



Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000

Act No. 94 of 2000 as amended

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[This Act was amended by Act No. 100 of 2005]

Amendment from Act No. 100 of 2005

[Schedule 2 (item 24) amended heading to item 138 of Schedule 1
Schedule 2 (item 24) commenced immediately after 20 September 2000]

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Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
Schedule 1—Amendment of the Social Security Act 1991		3
Part 1—Beneficiaries leaving Australia		3
Part 2—Pension bonus		30
Part 3—Retirement assistance for farmers		32
Part 4—Claiming unclaimed overseas entitlements		33
Part 5—Simplifying qualifying residence		34
Schedule 2—Amendment of the Social Security (Administration) Act 1999		38
Part 1—Tax file numbers		38
Part 2—Claiming unclaimed overseas pensions		39
Part 3—Beneficiaries leaving Australia		40
Schedule 3—Amendment of the Veterans’ Entitlements Act 1986		42
Schedule 4—Amendment of the Income Tax Assessment Act 1936		46
Schedule 5—Amendment of the Taxation Administration Act 1953		47
Schedule 6—Amendment of the Health Insurance Act 1973		48
Schedule 7—Amendment of the Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999		49
Schedule 8—Amendment of the A New Tax System (Family Assistance) Act 1999		50
Schedule 9—Amendment of the Social Security (International Agreements) Act 1999		54

**Schedule 10—Amendment of the Further 1998 Budget
Measures Legislation Amendment (Social Security) Act 1999**

55

An Act to amend the law relating to social security and veterans' entitlements in relation to various matters

[Assented to 30 June 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) The following provisions commence, or are taken to have commenced, on 20 September 2000:
 - (a) Parts 1, 4 and 5 of Schedule 1 (other than items 71, 72 and 123);
 - (b) Parts 2 and 3 of Schedule 2;
 - (c) Schedule 6.
- (3) Items 71 and 72 of Schedule 1 commence on the later of the following:
 - (a) 20 September 2000;
 - (b) immediately after the commencement of item 4 of Schedule 1 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.
- (4) Parts 2 and 3 of Schedule 1 commence, or are taken to have commenced, immediately after the commencement of Schedule 1 to the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*.
- (5) Part 1 of Schedule 2, and Schedules 4 and 5, commence, or are taken to have commenced, on 1 July 2000.

Section 3

- (6) Item 1 of Schedule 7 is taken to have commenced immediately after the commencement of item 2 of Schedule 5 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999*.
- (7) Item 2 of Schedule 7 is taken to have commenced immediately after the commencement of item 34 of Schedule 5 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999*.
- (8) Schedule 8 commences on the later of the following:
 - (a) 20 September 2000;
 - (b) immediately after the commencement of item 1 of Schedule 1 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.
- (9) Item 123 of Schedule 1, and Schedule 9, commence, or are taken to have commenced, on 1 August 2000.
- (10) Schedule 10 is taken to have commenced immediately before the commencement of items 8 to 52 of Schedule 2 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Social Security Act 1991

Part 1—Beneficiaries leaving Australia

1 Subsection 14(3)

Repeal the subsection.

2 Subsection 43(2)

Repeal the subsection.

3 Section 97

Repeal the section.

4 Subsection 147(2)

Repeal the subsection.

5 Subsection 198(4)

Omit “in Australia”, substitute “an Australian resident”.

6 Section 198AB

Repeal the section, substitute:

198AB Care not required to be in private residence during portability period

During any period of absence from Australia:

(a) throughout which Division 2 of Part 4.2 applies to the person; and

(b) that is before the end of the person’s portability period for carer payment (within the meaning of that Division);

the person does not cease to be qualified for carer payment merely because the constant care of the care receiver or care receivers is not provided in a private residence that is the home of the care receiver or care receivers.

7 Subsection 198AC(1)

Omit all the words after “merely”, substitute “because of that cessation”.

8 Paragraph 198AC(2)(c)

Omit “in Australia”.

9 Subsection 198AC(2)

Omit all the words after “merely”, substitute “because of the lack of provision of constant care”.

10 Subsection 315(2)

Repeal the subsection.

11 Subparagraph 408BA(2)(e)(ii)

Repeal the subparagraph, substitute:

(ii) throughout the period, she is an Australian resident.

12 Subsection 408BA(2) (note 3)

Repeal the note.

13 Subsections 408BA(4), (4A) and (5)

Repeal the subsections.

14 Paragraph 500(1)(c)

Repeal the paragraph.

15 Section 500A

Repeal the section.

16 At the end of subsection 500F(1)

Add:

unless, at that time:

- (c) the child is in the company of a person to whom Division 2 of Part 4.2 applies; and
- (d) the person is a person in relation to whom the child is a PP child; and
- (e) the person’s portability period for parenting payment (within the meaning of that Division) has not ended.

17 At the end of section 500G

Add:

unless, at that time:

- (c) the child is in the company of a person to whom Division 2 of Part 4.2 applies; and
- (d) the person is a person in relation to whom the child is a PP child; and
- (e) the person's portability period for parenting payment (within the meaning of that Division) has not ended.

18 Paragraph 540(d)

Repeal the paragraph, substitute:

- (d) throughout the period, the person is an Australian resident.

19 Paragraph 541(1)(b)

After "work" (first occurring), insert "in Australia".

20 Subdivision F of Division 1 of Part 2.11

Repeal the Subdivision.

21 Paragraph 568(c)

Repeal the paragraph, substitute:

- (c) the person is an Australian resident.

22 Subdivision D of Division 1 of Part 2.11A

Repeal the Subdivision.

23 Subparagraph 593(1)(g)(iii)

Repeal the subparagraph.

24 Paragraph 593(1)(g) (note)

Repeal the note.

25 Subsection 593(1) (note 13)

After "F" insert "and Part 4.2".

26 Subsection 593(1A)

Repeal the subsection.

27 Subparagraph 593(1B)(b)(iii)

Repeal the subparagraph.

