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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO 2) 1993

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Hon Con Sciacca MP
Parliamentary Secretary to the Minister for Social Security
representing the Minister for Social Security)**

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO 2) 1993

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill gives legislative effect to some 1992 and 1993 Budget initiatives, a Government election commitment announced prior to the 1993 Federal Election and to some policy changes.

The measures:

- Ensure that both the income test for family payment (that comprises basic family payment and additional family payment) and the parental income test for job search allowance and sickness allowance recipients or claimants under 18 take account of certain employer provided fringe benefits;
- Introduce a seniors health card;
- Ensure that the income test for family payment takes account of foreign income;
- Make foreign currency provisions in the *Social Security Act 1991* more responsive to market exchange rate fluctuations; and
- Extend the period for payment of the advance pharmaceutical allowance.

The measures involved in this Bill involve amendment of the *Social Security Act 1991* (the Act), the *Social Security Legislation Amendment Act (No 4) 1991*, the *National Health Act 1953* and the *Hearing Services Act 1991*.

The financial implications of the measures in this Bill are indicated below, after a brief summary of each measure.

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO 2) 1993

Taking certain employer provided fringe benefits into account in the income test for family payment and the parental income test for job search allowance and sickness allowance recipients or claimants under 18

Taking foreign income into account in the income test for family payment

There is concern that the use of taxable income alone might not be a reliable basis upon which to determine entitlement to certain social security payments.

The *Social Security Act 1991* will be amended from 1 January 1994 so that the income test for family payment (that comprises basic family payment and additional family payment) and the parental income test for job search allowance and sickness allowance recipients or claimants under 18 take account of certain employer provided fringe benefits. The benefits that will be assessable are employer provided motor vehicles, housing, loans, school fees and private health insurance. The value of the benefits of a person and the person's partner, or parent as the case may be, will be added together and anything in excess of \$1,000 will be taken into account. If the combined total is less than that amount it will be ignored.

Estimated savings from this measure are \$10.4m in 1993-94 and \$31.7m in 1994-95.

The *Social Security Act 1991* will also be amended from 1 January 1994 so that the income test for family payment takes foreign income into account.

Families receiving income support payments will not be affected because they are not subject to the family payment income test. In any case, recipients of social security pension or benefit (or service pension) should already have had such income taken into account in calculating their pension or benefit rate.

Estimated savings are \$3.5m in 1993-94 and \$7.0m in 1994-95.

Introducing a Seniors Health Card

All recipients of social security and service pension, and in some other cases, other social security payments, are entitled to certain health-related Commonwealth concessions such as pharmaceutical and hearing aid concessions.

People of age pension age or people of age service pension age whose income levels are the same as those of age or age service pensioners may not qualify for health-related concessions because they are not receiving a social security or service pension for various reasons. For example, they do not meet the residency requirements or have too many assets.

The *Social Security Act 1991*, the *National Health Act 1953* and the *Hearing Services Act 1991* will be amended from 1 July 1994 to give these people access to pharmaceutical and hearing aid concessions by the introduction of a seniors health card.

Estimated outlays of this measure are \$0.3m in 1993-94 and \$58.7m in 1994-95.

Making foreign currency provisions in the Social Security Act 1991 more responsive to market exchange rates

Many social security pensioners receive foreign income. That income must be converted to Australian dollars to calculate the rate of Australian pension payable.

The *Social Security Act 1991* will be amended to make the foreign currency provisions more responsive to frequent or sudden movements in the exchange rates. A new exchange rate for each nominated currency will be set every pension payday, based on the market exchange rate available at the Commonwealth Bank of Australia on the previous payday. If there is no such rate for that payday, for example, because of a national public holiday, the rate used will be the market exchange rate that applied on the last working day immediately before that payday.

Estimated additional administrative expenditure costs of this measure are \$0.2m in 1993-94 and \$0.2m in 1994-95.

This measure will commence on the day of Royal Assent.

Extending the period for payment of the advance pharmaceutical allowance

The *Social Security Act 1991* and the *Social Security Legislation Amendment Act (No 4) 1991* will be amended from the day of Royal Assent to provide that advance pharmaceutical allowance will be payable until 31 December 1994.

This measure has negligible financial implications.

SOCIAL SECURITY LEGISLATION AMENDMENT BILL (NO 2) 1993

PART 1 - PRELIMINARY

Part 1 of the Bill sets out how the amending Bill is to be cited (**clause 1**); that the *Social Security Act 1991* is referred to in the amending Act as the 'Principal Act' (**clause 1**); when the various Parts, Divisions and Sections of the amending Act are to commence (**clause 2**) and when certain amendments will apply (**clause 3**).

PART 2 - FRINGE BENEFITS

1. Summary of proposed changes

This Part contains provisions that will make sure that certain employer provided fringe benefits are treated as income when applying the income test for family payment (this comprises both basic and additional family payment) and the parental income test for job search and sickness allowance recipients or claimants who are under 18.

2. Background

Some people receive benefits from their employer such as a car or rent-free housing. These employer provided fringe benefits ('fringe benefits') are not subject to income tax because the definition of 'taxable income' in the *Income Tax Assessment Act 1936 (ITAA)* does not include the value of such benefits. Instead, the employer is subject to fringe benefits tax. This is provided for in the *Fringe Benefits Tax Assessment Act 1986 (FBTAA)*.

