

# Legislation

## Money matters

The *Social Security and Veterans Affairs Legislation Amendment Bill 1988* was introduced into Parliament on 3 November. Its major purpose is to implement several decisions announced in the August 1988 Budget. The main changes deal with the treatment of investment income and interests in retirement villages, and restructuring the system of rent assistance.

### Investment income

After the uproar surrounding the Budget announcement on market-linked investments, the Government consulted with pensioner bodies and investment associations, and has now produced a Bill that contains a number of variations from the original proposals.

The most important of these changes are:

- limiting the new provisions dealing with market-linked investments to those purchased on or after 9 September 1988; and
- providing a different method for ascertaining the rate of return on market-linked investments.

The Bill creates a Division 2 in Part I of the *Social Security Act*, entitled 'Investment Income' and repeals section 3A. The commencement date of these amendments is 1 December 1988. There will be basically 3 categories of investment income.

(1) accruing return investments, governed by s.12C (these non-market linked investments were previously covered by s.3A);

(2) market-linked investments made on or after 9 September 1988, regulated by s.12D; and

(3) other income of a capital nature, which includes pre-9 September 1988 market-linked investments, covered by s.12L (which is similar to s.3A(4)).

(The last category could well include other forms of income in addition to investment income.)

The provisions relating to accruing return investments are essentially the same as those in s.3A.

For market-linked investments made on or after 9 September 1988, a maximum rate of return of 11% per annum will be included as income from the later of the date of investment or 1

December 1988, regardless of whether there is an actual distribution by the fund. This rate can be reduced by the Minister under s.12E or by the Secretary of the DSS under s.12F. Fund managers and investors will be able to apply under s.12F to the Secretary to determine a lower rate of return and will be able to apply to the SSAT (s.12M) and the AAT (s.12N) for review if dissatisfied with the Secretary's decision.

Similar amendments made to the *Veterans' Entitlements Act* 1986 also give the power to reduce the rate of return (relating to service pensions) to the Social Security Minister and Secretary to the DSS which means that dissatisfied service pensioners will have to seek review by the SSAT rather than the Veterans' Review Board.

The definition of 'income' in s.3(1) will also be amended to include investment returns deemed to have been received under ss.12C and 12D and exclude actual returns received from those investments.

### Retirement villages

Section 4B is to be inserted in the *Social Security Act* and will commence operation on 12 June 1989. This rather complex section effectively deems residents of retirement villages to be either homeowners or non-homeowners depending on the size of the entry contribution they paid. This will affect the operation of the assets test and rent assistance provisions.

### Rent assistance

The Bill will bring about a number of structural changes to the system of rent assistance commencing from 13 June 1989. The definition of 'rent' in s.3(1) is to be changed.

The new definition will include as rent amounts payable every 3 months or more frequently; and amounts payable for services provided by retirement villages, nursing home accommodation costs and the cost of lodging (but not board).

The minimum rent threshold will be increased from \$15 to \$20 per week. Families with children will be paid greater rent assistance than childless families. Time spent in prison will be included as part of the 26 week waiting period for rent assistance payable to beneficiaries without children.

Increases in rent assistance rates will be brought in on 13 June 1989, 13

December 1989 and 13 June 1990. After 13 June 1990, pensioners and beneficiaries will receive the same rates of rent assistance which will be set at 3 levels:

- (1) families with 3 or more children;
- (2) families with 1 or 2 children; and
- (3) families with no children.

### Incentive allowances

Similar changes to the level and structure of incentive allowance rates will be effected by amendments to s.143 that commence on 13 June 1989 and 13 June 1990.

### New Zealand reciprocal agreement

A new agreement dated 31 December 1988 replaces the agreement dated 5 October 1986 currently contained in Schedule 3.

[D.M.]



## The 'Omnibus Bill'

The *Social Security Legislation Amendment Bill* 1988 was given its first reading in the House of Representatives on 19 October 1988. The Bill runs to 72 pages and contains amendments which will implement decisions announced in the May 1988 economic statement and the August 1988 budget.

