be taken to have commenced on 16 December 1987.

(9) Section 15 shall be taken to have commenced on 1 July 1987. 10

(10) Sections 18 and 19 shall be taken to have commenced on 1 May 1987.

Interpretation

3. Section 3 of the Principal Act is amended:

(a) by inserting after paragraph (k) of the definition of "income" in subsection (1) the following paragraph: 15

"(ka) an amount paid by way of compensation by the Federal Republic of Germany, or by a State of that Republic, under the laws of that Republic, or of that State, relating to compensation of victims of National Socialist persecution (other than an amount expressed to be paid for lost income);"; 20

(b) by omitting "under the AUSTUDY scheme" from paragraph (x) of the definition of "income" in subsection 3 (1) and substituting the following word and subparagraphs: 25

"under:

(i) the AUSTUDY scheme; or

(ii) the Aboriginal Study Assistance Scheme;";

(c) by inserting in subsection (1) the following definition: 30

"'pension pay-day' means:

(a) the Thursday that fell on 10 January 1985; and

(b) each succeeding alternate Thursday;";

(d) by omitting subsection (7);

(e) by inserting in subsection (10) "but subject to subsection (11)," after "this Act,"; 35

(f) by omitting "or" from paragraph (10) (a);

(g) by adding at the end of subsection (10) the following paragraphs:

"(c) the child had been an Australian resident and is living with the person outside Australia; or

(d) the child had been living with the person in Australia and is living with the person outside Australia."; 40

(h) by inserting after subsection (10) the following subsection:

“(11) Notwithstanding any other provision of this Act, a child shall not be treated, for the purposes of determining the maximum rate of special benefit payable to a person, as a dependent child in relation to the person unless:

- (a) the child is an Australian resident or a resident of Australia;
- (b) the child is living with the person while the person is an Australian resident;
- (c) the child had been an Australian resident and is living with the person outside Australia; or
- (d) the child had been living with the person in Australia and is living with the person outside Australia.”.

Rate of age or invalid pension

4. (1) Section 33 of the Principal Act is amended:

- (a) by omitting “and” from the end of paragraph (4) (ab);
- (b) by inserting in paragraph (4) (b) “(other than a child to whom paragraph (c) applies)” after “dependent child”;
- (c) by adding at the end of subsection (4) the following word and paragraph:

“; and (c) \$884 per annum in respect of each dependent child:

- (i) who is a prescribed student child of the person;
- (ii) who is a person to whom or in respect of whom payments under the Aboriginal Study Assistance Scheme are being made;
- (iii) who was, immediately before 1 January 1988, a student child to whom or in respect of whom payments under that Scheme were being made; and
- (iv) who was, immediately before that day, a person in respect of whom an increase in the maximum rate of a prescribed pension was applicable.”.

(2) Section 33 of the Principal Act is amended:

- (a) by adding at the end of paragraph (4) (ab) “and”;
- (b) by omitting from paragraph (4) (b) “(other than a child to whom paragraph (c) applies)”;
- (c) by omitting “and” from the end of paragraph (4) (b);
- (d) by omitting paragraph (4) (c).

Qualifications for widow’s pension

5. (1) Section 44 of the Principal Act is amended:

- (a) by omitting from paragraph (3) (a) “and is under the age of 16 years; and”;
- (b) by inserting after paragraph (3) (a) the following paragraph:

“(aa) either of the following subparagraphs applies:

- (i) the child has not attained the age of 16 years;
- (ii) the woman is qualified to receive a handicapped child’s allowance in respect of the child; and”.

(2) Section 44 of the Principal Act is amended by omitting from subparagraph (3) (aa) (ii) “handicapped child’s allowance” and substituting “child disability allowance”. 5

Interpretation

6. (1) Section 53 of the Principal Act is amended by omitting from subsection (1) the definition of “supporting parent” and substituting the following definition: 10

“‘supporting parent’ means an unmarried person who:

- (a) has a dependent child who has not attained the age of 16 years; or
- (b) is qualified to receive a handicapped child’s allowance in respect of a dependent child of the person; 15

but does not include:

- (c) a person who is qualified to receive a pension under Part IV or V; or
- (d) a woman who, but for the operation of section 144, would be in receipt of a wife’s pension under Part IV;”. 20

(2) Section 53 of the Principal Act is amended by omitting “handicapped child’s allowance” from paragraph (b) of the definition of “supporting parent” in subsection (1) and substituting “child disability allowance”.

