



# **Social Security (Non-Budget Measures) Legislation Amendment Act 1995**

**No. 105 of 1995**

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**An Act to amend the law relating to social security, and for  
related purposes**

*[Assented to 29 September 1995]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Social Security (Non-Budget Measures) Legislation Amendment Act 1995*.

### **Commencement**

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

**(2)** Subdivision A of Division 2 of Part 2 is taken to have commenced on 1 July 1993.

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(3) Sections 8 and 9 are taken to have commenced on 1 July 1995.

(4) Section 10 is taken to have commenced on 1 April 1993.

(5) Division 5 of Part 2 is taken to have commenced on 20 September 1994, immediately after Part 3 of the *Social Security (Home Child Care and Partner Allowances) Legislation Amendment Act 1994*.

(6) Paragraphs 17(c) and (d) and section 18 commence on 1 January 1996.

(7) Division 15 of Part 2 is taken to have commenced on 29 November 1993.

(8) Subdivision R of Division 18 of Part 2 commences on 1 July 1995.

(9) Division 18 of Part 2 commences on 20 March 1995.

(10) Paragraph 49(a) and Part 1 of the Schedule are taken to have commenced on 12 March 1992.

(11) Paragraph 49(b) and Part 2 of the Schedule are taken to have commenced on 1 July 1992.

(12) Paragraph 49(c) and Part 3 of the Schedule are taken to have commenced on 28 January 1993.

(13) Paragraph 49(d) and Part 4 of the Schedule are taken to have commenced on 1 March 1993.

(14) Paragraph 49(e) and Part 5 of the Schedule are taken to have commenced on 24 December 1993.

(15) Paragraph 49(f) and Part 6 of the Schedule are taken to have commenced on 1 January 1994.

**PART 2—AMENDMENTS OF THE SOCIAL SECURITY  
ACT 1991**

*Division 1—Preliminary*

**Principal Act**

3. In this Part, “**Principal Act**” means the *Social Security Act 1991*<sup>1</sup>.

*Division 2—Carer pension*

*Subdivision A—Qualification*

**Qualification for carer pension**

4. Section 198 of the Principal Act is amended by inserting after subsection (1A):

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“(1B) Subject to subsection (1C), if:

- (a) a person (the ‘carer’) is personally providing constant care for a severely handicapped person; and
- (b) the handicapped person is temporarily absent from Australia for a period of not more than 3 months; and
- (c) the carer accompanies the handicapped person on his or her absence from Australia;

the carer does not cease to be qualified for a carer pension merely because of that absence from Australia.

“(1C) If, during a calendar year, the carer has accompanied the handicapped person outside Australia on more than one occasion, the carer ceases to be qualified for carer pension under subsection (1B) in that calendar year after he or she has, during that calendar year, qualified for carer pension under that subsection for periods that together add up to 3 months.”.

***Subdivision B—Employment entry payment for carer pension recipients***

**Insertion of section**

**5.** After section 664H of the Principal Act the following sections are inserted:

**Carer pension recipients**

“664HA.(1) A person is qualified for an employment entry payment under this section if:

- (a) the person’s income from employment rises (including the case where a person commences employment); and
- (b) immediately before the rise in the person’s income from employment, the person was receiving a carer pension; and
- (c) because of the rise in the person’s income from employment, the person’s income from employment exceeds the threshold amount; and
- (d) the person’s income from employment is, in the Secretary’s opinion, likely to exceed the threshold amount for more than 4 weeks; and
- (e) the person has not, within the last 12 months, received a payment under this Part.

“(2) If the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed or the person’s earnings are to be increased; and
- (b) on the start of that employment or increase in earnings, the person would, but for receiving a payment under this subsection, be qualified for a payment under subsection (1);

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the following provisions have effect:

- (c) subject to paragraph (d), the person is qualified for an employment entry payment, which is payable to the person at such time as the Secretary determines;
- (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.

“(3) The time determined under paragraph (2)(c) must not be more than 14 days before the person is to commence the employment or the person’s income from the employment is to rise.

“(4) In this section:

‘**threshold amount**’ means the maximum amount of ordinary income that a person receiving newstart allowance could earn, derive or receive without the allowance ceasing to be payable, if the person:

- (a) was not a member of a couple; and
- (b) was not receiving rent assistance; and
- (c) was not receiving remote area allowance; and
- (d) had turned 21 but had not turned 60; and
- (e) has no dependent children.

**Amount of section 664HA payment**

“664HB. The amount of an employment entry payment under section 664HA is \$100.00.”.

**Need for a claim**

6. Section 665 of the Principal Act is amended:

- (a) by omitting from subsection (1) “or 664G” and substituting “, 664G or 664HA”;
- (b) by omitting from subsection (3) “or 664G” and substituting “, 664G or 664HA”.

*Subdivision C—Education entry payment for carer pension recipients*

**Insertion of Division**

7. After section 665ZF of the Principal Act the following Division is inserted:

*“Division 8A—Carer pension recipients*

**Payment to a carer pension recipient**

“665ZFA. A person is qualified for an education entry payment under this section if:

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- (a) the person is receiving a carer pension; and
- (b) the person is qualified, or if he or she were not in receipt of financial supplement under the Student Financial Supplement Scheme would be qualified, to receive pensioner education supplement under the AUSTUDY scheme; and
- (c) either:
  - (i) the Secretary is satisfied that the person intends to enrol in a full-time or part-time course of education that is an approved course under the AUSTUDY scheme; or
  - (ii) the person is enrolled in such a course; and
- (d) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

**Amount of section 665ZFA payment**

“665ZFB. The amount of an education entry payment under section 665ZFA is \$200.