Family payment, provided under the *Social Security Act 1991* (the Principal Act), is only payable to those who have a dependent child. To qualify for a family payment a claimant must pass an income test. At present the income test for family payment is based on 'taxable income' that is defined to mean the same as in the *ITAA*. Accordingly, the income test for family payment does not take account of employer provided fringe benefits. This means that some people who have a high income in real terms can still pass the income test.

Job search allowance (JSA) and sickness allowance (SA) for those under 18 ('under age') are subject to an income test. For most under age JSA and SA recipients the income test takes account of the income of the recipient's parent or guardian ('parent'). This is called the 'parental income test'. Currently, the parental income test is also based on taxable income. Accordingly, the value of employer provided fringe benefits is not taken into account. Once again, a JSA or SA claimant whose parent has a high income in real terms can still qualify.

This proposal is designed to make sure that welfare payments are targeted towards people who are most in need. It is also seen as unfair that some people who receive income in the form of fringe benefits can qualify for payments (or allow their dependents to qualify), whilst others, who receive benefits in the form of wages, cannot.

This proposal makes sure that the income test for family payment and the parental income test for under age JSA and SA takes account of certain employer provided fringe benefits ('assessable benefits'). The only assessable benefits will be employer provided motor vehicles, housing, loans, school fees and private health insurance. Further, only if the value of benefits exceeds a threshold amount ('free area') will it be taken into account. The value of all specified employer provided fringe benefits of the person and his/her partner (if any) would be added together. If the combined total is \$1,000 or less it will be ignored. If the combined total is more than \$1,000, then only the amount in excess of \$1,000 will be taken into account when the various income tests are applied.

3. Clauses involved in the changes

Clause 2(3): specifies the commencement day as 1 January 1994.

Clause 4: inserts a new section 10A into the Principal Act that contains the definitions and definitional provisions that are necessary for operation of the fringe benefits income test provisions.

Clause 5: amends Benefit Rate Calculator A in section 1067 of the Principal Act to make the amendments necessary so that the fringe benefits value of the person and his/her partner that exceeds the free area can be added to the person's income.

Clause 6: amends the Family Payment Rate Calculator in section 1069 of the Principal Act to make the amendments necessary so that the fringe benefits value of the person and his/her partner that exceeds the free area can be added to the person's income.

Clause 7: inserts a new Part 3.12A into the Principal Act that sets out the general provisions relating to the family payment income test and the parental means test for under age JSA and SA recipients.

Clause 8: makes the consequential amendments necessary to the Principal Act so that fringe benefits are assessable.

4. Explanation of the changes

Clause 4: inserts new section 10A in the Principal Act containing the family payment income test and parental means test definitions and definitional provisions. These are in broad terms so as to prevent evasion. Most are modelled on those in the *FBTAA*.

The list of definitions

The key definitions are those of 'arrangement', 'assessable fringe benefit', 'associate', 'car', 'census population', 'current employee', 'current employer', 'eligible urban area', 'employee', 'employer', 'fringe benefit', 'housing right', 'loan', 'unit of accommodation', 'urban centre' and 'school'.

'Assessable fringe benefit' means a fringe benefit that is:

- a car benefit; or
- a school fee benefit; or
- a private health insurance benefit; or
- a loan benefit; or
- a housing benefit,

and that is not exempt.

This is a key definition because only the value of assessable fringe benefits will be taken into account for the purposes of the family payment income test and the job search and sickness allowance parental income tests. Other employer provided fringe benefits will be ignored for this purpose.

'Associate' has same meaning as in the **FBTAA**. 'Arrangement' means any agreement, arrangement, understanding, promise or undertaking, express or implied, whether or not enforceable or intended to be enforceable by legal proceedings and any scheme, plan, proposal, action, course of action or conduct, whether unilateral or otherwise.

*The definitions of associate and arrangement are there to prevent evasion. They are intended to stop either the employer or employee using a third person or any legal mechanism so as to create the impression that a fringe benefit was not provided by an employer or provided to the employee when it was. Associate is not defined in detail in the Principal Act but it has the same meaning as in the **FBTAA** (with the necessary changes being made).*

'Car' means a motor vehicle (eg a truck, four wheel drive, motor car, station wagon, panel van, utility truck) that is a road vehicle designed to carry a load of less than 1 tonne or fewer than nine passengers but not including a motor cycle or a vehicle similar to a motor cycle.

Obviously this definition is central to the provisions which allow employer provided car fringe benefits to be taken into account when applying the relevant income test.

'Current employee' means someone who is an employee within the ordinary meaning of the word including someone who holds or performs duties of an appointment, office or position under the Commonwealth Constitution or a law of the Commonwealth, State or Territory, or someone who is a public servant for the Commonwealth Government or a State or Territory Government, including a member of the police or defence forces or a member of Parliament.

'Current employer' means someone who pays or is liable to pay salary or wages to an employee. This includes the Commonwealth, State or Territory or an authority of such.

The definitions of current employee and employer apply to all assessable benefits. They are wide in scope. It is not considered appropriate that public servants or office holders such as the police, defence forces or politicians should be treated any differently than any other employees as regards the application of the family payments income test and job search and sickness allowance parental income test. These definitions reflect this.