28 Paragraph 593(1B)(b) (note)

Repeal the note.

29 Subparagraph 593(2)(g)(iii)

Repeal the subparagraph.

30 Subsection 593(2) (note 10)

After “F” insert “and Part 4.2”.

31 Subsection 593(3)

Repeal the subsection.

32 Subsection 601(1)

After “work” (first occurring), insert “in Australia”.

33 Paragraph 660XBA(1)(e)

Omit “and”.

34 Paragraph 660XBA(1)(f)

Repeal the paragraph.

35 Subsection 660XBA(3)

Repeal the subsection.

36 Section 660XBH

Repeal the section.

37 Paragraph 660XBI(1)(b)

Omit “and”.

38 Paragraph 660XBI(1)(c)

Repeal the paragraph.

39 Subsection 660XBI(2)

Repeal the subsection (other than the notes).

40 Subsection 660XBI(2) (note 3)

Repeal the note.

41 Section 660XBK

Repeal the section.

42 Subsection 660YBA(8)

Repeal the subsection.

43 Subsection 660YBA(9)

Repeal the subsection.

44 Subsection 660YBA(10)

Repeal the subsection.

45 Section 660YBC

Repeal the section.

46 Paragraph 666(1)(g)

Omit “and”.

47 Paragraph 666(1)(h)

Repeal the paragraph.

48 Paragraph 667(4)(c)

Omit “and”.

49 Paragraph 667(4)(d)

Repeal the paragraph.

50 Section 674

Repeal the section.

51 Paragraph 729(2)(f)

Omit “and”.

52 Paragraph 729(2)(fa)

Repeal the paragraph.

53 Subsection 729(5)

Repeal the subsection.

54 Paragraph 771HA(1)(d)

Repeal the paragraph, substitute:

- (d) throughout the period, the person is an Australian resident;
and

55 Subsection 771HA(1) (note 3)

Repeal the note.

56 Subsections 771HA(4) and (5)

Repeal the subsections.

57 After Division 1A of Part 2.16

Insert:

Division 1B—Time limit on grant of other special needs pensions

771PA Special needs pensions not to be granted after 20 September 2000

- (1) In spite of any other provision of this Part, a person is not to be granted a special needs age pension, a special needs disability pension or a special needs widow B pension unless:
 - (a) the person's claim for the pension is lodged, or is taken to have been lodged, on or before 20 September 2000; and
 - (b) the person qualifies for the pension on or before 20 September 2000.

58 Paragraph 774(b)

Omit "and".

59 Paragraph 774(c)

Repeal the paragraph.

60 Paragraph 778(g)

Omit “and”.

61 Paragraph 778(h)

Repeal the paragraph.

62 Paragraph 953(1)(e)

Repeal the paragraph.

63 Paragraph 953(2)(e)

Repeal the paragraph.

64 Subsection 953(2) (note 3)

Repeal the note.

65 Paragraph 954(1)(e)

Repeal the paragraph.

66 Subsection 954(1) (note 3)

Repeal the note.

67 Section 956

Repeal the section, substitute:

956 Absence from Australia

During any period of absence from Australia:

- (a) throughout which Division 2 of Part 4.2 applies to the person; and
- (b) that is before the end of the person’s portability period for carer allowance (within the meaning of that Division);

the person does not cease to be qualified for carer allowance merely because the care and attention of the care receiver or care receivers is not provided in a private home that is the residence of the person and the care receiver or care receivers.

68 Subsection 957(1)

Omit all the words after “merely”, substitute “because of that cessation”.

69 Paragraph 957(2)(c)

Omit “the person were in Australia and”.

70 Subsection 957(2)

Omit all the words after “merely”, substitute “because of the lack of receipt of that care and attention”.

71 Subparagraph 999(1)(d)(ii)

Repeal the subparagraph, substitute:

- (ii) satisfies subsection (1A).

72 After subsection 999(1)

Insert:

When person satisfies this subsection

(1A) A person satisfies this subsection if the person is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v), and either of the following applies:

- (a) the person is in Australia; or
- (b) the person:
 - (i) is temporarily absent from Australia for a period not exceeding 26 weeks; and
 - (ii) the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2.

73 Subparagraph 1035(1)(a)(iv)

Repeal the subparagraph.

74 Subparagraph 1035(1)(b)(iv)

Repeal the subparagraph.

75 Subparagraph 1035(1)(ba)(v)

Repeal the subparagraph.

76 Subparagraph 1035(1)(c)(iii)

Repeal the subparagraph.

77 Subparagraph 1035(1)(ca)(iii)

Repeal the subparagraph.

78 Subparagraph 1035(1)(d)(iii)

Repeal the subparagraph.

79 Subsection 1061G(1)

Omit all the words after “payable”, substitute “to the person if the person is not an Australian resident”.

80 Paragraph 1061R(a)

Repeal the paragraph.

81 Point 1064-C1

Omit all the words after “rate”, substitute “if the person is an Australian resident”.

82 Paragraph 1064-D1(e)

Repeal the paragraph, substitute:

(e) the rent is in respect of premises in Australia; and

83 Point 1064-H4

Repeal the point.

84 Point 1065-C1

Omit all the words after “rate”, substitute “if the person is an Australian resident”.

85 Point 1065-E3

Repeal the point.

86 Point 1066-C1

Omit all the words after “rate”, substitute “if the person is an Australian resident”.

87 Paragraph 1066-D1(d)

Repeal the paragraph, substitute:

(d) the rent is in respect of premises in Australia; and

88 Point 1066-H3

Repeal the point.

89 Point 1066A-D1

Omit all the words after “rate”, substitute “if the person is an Australian resident”.

90 Paragraph 1066A-EA2(g)

Repeal the paragraph, substitute:

(g) the rent is in respect of premises in Australia; and

91 Paragraph 1066A-EB2(h)

Repeal the paragraph, substitute:

(h) the rent is in respect of premises in Australia; and

92 Point 1066A-I3

Repeal the point.

