

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

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

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1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 17 March 1988

(*Minister for Social Security*)

A BILL

FOR

**An Act to amend the *Social Security Act 1947* and the
Veterans' Entitlements Act 1986 in relation to maintenance,
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:

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Social Security and Veterans'
Entitlements (Maintenance Income Test) Amendment Act 1988*.

Commencement

- 2.** This Act commences on a day or days to be fixed by Proclamation.

PART II—AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Principal Act

3. In this Part, “Principal Act” means the *Social Security Act 1947*¹.

Interpretation

4. Section 3 of the Principal Act is amended: 5
- (a) by omitting “or” (last occurring) from paragraph (w) of the definition of “income” in subsection (1);
- (b) by adding at the end of the definition of “income” in subsection (1) the following word and paragraph: 10
- “; or (y) maintenance income;”;
- (c) by inserting in subsection (1) the following definitions: 10
- “ ‘annual maintenance free area’ means:
- (a) in relation to an unmarried person or a married person whose spouse is not in receipt of a prescribed pension—an amount equal to the aggregate of: 15
- (i) \$780; and
- (ii) \$260 for each dependent child (other than the first) of the person;
- (b) in relation to a married person whose spouse is in receipt of a prescribed pension but does not (apart from subsection (5AA)) have maintenance income—an amount equal to the aggregate of: 20
- (i) \$390; and
- (ii) \$130 for each child (other than the first) who is a dependent child of the person, the person’s spouse or both; 25
- (c) in relation to a married person whose spouse is in receipt of a prescribed pension and does (apart from subsection (5AA)) have maintenance income—an amount equal to the aggregate of: 30
- (i) \$780; and
- (ii) \$130 for each child (other than the first) who is a dependent child of the person, the person’s spouse or both;
- ‘capitalised maintenance income’, in relation to a person, means maintenance income of the person: 35
- (a) that is not a periodic amount or a benefit provided on a periodic basis; and
- (b) the amount or value of which exceeds \$1,500;
- ‘fortnightly maintenance free area’, in relation to a person, means an amount equal to one twenty-sixth of the annual maintenance free area of the person; 40

'in-kind housing maintenance income', in relation to a person,
means:

(a) in-kind maintenance income of the person in relation
to the provision of a residence that:

- (i) is the principal home of the person; and
- (ii) is the residence (in paragraphs (b) and (c)
called the 'family home') that was the principal
home, or last principal home, of both the person
and the person's spouse, former spouse or last
former spouse, as the case requires, immediately
before their separation;

(b) in-kind maintenance income of the person in relation
to the provision of a residence that:

- (i) is, or is to be, the principal home of the person;
- (ii) was not the family home; and
- (iii) has a value exceeding the value of the family
home at the time the in-kind maintenance
income is received or, if the Secretary considers
that some other time would be more
appropriate, that time;

less such part (if any) of that in-kind maintenance
income as the Secretary considers appropriate having
regard to the amount of that excess and the
circumstances of the case; or

(c) in-kind maintenance income of the person in relation
to the provision of a residence:

- (i) that is, or is to be, the principal home of the
person; and
- (ii) to which paragraphs (a) and (b) do not apply
(whether because there was no family home or
otherwise);

and, for the purposes of this definition, in-kind maintenance
income in relation to the provision of a residence includes in-
kind maintenance income consisting of:

- (d) a benefit received because of the transfer or settlement
of a right or interest in relation to the residence;
- (e) a benefit received because of the payment of interest,
charges or other amounts, or the repayment of amounts
borrowed, under a loan secured by a mortgage or
other interest in relation to the residence where the
sole or principal purpose of the loan was to enable
the residence, or a right or interest in relation to the
residence, to be acquired; and