'Census population' in relation to an urban centre means the census count on an actual location basis as published by the Australian statistician on 30 June 1981 in the report called 'Persons and Dwellings in Local Government Areas and Urban Centres'.

'Eligible urban area' means an 'urban centre' in Zone A or Zone B (as specified in schedule 2 to the *Income Tax Assessment Act 1936*) with a census population of 28,000 or more, or not located in Zone A or B, but with a population of 14,000 or more.

'Urban centre' is somewhere called an 'urban centre' or 'bounded locality' in the results of the 'Census of Population and Housing' taken by the Australian Statistician on 30 June 1981 and published in the above mentioned report.

The definitions of 'census population', 'urban centre' and 'eligible urban area' are needed when valuing housing benefits. Basically, if a unit of accommodation is in a 'special housing location' (remote area) then it is given a more favourable treatment. A 'special housing location' is either an 'urban centre' (town) in a particular location and of a particular population size; or somewhere that is a certain distance from an 'eligible urban area'.

'Fringe benefit' means a benefit provided to the employee (or his/her associate) by the employer, an associate of the employer or an arranger, in respect of the employment of the employee.

Once again, this is a key definition that applies to all assessable fringe benefits. It makes clear that only if a benefit is provided in respect of the person's employment would it be assessable.

'Employer' and 'employee' are defined to include the past, present and future tense.

This is necessary because some people will be asked to indicate whether they will receive a fringe benefit from their future employer at a future time. For example, a family payment claimant who wishes to be assessed on the basis of his or her estimated future income.

'Housing right' in relation to a person, means a lease or licence granted to the person to occupy or use a 'unit of accommodation' in so far as that lease or licence subsists at a time when the unit of accommodation is the person's usual place of residence.

'Unit of accommodation' includes a house, flat, home unit, caravan or other mobile home; or accommodation in a house, flat, home unit, hotel, hostel, motel, guesthouse, bunkhouse or any living quarters, ship, vessel, or floating structure.

Once again, these definitions are needed when assessing housing fringe benefits. It limits assessment to accommodation that meets the definition of unit of accommodation and that is the person's usual place of residence.

'Loan' includes an advance of money, the provision of credit or any other form of financial assistance or accommodation; or the payment of an amount for, on account of, or at the request of, the person (whether express or implied) to repay the amount; or a transaction (in whatever terms or form) which in substance effects a loan of money.

This definition is central to the assessment of loan fringe benefits. Once again, it is drafted in broad terms to prevent evasion.

'School' means a school, college or other educational institution that provides primary or secondary education.

This definition is needed when assessing school fee fringe benefits.

Definitional provisions

New subsections 10A(3) to (13) are definitional provisions.

New subsection 10A(3) is the list of metropolitan areas. They are the capital cities of Australia, that is: Adelaide, Brisbane, Canberra, Darwin, Hobart, Melbourne, Perth and Sydney.

This list is necessary because, when housing benefits are valued, a notional market rent is applied the rate of which depends on whether the house is in a metropolitan location or not.

New section 10A(4) says that a unit of accommodation is in a non-metropolitan area if it is in Australia, is not in a metropolitan location and is not in a special housing location.

New subsection 10A(5) says that a unit of accommodation is in a 'special housing location' if it is in Australia and:

- it is in an urban centre, situated in Zone A or B (as described in schedule 2 to the *Income Tax Assessment Act 1936*) which has a census population of *less than* 28,000; or
- it is in an urban centre, *not* situated in Zone A or B which has a census population of *less than* 14,000; or
- it is 40 kilometres or more, by the shortest practical surface route, from the centre point of an eligible urban area with a census population of *less than* 130,000; or

it is 100 kilometres or more, by the shortest practical surface route, from the centre point of an eligible urban area with a census population of *more* than 130,000.

New subsection 10A(6) says how distance between the centre point of an eligible urban area and another location is to be measured. Basically, it is by the shortest practical surface route between the tested location and:

the only point in the centre of a eligible urban area usually used for such measurements; or

if more than one point in an eligible urban area is usually used for such measurements, then the principal one.

New subsection 10A(7) says that a unit of accommodation is a 'dwelling' if it is a building, or contained in a building, and is, in whole or substantial part, residential accommodation.

New subsection 10A(8) says what a stratum unit is. It is a building containing a dwelling consisting of a flat or home unit registered as such on the register of titles of a State or Territory.

New subsection 10A(9) basically says when a loan is a housing loan. It is a housing loan if it is made to, or used by, a person (including jointly with his/her partner) wholly to:

buy a prescribed interest in empty land on which a dwelling will be built; or

buy a prescribed interest in land and finish building a dwelling on the land; or

build or finish building a dwelling on land in which the person already has a prescribed interest;

buy a prescribed interest in land on which a dwelling has already been built; or

buy a prescribed interest in a stratum title unit in relation to a dwelling; or

extend a building which is or contains a dwelling on land in which the person has a prescribed interest; or

- extend a building (containing a dwelling) which is on land in which the person has a prescribed interest by adding a room or part of a room; or

extend a stratum unit (containing a dwelling) by adding a room or part of a room;
or

- repay a loan made wholly to do any of the above;

and at the time of making the loan the dwelling was used, or was proposed to be used, as the person's usual place of residence.