93 Point 1066B-D1

Omit all the words after “rate”, substitute “if the person is an Australian resident”.

94 Point 1066B-F3

Repeal the point.

95 Point 1067G-C1

Omit all the words after “rate”, substitute “the person has a temporary incapacity exemption under section 542A”.

96 Paragraph 1067G-D1(f)

Repeal the paragraph, substitute:

(f) the rent is in respect of premises in Australia throughout the period; and

97 Point 1067G-K5

Repeal the point.

98 Paragraph 1067L-C1(a)

Repeal the paragraph.

99 Point 1067L-F5

Repeal the point.

100 Paragraph 1068-D1(b)

Repeal the paragraph.

101 Paragraph 1068-F1(d)

Repeal the paragraph, substitute:

- (d) the rent is in respect of premises in Australia throughout the period.

102 Point 1068-J6

Repeal the point.

103 Point 1068A-C1

Omit all the words after “rate”, substitute “if the person is an Australian resident”.

104 Paragraph 1068A-D1(e)

Repeal the paragraph, substitute:

- (e) the rent is in respect of premises in Australia; and

105 Point 1068A-F3

Repeal the point.

106 Paragraph 1068B-E1(c)

Repeal the paragraph.

107 Paragraph 1068B-F1(f)

Repeal the paragraph, substitute:

- (f) the rent is in respect of premises in Australia throughout the period.

108 Heading to Division 1 of Part 4.2

Repeal the heading, substitute:

Division 1—Preliminary

109 Sections 1211, 1212 and 1213

Repeal the sections, substitute:

1211 Social Security (International Agreements) Act overrides Part

If the *Social Security (International Agreements) Act 1999* applies to the payment of a social security payment to a person, this Part does not apply to the payment to the person.

1212 Meaning of terms used in this Part

In this Part:

allegation authority means:

- (a) the Greek Australian Workers' Welfare Association of NSW;
or
- (b) the Commission of Enquiry established by Letters Patent of 9 February 1984 and 16 August 1984 to investigate matters known as the Greek conspiracy.

claim, in relation to a social security payment, includes a claim that is taken to have been made under a provision of the *Social Security (Administration) Act 1999*.

eligible medical treatment, in relation to a person, means medical treatment of a kind that is not available to the person in Australia.

entitled person means:

- (a) a woman who has at any time been an Australian resident for a period of, or for periods totalling, at least 10 years; or
- (b) a woman in receipt of a widow B pension because she was legally married and her husband died; or
- (c) a woman who was, or is the partner of a man who was, the subject of a recommendation by an allegation authority that resulted in payment of an amount of compensation by the Commonwealth to her or her partner.

Note: This definition is only relevant in relation to wife pension and widow B pension.

Reserve service means attending a training camp as a member of any of the following:

- (a) the Australian Naval Reserve;
- (b) the Naval Emergency Reserve Forces;
- (c) the Australian Army Reserve;
- (d) the Australian Air Force Reserve;
- (e) the Air Force Emergency Force;
- (f) the Army Individual Emergency Reserve.

1212A Meaning of *acute family crisis*

For the purposes of this Part, a person's absence is for the purpose of attending to an ***acute family crisis*** at a particular time if the Secretary is satisfied that the absence is, at that time:

- (a) for the purpose of visiting a family member who is critically ill; or
- (b) for the purpose of visiting a family member who is hospitalised with a serious illness; or
- (c) for a purpose relating to the death of a family member; or
- (d) for a purpose relating to a life-threatening situation (other than an illness referred to in paragraph (a) or (b)) that:
 - (i) is facing a family member; and
 - (ii) is beyond the control of the family member.

1212B Meaning of *humanitarian purpose*

For the purposes of this Part, a person's absence is for a ***humanitarian purpose*** at a particular time if the Secretary is satisfied that the absence is, at that time:

- (a) for the purpose of involvement in custody proceedings, criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person) or other legal proceedings; or
- (b) for purposes relating to the adoption of a child by the person; or
- (c) for a purpose specified in the regulations for the purposes of this paragraph.

1212C Meaning of *temporary absence*

For the purposes of this Part, a person's absence from Australia is temporary if, throughout the absence, the person does not cease to reside in Australia (within the meaning of subsection 7(3)).

1212D Part does not affect need for qualification

For the avoidance of doubt, nothing in this Part confers a right on a person to continue to be paid a social security payment if the person is not qualified for the payment (even if the person's failure to qualify is related to the absence).

110 Section 1213A

Repeal the section.

111 Sections 1215, 1216, 1216A, 1216B and 1217

Repeal the sections, substitute:

Division 2—Portability of social security payments

Subdivision A—Basic portability provisions

1213 Persons to whom Division applies

This Division applies to a person during a period (the *period of absence*) throughout which the person is continuously absent from Australia, if:

- (a) immediately before the period of absence commenced, the person was receiving a social security payment (the *payment*) mentioned in column 2 of the table at the end of section 1217; or
- (b) during the period of absence, the person's claim for such a payment is granted under the *Social Security (Administration) Act 1999*.

1214 Some payments generally portable with no time limit

- (1) If the person's maximum portability period for the payment is an unlimited period, the person's right to continue to be paid the

payment throughout the period of absence is not affected merely by the absence.

Note 1: Section 1217 defines the person's *maximum portability period* for the payment.

Note 2: However, the person's rate of payment may be affected after 26 weeks—see Division 3.

(2) This section is subject to section 1220.

1215 Some payments generally portable with time limit

(1) If the person's maximum portability period for the payment is not an unlimited period, the following rules apply:

- (a) throughout the person's portability period for the payment, the person's right to continue to be paid the payment is not affected merely by the absence;
- (b) throughout so much (if any) of the period of absence as occurs after the end of the person's portability period for the payment, the payment is not payable to the person.

Note: Section 1217 defines the person's *maximum portability period* and *portability period* for the payment.

(2) This section is subject to Subdivision B of this Division (which contains exceptions) and section 1220.