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- (f) a benefit received because of the payment of rent (including Government rent), or a like payment, in relation to the residence;
- 'in-kind maintenance income', in relation to a person, means maintenance income of the person other than the amount of a payment received by the person or a dependent child of the person; 5
- 'maintenance agreement' means an agreement in writing (whether made within or outside Australia) that makes provision in relation to the maintenance of a person (whether or not it also makes provision in relation to other matters), and includes such an agreement that varies an earlier maintenance agreement; 10
- 'maintenance income', in relation to a person, means:
- (a) the amount of a payment, or the value of a benefit, received by the person; 15
- (i) from a parent of a dependent child of the person, or from the spouse or former spouse of such a parent, for the maintenance of the child; or 20
- (ii) from the person's spouse or former spouse for the maintenance of the person; or
- (b) the amount of a payment, or the value of a benefit, received by a dependent child of the person from a parent of the child, or from the spouse or former spouse of a parent of the child, for the maintenance of the child; 25
- and, for the purposes of this definition:
- (c) a payment received under subsection 76 (1) of the *Child Support Act 1988* in relation to a registered maintenance liability (within the meaning of that Act) shall be taken to be received from the person who is the payer (within the meaning of that Act) in relation to the liability; 30
- (d) a reference to a benefit received by a person includes a reference to a benefit received by the person because of a payment made to, or a benefit conferred on, another person (including a payment made or benefit conferred under a liability owed to the other person); and 35
- (e) a reference to a payment or benefit received from a person includes a reference to a payment or benefit received:
- (i) directly or indirectly from the person; 40

- (ii) out of any assets of, under the control of, or held for the benefit of, the person; and
- (iii) from the person under or as a result of a court order, a court registered or approved maintenance agreement or otherwise;

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'parent', in relation to a child who has been adopted, means an adoptive parent of the child;

'special maintenance income', in relation to a person, means:

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- (a) in-kind housing maintenance income of the person;
- (b) in-kind maintenance income of the person (other than in-kind housing maintenance income or capitalised maintenance income) received from the person's spouse or former spouse during the period of 6 months following the person's separation from the spouse or former spouse; or
- (c) maintenance income of the person provided in relation to expenses arising directly from a physical, intellectual or psychiatric disability, or a learning difficulty, of a dependent child of the person where the disability or difficulty is likely to be permanent or to last for an extended period;"

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- (d) by inserting after subsection (5) the following subsection:

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"(5AA) For the purposes of this Act, unless the contrary intention appears, the annual rate of the maintenance income of a married person (other than a person whose spouse is not in receipt of a prescribed pension and does not have maintenance income) shall be taken to be 50% of the sum of the annual rates of the maintenance income of the person and the person's spouse."

5. After section 4 of the Principal Act the following section is inserted:

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Apportionment of capitalised maintenance income

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"4A. (1) Capitalised maintenance income of a person shall be taken to be received by the person over the course of the capitalisation period determined under subsections (2) to (5) (inclusive) in relation to the income, and, accordingly, the maintenance income of the person attributable to the capitalised maintenance income during any period (in this subsection called the 'relevant period') in the capitalisation period is an amount

calculated in accordance with the formula $A \times \frac{R}{C}$, where:

A is the capitalised maintenance income;

R is the relevant period; and

40

C is the capitalisation period.

“(2) Where:

- (a) the capitalised maintenance income is received under or as a result of:
 - (i) the order of a court; or
 - (ii) a maintenance agreement registered in, or approved by, a court under the *Family Law Act 1975* or the law of a State or Territory; 5
- (b) the order or agreement specified the period in relation to which the capitalised maintenance income was to be provided; and
- (c) the length of the period could be ascertained with reasonable certainty when the order was made or the agreement was so registered or approved; 10

the capitalisation period is, subject to subsection (5), the period specified in the order or agreement.

“(3) Where, in a case not falling within subsection (2): 15

- (a) the capitalised maintenance income relates to the maintenance of a dependent child of the person; and
- (b) the child has not attained 18 years of age on the day on which the income is received;

the capitalisation period is, subject to subsection (5), the period beginning on the day on which the income is received and ending on the day immediately before the day on which the child attains 18 years of age. 20

“(4) Where, in a case not falling within subsection (2):

- (a) the capitalised maintenance income relates to the maintenance of the person by the person's spouse or former spouse; and 25
- (b) the person has not attained 65 years of age on the day on which the income is received;

the capitalisation period is, subject to subsection (5), the period beginning on the day on which the income is received and ending on the day immediately before the day on which the person attains 65 years of age. 30

“(5) Where:

- (a) the Secretary considers:
 - (i) in a case falling within subsection (2) where the period referred to in that subsection was specified in an order of a court that was made by consent or in a maintenance agreement—that the period is not appropriate in the circumstances of the case; or 35
 - (ii) in a case falling within subsection (3) or (4)—that the period referred to in that subsection is not appropriate in the circumstances of the case; or 40
- (b) no capitalisation period is applicable in relation to the capitalised maintenance income under subsection (2), (3) or (4);

the capitalisation period is such period as the Secretary considers appropriate in the circumstances of the case.”.