The last requirement (that the dwelling be used or proposed to be used as the person's usual place of residence) means that investment properties would be subject to the higher notional rate.

New subsections 10A(10) to 10A(14) say what a 'prescribed interest' is.

New subsection 10A(10) says that *freehold* interest in land or a stratum unit is a prescribed interest.

New subsection 10A(11) says that a *leasehold* interest is a prescribed interest if:

- the person had or has a lease or licence in land or a stratum unit; and
- the Secretary is satisfied that it gives 'reasonable security of tenure' for 10 years or more (continuously or in aggregation).

New subsections 10A(12) and (13) deal with 'instalment contracts' to buy or lease property. They say that a person has a prescribed interest if the person:

- acquires (holds or held) a freehold or leasehold interest in land or a stratum unit under an agreement; and
- the agreement provides (or provided) for the payment of the purchase price (or part thereof) to be made at a future time or by instalment; and
- in the case of leaseholds, the Secretary is satisfied that the lease will give reasonable security of tenure to the lessee for a period of 10 years or more (continuously or in aggregate).

New subsection 10A(14) simply deals with the situation of more than one person having one of the above mentioned interests. It makes sure that a person is taken to have a prescribed interest if s/he buys or leases land or a stratum unit along with another.

Clause 5: amends Benefit Rate Calculator A in section 1067 of the Principal Act so that a reference to 'income' in that section includes the person's fringe benefit value. This will ensure that when the parental means test is applied to the parent of a *job search allowance* or *sickness allowance* claimant then the value of assessable fringe benefits are taken into account.

Clause 5: amends Benefit Rate Calculator A to do the following:

Clause 5(a): amends the current method statement to add a number of steps. Basically, the new steps are intended to make sure that the value of the person's fringe benefits (including certain fringe benefits provided by an employer of the person's *partner*) that exceeds the free area is added to other income.

Clause 5(b): simply renumbers steps 9-11 in the method statement.

Clause 5(c) adds a note to the end of point 1067-G1. This makes clear that not all fringe benefits would be assessable. Only the value of 'assessable fringe benefits' would be taken into account.

Clause 5(d): makes sure that:

if the person is the only means test parent then sum of the value of all the assessable fringe benefits provided to the person in the tax year is added to other income (point 1067-G14A);

if the person has a partner then, whether or not that partner is a means test parent, the value of all assessable fringe benefits provided in the tax year to either person is added together and the total is taken into account in applying the parental income test (points 1067-G14B and G14C);

the parental fringe benefits value free area is \$1,000. This means that if the means test parent is single, s/he has a \$1,000 free area, and if s/he has a partner, their combined free area is still only \$1,000 (point 1067-G14D);

the person's 'adjusted fringe benefit value' is the difference between the fringe benefits value of the person and his/her partner and the free area (point 1067-G14E);

if the combined value does not exceed the free area then it is given a nil value. This stops a person from getting a notional loss and saying that it can be offset against other income (point 1067-G14F).

Clause 6: amends the Family Payment Rate Calculator in section 1069 of the Principal Act to achieve the following:

Clauses 6(a) and (b): substitute new steps 4 and 9 into the method statement in section 1069-A1 of the Principal Act so that Submodules 3 and 4 are applied when working out the person's family payment rate.

Clause 6(c) and (d): are consequential amendments that omit the word 'taxable' from the heading to Module H, and point 1069-H1 and tell the reader to use Submodules 3 and 4 in applying the income test.

Clause 6(e): is an important provision that tells the reader that, for the purposes of the family payment income test, the person's fringe benefit value for a tax year includes the sum of the value of all assessable fringe benefits received by the person and his/her partner for the tax year.

Clauses 6(f) to (s): are consequential amendments that omit the word 'taxable' from a number of provisions and make sure that 'income' includes fringe benefits values in others. This is necessary because the 'taxable income' would not include the value of fringe benefits unless these amendments were made. Following these amendments the

income test will no longer be based on taxable income alone but will include the value of assessable fringe benefits.

Clause 6(t): will do two things:

First, **clause 6(t)** will substitute new Submodules 3 and 4 for existing Submodules 3, 4 and 5 of Module H.

New Submodule 3 will be headed '*Family Payment income test*'. New Submodule 4 will be headed '*Additional family payment: effect of family payment income test*'.

Submodules 3 and 4 will substitute two new method statements. In substance, the new method statements are basically the same as the provisions they replace except that the new provisions are simpler and there is a separate statement for each payment type. However, the important change is that references to 'taxable income' are replaced by references to 'income' so that the value of assessable fringe benefits are included.

The method statements for family payment will make sure that the amount of the person's fringe benefits value which exceeds the 'free area' (points 1069-H23 and H28) is added to the person's taxable income when applying the income test for both basic family payment and additional family payment. This is achieved particularly by steps 3, 4, 5 and 6 of the method statements in Submodules 3 and 4.

There are provisions saying that the person's fringe benefits value is the amount which exceeds the person's free area (points 1069-H24 and H29), and that any unused free area is given a nil value and therefore cannot be offset against other income (points 1069-H25 and H30).

The amount of additional family payment is then reduced at the rate of 50 cents for every dollar of excess income as at present (points 1069-H33 and H34).

Clause 7: inserts new part 3.12A which sets out the general provisions relating to both the family payment income test and the parental means test.