**Need for a claim**

“665ZFC. A person is not qualified for an education entry payment under section 665ZC unless:

- (a) the person makes a claim for the payment; and
- (b) the claim is in writing and in a form approved by the Secretary.

**Claim may be withdrawn**

“665ZFD.(1) A claimant for an education entry payment under this Division or a person on behalf of a claimant may withdraw a claim that has not been determined.

“(2) A claim that is withdrawn is taken not to have been made.

“(3) A withdrawal may be made orally or in writing.”.

***Division 3—Suspension and restoration of fringe benefits payable to disability support pensioner***

**Suspension may occur instead of automatic termination in some circumstances**

8. Section 139 of the Principal Act is amended:

(a) by inserting after subsection (2):

“(2A) If:

- (a) disability support pension ceases to be payable to a person because the rate of the pension is nil as a result of the income, or increased income, earned by the person from his or her employment; and

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- (b) the person has notified the Secretary about the income or increased income within the notification period referred to in paragraph 137(b);

the Secretary may determine:

- (c) that section 137 does not apply to the person's pension; and
- (d) that the person's pension is to be suspended.

Note: The determination to suspend is made under section 146.”;

- (b) by inserting in paragraphs (3)(a), (4)(a) and (5)(a) “or (2A)” after “(1)”.

### **Suspension may be taken to have occurred**

**9.** Section 140 of the Principal Act is amended by adding at the end:

“(2A) If:

- (a) disability support pension ceased to be payable to a person under section 137 because the rate of the pension was nil as a result of the income, or increased income, earned by the person from his or her employment; and
- (b) within the period of 2 years after the pension ceased to be payable, the income earned by the person from his or her employment is reduced to a rate that would not preclude the person from receiving disability support pension;

the Secretary may determine that the person is to be treated as if:

- (c) section 137 had not applied to the person's disability support pension; and
- (d) the disability support pension had been suspended under section 139.

“(2B) If:

- (a) the Secretary makes a determination under subsection (2A) in respect of a person; and
- (b) the person's partner had ceased to be qualified for wife pension or carer pension when disability support pension ceased to be payable to the person as mentioned in paragraph (2A)(a);

the Secretary may determine that the partner is to be treated as if the partner's wife or carer pension had not been cancelled but had been suspended under section 139.”.

### **Insertion of section**

**10.** After section 146T of the Principal Act the following section is inserted in Division 11 of Part 2.3:

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**12 month extension of fringe benefits—disability support pension ceasing to be payable because of employment income**

“146U. For the purposes of this Division, if:

- (a) a person has been receiving disability support pension; and
- (b) disability support pension ceases to be payable to the person because of the income, or increased income, earned by the person from his or her employment;

the person is taken to be receiving disability support pension for the period of 12 months after the pension ceased to be payable to the person.

Note: A person who is taken to be receiving disability support pension is qualified for fringe benefits under section 146R.”

***Division 4—Mobility allowance***

**Qualification for mobility allowance**

**11.** Section 1035 of the Principal Act is amended by inserting after paragraph (b):

“(ba) all the following apply:

- (i) the person is a handicapped person;
- (ii) the person is receiving job search allowance or newstart allowance, or youth training allowance under the *Student and Youth Assistance Act 1973*;
- (iii) the Secretary is of the opinion that:
  - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
  - (B) the person’s inability to use public transport without substantial assistance is because of the person’s physical or mental disability; and
- (iv) the person is not receiving an amount called the training component from the Employment Department;

Note: The training component is paid to a person to assist with his or her expenses in undertaking the job search activities.

- (v) the person is physically present in Australia;
- (vi) the person is an Australian resident;”

***Division 5—Partner allowance***

**Multiple entitlement exclusion**

**12.** Section 771HI of the Principal Act is amended by omitting subsection (3) and substituting:

“(3) A partner allowance is not payable to a person if the person is receiving a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.”

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**Provisional commencement day**

13. Section 771HN of the Principal Act is amended:

- (a) by omitting from subsection (1) “subsections (2), (3) and (4)” and substituting “this section”;
- (b) by omitting from subsection (4) “If” and substituting “Subject to subsection (5), if”;
- (c) by adding at the end:

*Partner receiving job search allowance etc.*

“(5) If a person makes a claim for partner allowance within 14 days after the person’s partner made a claim for another social security benefit, the person’s provisional commencement day is the same as the partner’s provisional commencement day in relation to the other benefit granted to the partner.”.

***Division 6—Sole parent pension***

***Family relationships definitions—couples***

14. Section 4 of the Principal Act is amended:

- (a) by inserting in the definition of “member of a couple” in subsection (1) “, (3A)” after “(3)”;
- (b) by inserting in paragraph (2)(a) “or indefinite” after “permanent”;
- (c) by omitting from subparagraph (2)(b)(i) “is living” and substituting “has a relationship”;
- (d) by omitting from subparagraph (2)(b)(iii) “subsection (3)” and substituting “subsections (3) and (3A)”;
- (e) by inserting after subsection (3):

“(3A) The Secretary must not form the opinion that the relationship between a person and his or her partner is a marriage-like relationship if the person is living separately and apart from the partner on a permanent or indefinite basis.”.