Rate of age or invalid pension

6. Section 33 of the Principal Act is amended:

5 (a) by omitting paragraph (7) (a) and substituting the following paragraph:

“(a) an amount equal to the aggregate of:

(i) the amount (if any) per annum by which the annual rate of income of the person exceeds \$1,820; and

10 (ii) the amount (if any) per annum by which the annual rate of maintenance income of the person exceeds the annual maintenance free area of the person;”;

(b) by omitting paragraphs (8) (a) and (b) and substituting the following paragraphs:

15 “(a) if the amount per annum of the reduction is less than the amount of the increase under subsection (4) or subsections (3) and (4), no amount per annum is applicable in relation to the person or the person’s spouse under paragraph (12) (a);

20 (b) if the amount per annum of the reduction is equal to the amount of the increase under subsection (4) or subsections (3) and (4), the aggregate referred to in paragraph (12) (a) shall be taken, for the purposes of the application of subsection (12) in relation to the person and the person’s spouse, to be reduced by the amount per annum of the reduction; and

25 (c) in either case, no amount per annum is applicable in relation to the person or the person’s spouse under paragraph (12) (b).”;

30 (c) by omitting paragraph (12) (a) and substituting the following paragraph:

“(a) 50% of the aggregate of:

(i) the amount (if any) per annum by which the annual rate of income of the person exceeds:

35 (A) if the person is an unmarried person—\$2,080;
or

(B) if the person is a married person—\$1,820; and

(ii) the amount (if any) per annum by which the annual rate of maintenance income of the person exceeds the annual maintenance free area of the person; or”;

40 (d) by inserting after subsection (12) the following subsection:

“(12A) Where a person who is qualified to receive a pension under this Part has special maintenance income the annual rate of which exceeds the aggregate of:

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(a) the following amount:

(i) in the case of an unmarried person or a married person not falling within subparagraph (ii)—50% of the maximum rate of pension under this Part applicable to the person, including: 5

(A) any increase applicable under this section or section 36; and

(B) any incentive allowance (if applicable);

(ii) in the case of a married person:

(A) who has a dependent child; and 10

(B) whose spouse is in receipt of a pension, benefit or allowance referred to in subsection (7);

25% of the aggregate of the maximum rate of pension under this Part applicable to the person and the maximum rate of pension, benefit or allowance applicable to the spouse, including, in relation to the person, the amounts mentioned in sub-subparagraphs (i) (A) and (B) and, in relation to the spouse, such amounts or any other increase applicable in relation to the pension, benefit or allowance of the spouse; and 15 20

(b) the annual maintenance free area of the person;

the excess shall be disregarded for the purposes of subparagraphs (7) (a) (ii) and (12) (a) (ii).”.

Calculation of income in respect of children 25

7. Section 35 of the Principal Act is amended by omitting from paragraphs (1) (a) and (b) “Act, under the *Veterans' Entitlements Act 1986*” and substituting “Act, a payment of maintenance income, a payment under the *Veterans' Entitlements Act 1986*, a payment under the AUSTUDY scheme or the Assistance for Isolated Children Scheme”. 30

8. Section 47 of the Principal Act is repealed and the following section is substituted:

Condition of entitlement to widow's pension

“47. Where a widow is entitled to claim maintenance from another person for herself or a dependent child, she is not qualified to receive a widow's pension if: 35

(a) the Secretary considers that it is reasonable that the widow should have taken action to obtain maintenance from the other person; and

(b) she has not taken such action as the Secretary considers reasonable to obtain appropriate maintenance from the other person.”. 40

