

Legislation

Social Security Amendment Act 1988

This Act has made a number of changes to the *Social Security Act*. None of the changes involves a major policy decision; but several of the changes will have a significant impact on some pensioners and beneficiaries.

- A new exemption (of Nazi restitution payments) is inserted in the definition of 'income' in s.3(1), from 30 November 1987:

'(ka) an amount paid by way of compensation by the Federal Republic of Germany . . . relating to compensation of victims of National Socialist persecution;'

This amendment will adopt the approach of the AAT in *Artwinska* (1985) 24 SSR 287 and *Kolodziej* (1985) 26 SSR 315; and reverse the approach taken in *Teller* (1985) 25 SSR 298.

- A person eligible for handicapped child's allowance can also qualify for widow's pension or supporting parent's benefit, even where the child has turned 16. This change to ss.44(3) and 53(1) will apply from 1 September 1987, and will modify changes to eligibility tests for widow's

pension and supporting parent's benefit made in the 1987 May Economic Statement.

- Section 117 is amended to allow payment of sickness benefit, from 1 October 1987, during a person's 3-month temporary absence from Australia.

● Section 125(4) is amended to allow payment of arrears of sickness benefit, from 1 July 1987, for up to 4 weeks, where the late lodgment of the claim for benefit was due to the person's incapacity. This modifies another of the May 1987 changes.

● Where a compensation claim, relating to a person's disease or injury, is settled on or after 9 February 1988, 50% of the settlement will be taken as payment for economic loss. This change is made through amendment of s.152(2)(c). The Minister said, in the Second Reading speech, that it was designed to prevent abuse of the recovery and preclusion rules in Part XVII of the Act. [It replaces a DSS policy rule, under which the Department had assumed that 70% of any such settlement was payment for economic loss. That policy rule will presumably continue to be applied by the DSS, if not the AAT, in relation to settlements made between 1 May 1987 and 8 February 1988, and

to compensation orders resulting from a fully contested hearing.]

● The preclusion rule in s.153(1) (which precludes a person from receiving invalid pension, unemployment, sickness or special benefit or sheltered employment allowance during the period for which the person has received compensation for economic loss) is to be broadened retrospectively. Prior to the amendment, the preclusion rule only applied where a person received lump sum compensation at a time when the person was qualified for pension, benefit or allowance. With effect from 1 May 1987, the preclusion rule will apply to a person who receives lump sum compensation 'whether before or after becoming so qualified'. [This retrospective change would, it seems, reverse the AAT decision in *Tallon* (see this issue of the *Reporter*). It will also catch people who have settled their compensation payments over the past 13 months on the assumption that the preclusion rule would not apply to them, because they were not, at the time of settlement, qualified for invalid pension etc.]

[P.H.]



Update

The May Economic Statement

Compared to the dramatic impact of the 1987 May Economic Statement, the 1988 Statement was a moderate affair. Nevertheless, several significant changes to social security entitlements, and to decision-making processes, were announced on 25 May 1988. According to a statement issued by the DSS, the savings from these changes will amount to \$58.9 million in 1988-89, and \$104.7 million in the first full year. The major changes are:

- The review officer system is to be less decentralized - a review officer will be located in each area office with power to review decisions made in about 12 regional offices. This, according to the DSS 'will improve the independence and upgrade decision making.'
- SSATs are to be given decision-making powers from 1 November 1988. The AAT will retain its review powers; but appeals to the Tribunal will be open to the DSS as well as claimants. The change will, according to the DSS, simplify and speed up the appeals process. [This change adopts the 1984 recommendation of the Administrative Review Council. For further background, see (1985) 22 SSR 355; (1986) 32 SSR 401; (1986) 34 SSR 429.]
- By 1 November 1988, a standard sickness benefit report form will be introduced

to provide 'more specific information about the effect of the medical condition on the person's ability to work'. Expected 1988-89 savings are \$11 million.

● From 1 July 1988, the capital growth from 'capital stable investments' (insurance bonds, variable income annuities, approved deposit funds and deferred annuities) 'will be assessed as ongoing yearly income' [This will be done, according to the DSS, by tightening administration. However, the decision of the High Court in *Read v Commonwealth of Australia* (see this issue of the *Reporter*) strongly suggests that this change will require amendment to the *Social Security Act*, because unrealized capital growth does not presently fall within the definition of 'income'.]

● A person's ability to maintain herself (from savings) when applying for special benefit 'will be more closely examined'; and long-term beneficiaries will be reviewed closely. Expected yearly savings are \$8 million.

● From 1 November 1988, pensioners travelling overseas will need to obtain a 'pre-departure certificate' from the DSS, if they want their pensions to be paid for more than 6 months overseas. In the absence of a certificate, payment of pension overseas will cease after 6 months.

● Pensioners overseas will be subject to 6-monthly mail reviews. Failure to respond to the reviews will lead to cancellation.

● Widow pensioners and supporting parent beneficiaries leaving Australia after 1 July 1988 will only be paid overseas for 12 months, unless they are being paid under a reciprocal agreement or 'the client had been married and her husband died in Australia.' Those already overseas on 1 July 1988 will lose their entitlement on 30 June 1989.

● From 1 October 1988, payment of family allowance will cease once a family has been temporarily absent from Australia for 3 years; and restored after 3 months continuous residence in Australia.

● Payment of family allowance and family allowance supplement (FAS) will be integrated as part of an attempt to improve take-up of FAS. An assets test will be introduced for FAS from January 1989 - families with net assets of \$300,000 (excluding the family home) will not be eligible for FAS. This change is expected to save \$20.5 million in 1988-89.

● Additional unemployment and sickness benefit for non-custodial parents who are contributing to their children's maintenance will cease from 13 December 1988.

[P.H.]