1216 Amounts added to rate

During the period of absence, remote area allowance, rent assistance, incentive allowance and pharmaceutical allowance are not to be added to the person's rate under Chapter 3 after whichever of the following times applies:

- (a) if the person's maximum portability period for the payment is an unlimited period—26 weeks after the period of absence commenced;
- (b) otherwise—the end of the person's portability period for the payment.

1217 Meaning of *maximum portability period*, *allowable absence* and *portability period*

Meaning of maximum portability period

- (1) The person's ***maximum portability period*** for the payment is the period referred to in column 5 of the table at the end of this section (the ***table***) that is applicable to:
- (a) the payment (as specified in column 2 of the table); and
 - (b) the class of persons to which the person belongs (as specified in column 3 of the table).

Meaning of allowable absence

- (2) The person's absence is an ***allowable absence*** in relation to the payment at a particular time if, at that time, it is an absence specified in column 5 of the table that is applicable to:
- (a) the payment (as specified in column 2 of the table); and
 - (b) the class of persons to which the person belongs (as specified in column 3 of the table).

Meaning of portability period if unlimited maximum portability period

- (3) If the person's maximum portability period for the payment is an unlimited period, the person's ***portability period*** for the payment, in relation to the period of absence, is an unlimited period beginning at the commencement of the period of absence.

Meaning of portability period if maximum portability period limited

- (4) If the person's maximum portability period for the payment is a period of weeks, the person's ***portability period*** for the payment, in relation to the period of absence, is the period:
- (a) beginning at the commencement of the period of absence; and
 - (b) ending at the earlier of the following times:
 - (i) the first time during the period of absence at which the absence is not an allowable absence in relation to the payment;

- (ii) the end of the period of weeks that is person's maximum portability period for the payment.

Note: People will be required (under the *Social Security (Administration) Act 1999*) to notify changes in circumstance.

Persons who cease to be severely disabled

- (5) However, if:
- (a) the person was a severely disabled person at the commencement of the period of absence; and
 - (b) during the period of absence, the person ceased to be a severely disabled person;
- the person's portability period for disability support pension, in relation to the period of absence, is taken to have begun when the person ceased to be a severely disabled person.

Portability of social security payments				
Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
1	Age pension	All persons	Any absence	Unlimited period
2	Disability support pension	Severely disabled person	Any absence	Unlimited period
3	Disability support pension	Person other than severely disabled person	Any absence	26 weeks
4	Wife pension	Entitled person	Any absence	Unlimited period
5	Wife pension	Person other than entitled person	Any absence	26 weeks
6	Carer payment	All persons	Any temporary absence	26 weeks
7	Bereavement allowance	All persons	Any absence	Unlimited period

Portability of social security payments				
Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
8	Widow B pension	Entitled person	Any absence	Unlimited period
9	Widow B pension	Person other than entitled person	Any absence	26 weeks
10	Widow allowance	All persons	Any temporary absence	26 weeks
11	Parenting payment	All persons	Any temporary absence	26 weeks
12	Youth allowance	Person other than person undertaking full-time study	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	26 weeks
13	Youth allowance	Person undertaking full-time study	Any temporary absence	26 weeks (but see also section 1218)
14	Austudy payment	All persons	Any temporary absence	26 weeks (but see also section 1218)

Portability of social security payments				
Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
15	Newstart allowance	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	26 weeks
16	Mature age allowance and mature age partner allowance under Part 2.12A	All persons	Any temporary absence	26 weeks
17	Mature age allowance under Part 2.12B	All persons	Any temporary absence	26 weeks

Schedule 1 Amendment of the Social Security Act 1991

Portability of social security payments				
Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
18	Sickness allowance	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	26 weeks
19	Special benefit	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	26 weeks
20	Partner allowance	All persons	Any temporary absence	26 weeks
21	Carer allowance	All persons	Any temporary absence	26 weeks
22	Mobility allowance	All persons	Any temporary absence	26 weeks
23	Telephone allowance	All persons	Any temporary absence	26 weeks

Note: Double orphan pension is covered by the *Family Assistance Act 1999*.

Subdivision B—Exceptions to Subdivision A rules

1218 Exception—full-time students outside Australia for purposes of Australian course

- (1) This section applies if, immediately before the period of absence commenced:
 - (a) the person was undertaking full-time study as part of a course of education at an educational institution; and
 - (b) the person was receiving youth allowance or austudy payment.
- (2) The person's right to continue to be paid youth allowance or austudy payment is not affected merely by the person's absence throughout so much of the period of absence as is for the purpose of undertaking studies that form part of the course of education.
- (3) If the person returns to Australia for a period of 13 weeks or less, the return is taken not affect the continuity of the period of absence.

1218A Exception—Reserve service

- (1) This section applies if, immediately before the period of absence commenced, the person was receiving parenting payment, youth allowance, austudy payment, newstart allowance, mature age allowance or mature age partner allowance.
- (2) The person's right to continue to be paid the payment is not affected merely by the person's absence throughout so much of the period of absence as is for the purpose of undertaking Reserve service.

1218B Exception—waiting period in Australia before parenting payment is portable

If:

- (a) immediately before the period of absence commenced, the person was receiving parenting payment; and
 - (b) at a time not more than 26 weeks before the period of absence commenced, parenting payment had ceased to be payable to the person because:
-

- (i) the person's portability period for parenting payment in relation to another period of absence ended; or
- (ii) another absence had ceased to be an allowable absence for parenting payment;

parenting payment is not payable to the person during the period of absence.

1218C Extension of person's portability period

- (1) The Secretary may extend the person's portability period for the payment if the Secretary is satisfied that the person is unable to return to Australia because of any of the following events:
 - (a) a serious accident involving the person or a family member of the person;
 - (b) a serious illness of the person or a family member of the person;
 - (c) the hospitalisation of the person or a family member of the person;
 - (d) the death of a family member of the person;
 - (e) the person's involvement in custody proceedings in the country in which the person is located;
 - (f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
 - (g) robbery or serious crime committed against the person or a family member of the person;
 - (h) a natural disaster in the country in which the person is located;
 - (i) political or social unrest in the country in which the person is located;
 - (j) industrial action in the country in which the person is located;
 - (k) a war in the country in which the person is located.
 - (2) The Secretary must not extend the person's portability period under subsection (1) unless:
 - (a) the event occurred or began during the period of absence; and
 - (b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating in the event.
-

- (3) If the Secretary extends a person's portability period under subsection (1), the person's portability period for the payment, for the purposes of this Part, is the extended period.