Rate of widow's pension

9. Section 48 of the Principal Act is amended:

(a) by omitting paragraph (3) (a) and substituting the following paragraph:

5 “(a) 50% of the aggregate of:

 (i) the amount (if any) per annum by which the annual rate of income of the widow exceeds \$2,080; and

10 (ii) the amount (if any) per annum by which the annual rate of maintenance income of the widow exceeds the annual maintenance free area of the widow; or”;

(b) by inserting after subsection (3) the following subsection:

 “(3A) Where a widow who is qualified to receive a widow's pension has special maintenance income the annual rate of which exceeds the aggregate of:

15 (a) 50% of the maximum rate of widow's pension applicable to the widow, including any increase applicable under paragraph (1) (a) or section 50; and

 (b) the annual maintenance free area of the widow;

20 the excess shall be disregarded for the purposes of subparagraph (3) (a) (ii).”.

Calculation of income in respect of children

10. Section 49 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

25 “(1) For the purposes of this Part, where a widow has a dependent child, the income of the widow shall be reduced by \$624 per annum less the annual amount of any payment (not being a payment under this Act, a payment of maintenance income, a payment under the *Veterans' Entitlements Act 1986*, a payment under the AUSTUDY scheme or the Assistance for Isolated Children Scheme or a payment in the nature of family allowance) received by the widow for or in respect of the child.”.

11. Section 55 of the Principal Act is repealed and the following section is substituted:

Condition of entitlement to supporting parent's benefit

35 “55. Where a supporting parent is entitled to claim maintenance from another person for the supporting parent or a dependent child, the supporting parent is not qualified to receive supporting parent's benefit if:

 (a) the Secretary considers that it is reasonable that the supporting parent should have taken action to obtain maintenance from the other person; and

- (b) the supporting parent has not taken such action as the Secretary considers reasonable to obtain appropriate maintenance from the other person.”.

12. After section 122 of the Principal Act the following section is inserted:

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Maintenance income test

“122A. (1) Subject to this section, where an unemployment benefit, a sickness benefit or a job search allowance is payable to a person whose fortnightly maintenance income exceeds the fortnightly maintenance free area of the person, the rate per fortnight of the benefit shall (in addition to any reduction made under section 122) be reduced by 50% of the amount by which the maintenance income exceeds the maintenance free area.

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“(2) If the person is a married person, the maintenance income of the person includes the maintenance income of the person’s spouse.

“(3) If the person is a married person and the person’s spouse:

15

(a) has maintenance income that is, under subsection (2), included in the maintenance income of the person; and

(b) is in receipt of a prescribed pension;

the rate per week of the benefit payable to the person shall be reduced by 50% of the amount that, but for this subsection, would have been the amount of the reduction under subsection (1).

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“(4) If the person receives maintenance income on a periodic basis at intervals longer than a fortnight, the person shall be taken to receive, in relation to that maintenance income, in each fortnight or part of a fortnight in the period an amount of maintenance income bearing the same proportion to the amount received as the number of days in the fortnight or part of the fortnight bears to the number of days in the period.

25

“(5) If the person has special maintenance income the fortnightly rate of which exceeds the aggregate of:

(a) 50% of the maximum fortnightly rate of benefit or allowance applicable to the person (including any increase under section 118 or 120 but before any reduction made under section 122 or under this section); and

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(b) the fortnightly maintenance free area of the person;

the excess shall be disregarded for the purposes of subsection (1).”.

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Cancellation, suspension or variation of pension etc.

13. Section 168 of the Principal Act is amended by inserting in paragraph (4) (c) “(other than a change consisting of a decrease in the rate of the person’s maintenance income)” after “circumstances”.

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ACT 1986**

Principal Act

5 **14.** In this Part, "Principal Act" means the *Veterans' Entitlements Act 1986*².