**Qualification for sole parent pension**

15. Section 249 of the Principal Act is amended:

- (a) by omitting subparagraph (1)(a)(iii);
- (b) by omitting from paragraph (1A)(a) “is living” and substituting “has a relationship”;
- (c) by adding at the end of subsection (1B) “and subsection 4(3A)”.

**Consequential amendments**

16.(1) Each of the following provisions of the Principal Act is amended by inserting “or indefinite” after “permanent” (wherever occurring):



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subsection 4(5)  
paragraph 4(9A)(c)  
paragraph 24(1)(b)  
subsection 263(2)  
subsections 264(3) and (4)  
subsection 282(2)  
subsections 283(3) and (4)  
subparagraph 296(3)(c)(ii).

(2) Section 4 of the Principal Act is amended by omitting from subsection (4) “is not living with the other person in a marriage-like relationship” and “is not living in a marriage-like relationship with the other person” and substituting in each case “does not have a marriage-like relationship with the other person”.

(3) Each of the following provisions is amended by omitting “is not living with the other person in a marriage-like relationship” and substituting “does not have a marriage-like relationship with the other person”:

subsection 264(2)  
subsection 283(2)  
subparagraph 296(3)(c)(i).

(4) Section 24 of the Principal Act is amended by omitting from paragraph (2)(a) “is living” and substituting “has a relationship”.

(5) Each of the following provisions of the Principal Act is amended by omitting “is living with the other person in a marriage-like relationship” and substituting “has a marriage-like relationship with the other person”:

subsection 264(1)  
subsection 283(1).

(6) Each of the following provisions of the Principal Act is amended by omitting paragraphs (a) and (b) and substituting:

“(a) a person has a relationship with a person of the opposite sex (**‘other person’**); and  
(b) the relationship between them is a marriage-like relationship in the Secretary’s opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));”:

subsection 1064(4)  
subsection 1066(3)  
subsection 1066A(5)  
subsection 1067(2)

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subsection 1067E(2)  
subsection 1068(2).

(7) Each of the following provisions of the Principal Act is amended by omitting paragraphs (a) and (b) and substituting:

- “(a) a person who is permanently blind has a relationship with a person of the opposite sex (**‘other person’**); and
- (b) the relationship between them is a marriage-like relationship in the Secretary’s opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));”:

subsection 1065(3)  
subsection 1066B(4).

*Division 7—Family payment*

*Subdivision A—Benchmarks for child payments*

**Family Payment Rate Calculator**

17. The Rate Calculator in section 1069 of the Principal Act is amended:
- (a) by omitting the amounts specified in column 3 of item 1, and column 3 of item 2, of Table B1 in point 1069-B1 and substituting “\$21.70” and “\$28.90” respectively;
  - (b) by omitting the amounts specified in column 3 of item 1, and column 3 of item 2, of Table D in point 1069-D23 and substituting “\$67.20” and “\$94.10” respectively;
  - (c) by omitting from Note 2 at the end of point 1069-D23 “16.2%” and substituting “16.6%”;
  - (d) by omitting from Note 3 at the end of point 1069-D23 “21.2%” and substituting “21.6%”;
  - (e) by omitting point 1069-D24.

**Adjustment of AFP child MBRs**

18. Section 1199 of the Principal Act is amended:
- (a) by omitting from subsection (1) “16.2” and substituting “16.6”;
  - (b) by omitting from Note 3 at the end of subsection (1) “16.2” (three times occurring) and substituting “16.6”;
  - (c) by omitting from subsection (3) “21.2” and substituting “21.6”;
  - (d) by omitting from Note 3 at the end of subsection (3) “21.2” (three times occurring) and substituting “21.6”.

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***Subdivision B—Backdating of entitlement in respect of adopted and additional children***

**Insertion of section**

**19.** After section 844 of the Principal Act the following section is inserted:

**Backdating—prospective adoption of child**

“844A.(1) If:

- (a) as part of the process for the adoption of a child by a person, the child is entrusted to the care of the person by an authorised party; and
- (b) the child is a dependent child of the person; and
- (c) the person lodges a claim for family payment within 13 weeks after the day (**‘placement day’**) on which the child became a dependent child of the person;

the person’s provisional commencement day is the placement day.

Note: For ‘authorised party’ see subsection (2)

“(2) In subsection (1):

**‘authorised party’**, in relation to the adoption of a child, means a person or agency that, under the law of the State, Territory or foreign country whose courts have jurisdiction in respect of the adoption, is authorised to conduct negotiations or arrangements for the adoption of children.”.

**Date of effect of favourable determination**

**20.** Section 887 of the Principal Act is amended:

- (a) by omitting from subsection (5) “If” and substituting “Subject to subsections (5A) and (5B), if”;
- (b) by inserting after subsection (5):

“(5A) If:

- (a) the favourable determination is made following the birth of a child; and
- (b) the recipient advised the Department of the birth of the child within 13 weeks after the date of the birth;

the determination takes effect on the date of the child’s birth.

“(5B) If:

- (a) as part of the process for the adoption of a child by the recipient, the child is entrusted to his or her care by an authorised party; and
- (b) the favourable determination is made because the child is an FP child of the recipient; and

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- (c) the recipient advised the Department of the circumstances in which the child became an FP child of the recipient within 13 weeks after the day ('placement day') on which the child became an FP child of the recipient;

the determination takes effect on the placement day.