112 Heading to Division 2 of Part 4.2

Repeal the heading.

113 Sections 1218, 1218A, 1218B, 1218C and 1219

Repeal the sections.

114 Paragraphs 1220(1)(d) and (e)

Omit "12 months", substitute "2 years".

115 Paragraph 1220(1)(e)

Omit "and" (last occurring).

116 Paragraph 1220(1)(g)

Repeal the paragraph.

117 Paragraphs 1220(2)(d) and (e)

Omit "12 months", substitute "2 years".

118 Paragraph 1220(2)(e)

Omit "and" (last occurring).

119 Paragraph 1220(2)(g)

Repeal the paragraph.

120 Subsection 1220(3)

Repeal the subsection.

121 Sections 1220A and 1220B

Repeal the sections, substitute:

1220A Proportionality—age pension rate

A person's rate of age pension is to be calculated using the Pension Portability Rate Calculator at the end of section 1221 if:

- (a) the person has been continuously absent from Australia, throughout a period (the *period of absence*) of more than 26 weeks; and
- (b) either:
 - (i) immediately before the period of absence commenced, the person was receiving the age pension; or
 - (ii) during the period of absence, the person's claim for the age pension is granted under the *Social Security (Administration) Act 1999*.

1220B Proportionality—disability support pension rate for a severely disabled person

- (1) The rate of disability support pension for a severely disabled person is to be calculated using the Pension Portability Rate Calculator at the end of section 1221 if:
 - (a) the person has been continuously absent from Australia, throughout a period (the *period of absence*) of more than 26 weeks; and
 - (b) either:
 - (i) immediately before the period of absence commenced, the person was receiving the disability support pension; or
 - (ii) during the period of absence, the person's claim for the disability support pension is granted under the *Social Security (Administration) Act 1999*.
- (2) Subsection (1) does not apply to a person if the person became qualified to receive the disability support pension because the person became unable to work or permanently blind while the person was an Australian resident.

122 Subsections 1221(1), (2) and (3)

Repeal the subsections, substitute:

1221 Proportionality—wife pension and widow B pension rate for entitled persons

- (1) An entitled person's rate of wife pension or widow B pension is to be calculated using the Pension Portability Rate Calculator at the end of this section if:
 - (a) the person has been continuously absent from Australia, throughout a period (the *period of absence*) of more than 26 weeks; and
 - (b) immediately before the period of absence commenced, the person was receiving the wife pension or widow B pension.
- (2) Subsection (1) does not apply to a person if:
 - (a) the person became qualified to receive the pension because of the death of the person's partner; and
 - (b) immediately before the death of the partner, the partner was an Australian resident.

123 After point 1221-A1

Insert in Module A:

Limit in portability rate

1221-A2 If a person's portability rate as calculated under point 1221-A1 would exceed the rate (the *notional rate*) that would be the person's notional domestic rate under that point if the person had a residence factor of 1, the person's portability rate is the rate that equals the notional rate.

124 Point 1221-B2

Omit "to 1221-B9", substitute "and 1221-B4".

125 Points 1221-B5, 1221-B6, 1221-B7, 1221-B8 and 1221-B9

Repeal the points.

126 Schedule 1A

Insert in the appropriate numerical position:

128 Saving provision—portability rules relating to rates of pension

Despite the amendments of sections 1213A, 1215, 1216, 1220A, 1220B and 1221 of this Act made by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, if:

- (a) a person was absent from Australia immediately before 20 September 2000; and
- (b) at a time (the *post-start time*) after 20 September 2000, the person had not returned to Australia for a continuous period of 26 weeks or more since 20 September 2000;

those provisions continue to apply to the person at the post-start time as if those amendments had not been made.

129 Application of amendments relating to short residence

Despite the amendments of section 1220 of this Act made by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, that section, as in force immediately before 20 September 2000, continues to apply to a pension or allowance granted before 20 September 2000 as if those amendments had not been made.

130 Saving provision—other portability rules

Despite the amendments of this Act made by Part 1 of Schedule 1 to the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, other than:

- (a) the amendments mentioned in clauses 128 and 129 of this Schedule; and
- (b) the amendments of sections 1216B, 1218, 1218A, 1218B, 1218C and 1219; and
- (c) the amendment of Module A of the Rate Calculator at the end of section 1221;

if:

- (d) a person was absent from Australia immediately before 20 September 2000; and
 - (e) at a time (the *post-start time*) after 20 September 2000, the person had not returned to Australia since 20 September 2000;
-

this Act continues to apply to the person at the post-start time as if the amendments (other than those mentioned in paragraphs (a) to (c)) had not been made.

Part 2—Pension bonus

127 Paragraph 93H(b)

Repeal the paragraph, substitute:

- (b) if the person is permanently blind—the sum of:
 - (i) the person's maximum basic rate under Table B in point 1065-B1; and
 - (ii) the person's pension supplement worked out under point 1065-BA2;calculated in each case as at the date of grant of the age pension.

128 Paragraphs 93J(3)(a) and (b)

Repeal the paragraphs, substitute:

- (a) if the person is not permanently blind—the sum of:
 - (i) the adjusted percentage of the person's maximum basic rate under Table B in point 1064-B1; and
 - (ii) the person's pension supplement worked out under point 1065-BA2;calculated in each case as at the date of grant of the age pension and assuming that the person was not a member of a couple at that date; or
- (b) if the person is permanently blind—the sum of:
 - (i) the person's maximum basic rate under Table B in point 1065-B1; and
 - (ii) the person's pension supplement worked out under point 1065-BA2;calculated in each case as at the date of grant of the age pension and assuming that the person was not a member of a couple at that date.