Several of the changes reflect the Government's adoption of recommendations made by the Social Security Review headed by Bettina Cass. In his second reading speech, Social Security Minister Brian Howe foreshadowed further reforms to social security policy and legislation, in the light of expected recommendations from the Review in the areas of support for people with disabilities and retirement incomes policy.

Amongst the changes which this Bill would make to the *Social Security Act* are:

- From 1 March 1989, Parts V (widow's pension) and VI (supporting parent's benefit) of the Act will be repealed and replaced by Part V which will introduce a sole parent's pension.

The qualifications for sole parent's pension will be set out in s.44 of the Act. They are framed so as to ensure that any person who currently qualifies for supporting parent's benefit or class A widow's pension will qualify for sole parent's pension. In addition, eligibility will be extended to a person who is not the natural or adoptive parent of a child and who does not have legal custody of that child, if the child has been wholly or substantially in the care and control of the person for a period of at least 12 months; and the Secretary is satisfied that this situation is likely to last indefinitely: s.43(1) definition of 'qualifying child'.

The rate of sole parent's pension will be the same as the current rates of widow's pension and supporting parent's benefit; and there will be the same requirement to take reasonable maintenance action against the non-custodial parent: s.47.

- Also from 1 March 1989, a new **widowed person's allowance** will be introduced. This allowance will be paid to a person whose spouse dies on or after 17 February 1989, who does not have a qualifying child for the purposes of sole parent's pension and who satisfies the Australian residence requirements. The allowance will be paid at the standard pension rate for 12 weeks or, if the applicant is a woman and pregnant when her spouse dies ('and . . . the Secretary has no reason to believe that she is pregnant by a person other than her deceased spouse': s.58A(2)(b)) at least until the conclusion of her pregnancy: s.58A(2).

This allowance replaces class C widow's pension, which is at present payable to a woman during the 26 weeks after the death of her husband or de facto husband: s.44(1)(c).

- The right to **portability** of a pension, currently granted by s.60 of the Social Security Act, will be subject to new s.60A. The latter section, which comes into effect on 1 February 1989, will require that a person who proposes to leave Australia should obtain a 'pre-departure certificate' from the Secretary to the DSS to the effect that the Secretary is satisfied that the person is qualified to receive her or his pension. A person who leaves Australia on or after 1 February 1989 without such a certificate will cease to be qualified to receive the pension after the first 6 months of absence from Australia: s.60A(3).

- A special, and even more restrictive, rule is introduced in the case of most persons receiving **sole parent's**

**pension**. Even if such a person obtains a pre-departure certificate, he or she will not be qualified to receive sole parent's pension after the first 12 months of absence from Australia: s.60B(1). The one exception will be a 'woman [who] became a single person because of the death of a man', to whom she was, immediately before his death, 'legally married', and both of whom were, immediately before the man's death, 'Australian residents': s.60B(2).

This restrictive rule comes into effect on 1 March 1989. However, it applies to any person who left Australia on or after 1 July 1988; and provides that any person who left before that date shall be treated as if the person had left Australia on 1 July 1988. That is, the 12 month period for many people will commence to run from 1 July 1988, so that their sole parent's pensions (which will replace their widow's pension or supporting parent's benefit on 1 March 1989) will cease to be payable on 30 June 1989.

- The restrictive effect of ss.60A and 60B is modified by the provision that 'an absence of a person from Australia comes to an end if the person returns to Australia, even if that return is only temporary': s.60A(4) and 60B(4).

- An **assets test** will be introduced for family allowance supplement from 29 December 1988. According to the new s.74A, **family allowance supplement** will not be payable to a person if the value of the property of that person and the person's spouse exceeds \$300 000.

- **Family allowance** will cease to be payable for a child where that child has been absent from Australia for 3 years: s.83(1). This provision comes into effect on 18 May 1989 and is declared to apply to any person who left Australia on or after 18 May 1986; a person who left Australia before that date is to be treated as having left Australia on 18 May 1986: s.83(6).

A child who returns to Australia for less than 3 months will be treated as still absent from Australia during that period: s.83(3), (4) and (5).

- Several modifications or exemptions are made to the **unemployment benefit work test**.