Note: For 'authorised party' see subsection (10).";

- (c) by adding at the end:

“(10) In subsection (5B):

**'authorised party'**, in relation to the adoption of a child, means a person or agency that, under the law of the State, Territory or foreign country whose courts have jurisdiction in respect of the adoption, is authorised to conduct negotiations or arrangements for the adoption of children.”.

*Subdivision C—Fringe benefits*

**Exempt loan benefit**

**21.** Section 1157H of the Principal Act is amended:

- (a) by omitting subsections (1) and (2);

- (b) by omitting paragraph (3)(b) and substituting:

“(b) the loan is made for the sole purpose of enabling the employee to meet expenses incurred in performing the duties of his or her employment; and”;

- (c) by omitting from subparagraph (3)(d)(i) “, not later than 6 months after the loan is made,”;

- (d) by omitting from paragraph (4)(c) all the words from “loan” (first occurring) and substituting “amount of the advance”.

*Division 8—Sickness allowance*

**Ordinary waiting period**

**22.** Section 693 of the Principal Act is amended by adding at the end:

- “; or (f) the Secretary is satisfied that the person would suffer severe financial hardship if the person were subject to the ordinary waiting period.”.

*Division 9—Attendance requirements*

*Subdivision A—Job search allowance*

**Secretary may require a person to attend the Department or CES etc.**

**23.** Section 546C of the Principal Act is amended:

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- (a) by inserting after subparagraph (1)(b)(ii):
  - “(iia) attend a particular place for a particular purpose; or”;
- (b) by inserting after subparagraph (1)(c)(ii):
  - “(iia) attend the place nominated by the Secretary for the purpose specified in the notice; or”;
- (c) by inserting after subsection (1):
  - “(2) The Secretary may notify a person for the purposes of subsection (1) by sending a notice addressed to the person by pre-paid post to the postal address of the person last known to the Secretary. This subsection does not prevent the Secretary from notifying the person in any other way.”.

***Subdivision B—Newstart allowance***

**Secretary may require a person to attend the Department or CES etc.**

**24. Section 630C of the Principal Act is amended:**

- (a) by inserting after subparagraph (1)(b)(ii):
  - “(iia) attend a particular place for a particular purpose; or”;
- (b) by inserting after subparagraph (1)(c)(ii):
  - “(iia) attend the place nominated by the Secretary for the purpose specified in the notice; or”;
- (c) by inserting after subsection (1):
  - “(2) The Secretary may notify a person for the purposes of subsection (1) by sending a notice addressed to the person by pre-paid post to the postal address of the person last known to the Secretary. This subsection does not prevent the Secretary from notifying the person in any other way.”.

***Division 10—Training supplement payable only if training course undertaken with approval of Employment Secretary***

***Subdivision A—General***

**General definitions**

**25. Section 23 of the Principal Act is amended by inserting in subsection (1) the following definition:**

**“ ‘Employment Minister’ means the Minister administering the Employment Department;”.**

***Subdivision B—Job search training supplement***

**Job search training supplement**

**26. Section 560 of the Principal Act is amended:**

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- (a) by inserting in subsection (1) “, with the approval of the Employment Secretary,” after “undertaking”;
- (b) by inserting in subsection (1) “, or a labour market program” after “training” (first occurring);
- (c) by adding at the end:

“(8) The Employment Minister may determine in writing guidelines to be followed in approving, for the purposes of subsection (1), a person’s undertaking of a course of vocational training or a labour market program.”.

***Subdivision C—Newstart training supplement***

**Newstart training supplement**

27. Section 644 of the Principal Act is amended:

- (a) by inserting in subsection (1) “, with the approval of the Employment Secretary,” after “undertaking”;
- (b) by inserting in subsection (1) “, or a labour market program” after “training” (first occurring);
- (c) by adding at the end:

“(8) The Employment Minister may determine in writing guidelines to be followed in approving, for the purposes of subsection (1), a person’s undertaking of a course of vocational training or a labour market program.”.

***Subdivision D—Appropriation***

**Appropriation**

28. Section 1363 of the Principal Act is amended by omitting from subsection (2) all the words from and including “Parliament” and substituting “Parliament to the Employment Department for the purposes of Labour Market Program Assistance to Jobseekers and Industry”.

***Division 11—Notice of decisions***

**Notice of decisions under this Act**

29. Section 1302A of the Principal Act is amended by omitting from paragraph (1)(c) “address of the place of residence or business” and substituting “postal address”.

***Division 12—Unreasonable delay in entering into Job Search Activity Agreement or Newstart Activity Agreement***

**Job search activity agreements—failure to negotiate**

30. Section 525C of the Principal Act is amended by omitting paragraph (1)(b) and substituting:

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- “(b) because the person did not:
- (i) attend the negotiation of the agreement; or
  - (ii) respond to correspondence about the agreement; or
  - (iii) agree to terms of the agreement proposed by the CES;
- or for any other reason, the Secretary is satisfied that the person is unreasonably delaying entering into the agreement;”.

**Newstart activity agreements—failure to negotiate**

31. Section 607 of the Principal Act is amended by omitting paragraph (1)(b) and substituting:

- “(b) because the person did not:
- (i) attend the negotiation of the agreement; or
  - (ii) respond to correspondence about the agreement; or
  - (iii) agree to terms of the agreement proposed by the CES;
- or for any other reason, the Secretary is satisfied that the person is unreasonably delaying entering into the agreement;”.