129 Paragraphs 93J(4)(a) and (b)

Repeal the paragraphs, substitute:

- (a) if the person is not permanently blind—the sum of:
 - (i) the adjusted percentage of the person's maximum basic rate under Table B in point 1064-B1; and

- (ii) the person's pension supplement worked out under point 1064-BA2;
calculated in each case as at the date of grant of the age pension and assuming that the person was a member of a couple at that date; or
- (b) if the person is permanently blind—the sum of:
 - (i) the person's maximum basic rate under Table B in point 1065-B1; and
 - (ii) the person's pension supplement worked out under point 1065-BA2;
calculated in each case as at the date of grant of the age pension and assuming that the person was a member of a couple at that date.

Part 3—Retirement assistance for farmers

130 Paragraphs 1185K(4)(a) and (b)

Repeal the paragraphs, substitute:

- (a) if the person was a member of a couple at any time during the 3 years immediately before the operative day—an amount equal to twice the sum of:
 - (i) the amount that was, on the operative day, the maximum basic rate for a partnered person under Module B of Pension Rate Calculator A in section 1064; and
 - (ii) the amount that was, on the operative day, the person's pension supplement worked out under point 1064-BA2; or
- (b) if paragraph (a) does not apply—an amount equal to the sum of:
 - (i) the amount that was, on the operative day, the maximum basic rate for a person who is not a member of a couple under Module B of Pension Rate Calculator A in section 1064; and
 - (ii) the amount that was, on the operative day, the person's pension supplement worked out under point 1064-BA2.

Part 4—Claiming unclaimed overseas entitlements

131 Subsection 23(1) (definition of *CFP country*)

Repeal the definition.

132 Section 38A

Repeal the section.

133 Schedule 1A

Insert in the appropriate numerical position:

131 Certain payments not recoverable

An amount paid to a person under this Act is not recoverable from the person if:

- (a) the amount was not payable because the person, or the person's partner, had received a comparable foreign payment; and
- (b) during the period beginning on 20 September 2000 and ending on 19 January 2001, the person gave notice to the Secretary of any comparable foreign payment which he or she had received or was receiving; and
- (c) the amount was paid before the person gave notice as mentioned in paragraph (b); and
- (d) before receiving that notice, the Secretary was unaware that the person, or the person's partner, had received or was receiving the comparable foreign payment.

Part 5—Simplifying qualifying residence

134 Subsection 7(1) (definition of *exempt resident*)

Repeal the definition.

135 Subsection 7(1) (definition of *former exempt resident*)

Repeal the definition.

136 Subsection 7(1) (definition of *qualifying residence exemption*)

Omit “(6A)”, substitute “(6AA)”.

137 Subsection 7(1) (definition of *special purpose visa*)

Repeal the definition.

138 Paragraph 7(2)(b) (note)

Omit “, permanent visa and special purpose visa”, substitute “and permanent visa”.

139 Subparagraph 7(2)(b)(iv)

Repeal the subparagraph.

140 Subsection 7(4A)

Repeal the subsection.

141 Paragraphs 7(6AA)(a), (c), (d) and (e)

Repeal the paragraphs.

142 Subsection 7(6A)

Repeal the subsection.

143 Subsection 7(6C)

Repeal the subsection.

144 Subsection 7(6D)

Omit “subsections (6AA) and (6A)”, substitute “subsection (6AA)”.

145 Subsection 7(6F)

After “under”, insert “paragraph (6AA)(f) or”.

146 Subsection 23(1) (definition of *inhabitant of Australia*)

Repeal the definition.

147 Subsection 23(13)

Repeal the subsection.

148 Section 25A

Repeal the section.

149 At the end of subsection 201AA(5)

Add:

; or (d) the person holds a visa that is in a class of visas determined in writing by the Minister for the purposes of this paragraph.

150 Subparagraph 315(1)(d)(ii)

Repeal the subparagraph, substitute:

(ii) the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks; or

151 Subparagraph 315(1)(d)(iii)

Repeal the subparagraph.

152 Subparagraph 408BA(2)(d)(ii)

Repeal the subparagraph, substitute:

(ii) she has 10 years qualifying Australian residence; or

153 Subsection 660YCFA(3)

Repeal the subsection.

154 Subsection 660YCFB(2)

Repeal the subsection.

155 Subsection 660YCFB(3)

Omit “If subsection (2) does not apply, the”, substitute “The”.

156 Subparagraphs 729(2)(f)(ii), (iii) and (iv)

Repeal the subparagraphs.

157 Subsection 729(2) (note 2)

Repeal the note.

158 Paragraphs 739A(1)(c) and (d)

Repeal the paragraphs.

159 Subsection 739A(2)

Omit all the words after “holder”, substitute “of a visa that is in a class of visas determined by the Minister for the purposes of this subsection, the person is subject to a newly arrived resident’s waiting period”.

160 Paragraph 739A(3)(b)

Repeal the paragraph, substitute:

- (b) before, on or after the commencement of this subsection, the person applies for a visa that is in a class of visas determined by the Minister for the purposes of this paragraph;

161 Paragraph 739A(4)(b)

Repeal the paragraph, substitute:

- (b) before, on or after the commencement of this subsection, the person was the holder of a visa that is in a class of visas determined by the Minister for the purposes of this paragraph;

162 Subsection 739A(6)

Repeal the subsection, substitute:

- (6) Neither subsection (1) nor (2) applies to a person if the person holds, or was the former holder of, a visa in a class of visas determined by the Minister for the purposes of this subsection.

163 At the end of section 739A

Add:

- (8) A determination under paragraph (1)(e), subsection (2), paragraph (3)(b), paragraph (4)(b) or subsection (6) is a disallowable

instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

164 Subsections 771HNA(3) and 771HNB(2)

Repeal the subsections.