Division 1 - Purpose of Part

Division 1 sets out the purpose of Part 3.12A which is to tell the reader which benefits are assessable and how to value them for the purposes of the family payment and parental income tests (new section 1157A).

New subsection 1157B makes clear that benefits received outside Australia are also assessable.

Division 2 - Benefits that may be assessable fringe benefits

Division 2 sets out the general provisions for assessing fringe benefits. Once again, the assessable fringe benefits are:

car benefits;

school fee benefits;

private health insurance benefits;

- loan benefits; and

housing benefits.

Car benefits

New section 1157C deals with car benefits. New subsection 1157C(1) sets out when a person is taken to have a car benefit. An employee is taken to have a car fringe benefit when an employer ('provider') makes a car available to an employee for private use (whether or not the employee actually uses the car at a particular time) in respect of the employment of the employee.

This provision is drafted to prevent evasion so that provider and employee also includes an associate of either. A large number of the following provisions are drafted in the same way. This is repeated in many provisions and they should be read with this in mind.

New subsection 1157C(2) says that an employee is taken to have a car available for private use when the employer has a car and it is garaged or kept at or near a place of residence of the employee.

New subsection 1157C(3) says that if a car is held by an employer but not at the employer's business premises, and the employee is either entitled to use the car privately, or the employee is not performing duties but has custody or control of the car, then the car is taken to be available for private use by the employee.

New subsection 1157C(4) says that s 1157C(3) still applies if there is a prohibition on private use of the car but it is not consistently enforced.

New subsection 1157C(5) deals with a car that is let on hire purchase and says that it is taken to be owned by the person from the day the car was hired.

New subsection 1157C(6) says that a taxi let on hire to the provider is *not* a car, nor is a car that is let continuously or under an agreement for intermittent use on an hourly, daily, weekly or other short-term basis.

New subsection 1157C(7) says that paragraph 1157C(6)(b) does not apply if the car has been, or can reasonably be expected to be, on hire under successive agreements of a kind resulting in 'substantial continuity of hiring of the car'.

Exempt car benefits

New section 1157D says which car benefits are exempt.

New subsection 1157D(1) says that a benefit is exempt unless section 1157C says that it is not.

New subsection 1157D(2) says that if a taxi, panel van, utility truck or other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for carrying passengers) is provided in respect of employment, and the only private use by the employee is either for work related travel or minor, infrequent or irregular, then it is exempt.

New subsection 1157D(3) says that a car is exempt for the time it is left unregistered.

School benefits

New subsection 1157E contains the general provisions relating to school benefits.

New subsections 1157E(1) and (2) say that a person ('recipient') is taken to have been provided with a school benefit if an amount is paid to the person or is paid instead to the school and the amount is for:

- fees for tuition (at a primary or secondary level); or
- books or equipment in relation to that tuition;

and the tuition, books or equipment are provided to:

- a dependent child of the recipient or the recipient's partner; or
- a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a job search allowance or sickness allowance.

New subsection 1157E(3) says that certain boarding fees can be counted as a school fee fringe benefit.

Health insurance benefits

New subsection 1157F deals with payments of private health insurance.

New subsections 1157F(1) and (2) say that a person ('recipient') has a health insurance benefit if an amount is paid to the recipient or the fund for the cost of health insurance and the insurance covers:

the recipient; or

the recipient's partner; or

the dependent child of the recipient or the recipient's partner; or

a person who would be a dependent child of the recipient or recipient's partner if the person was not receiving a job search or sickness allowance.

Loan benefits

New section 1157G deals with loan fringe benefits. New subsection 1157G(1) says that when someone ('provider') makes a loan to another ('recipient') then the loan is a loan benefit.

New subsection 1157G(2) deals with late payment of debts. It says that if someone ('debtor') is supposed to pay an amount ('principal') to another ('creditor') and the amount is not paid when it should be, then the debtor is taken to have a loan from the time it should be paid and the amount of the loan is the amount unpaid. The interest rate on that loan is either the amount specified under the loan agreement or nil.

New subsection 1157G(3) says that a loan is a deferred interest loan if the rate of interest payable on the loan exceeds nil.

New subsection 1157G(4) says when something is *not* a 'deferred interest loan'. It is not a deferred interest loan if:

the whole of the interest on the loan is due for payment within 6 months after the loan is made; or

the interest is payable by instalments, the interval between instalments does not exceed 6 months and the first instalment is payable within 6 months after the loan is made.

New subsection 1157G(5) says that if a person ('provider') makes a deferred interest loan to another ('recipient') then:

- the provider is deemed to have made a loan to the recipient starting 6 months after the day when the loan was made and each subsequent period of 6 months;
- the amount of the loan is the difference between the accrued interest on the loan and the amount of interest (if any) paid before the end of the period.

If any part of the accrued interest becomes payable or is paid after the time when the deemed loan is taken to have been made, the deemed loan is reduced accordingly and the deemed loan is taken to have been made at a nil rate of interest.

New subsection 1157G(6) says that paragraph 1157G(5)(a) only applies if the recipient is under an obligation during the whole period to repay the whole or part of the principal loan.

New subsection 1157G(7) says that if no interest is payable in respect of the loan, a nil rate of interest is payable.