***Division 13—Automatic rate reduction on failure to inform Department of payment for remunerative work***

***Subdivision A—Job search allowance***

**Repeal and substitution of section**

32. Section 583AA of the Principal Act is repealed and the following section is substituted:

**Automatic rate reduction—failure to inform Department of payment for remunerative work**

“583AA. If:

- (a) a person who is receiving job search allowance is given a notice under section 574; and
- (b) the notice requires the person to inform the Department of income for remunerative work undertaken by the person or the person’s partner; and
- (c) the person fails to notify the Department, in accordance with the notice, of income of that kind in respect of a particular period; and
- (d) immediately before the beginning of that period, the person’s earnings credit account balance is greater than nil; and
- (e) because of the income mentioned in paragraph (c):
  - (i) the person’s fortnightly rate of ordinary income exceeds the ordinary income free area; and

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(ii) the person's rate of allowance is to be reduced;  
the allowance is payable to the person at the reduced rate on and from the first day of that period.

Note 1: Income for remunerative work is taken into account in accordance with Benefit Rate Calculator A (Module H) or Benefit Rate Calculator B (Module G).

Note 2: Division 5 of Part 3.10 deals with earnings credit accounts."

***Subdivision B—Newstart allowance***

**Repeal and substitution of section**

**33.** Section 660FAA of the Principal Act is repealed and the following section is substituted:

**Automatic rate reduction—failure to inform Department of payment for remunerative work**

"660FAA. If:

- (a) a person who is receiving newstart allowance is given a notice under section 657; and
- (b) the notice requires the person to inform the Department of income for remunerative work undertaken by the person or the person's partner; and
- (c) the person fails to notify the Department, in accordance with the notice, of income of that kind in respect of a particular period; and
- (d) immediately before the beginning of that period, the person's earnings credit account balance is greater than nil; and
- (e) because of the income mentioned in paragraph (c):
  - (i) the person's fortnightly rate of ordinary income exceeds the ordinary income free area; and
  - (ii) the person's rate of allowance is to be reduced;

the allowance is payable to the person at the reduced rate on and from the first day of that period.

Note 1: Income for remunerative work is taken into account in accordance with Benefit Rate Calculator B (Module G).

Note 2: Division 5 of Part 3.10 deals with earnings credit accounts."

***Subdivision C—Sickness allowance***

**Repeal and substitution of section**

**34.** Section 728HAA of the Principal Act is repealed and the following section is substituted:

**Automatic rate reduction—failure to inform Department of payment for remunerative work**

"728HAA. If:



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- (a) a person who is receiving sickness allowance is given a notice under section 727; and
- (b) the notice requires the person to inform the Department of income for remunerative work undertaken by the person or the person's partner; and
- (c) the person fails to notify the Department, in accordance with the notice, of income of that kind in respect of a particular period; and
- (d) immediately before the beginning of that period, the person's earnings credit account balance is greater than nil; and
- (e) because of the income mentioned in paragraph (c):
  - (i) the person's fortnightly rate of ordinary income exceeds the ordinary income free area; and
  - (ii) the person's rate of allowance is to be reduced;

the allowance is payable to the person at the reduced rate on and from the first day of that period.

Note 1: Income for remunerative work is taken into account in accordance with Benefit Rate Calculator A (Module H) or Benefit Rate Calculator B (Module G).

Note 2: Division 5 of Part 3.10 deals with earnings credit accounts."

***Subdivision D—Partner allowance***

**Repeal and substitution of section**

**35.** Section 771NJ of the Principal Act is repealed and the following section is substituted:

**Automatic rate reduction—failure to inform Department of payment for remunerative work**

"771NJ. If:

- (a) a person who is receiving partner allowance is given a notice under section 771MC; and
- (b) the notice requires the person to inform the Department of income for remunerative work undertaken by the person or the person's partner; and
- (c) the person fails to notify the Department, in accordance with the notice, of income of that kind in respect of a particular period; and
- (d) immediately before the beginning of that period, the person's earnings credit account balance is greater than nil; and
- (e) because of the income mentioned in paragraph (c):
  - (i) the person's fortnightly rate of ordinary income exceeds the ordinary income free area; and
  - (ii) the person's rate of allowance is to be reduced;

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the allowance is payable to the person at the reduced rate on and from the first day of that period.

Note 1: Income for remunerative work is taken into account in accordance with Benefit Rate Calculator B (Module G).

Note 2: Division 5 of Part 3.10 deals with earnings credit accounts.”.

***Division 14—Information relating to seniors health card***

**General power to obtain information**

36. Section 1304 of the Principal Act is amended by adding at the end of subsection (1):

- “; or (e) whether a person who has made a claim for a seniors health card is qualified for the card; or  
(f) whether a person who has been granted a seniors health card is or was qualified for the card”.

***Division 15—Exchange trading systems***

***Income test definitions***

37. Section 8 of the Principal Act is amended:

(a) by adding at the end of subsection (8):

“(zl) if a person is a member of an approved exchange trading system—an amount credited to the person’s account for the purposes of the scheme in respect of any goods or services provided by the person to another member.