165 Subsection 771HNB(3)

Omit “If subsection (2) does not apply, the”, substitute “The”.

Schedule 2—Amendment of the Social Security (Administration) Act 1999

Part 1—Tax file numbers

1 After section 204

Insert:

204A Use of tax file numbers

- (1) The Secretary may require the Commissioner of Taxation to provide the Secretary with information about people, including tax file numbers, that was contained in TFN declarations lodged with the Commissioner under Division 3 of Part VA of the *Income Tax Assessment Act 1936*.
- (2) Information provided to the Secretary under a requirement made under subsection (1) may be used only for the following purposes:
 - (a) to detect cases in which amounts of social security payments under the social security law have been paid when they should not have been paid;
 - (b) to verify, in respect of persons who have made claims for social security payments under the social security law, the qualification of those persons for those payments;
 - (c) to establish whether the rates at which social security payments under the social security law are being, or have been, paid are, or were, correct.

Part 2—Claiming unclaimed overseas pensions

2 Paragraph 66(2)(b)

Omit “CFP”, substitute “foreign”.

3 Paragraph 66(3)(b)

Omit “CFP”, substitute “foreign”.

4 Subsections 82(1) and (2)

After “cancelled”, insert “or suspended”.

Note: The heading to section 82 is altered by inserting “**or suspension**” after “**Cancellation**”.

Part 3—Beneficiaries leaving Australia

5 Subsection 109(6)

Repeal the subsection.

6 Subsection 118(10)

Repeal the subsection.

7 Subsection 135(1)

Omit “subsections (3) and (4) and”, substitute “subsection (3) and subsection”.

8 Subsection 135(4)

Repeal the subsection.

9 Paragraph 144(q)

Repeal the paragraph.

10 Paragraph 151(2)(f)

Repeal the paragraph.

11 Section 190

Repeal the section.

12 Subsection 234(3)

Repeal the subsection, substitute:

- (3) The Secretary cannot delegate to anyone except the CEO the Secretary’s power under paragraph 1314(1)(b) of the 1991 Act.

13 Subsection 234(4)

Omit “subsection 1218A(2) or”.

14 Saving provision

Despite the amendments of the *Social Security (Administration) Act 1999* made by this Part (other than the amendments made by items 11, 12 and 13), that Act continues to apply, after 20 September 2000, to a decision made before that time under section 1218 of the *Social Security Act 1991*, as if those amendments had not been made.

Schedule 3—Amendment of the Veterans' Entitlements Act 1986

1 Subparagraphs 5N(2)(a)(i) and (ia)

Before “occupied”, insert “that are in Australia and are”.

2 Subparagraph 5N(2)(a)(ii)

After “village”, insert “in Australia”.

3 Subparagraph 5N(2)(a)(iii)

After “care is”, insert “a place in Australia that is”.

4 Subparagraph 5N(2)(a)(iv)

After “premises”, insert “in Australia”.

5 Subparagraph 5N(2)(a)(v)

After “site”, insert “in Australia”.

6 Subparagraph 5N(2)(a)(vi)

After “moor”, insert “in Australia”.

7 Subsection 5Q(1)

Insert:

temporarily, in relation to a departure or absence from Australia, has a meaning affected by subsection (3) or (4), as the case requires.

8 Subsection 5Q(3)

Repeal the subsection, substitute:

- (3) In determining whether a person has left Australia temporarily or otherwise, regard is to be had to the following:
- (a) the purpose for which the person left Australia;
 - (b) the intended duration of the person's absence from Australia;
 - (c) the frequency of the occasions on which the person has left Australia.

- (4) In determining whether a person is absent from Australia temporarily or otherwise, regard is to be had to the following:
- (a) the purpose of the absence;
 - (b) the intended duration of the absence;
 - (c) the frequency of such absences.

9 Paragraph 5R(12)(c)

Omit "(but still in Australia)".

10 Subsection 58K(1) (note)

Repeal the note, substitute:

- Note 1: Rent assistance is not payable to a person who is absent from Australia otherwise than temporarily. If a person is absent from Australia temporarily, rent assistance is not payable for any part of the absence in excess of 26 weeks.
- Note 2: A person who is absent from Australia may not be eligible for a pharmaceutical allowance (see section 118A and point SCH6-D2 for a person leaving Australia on or after 20 September 2000 or see that section and point as previously in force for a person who left Australia before that date).

11 Subsection 118A(1)

After "subsections (2)", insert ", (2A)".

12 Subsection 118A(2)

Repeal the subsection, substitute:

- (2) A person who leaves Australia otherwise than temporarily is not eligible for a pharmaceutical allowance after the day on which he or she left Australia.
- (2A) A person who is temporarily absent from Australia and has been so absent for more than 26 weeks is not eligible for a pharmaceutical allowance after the first 26 weeks of the absence.

13 Subsection 118A(4)

Repeal the subsection.

14 After subsection 118Q(3)

Insert:

People leaving Australia otherwise than temporarily

- (3A) A person who leaves Australia otherwise than temporarily is not eligible for a telephone allowance on or after the next telephone allowance payday.

Temporary absence from Australia

- (3B) A person who is temporarily absent from Australia and has been so absent for more than 26 weeks is not eligible for an instalment of telephone allowance that, apart from this subsection, would be payable on a telephone allowance payday occurring after the first 26 weeks of the absence.

15 Paragraph SCH6-C3(e)

Repeal the paragraph, substitute:

(e) either:

- (i) the person is in Australia; or
- (ii) the person is temporarily absent from Australia and the period in respect of which the rent assistance is sought is not a period after the first 26 weeks of the absence; and

16 Point SCH6-D2

Repeal the point, substitute:

No pharmaceutical allowance during certain periods of absence from Australia

- SCH6-D2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is not eligible to receive the allowance because of subsection 118A(2) or (2A).

17 Point SCH6-G3

Repeal the point, substitute:

Eligibility of FA children who are outside Australia

- SCH6-G3(1) If an FA child leaves Australia otherwise than temporarily, additional allowance is not payable for the child on or after the day on which he or she left Australia.