Interpretation 25

7. (1) Section 72 of the Principal Act is amended by adding at the end the following subsection:

“(3) For the purposes of this Part, where:

- (a) a person receives a lump sum payment of any of the following: 30
 - (i) an amount received by way of a Post-graduate Award under the *Student Assistance Act 1973*;
 - (ii) a benefit received under the AUSTUDY scheme;
 - (iii) an amount received under the Aboriginal Study Assistance Scheme; and

(b) that lump sum is paid in lieu of periodic payments; 35
the person shall be treated as if he or she had received those periodic payments instead of that lump sum.”.

(2) Section 72 of the Principal Act is amended by adding at the end the following subsections:

“(4) For the purposes of this Part, where a person is entitled to receive a lump sum from the person’s former employer in consequence of the 40

termination of the person's employment, the person shall be deemed to have received the lump sum on the day on which the person's employment was terminated.

“(5) For the purposes of this Part, where:

5 (a) 2 or more Thursdays (whether or not public holidays) occur wholly within a period when a person is on leave from his or her employment; and

10 (b) the person receives a lump sum in respect of that leave (including a lump sum paid by way of bonus, loading or other additional payment relating to that leave);

the person shall be treated as if he or she had received periodic payments, instead of that lump sum, on each of those Thursdays of an amount calculated by dividing the lump sum by the number of those Thursdays.

15 “(6) For the purposes of subsection (5), a Thursday shall be taken to occur wholly within a period when a person is on leave from his or her employment if, and only if, the person does not perform any of the duties of that employment on that Thursday.”.

Payment of allowance

20 8. (1) Section 76 of the Principal Act is amended by adding at the end the following subsection:

“(3) Where a person lodges a claim for an allowance before the end of 6 weeks after receiving the first payment of any of the following in respect of a period in the year commencing on 1 January 1988:

25 (a) an amount received by way of a Post-graduate Award under the *Student Assistance Act 1973*;

(b) a benefit received under the AUSTUDY scheme;

(c) an amount received under the Aboriginal Study Assistance Scheme; the claim shall be taken to have been lodged on the first day of that period.”.

30 (2) Section 76 of the Principal Act is amended by omitting subsection (3).

Reduction for periods in institution

9. Section 106 of the Principal Act is amended by omitting from paragraph (b) “Part VIII” and substituting “Part VII”.

35 Sickness benefits

10. Section 117 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

40 “(1A) A person who is temporarily absent from Australia shall be treated, for the purposes of subsection (1), as if the person were in Australia:

(a) if the period of temporary absence is not longer than 3 months—throughout that period; or

(b) in any other case—throughout the first 3 months of that period.”;

(b) by omitting from subsection (2) “paragraph 121 (a)” and substituting “paragraph 121 (1) (a)”.

Rate of unemployment and sickness benefit

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11. (1) Section 118 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) A person who is temporarily absent from Australia shall be treated, for the purposes of subsection (2), as if the person were in Australia:

(a) if the period of temporary absence is not longer than 3 months— 10
throughout that period; or

(b) in any other case—throughout the first 3 months of that period.”.

(2) Section 118 of the Principal Act is amended:

(a) by omitting “and” from the end of paragraph (11) (cb);

(b) by inserting in paragraph (11) (d) “(other than a child to whom 15
paragraph (c) applies)” after “dependent child”;

(c) by adding at the end of subsection (11) the following word and paragraph:

“; and (e) \$17 per week in respect of each dependent child:

(i) who is a prescribed student child of the person; 20

(ii) who is a person to whom or in respect of whom
payments under the Aboriginal Study Assistance
Scheme are being made;

(iii) who was, immediately before 1 January 1988, a 25
student child to whom or in respect of whom
payments under that Scheme were being made;
and

(iv) who was, immediately before that day, a person 30
in respect of whom an increase in the maximum
rate of prescribed pension was applicable.”.

(3) Section 118 of the Principal Act is amended:

(a) by adding at the end of paragraph (11) (cb) “and”;

(b) by omitting from paragraph (11) (d) “(other than a child to whom
paragraph (c) applies)”;

(c) by omitting “and” from the end of paragraph (11) (d); 35

(d) by omitting paragraph (11) (e).

Rent assistance

12. Section 120 of the Principal Act is amended:

(a) by adding at the end of paragraphs (4) (a) and (6) (a) “in respect 40
of a period”;

- (b) by inserting after paragraphs (4) (a) and (6) (a) the following paragraph:

“(aa) the person is in Australia throughout that period;”.