Note: For ‘approved exchange trading system’ see subsections (9) and (10).”;

(b) by adding at the end:

“(9) An exchange trading system is an arrangement between a number of persons (‘members’) under which each member may obtain goods or services from another member for consideration that is wholly or partly in kind rather than in cash. Each member has, for the purposes of the arrangement, an account:

(a) to which is credited:

(i) the amount representing the value of any goods or services provided by the member to another member;  
or

(ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash; and

(b) to which is debited:

(i) the amount representing the value of any goods or services supplied to the member by another member; or

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- (ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash.

“(10) An exchange trading system is an **approved exchange trading system** if the Secretary is satisfied that:

- (a) it is a local community-based system; and
- (b) its primary purpose is to help persons maintain their labour skills and keep them in touch with the labour market; and
- (c) it is not a system run by a person or organisation for profit.”.

*Division 16—Debt recovery*

**Debts arising under this Act and the 1947 Act**

**38.** Section 1223 of the Principal Act is amended:

- (a) by omitting subsections (5) and (6) and substituting:

*Amount calculated using incorrect maximum payment rate—no social security payment payable*

“(5) If:

- (a) an amount (the ‘**received amount**’) has been paid to a person by way of social security payment; and
- (b) the received amount was calculated by using a maximum payment rate that was not the maximum payment rate (the ‘**correct maximum payment rate**’) that should have been used in working out the rate of the person’s social security payment; and
- (c) the received amount should not have been paid because the rate of the person’s social security payment under this Act (that is, the rate worked out by using the correct maximum payment rate) was nil;

the received amount is a debt due to the Commonwealth.

“Note: A person’s maximum payment rate (except for family payment) is worked out by following the steps set out in the Method statement in Module A of each relevant Rate Calculator.

*Amount calculated using incorrect maximum payment rate—social security payment available*

“(6) If:

- (a) an amount (the ‘**received amount**’) has been paid to a person by way of social security payment; and

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- (b) the received amount was calculated by using a maximum payment rate that was not the maximum payment rate (the **'correct maximum payment rate'**) that should have been used in working out the rate of the person's social security payment; and
- (c) the received amount is greater than the amount (the **'correct amount'**) of social security payment that would have been paid to the person under this Act if the amount had been calculated by using the correct maximum payment rate;

the difference between the received amount and the correct amount is a debt due to the Commonwealth.

“Note: A person's maximum payment rate (except for family payment) is worked out by following the steps set out in the Method statement in Module A of each relevant Rate Calculator.”;

(b) by omitting paragraph (7)(b) and substituting:

“(b) when the amount was calculated;

- (i) an amount of remote area allowance was added to the rate of the person's social security payment when no such amount should have been added; or
- (ii) if the person was receiving a job search allowance—the rate of the person's job search allowance was increased by an amount of job search training supplement when that rate should not have been so increased; or
- (iii) if the person was receiving a newstart allowance—the rate of the person's newstart allowance was increased by an amount of newstart training supplement when that rate should not have been so increased.”;

(c) by adding at the end of subsection (7):

“Note: For 'job search training supplement' see section 560 and for 'newstart training supplement' see section 644.”;

(d) by omitting subsection (8) and substituting:

*Amount calculated using incorrect non-income/assets tested add-on amount—add-on amount payable*

“(8) If:

- (a) an amount (the **'received amount'**) has been paid to a person by way of social security payment; and
- (b) when the received amount was calculated:

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- (i) an amount of remote area allowance was added to the rate of the person's social security payment that was greater than the amount that should have been added under this Act; or
- (ii) if the person was receiving a job search allowance—the rate of the person's job search allowance was increased by an amount of job search training supplement that was greater than the amount by which it should have been so increased under this Act; or
- (iii) if the person was receiving a newstart allowance—the rate of the person's newstart allowance was increased by an amount of newstart training allowance that was greater than the amount by which it should have been so increased under this Act;

the difference between the received amount and the amount of social security payment that would have been paid to the person under this Act if the amount had been calculated by using the correct amount of remote area allowance, job search training supplement or newstart training supplement (as the case may be) is a debt due to the Commonwealth.”.

***Division 17—Waiver of debts***

**Application**

**39.** Section 1236A of the Principal Act is amended by omitting “and 1237A” and substituting “, 1237A and 1237AB”.

**Insertion of section**

**40.** After section 1237A of the Principal Act the following section is inserted:

**Secretary may waive debts of a particular class**

“1237AB.(1) The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover debts arising under or as a result of this Act that are included in a class of debts specified by the Minister by notice published in the *Gazette*.

“(2) A decision under subsection (1) takes effect:

- (a) if no day is specified in the decision—on the day on which the decision is made; or
- (b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

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- “(3) A notice referred to in subsection (1):
- (a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; and
  - (b) is deemed not to specify a class of debts for the purposes of that subsection before the expiration of the time within which the notice may be disallowed by each House of the Parliament.”.

***Division 18—Amendments consequential upon income support supplement becoming payable under the Veterans’ Entitlements Act***

**General definitions**

41. Section 23 of the Principal Act is amended by inserting in subsection (1):

“ ‘income support supplement’ means income support supplement under Part IIIA of the Veterans’ Entitlements Act;”.

**Qualification for carer pension**

42. Section 198 of the Principal Act is amended:

- (a) by omitting from subparagraph (1)(d)(i) “or a service pension” and substituting “, a service pension or income support supplement”;
- (b) by inserting in paragraph (1A)(b) “or income support supplement” after “pension”.