- (2) If an FA child is temporarily absent from Australia for more than 8 weeks, additional allowance is not payable for the child after the first 8 weeks of the absence.

18 Application of amendments

The amendments made by this Part apply only to people leaving Australia on or after 20 September 2000, and the provisions of the *Veterans' Entitlements Act 1986* that are amended by this Part continue to apply, as if the amendments had not been made, to people leaving Australia before that date.

Schedule 4—Amendment of the Income Tax Assessment Act 1936

1 At the end of section 202

Add:

; and (o) to facilitate the administration of section 204A of the *Social Security (Administration) Act 1999*.

Schedule 5—Amendment of the Taxation Administration Act 1953

1 Paragraphs 8WB(1)(d) and (e)

Omit “or (n)”, substitute “, (n) or (o)”.

Schedule 6—Amendment of the Health Insurance Act 1973

1 Subparagraphs 5BA(4)(b)(iv), (v) and (vi)

Repeal the subparagraphs, substitute:

- (iv) a person who has a qualifying residence exemption.

**Schedule 7—Amendment of the Social
Security (Administration and
International Agreements)
(Consequential Amendments) Act 1999**

1 Item 34 of Schedule 1

Repeal the item, substitute:

**34 Section 201AAA (the section 201AAA renumbered by item
2 of Schedule 5 to the *Further 1998 Budget Measures
Legislation Amendment (Social Security) Act 1999*)**

Repeal the section.

2 Item 117 of Schedule 1

Repeal the item, substitute:

**117 Section 771HNC (the section 771HNC renumbered by
item 34 of Schedule 5 to the *Further 1998 Budget
Measures Legislation Amendment (Social Security) Act
1999*)**

Repeal the section.

Schedule 8—Amendment of the A New Tax System (Family Assistance) Act 1999

1 Subparagraph 21(1)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) satisfies subsection (1A); and

2 After subsection 21(1)

Insert:

When individual satisfies this subsection

(1A) An individual satisfies this subsection if the individual is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the *Social Security Act 1991*, and either of the following applies:

- (a) the individual is in Australia; or
- (b) the individual:
 - (i) is temporarily absent from Australia for a period not exceeding 26 weeks; and
 - (ii) the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

3 Subparagraph 42(1)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) satisfies subsection (1A); or

4 After subsection 42(1)

Insert:

When individual satisfies this subsection

(1A) An individual satisfies this subsection if the individual is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the *Social Security Act 1991*, and either of the following applies:

- (a) the individual is in Australia; or

(b) the individual:

- (i) is temporarily absent from Australia for a period not exceeding 26 weeks; and
- (ii) the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

5 Subparagraph 44(1)(d)(ii)

Repeal the subparagraph, substitute:

- (ii) satisfies subsection (1A); or

6 After subsection 44(1)

Insert:

When individual satisfies this subsection

(1A) An individual satisfies this subsection if the individual is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the *Social Security Act 1991*, and either of the following applies:

- (a) the individual is in Australia; or
- (b) the individual:
 - (i) is temporarily absent from Australia for a period not exceeding 26 weeks; and
 - (ii) the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

7 Subparagraph 45(1)(f)(ii)

Repeal the subparagraph, substitute:

- (ii) satisfies subsection (1A); or

8 After subsection 45(1)

Insert:

When individual satisfies this subsection

(1A) An individual satisfies this subsection if the individual is the holder of a visa determined by the Minister for the purposes of

subparagraph 729(2)(f)(v) of the *Social Security Act 1991*, and either of the following applies:

- (a) the individual is in Australia; or
- (b) the individual:
 - (i) is temporarily absent from Australia for a period not exceeding 26 weeks; and
 - (ii) the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

9 After section 63

Insert:

63A Secretary may extend 26 week period of absence from Australia

- (1) The Secretary may extend the 26 week period (the *initial period*) referred to in subsection 62(2) or 63(2) if the Secretary is satisfied that the individual mentioned in subsection 62(2) or the FTB child mentioned in subsection 63(2) (in each case, the *person*) is unable to return to Australia within that period because of any of the following events:
 - (a) a serious accident involving the person or a family member of the person;
 - (b) a serious illness of the person or a family member of the person;
 - (c) the hospitalisation of the person or a family member of the person;
 - (d) the death of a family member of the person;
 - (e) the person's involvement in custody proceedings in the country in which the person is located;
 - (f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
 - (g) robbery or serious crime committed against the person or a family member of the person;
 - (h) a natural disaster in the country in which the person is located;

- (i) political or social unrest in the country in which the person is located;
 - (j) industrial action in the country in which the person is located;
 - (k) a war in the country in which the person is located.
- (2) The Secretary must not extend the initial period under subsection (1) unless:
- (a) the event occurred or began during the initial period; and
 - (b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating in the event.

Schedule 9—Amendment of the Social Security (International Agreements) Act 1999

1 At the end of section 13

Add:

- (2) If a person's international agreement portability rate as calculated under subsection (1) would exceed the rate (the *notional rate*) that would be the person's notional agreement pension rate under that subsection if the person had a residence factor of 1, the person's international agreement portability rate is the rate that equals the notional rate.

Schedule 10—Amendment of the Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999

1 Item 12 of Schedule 2

Omit “Division 6”, substitute “Division 5”.

2 Item 15 of Schedule 2

Omit “Division 5”, substitute “Division 4”.

3 Item 21 of Schedule 2

Omit “Subdivision E”, substitute “Subdivision F”.

4 Item 22 of Schedule 2

Omit “Division 6”, substitute “Division 5”.

5 Item 28 of Schedule 2

Omit “Division 5”, substitute “Division 4”.

6 Item 29 of Schedule 2

Omit “Subdivision AA of Division 9”, substitute “Division 4”.

7 Item 35 of Schedule 2

Omit “Division 7”, substitute “Division 6”.

8 Item 40 of Schedule 2

Omit “Division 5”, substitute “Division 4”.