Some of these are minor: for example, s.116(4A) will exempt a person from the work test while the person is attending a training camp as a member of the defence force reserve; and s.116(4B) will relax the work test for persons in remote areas of Australia where it would be unreasonable to expect the person to comply with the

work test. These two provisions come into effect when the *Amendment Act* receives the Royal Assent.

A more substantial modification will be made by the new s.116A, which comes into effect on 1 February 1989. This provision will exempt a person from the work test where the person is at least 18 years of age, has commenced an approved full-time training course after 1 February 1989 and has been qualified for unemployment benefits for at least 12 months immediately before commencing that course.

In addition, such a person who is engaged in full-time voluntary work with an approved organisation will be exempt from the work test.

However, the first of these exemptions (for an approved full-time training course) only applies for 8 weeks in any year; and the second exemption (for work with an approved organisation) only applies for 4 weeks in any year; s.116A(4) and (6).

- The **parental income test** applied to job search allowance will not take account of the income of a young person's foster-parents. This result is produced by an amendment to the definition of 'person to whom this section applies' in s.121A(1) of the Social Security Act, which amendment commences on 1 January 1989.

- A **person released from prison** after serving at least 7 days and who applies for unemployment or sickness benefit within 7 days of release will be paid 2 weeks benefit for the first week of benefit period: s.122B, which commences on 1 January 1989.

A similar provision for double payment of special benefit during the first week after a person's release from prison is to be made by a new s.130(2), which also commences on 1 January 1989.

- Amendments to s.164 would impose some restrictions on the **power of the Secretary to demand information** from any person. For example, s.164(2AA) would limit the Secretary to demanding information which the Secretary considers relevant to entitlements under the *Social Security Act*; s.164(2AC) would limit the purposes for which the Secretary can demand information to the detection of overpayments and the verification of entitlements under the Act; s.164(2AF) would limit the information which the Secretary can demand by detailing that information - for example, name, address, sex, marital status, date of birth, date of death, etc.; and s.164(2AH) and (2AJ)

would require the destruction of any information which has been received by the Secretary and not classed by the Secretary as relevant.

• Section 237A, which comes into operation on 1 February 1989, introduces a new payment called 'an employment entry payment', which is to be paid to a person commencing employment after 12 months on an unemployment benefit, where the person is at least 18 years of age and the employment is likely to last for more than 4 weeks. The payment, of \$100, can be made only once in every 12 months.

• An amendment to s.251 (formerly s.186) of the *Social Security Act* would give the Minister power to issue directions in writing relating to the Secretary's discretion under s.251(1) to waive recovery of debts: this amendment, if passed, would be s.251(1B). These directions are to be laid before each House of Parliament (but neither House is given any power to

disallow the directions): this would be numbered as s.251(1C); and the Secretary would be obliged to 'act in accordance with directions from time to time in force': s.251(1A).

[At this stage, it is not clear whether this amendment will be passed. I understand that the Opposition will be moving either to amend or to delete the clause containing these amendments from the Amendment Bill.

There are two concerns: first, that the amendments would effectively give the Minister the power to make delegated legislation which, unlike other forms of delegated legislation, could not be disallowed by either House of Parliament; and, secondly, there is real concern that the mandatory nature of these directions would limit the ability of the DSS, the SSAT and the AAT to deal with the merits of unusual cases.

On the second point, it should be noted that, if the Secretary is bound to give effect to the directions, then the SSAT will be similarly bound, because

it may only 'exercise all the powers and discretions that are conferred by this Act on the Secretary': s.182(4) of the *Social Security Act*. The AAT is similarly limited: s.43(1) of the AAT Act.

The point is being pressed by a number of critics that the power of the Minister conferred by s.17 as enacted in October this year, to issue 'a written statement of a policy of the Commonwealth Government in relation to the administration of this Act', which the DSS and the SSAT would be obliged to 'have regard to', would be far preferable to the proposed amendments to s.251. The existing s.17 has the advantage of allowing the Government to develop policy on the administration of the *Social Security Act*, including the exercise of the many discretions contained in the Act, while leaving to the decision makers (including the two Appeals Tribunals) the capacity to respond to exceptional cases.]

[P.H.]

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