Interpretation

15. Section 35 of the Principal Act is amended:

- 10 (a) by omitting "or" from paragraph (v) of the definition of "income" in subsection (1);
- 10 (b) by adding at the end of the definition of "income" in subsection (1) the following word and paragraph:
"; or (x) maintenance income;";
- (c) by inserting in subsection (1) the following definitions:
" 'annual maintenance free area' means:
- 15 (a) in relation to an unmarried person or a married person whose spouse is not in receipt of a relevant pension—an amount equal to the aggregate of:
- (i) \$780; and
- 20 (ii) \$260 for each child (other than the first) who is a dependant of the person and is wholly or substantially dependent on the person;
- (b) in relation to a married person whose spouse is in receipt of a relevant pension but does not (apart from subsection (12A)) have maintenance income—an amount equal to the aggregate of:
- 25 (i) \$390; and
- (ii) \$130 for each child (other than the first) who is a dependant of the person, the person's spouse or both and is wholly or substantially dependent on the person, the person's spouse or both;
- 30 (c) in relation to a married person whose spouse is in receipt of a relevant pension and does (apart from subsection (12A)) have maintenance income—an amount equal to the aggregate of:
- 35 (i) \$780; and
- (ii) \$130 for each child (other than the first) who is a dependant of the person, the person's spouse or both and is wholly or substantially dependent on the person, the person's spouse or both;
- 40

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'capitalised maintenance income', in relation to a person, means maintenance income of the person:

- (a) that is not a periodic amount or a benefit provided on a periodic basis; and
- (b) the amount or value of which exceeds \$1,500; 5

'in-kind housing maintenance income', in relation to a person, means:

- (a) in-kind maintenance income of the person in relation to the provision of a residence that:

- (i) is the principal home of the person; and 10
- (ii) is the residence (in paragraphs (b) and (c) called the 'family home') that was the principal home, or last principal home, of both the person and the person's spouse, former spouse or last former spouse, as the case requires, immediately before their separation; 15

- (b) in-kind maintenance income of the person in relation to the provision of a residence that:

- (i) is, or is to be, the principal home of the person; 20
- (ii) was not the family home; and
- (iii) has a value exceeding the value of the family home at the time the in-kind maintenance income is received or, if the Commission considers that some other time would be more appropriate, that time; 25

less such part (if any) of that in-kind maintenance income as the Commission considers appropriate having regard to the amount of that excess and the circumstances of the case; or

- (c) in-kind maintenance income of the person in relation to the provision of a residence: 30

- (i) that is, or is to be, the principal home of the person; and
- (ii) to which paragraphs (a) and (b) do not apply (whether because there was no family home or otherwise); 35

and, for the purposes of this definition, in-kind maintenance income in relation to the provision of a residence includes in-kind maintenance income consisting of:

- (d) a benefit received because of the transfer or settlement of a right or interest in relation to the residence; 40
- (e) a benefit received because of the payment of interest, charges or other amounts, or the repayment of amounts borrowed, under a loan secured by a mortgage or

other interest in relation to the residence where the sole or principal purpose of the loan was to enable the residence, or a right or interest in relation to the residence, to be acquired; and

- 5 (f) a benefit received because of the payment of rent (including Government rent), or a like payment, in relation to the residence;

10 'in-kind maintenance income', in relation to a person, means maintenance income of the person other than the amount of a payment received by the person or by a child who is a dependant of the person and is wholly or substantially dependent on the person;

15 'maintenance agreement' means an agreement in writing (whether made within or outside Australia) that makes provision in relation to the maintenance of a person (whether or not it also makes provision in relation to other matters), and includes such an agreement that varies an earlier maintenance agreement;

20 'maintenance income', in relation to a person, means:

- (a) the amount of a payment, or the value of a benefit, received by the person:

25 (i) from a parent of a child who is a dependant of the person and is wholly or substantially dependent on the person, or from the spouse or former spouse of such a parent, for the maintenance of the child; or

(ii) from the person's spouse or former spouse for the maintenance of the person; or

- 30 (b) the amount of a payment, or the value of a benefit, received by a child who is a dependant of the person and is wholly or substantially dependent on the person from a parent of the child, or from the spouse or former spouse of a parent of the child, for the maintenance of the child;

35 and, for the purposes of this definition:

40 (c) a payment received under subsection 76 (1) of the *Child Support Act 1988* in relation to a registered maintenance liability (within the meaning of that Act) shall be taken to be received from the person who is the payer (within the meaning of that Act) in relation to the liability;