Exempt loan benefits

New section 1157H says which loan benefits are exempt. New subsection 1157H(1) basically says that a loan made by a financial institution under a written agreement at a *fixed market rate* of interest is exempt. This makes clear that only 'low interest' loans would be assessable.

New subsection 1157H(2) say that if a loan is made by a financial institution and the interest rate is *variable* but it does not vary below the *market rate* of interest for the same kind of loan, then it is exempt.

New subsection 1157H(3) says that loans made in respect of employment for the 'sole purpose' of meeting employment related expenses are exempt, provided the amount of the loan does not substantially exceed the amount it would be reasonable to spend on work related expenses and there is a mechanism by which the employee is required to pay back the money not spent on work expenses at 6 month intervals.

New subsection 1157H(4) deals with certain loans made in respect of employment for certain accommodation expenses such as rental bond or a security deposit for electricity, gas or telephone. Such loans would be exempt provided they must be repaid within 12 months from the day the loan is made.

Housing benefits

New section 1157I says that a person has a housing benefit when a 'housing right' is granted to a person.

Exempt housing benefits - live-in residential care workers

New section 1157J says that certain live in residential care workers are exempt.

Basically a residential care worker is someone whose job is caring for mature or disadvantaged persons. If the care worker is employed either by a government body, religious institution or non-profit company which provides care for those people, and the worker lives in 'residential premises' provided by his/her employer because it is necessary to do so to care for those people, then the benefit may be exempt.

Residential premises is defined to mean a house or hostel used 'exclusively' to provide accommodation for mature or disadvantaged persons.

Division 3 - Value of car fringe benefits

Method of valuing car fringe benefits

New subsection 1157K says how to value a car fringe benefit. It's value would be worked out in accordance with section 1157L unless the Minister for Social Security makes a determination under section 1157M to use an alternative valuation method.

Value of car fringe benefit

New subsection 1157L(1) sets out the method statement for working out the value of a car benefit. New subsection 1157L(2) then sets out the table.

Basically, there are three parts to the table (Parts A, B and C) that says what the benefit value of a car will be for the year. A different part of the table would be used depending on the engine size of the car. Each part of the table would then produce a different dollar value depending on two factors, the age of the car and the number of complete months in the relevant tax year the car was available for the person's use.

The table assumes all employees make a contribution towards running costs of a car and incorporates a standard value for this. Consequently, there is no need for a client to substantiate and claim contributions.

If the person's income is based on the current tax year, the person could estimate how many months of the tax year the car will be available for use. If the person had or will have more than one car in the tax year, the table could be used to produce two different figures which would be added together to give the total value of the person's car benefit for the relevant tax year.

There is one method statement which applies to all three tables. It has three steps. Steps 1 and 2 simply take the reader to the correct part and row of the table depending on the age and engine size of the car. A calculation is then made of the number of complete months in the relevant year the car was available for the person's use. The person then goes to the column of the table that corresponds to the correct number of months. The dollar figure found there represents the **value of the car fringe benefit** (step 3).

New subsection 1157L(3) makes special provision for members of a couple.

Basically, the position is this: if a person is receiving a car benefit and has a partner who is *not* receiving a car benefit, then the whole value of the car benefit is attributable to the person. If *both* are receiving a car benefit, but it is *not* the same car, the value of each person's benefit would be considered separately. The whole value of the benefit received by each person is counted against that person.

Finally, there is the possibility that the same car benefit may be shared by a couple. For example two people who are joint managers of a hotel are provided with a car. New subsection 1157L(3) deals with this. If so, the value of the benefit would be divided equally. 50% of the joint value would be attributed to each person. This stops the Secretary from double counting the benefit value.

Minister may determine alternative method of valuing car fringe benefits

New section 1157M says that the Minister for Social Security can decide to use another valuation mechanism instead. This must be a disallowable instrument under section 46A of the *Acts Interpretation Act 1901*. This means that Parliament can decide to override the Minister's decision to use another method by not passing the instrument into law. If Parliament agrees to the instrument, it must be notified in the Gazette and would have effect from the day of notification. It would cease to operate after 6 months if not revoked before then.

This would allow the Minister to update car benefit values quickly when market circumstances dictate that values different than those specified in the legislation should be used.

Division 4 - Value of school fee benefits

Value of school fee fringe benefits

New subsection 1157N says how to value a school fee fringe benefit. Its value is the amount of the school fees provided. In other words, school fees are counted on a dollar for dollar basis.

Division 5 - Value of health insurance fringe benefits

Value of health insurance fringe benefits

New subsection 1157O says how to value a health insurance benefit. Its value is the amount of the health insurance benefit provided. In other words, health insurance benefits are counted on a dollar for dollar basis.

Division 6 - Value of loan fringe benefits

Method of valuing loan fringe benefits

New subsection 1157P says how the value of a loan fringe benefit is to be worked out. It is worked out in accordance with the method statement in new subsection 1157Q unless the Minister for Social Security decides under new section 1157R to use another method.

Value of loan fringe benefit

New subsection 1157Q(1) sets out the method statement. Basically, loans are valued as follows. They are divided into two types, housing and non-housing (step 1). The legislation then sets a 'notional rate' of interest for each type of loan for each tax year. For the tax year ending 30 June 1993 it would be 10% for housing loans and 13.5% for other loans (s 1157Q(2)). For the tax year ending 30 June 1994 - 6.95% for housing loans and 11.75% for other loans (s 1157Q(3)). For any subsequent tax year it would be 6.95% for housing loans and 11.75% for other loans (s1157Q(4)). A comparison is then made between the actual rate of interest charged in respect of the loan on 1 July in the appropriate tax year and the notional rate applicable to that type of loan (steps 2 and 3).