Parental income test

5 13. Section 121A of the Principal Act is amended:

- (a) by omitting “30 June in the calendar year” from the definition of “last year of income” in subsection (1) and substituting “the last 30 June”;
- 10 (b) by omitting “or” from the end of paragraph (e) of the definition of “person to whom this section applies” in subsection (1);
- (c) by adding at the end of the definition of “person to whom this section applies” in subsection (1) the following word and paragraph:
- 15 “; or (g) a person who has a parent in receipt of a pension, benefit or allowance under Part IV, V, VI, XIII, XIV or XVI of this Act or a pension under Part III of the *Veterans' Entitlements Act 1986*”.

Income test

14. Section 122 of the Principal Act is amended by omitting subsection (10) and substituting the following subsection:

- 20 “(10) Subject to section 7, a benefit is not payable to a person who has attained the age of 25 years if the value of the property of the person exceeds:
- (a) if the person is a married person whose spouse is not in receipt of a prescribed pension:
- 25 (i) if subparagraph 4 (1) (a) (ii) applies to the person—twice the amount specified in paragraph 8 (c);
- (ii) if subparagraph 4 (1) (a) (ii) does not apply to the person—twice the amount specified in paragraph 8 (d); or
- 30 (b) in any other case—the amount specified in the paragraph of section 8 that applies to the person.”.

Waiting period

15. Section 125 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

- 35 “(4) If a claim for sickness benefit is not lodged within the time specified in subsection (3), the benefit is payable:
- (a) if the Secretary is satisfied that the sole or dominant cause of the failure to lodge the claim within that time was the incapacity concerned—from and including such date as the Secretary considers to be reasonable in the circumstances, not being a date earlier than 4 weeks before the day on which the claim is lodged; or
- 40 (b) in any other case—from and including the day on which the claim is lodged.”.

Benefit not payable to full-time students

16. Section 136 of the Principal Act is amended by omitting subparagraph (3) (b) (ii) and substituting the following subparagraph:

“(ii) ‘, and for a continuous period of at least 6 weeks has not lived,’ were omitted from paragraph 118 (8) (a).”.

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Sheltered employment

17. Section 140 of the Principal Act is amended by adding at the end the following subsections:

“(2) Where, under subsection 10 (1) of the *Disability Services Act 1986*, the Minister administering that Act has approved the making of a grant of financial assistance to an approved organisation in relation to the provision by the organisation of supported employment services within the meaning of section 7 of that Act, the Secretary may decide that the paid employment to which those supported employment services relates is, for the purposes of this Part, sheltered employment.

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“(3) A decision under subsection (2) may be expressed to relate to paid employment provided at a time earlier than the date on which the decision was made, not being a time earlier than 5 June 1987.”.

Interpretation

18. Section 152 of the Principal Act is amended:

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(a) by inserting in paragraph (2) (a) “received on or after 1 May 1987” after “being a payment”;

(b) by omitting paragraph (2) (c) and substituting the following paragraph:

“(c) a reference to the compensation part of a lump sum payment by way of compensation is a reference to:

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(i) if the lump sum payment was made (whether with or without admission of liability) in settlement of a claim that is, in whole or in part, related to disease or injury and:

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(A) in a case where a judgment by consent was entered in respect of the settlement—the judgment was entered on or after 9 February 1988; or

(B) in any other case—the settlement was made or entered into on or after 9 February 1988;

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50% of the lump sum payment; or

(ii) in any other case—so much of the lump sum payment as is, in the opinion of the Secretary, in respect of an incapacity for work;”.

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Reduction in rate of pension

19. Section 153 of the Principal Act is amended by inserting in subsection (1) “or has received (whether before or after becoming so qualified)” after “receives”.

5 **Cancellation, suspension or variation of pension etc.**

20. Section 168 of the Principal Act is amended:

(a) by omitting from the end of paragraph (4) (c) “or”;

(b) by inserting after paragraph (4) (c) the following paragraph:

10 “(ca) in the case of a determination granting a claim where none of the preceding paragraphs applies—on the day on which the determination was made or on such later day or earlier day as is specified in the determination; or”.

Rates of certain pensions affected where certain education payments are made

15 21. Section 180 of the Principal Act is amended by adding at the end the following subsection:

“(3) Where:

(a) immediately before 1 January 1988, a person:

20 (i) was receiving a prescribed pension (other than a benefit under Part XIII or a pension under the *Veterans’ Entitlements Act 1986*);

(ii) was eligible to receive payments under the Aboriginal Study Assistance Scheme; and

25 (iii) was a person to whom or in respect of whom payments were being made under the Aboriginal Study Assistance Scheme; and

(b) the person continues to be eligible to receive payments under the Aboriginal Study Assistance Scheme on or after 1 January 1988;

30 the rate of that pension, while the person continues to be eligible to receive payments under the Aboriginal Study Assistance Scheme, shall not exceed the rate at which it was payable immediately before the commencement of section 1 of the *Social Security Amendment Act 1988*.”.