45 (d) a reference to a benefit received by a person includes a reference to a benefit received by the person because of a payment made to, or a benefit conferred on, another person (including a payment made or benefit

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conferred under a liability owed to the other person);
and

(e) a reference to a payment or benefit received from a person includes a reference to a payment or benefit received:

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- (i) directly or indirectly from the person;
- (ii) out of any assets of, under the control of, or held for the benefit of, the person; and

(iii) from the person under or as a result of a court order, a court registered or approved maintenance agreement or otherwise;

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'parent', in relation to a child who has been adopted, means an adoptive parent of the child;

'relevant pension' means:

- (a) a pension under this Part; or
- (b) a pension under Part IV, a benefit under Part XIII, an allowance under Part XIV, or a rehabilitation allowance under Part XVI, of the *Social Security Act 1947*;

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'special maintenance income', in relation to a person, means:

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- (a) in-kind housing maintenance income of the person;
- (b) in-kind maintenance income of the person (other than in-kind housing maintenance income or capitalised maintenance income) received from the person's spouse or former spouse during the period of 6 months following the person's separation from the spouse or former spouse; or

25

(c) maintenance income of the person provided in relation to expenses arising directly from a physical, intellectual or psychiatric disability, or a learning difficulty, of a child who is a dependant of the person and is wholly or substantially dependent on the person where the disability or difficulty is likely to be permanent or to last for an extended period;";

30

(d) by inserting after subsection (12) the following subsection:

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"(12A) For the purposes of this Part, unless the contrary intention appears, the annual rate of the maintenance income of a married person (other than a person whose spouse is not in receipt of a relevant pension and does not have maintenance income) shall be taken to be one-half of the sum of the annual rates of the maintenance income of the person and the person's spouse."

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Method of calculation of income

5 16. Section 37 of the Principal Act is amended by omitting from paragraphs (1) (a) and (b) "Part III of this Act or under the *Social Security Act 1947*" and substituting "this Act, a payment of maintenance income, a payment under the *Social Security Act 1947*, a payment under the AUSTUDY scheme or the Assistance for Isolated Children Scheme".

17. After section 37 of the Principal Act the following section is inserted:

Apportionment of capitalised maintenance income

10 "37A. (1) Capitalised maintenance income of a person shall be taken to be received by the person over the course of the capitalisation period determined under subsections (2) to (5) (inclusive) in relation to the income, and, accordingly, the maintenance income of the person attributable to the capitalised maintenance income during any period (in this subsection called the 'relevant period') in the capitalisation period is an amount
15 calculated in accordance with the formula $A \times \frac{R}{C}$, where:

A is the capitalised maintenance income;

R is the relevant period; and

C is the capitalisation period.

"(2) Where:

20 (a) the capitalised maintenance income is received under or as a result of:

 (i) the order of a court; or

25 (ii) a maintenance agreement registered in, or approved by, a court under the *Family Law Act 1975* or the law of a State or Territory;

 (b) the order or agreement specified the period in relation to which the capitalised maintenance income was to be provided; and

30 (c) the length of the period could be ascertained with reasonable certainty when the order was made or the agreement was so registered or approved;

the capitalisation period is, subject to subsection (5), the period specified in the order or agreement.

"(3) Where, in a case not falling within subsection (2):

35 (a) the capitalised maintenance income relates to the maintenance of a child who is a dependant of the person and is wholly or substantially dependent on the person; and

 (b) the child has not attained 18 years of age on the day on which the income is received;

the capitalisation period is, subject to subsection (5), the period beginning on the day on which the income is received and ending on the day immediately before the day on which the child attains 18 years of age.