If the actual rate exceeds the notional rate, then a market rate of interest is being charged and the loan is valued at nil (steps 4 and 5). Giving the loan a nil value means nothing would be added to the person's income for that loan and stops a person from getting a notional loss which can be offset against other income.

If the actual rate is less than the notional rate, then the person is enjoying a benefit, and the actual rate is deducted from the notional rate to produce the applicable **rate of interest** (step 6).

The amount of the loan outstanding is then ascertained (step 7) and this amount is multiplied by the applicable **rate** to get the **interim value of the loan** (step 8). The interim value is then multiplied by the number of complete weeks in the relevant tax year the person had (or will have) the loan (steps 8-10). This gives the **value of the loan fringe benefit** (step 11).

New subsection 1157Q(5) says how to work out what the actual rate of interest is in certain circumstances. This deals with cases where someone takes out a loan half way through a year. If the person had the loan at the beginning of the year, the actual rate is that applying on 1 July in the tax year. Otherwise it is the rate payable when the loan starts.

New subsection 1157Q(6) also deals with loans received part way through the year. It says that, if the loan did not start on 1 July, the outstanding amount of the loan is the amount outstanding on the day the loan starts.

New subsection 1157Q(7) deals with the problem referred to earlier of a couple sharing the same benefit. An example could be where a couple, who work for the same employer, are provided with a loan to buy a house and the loan is taken out jointly. Once again, the value of the benefit would be divided equally to prevent double counting.

Minister may determine alternative method of valuing loan fringe benefits

New subsection 1157R gives the Minister for Social Security the power to specify a new valuation method by way of disallowable instrument.

This would allow the Minister to update loan benefit values quickly when market circumstances dictate that values different than those specified in the legislation should be used.

Division 7 - Value of housing fringe benefits

Method of valuing housing fringe benefits

New subsection 1157S says how to value a housing benefit. It is to be worked out in accordance with new subsection 1157T unless the Minister for Social Security makes a determination under new subsection 1157U that another valuation mechanism is to be used.

Value of housing fringe benefit

New subsection 1157T(1) contains the method statement for using the table in new subsection 1157T(2).

The method statement contains six steps. Step 1 simply tells the reader which row of the table to go to depending on the location of the unit of accommodation. If a unit is in Australia then it could be either in a metropolitan, non-metropolitan or special housing location. There is a separate weekly market rent for houses outside Australia. Step 2 says which column to go to depending on the type of unit and to obtain the dollar figure there called the **weekly market rent**. The type of unit depends on the number of bedrooms it has.

The **weekly market rent** figure is then multiplied by the number of complete weeks in the appropriate tax year that the unit of accommodation was or will be available to the person. This is called the **provisional value of the housing benefit** (steps 3 and 4). Finally, the total of the rent paid by the person during the year is calculated and deducted from the provisional value to give the **value of the housing fringe benefit** (steps 5 and 6).

A person's contribution towards rent would be deductible on a dollar for dollar basis. There is no maximum limit. However, if by any chance the person's contributions exceeded the provisional value of the benefit, any nominal loss cannot be offset against housing or any other fringe benefits. Rent contributions would only be deductible if the person satisfies the Secretary that the amount was contributed and that it was a contribution towards rent. This means that the person must produce written evidence of the amount contributed if called on to do so. Other types of contribution to, or expenditure on, housing would not be deductible.

New subsections 1157T(3) and 1157T(4) deal with the problem (discussed earlier in the context of car and loan benefits) of a members of a couple receiving a housing benefit. They also deal with joint contributions to rent.

New subsection 1157T(3) applies to single people and couples. It says that if a person is single, then the allowable rent contribution is the amount the person spent on rent. If the person is a member of a couple then the allowable contribution is the amount spent by the person and his/her partner on rent. This stops double counting of the rent contribution.

New subsection 1157T(4) effectively says that if a couple share the same unit of accommodation, then in working out the fringe benefit value in respect of each person, you attribute half of the total rent value and rent contribution to each party. This stops the couple from double counting their rent contribution. It also stops the Secretary treating the couple unfairly by double counting the housing benefit.

Minister may determine alternative method of valuing housing fringe benefits

New subsection 1157U gives the Minister for Social Security a power to determine that another method of valuation be used. Once again, this would be a disallowable instrument.

This would allow the Minister to update housing benefit values quickly when market circumstances dictate that values different than those specified in the legislation should be used.

Division 8 - Foreign currency rates

If someone is outside Australia and is provided with an assessable benefit, this will still be counted. In many cases the benefit will be provided in a foreign currency. For example, a diplomat posted to the USA who is provided with private health insurance in American dollars. Division 8 says how to take that money into account.

New subsection 1157V(1) says that if it is necessary to work out an amount or value and it is expressed in a foreign currency, then you use the market exchange rate for 1 July in the appropriate tax year.

New subsection 1157V(2) says that if there is no exchange rate on that day (eg a national public holiday) the rate to be used is the rate applicable on the last working day immediately before that day.