**Continuation of carer pension for bereavement period where person cared for dies**

43. Section 235 of the Principal Act is amended by inserting in paragraph (4)(a) “or IIIA” after “Part III”.

**Lump sum payable in some circumstances**

44. Section 236A of the Principal Act is amended by adding at the end of sub-subparagraph (1)(d)(ii)(C) “or income support supplement”.

**Qualification for payments under this Subdivision**

45. Section 237 of the Principal Act is amended by inserting in subparagraph (1)(d)(viii) “or income support supplement” after “pension”.

**Continued payment of partner’s pension or allowance**

46. Section 238 of the Principal Act is amended by inserting in paragraph (1)(b) “or income support supplement” and “or IIIA (as the case may be)” after “pension” (first occurring) and “Part III” respectively.

**Benefits under this Subdivision**

47. Section 242 of the Principal Act is amended:

- (a) by inserting in paragraph (1)(b) “or IIIA” after “Part III”;
- (b) by inserting in paragraph (2)(b) “or IIIA” after “Part III”.

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**Death of recipient**

48. Section 246 of the Principal Act is amended by inserting in sub-subparagraph (1)(b)(ii)(C) “or income support supplement” after “pension”.

*Division 19—Further amendments*

**Further amendments**

49. The Principal Act is amended:
- (a) as set out in Part 1 of the Schedule; and
  - (b) as set out in Part 2 of the Schedule; and
  - (c) as set out in Part 3 of the Schedule; and
  - (d) as set out in Part 4 of the Schedule; and
  - (e) as set out in Part 5 of the Schedule; and
  - (f) as set out in Part 6 of the Schedule; and
  - (g) as set out in Part 7 of the Schedule.

**PART 3—AMENDMENTS OF THE NATIONAL HEALTH  
ACT 1953**

**Principal Act**

50. In this Part, “Principal Act” means the *National Health Act 1953*<sup>2</sup>.

**Interpretation**

51. Section 4 of the Principal Act is amended by omitting paragraph (c) of the definition of “pensioner” in subsection (1) and substituting:

“(c) a person to whom or in respect of whom there is being paid an allowance under the *Tuberculosis Act 1948*;

and includes a person who is a pensioner because of section 4AAA or 4AAAB;”.

**Insertion of section**

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

**Former recipient of mature age allowance etc.**

“4AAAB. If:

- (a) a person has been receiving a mature age allowance or a mature age partner allowance (within the meaning of the *Social Security Act 1991*); and

Note: Such a person is a pensioner within the meaning of paragraph (a) of the definition of ‘pensioner’ in subsection 4(1).

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- (b) either:
    - (i) the person or the person's spouse commences employment; or
    - (ii) there is an increase in the ordinary income of the person or of the person's spouse from employment; and
  - (c) because of the employment or increase:
    - (i) the person ceases to be qualified for the allowance; or
    - (ii) the allowance ceases to be payable to the person;
- the person is a pensioner for the purpose of this Act for the period of 6 months after:
- (d) the person ceases to be qualified for the allowance; or
  - (e) the allowance ceases to be payable to the person.”.

### **Interpretation**

**53.** Section 84 of the Principal Act is amended by omitting paragraph (ab) of the definition of “concessional beneficiary” in subsection (1) and substituting:

“(ab) a person:

- (i) to whom, or in respect of whom, there is being paid a mobility allowance under the *Social Security Act 1991*; or
- (ii) who is qualified for such an allowance but to whom the allowance is not payable because of paragraph 1037(b) of that Act; or

Note: Section 1037 of the *Social Security Act 1991* provides:

‘1037. A mobility allowance is not payable to a person:

(a) .....

(b) if the person receives the benefit of an exemption under:

(i) item 135 or 135A of the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*; or

(ii) item 96 or 97 in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*; (other than a benefit in respect of parts for a motor vehicle)—during the period of 2 years starting on the day on which the person received the benefit of the exemption.’”.

## **PART 4—AMENDMENTS OF THE DATA-MATCHING PROGRAM (ASSISTANCE AND TAX) ACT 1990**

### **Principal Act**

**54.** In this Part, “Principal Act” means the *Data-matching Program (Assistance and Tax) Act 1990*<sup>3</sup>.

### **Object of Part**

**55.(1)** The program of financial assistance provided to first home owners under the *First Home Owners Act 1983* is being phased out. Consequently, the Department responsible for the program (now the



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Department of Housing and Regional Development but referred to in the Principal Act as the Department of Community Services and Health) is to cease to be an assistance agency for the purposes of the Principal Act.

(2) The object of this Part is to make the necessary amendments to the Principal Act.

**Interpretation**

56. Section 3 of the Principal Act is amended:

- (a) by omitting paragraph (a) of the definition of “assistance agency”;
- (b) by omitting paragraph (x) of the definition of “family identity data”;
- (c) by omitting paragraph (a) of the definition of “personal assistance”.

**Steps in data matching cycle**

57. Section 7 of the Principal Act is amended by omitting paragraph 14(a) of step 5 and substituting:

“(a) income data of the person given to it by assistance agencies; and”.

**Continuation of rights etc.**

58. Sections 10, 11 and 12 of the Principal Act, as in force immediately before the commencement of this Part, continue to apply to the Department of Housing and Regional Development in relation to information received by it under a step of a data matching cycle, as if it were still an assistance agency under the Act.

**PART 5—AMENDMENT OF THE SOCIAL SECURITY  
(BUDGET AND OTHER MEASURES) LEGISLATION  
AMENDMENT ACT 1993**

**Principal Act**

59. In this Part, “Principal Act” means the *Social Security (Budget and Other Measures) Legislation Amendment Act 1993*<sup>4</sup>.