“(4) Where, in a case not falling within subsection (2):

- (a) the capitalised maintenance income relates to the maintenance of the person by the person's spouse or former spouse; and 5
- (b) the person has not attained 65 years of age on the day on which the income is received;

the capitalisation period is, subject to subsection (5), the period beginning on the day on which the income is received and ending on the day immediately before the day on which the person attains 65 years of age. 10

“(5) Where:

(a) the Commission considers:

- (i) in a case falling within subsection (2) where the period referred to in that subsection was specified in an order of a court that was made by consent or in a maintenance agreement—that the period is not appropriate in the circumstances of the case; or 15
- (ii) in a case falling within subsection (3) or (4)—that the period referred to in that subsection is not appropriate in the circumstances of the case; or 20

(b) no capitalisation period is applicable in relation to the capitalised maintenance income under subsection (2), (3) or (4);

the capitalisation period is such period as the Commission considers appropriate in the circumstances of the case.”. 25

Rate of veteran's service pension

18. Section 47 of the Principal Act is amended:

(a) by omitting subparagraph (4) (a) (i) and substituting the following subparagraph:

“(i) an amount equal to the aggregate of: 30

(A) the amount (if any) per year by which the annual rate of income of the veteran exceeds \$1,820 per year; and

(B) the amount (if any) per year by which the annual rate of maintenance income of the veteran exceeds the annual maintenance free area of the veteran;” 35

(b) by omitting subparagraphs (4) (b) (i) and (ii) and substituting the following subparagraphs:

“(i) if the amount per year of the reduction is less than the amount of the increase under subsection (3), no amount per year is applicable in relation to the veteran under paragraph (5) (a) or in relation to the spouse of the veteran under paragraph 48 (4) (a); 40

(ii) if the amount per year of the reduction is equal to the amount of the increase under subsection (3):

(A) in relation to the veteran, the aggregate referred to in paragraph (5) (a); and

(B) in relation to the spouse of the veteran, the aggregate referred to in paragraph 48 (4) (a);

shall be taken for the purpose of that paragraph, to be reduced by the amount per year of the reduction; and

(iii) in either case, no amount per year is applicable in relation to the veteran under paragraph (5) (b) or in relation to the spouse of the veteran under paragraph 48 (4) (b); and”;

(c) by omitting paragraph (5) (a) and substituting the following paragraph:

“(a) one-half of the aggregate of:

(i) the amount (if any) per year by which the annual rate of income of the veteran exceeds:

(A) in the case of an unmarried veteran—\$2,080 per year; or

(B) in the case of a married veteran—\$1,820 per year; and

(ii) the amount (if any) per year by which the annual rate of maintenance income of the veteran exceeds the annual maintenance free area of the veteran; or”;

(d) by inserting after subsection (5) the following subsection:

“(5A) Where a veteran who is eligible to receive a pension under this Part has special maintenance income the annual rate of which exceeds the aggregate of:

(a) the following amount:

(i) in the case of an unmarried veteran or a married veteran not falling within subparagraph (ii)—one-half of the maximum rate of service pension applicable to the veteran, including any increase applicable under this section or section 55; or

(ii) in the case of a married veteran:

(A) in relation to whom or in relation to whose spouse, or both, a child is a dependant and is wholly or substantially dependent on the veteran, the spouse or both; and

(B) whose spouse is in receipt of a pension, benefit or allowance referred to in subsection (4);

one-quarter of the aggregate of the maximum rate of service pension applicable to the veteran and the maximum rate of pension, benefit or allowance

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applicable to the spouse, including, in relation to the veteran, any increase applicable under this section or section 55 and, in relation to the spouse, any such increase or any other increase applicable in relation to the pension, benefit or allowance of the spouse; and 5

(b) the annual maintenance free area of the veteran; the excess shall be disregarded for the purposes of sub-subparagraph (4) (a) (i) (B) and subparagraph (5) (a) (ii).”.

Rate of wife's service pension 10

19. Section 48 of the Principal Act is amended:

(a) by omitting paragraph (4) (a) and substituting the following paragraph:

“(a) one-half of the aggregate of:

(i) the amount (if any) per year by which the annual rate of income of the wife or widow exceeds \$1,820 per year; and 15

(ii) the amount (if any) per year by which the annual rate of maintenance income of the wife or widow exceeds the annual maintenance free area of the wife or widow; or”;

(b) by inserting after subsection (4) the following subsection:

“(4A) Where a wife or widow who is eligible to receive a wife's service pension has special maintenance income the annual rate of which exceeds the aggregate of: 25

(a) the following amount:

(i) in the case of a wife not falling within subparagraph (ii) or a widow—one-half of the maximum rate of wife's service pension applicable to the wife or widow, including any increase applicable under this section or section 55; and 30