Application of amendments

22. (1) In this section:

35 “amended Act” means the Principal Act as amended by this Act.

(2) The amendment made by paragraph 3 (a) applies to payments under the amended Act that fell or fall due on or after 30 November 1987.

40 (3) The amendments made by paragraph 3 (b), subsections 4 (1), 7 (1), 8 (1) and 11 (2) and sections 16 and 21 apply to payments under the amended Act that fell or fall due on or after 1 January 1988.

(4) The amendments made by paragraphs 3 (e), (f), (g) and (h) and 10 (a), subsection 11 (1) and section 12 apply to payments under the amended Act that fell or fall due on or after 1 October 1987.

(5) The amendments made by subsections 4 (2), 8 (2) and 11 (3) apply to payments under the amended Act that fall due on or after 1 January 1989. 5

(6) The amendments made by subsections 5 (1) and 6 (1) apply to payments under the amended Act that fell or fall due on or after 1 September 1987.

(7) The amendments made by subsections 5 (2) and 6 (2) and section 9 apply to payments under the amended Act that fell or fall due on or after 15 November 1987. 10

(8) The amendment made by subsection 7 (2) applies to payments under the amended Act that fell or fall due on or after 16 December 1987.

(9) The amendment made by section 14 applies to payments under the amended Act that fell or fall due on or after 13 December 1987. 15

(10) The amendment made by section 15 applies to claims lodged on or after 1 July 1987.

(11) The amendment made by section 19 applies to payments received on or after 1 May 1987. 20

Transitional—Part XVII of the *Social Security Act 1947*

23. For the purposes of subsection 22 (11) of this Act and Part XVII of the Principal Act as amended by this Act, where:

(a) all of the following conditions are satisfied in relation to a payment:

(i) the payment was received before 1 May 1987; 25

(ii) apart from the date of its receipt, the payment would be a payment by way of compensation within the meaning of that Part;

(iii) the payment was received by a person who was, or becomes, qualified to receive a sickness benefit; and 30

(b) Division 3A of Part VII of the Principal Act, as in force at any time before 1 May 1987 (including that Division in its application by virtue of subsection 42 (2) of the *Social Security and Veterans' Affairs (Miscellaneous Amendments) Act 1986*), does not apply in relation to the sickness benefit; 35

the payment shall be taken to have been received on or after 1 May 1987.

Determinations under section 168 of the *Social Security Act 1947*

24. Notwithstanding subsection 168 (4) of the Principal Act as amended by this Act, a determination under subsection 168 (3) of that Act made for the purpose of giving effect to the amendments made by this Act may take effect more than 3 months before the determination was made. 40

NOTE

1. No. 26, 1947, as amended. For previous amendments, see Nos. 38 and 69, 1948; No. 16, 1949; Nos. 6 and 26, 1950; No. 22, 1951; Nos. 41 and 107, 1952; No. 51, 1953; No. 30, 1954; Nos. 15 and 38, 1955; Nos. 67 and 98, 1956; No. 46, 1957; No. 44, 1958; No. 57, 1959; No. 45, 1961; Nos. 1 and 95, 1962; No. 46, 1963; Nos. 3 and 63, 1964; Nos. 57 and 152, 1965; No. 41, 1966; Nos. 10 and 61, 1967; No. 65, 1968; No. 94, 1969; Nos. 2 and 59, 1970; Nos. 16 and 67, 1971; Nos. 1, 14, 53 and 79, 1972; Nos. 1, 26, 48, 103 and 216, 1973; Nos. 2, 23 and 91, 1974; Nos. 34, 56, 101 and 110, 1975; Nos. 26, 62 and 111, 1976; No. 159, 1977; No. 128, 1978; No. 121, 1979 (as amended by Nos. 37 and 98, 1982); No. 130, 1980; Nos. 61 and 170, 1981; No. 159, 1981 (as amended by No. 98, 1982); Nos. 37, 38 and 148, 1982; Nos. 4 and 36, 1983; No. 69, 1983 (as amended by No. 78, 1984); Nos. 46, 78, 93, 120, 134 and 165, 1984; Nos. 24, 52, 95, 127 and 169, 1985; Nos. 5, 28, 33, 106, 130 and 152, 1986; Nos. 77, 88 and 130, 1987; and No. 000, 1988.