**Schedule 8**

60. Schedule 8 to the Principal Act is amended by omitting items 77, 78, 79 and 80.

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**SCHEDULE**

Section 49

**FURTHER AMENDMENTS OF THE SOCIAL SECURITY ACT 1991**

**PART 1—AMENDMENTS COMMENCING ON 12 MARCH 1992**

**1. Schedule 1A—subclause 42(2):**

Add at the end “at a rate not more than \$6,539.00 per year”.

**2. Schedule 1A—subclause 43(2):**

Add at the end “at a rate not more than \$6,539.00 per year”.

**3. Schedule 1A—subclause 45(2):**

Add at the end “at a rate not more than \$6,539.00 per year”.

**4. Schedule 1A—subclause 46(2):**

Add at the end “at a rate not more than \$6,539.00 per year”.

**PART 2—AMENDMENTS COMMENCING ON 1 JULY 1992**

**5. Subsection 1061Y(3):**

Omit “A notice”, substitute “Subject to subsection (3A), a notice”.

**6. After subsection 1061Y(3):**

Insert:

“(3A) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (3)(c) or (e).”.

**7. Subsection 1061Z(2):**

Omit “A notice”, substitute “Subject to subsection (2A), a notice”.

**8. After subsection 1061Z(2):**

Insert:

“(2A) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (2)(c) or (e).”.

**PART 3—AMENDMENT COMMENCING ON 28 JANUARY 1993**

**9. Section 1068 (Benefit Rate Calculator B—  
point 1068-F1—paragraph (aa)):**

Omit “item 2”, substitute “item 1”.

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**SCHEDULE—continued**

**PART 4—AMENDMENT COMMENCING ON 1 MARCH 1993**

**10. Section 28:**

After “524” insert “, 524A”.

**PART 5—AMENDMENTS COMMENCING ON 24 DECEMBER  
1993**

**11. Subsection 873A(2):**

Omit “A notice”, substitute “Subject to subsection (2A), a notice”.

**12. After subsection 873A(2):**

Insert:

“(2A) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (2)(c) or (e).”.

**PART 6—AMENDMENT COMMENCING ON 1 JANUARY 1994**

**13. Schedule 1A—clause 69:**

Omit the words after “who,”, substitute:

“immediately before 1 January 1994, was receiving additional family payment under this Act and payments under the Post-Graduate Award Scheme, until the person ceases:

- (a) to be eligible to receive additional family payment under this Act (as in force immediately before 1 January 1994); or
- (b) to receive payments under the scheme”.

**PART 7—AMENDMENTS COMMENCING ON ROYAL ASSENT**

**14. Subsections 9(3) and (4):**

Omit the subsections.

**15. Section 99:**

Repeal the section, substitute:

**Disability support pension generally not payable before claim**

“99. Disability support pension is not payable to a person who is qualified for the pension, before the person’s provisional commencement day (identified under section 100).”.

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**SCHEDULE—continued**

**16. Subparagraph 523(2)(a)(i):**

Omit “(ii)”, substitute “(iii)”.

**17. Paragraph 1219(1)(d):**

Omit “is in Australia and”.

**18. Paragraph 1224(1)(a):**

Omit “under this Act or the 1947 Act”.

**19. Paragraph 1251(1)(b):**

Omit the paragraph, substitute the following paragraph:

“(b) the adverse decision:

- (i) depends on the exercise of a discretion by a person or the holding of an opinion by a person; or
- (ii) would result in the application of a deferment period; and

Note: For ‘deferment period’ see section 23.”.

**20. After section 1251:**

Insert the following section:

**Guidelines for exercise of Secretary’s power to continue payment**

“1251A.(1) The Minister, by determination in writing:

- (a) is to set guidelines for the exercise of the Secretary’s power to make declarations under subsection 1251(1) in relation to social security payments to persons who are subject to deferment periods; and
- (b) may revoke or vary those guidelines.

Note: For ‘deferment period’ see section 23.

“(2) A determination made under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

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**NOTES**

*Social Security Act 1991*

1. No. 46, 1991, as amended. For previous amendments, see Nos. 68, 69, 70, 73, 74, 115, 116, 141, 175, 194 and 208, 1991; Nos. 12, 69, 81, 94, 118, 133, 134, 138, 228, 229, 230, 233 and 241, 1992; Nos. 25, 36, 61, 120 and 121, 1993; Nos. 55, 63, 68, 78, 98, 109, 157, 161 and 174, 1994.

*National Health Act 1953*

2. No. 95, 1993, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; No. 95, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119, 122, 141, 169, 175, 208 and 211, 1991; Nos. 70, 81, 88, 136, 192, 200 and 204, 1992; No. 106, 1993; Nos. 22 and 23, 1994; and Nos. 24 and 41, 1995.

*Data-matching Program (Assistance and Tax) Act 1990*

3. No. 20, 1991, as amended. For previous amendments, see Nos. 115, 175 and 194, 1991; Nos. 81, 138, 205 and 229, 1992; and No. 121, 1993.

*Social Security (Budget and Other Measures) Legislation Amendment Act 1993*

4. No. 121, 1993.

[Minister's second reading speech made in—  
*House of Representatives on 19 June 1995*  
*Senate on 21 June 1995*]