(ii) in the case of a wife:

(A) in relation to whom or in relation to whose husband, or both, a child is a dependant and is wholly or substantially dependent on the wife, the husband or both; and 35

(B) whose husband is in receipt of a pension, benefit or allowance referred to in subsection 47 (4);

one-quarter of the aggregate of the maximum rate of service pension applicable to the wife and the maximum rate of pension, benefit or allowance applicable to the husband, including, in relation to the wife, any increase applicable under this section or 40

section 55 and, in relation to the husband, any such increase or any other increase applicable in relation to the pension, benefit or allowance of the husband; and

- 5 (b) the annual maintenance free area of the wife or widow; the excess shall be disregarded for the purposes of subparagraph (4) (a) (ii).”.

Cancellation, suspension or variation of service pension

- 10 20. Section 58 of the Principal Act is amended by inserting in paragraph (3A) (a) “(other than a change consisting of a decrease in the rate of the service pensioner’s maintenance income)” after “circumstances”.

PART IV—TRANSITIONAL PROVISIONS

Saving for certain existing pensions etc.

- 15 21. (1) In this section:
“final pre-amendment period” means the fortnight ending on the day immediately before the day on which this Act comes into operation;
“income”, in relation to a person, has the same meaning as in the Social Security Act or Part III of the Veterans’ Entitlements Act, but does not include so much of a payment as, under subsection 12A (3) of the Social Security Act or subsection 49B (3) of the Veterans’ Entitlements Act, the person is taken not to have received;
20 “maintenance income”, in relation to a person, has the same meaning as in the Social Security Act or Part III of the Veterans’ Entitlements Act;
25 “qualifying pension” means:
(a) a pension, allowance or benefit under the Social Security Act; or
(b) a pension or allowance under Part III of the Veterans’ Entitlements Act;
30 “Social Security Act” means the *Social Security Act 1947*;
“total income”, in relation to a person, means the aggregate of:
(a) the person’s income and maintenance income; and
(b) any qualifying pension received by the person;
35 “Veterans’ Entitlements Act” means the *Veterans’ Entitlements Act 1986*.

- (2) Subject to subsection (3), this section applies in relation to a person who, in the final pre-amendment period:
(a) was receiving a qualifying pension; and
(b) had maintenance income;
40 and applies in relation to such a person until:

- (c) the person ceases to be eligible to receive a qualifying pension (whether or not of the same kind); or
- (d) subsection (4) does not apply in relation to the person in relation to a fortnight after the commencement of this Act;

whichever happens first.

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(3) This section does not apply in relation to a person who:

- (a) was required by or under the Social Security Act or the Veterans' Entitlements Act to notify the Department of the maintenance income that the person had in the final pre-amendment period; and
- (b) failed to notify the Department of the maintenance income as required by or under the Social Security Act or the Veterans' Entitlements Act.

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(4) If, in a fortnight after the commencement of this Act, the total income of a person would, but for this section, be less than it was in the final pre-amendment period, the amount of any qualifying pension that the person is eligible to receive in that fortnight shall, in spite of anything in the Social Security Act or the Veterans' Entitlements Act but subject to subsection (5), be an amount such that the person's total income for the fortnight is equal to the person's total income for the final pre-amendment period.

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(5) The amount of the qualifying pension shall not exceed the amount of the qualifying pension (whether or not of the same kind) received in the final pre-amendment period.

(6) If the amount of:

- (a) a benefit or allowance received by a person under the Social Security Act in the final pre-amendment period; or
- (b) a pension received by a person under Part III of the Veterans' Entitlements Act in that period;

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is less than the amount of the person's fortnightly rate of the benefit, allowance or pension, the amount of the benefit, allowance or pension received by the person in that period shall, for the purpose of this section, be taken to be the amount of the person's fortnightly rate of the benefit, allowance or pension.

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NOTES

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;

NOTES—continued

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; and Nos. 77, 88 and 130, 1987.

2. No. 27, 1986, as amended. For previous amendments, see Nos. 106 and 130, 1986; and Nos. 78, 88 and 130, 1987.

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