New subsection 1157V(3) says that the market exchange rate for a foreign currency is the on-demand airmail buying rate for that currency available at the Commonwealth Bank of Australia.

Clause 8: says that the consequential amendments are set out in the Schedule.

5. Commencement.

These changes will commence on 1 January 1994.

PART 3 - SENIORS HEALTH CARD

1. Summary of the proposed changes

This Part provides the legislative basis within the Principal Act for the seniors health card that will give low income non-pensioner/beneficiary retirees access to certain health-related Commonwealth concessions. It also proposes amendments to the *National Health Act 1953* and the *Hearing Services Act 1991* that will enable these people to have access to concessional pharmaceutical benefits and hearing aid concessions.

2. Background

All recipients of social security and service pension and, in some cases, other social security payments are entitled to pharmaceutical and hearing aid concessions under provisions in the *National Health Act 1953*, the *Health Insurance Act 1973* and the *Hearing Services Act 1991*. The administrative mechanisms enabling this access are the various "Health Cards", including the Pensioner Health Benefit card (to become the Pensioner Concession card), the Health Benefit card and the Health Care card. The cards may also provide access to other non-health related concessions but these are not of concern here.

People of age pension age or people of age service pension age whose income levels are the same as those of age or age service pensioners may not qualify for health-related concessions because they are not receiving a pension as a consequence of:

failing certain qualification or payability conditions such as the assets test or pension residential requirements (eg 10 years qualifying residence for age pension);
or

- their reluctance to claim a pension, the value of which would be relatively insignificant, eg \$67.60 a year (\$2.60 a fortnight).

This initiative is estimated to assist about 200,000 non-pensioner retirees.

3. Clauses involved in the changes

Clause 2(5): specifies the commencement date as 1 July 1994.

Clause 9: inserts a new section 6A into the Principal Act (seniors health card definitions).

Clause 10: amends the definitions of "recipient notification notice" and "recipient statement notice" in subsection 23(1) of the Principal Act.

Clause 11: inserts a new Chapter 2A into the Principal Act (Benefits and Concessions other than Payments) that comprises a new Part 2A.1 to deal with the seniors health card.

Clause 12: inserts a new Part 3.9 into the Principal Act (seniors health card ordinary income test calculator).

Clause 13: amends section 1190 of the Principal Act (indexed and adjusted amounts table).

Clause 14: inserts new section 1206C into the Principal Act (adjustment of seniors health card thresholds).

Clause 15: amends section 1239 of the Principal Act (Secretary may review decisions).

Clause 16: amends section 1240 of the Principal Act (application for review).

Clause 17: amends section 84 of the *National Health Act 1953* (definitions of "concessional beneficiary" and "dependant").

Clause 18: amends section 5 of the *Hearing Services Act 1991* (definition of "prescribed person").

4. Explanation of the changes

Clause 9 will insert a new section 6A into the Principal Act to define the term "holder of a seniors health card". A person will be a holder of a seniors health card if a determination is in force that the person is entitled to a card. Such a determination would be made under new section 1061ZI or 1061ZT (see **clause 11**). Basically, a person will need to be qualified for a seniors health card to become entitled to be a holder of a card.

Clause 10 will amend the definitions of "recipient notification notice" and "recipient statement notice" in subsection 23(1) of the Principal Act. At the moment, those terms are the shorthand names for provisions requiring recipients of certain social security payments to provide the Department of Social Security with information that might affect their payments. The amendments to the definitions, together with new sections 1061ZK and 1061ZL (see **clause 11**) will impose similar obligations on seniors health cardholders in so far as the need to provide information that might affect their qualification for the cards is concerned.

Clause 11 will insert a new Chapter 2A into the Principal Act which will deal with **benefits and concessions other than social security payments**. It also inserts new Part 2A.1 which will provide the legislative basis for the seniors health card including details about:

qualifying for the card (new section 1061ZA);

entitlement to be a holder of a card (new section 1061ZB);

claiming the card (new sections 1061ZC to 1061ZG);

determining entitlement to the card (new sections 1061ZH to 1061ZD);

notification obligations of a cardholder (new sections 1061ZK and 1061ZL); and

continuing effect of a determination regarding entitlement to a card and varying or terminating such a determination (new sections 1061ZM to 1061ZV).

The conditions to be satisfied in order for a person to qualify for a seniors health card are set out in new section 1061ZA. New subsection 1061ZA(1) deals with a person who might otherwise qualify for an age pension and new subsection 1061ZA(2) with a person who might otherwise be eligible for an age service pension. In summary, to be qualified for the card, a person:

must be either:

- of age pension age (ie 60 for a woman or 65 for a man); or
- of up to 5 years less than age pension age (ie 55 to 60 for a woman or 60 to 65 for a man), eligible for an age service pension, or would be if the person had been an Australian resident (in accordance with section 5G of the *Veterans' Entitlements Act 1986*) continuously for 10 years; and

must be an Australian resident (in accordance with the term "Australian resident" as defined in the Principal Act or the *Veterans' Entitlements Act 1986* as the case may be); and

must be in Australia; and

must satisfy the seniors health card ordinary income test; and

must not be receiving a social security pension or benefit or a service pension.

Notes 1 and 2 to new subsection 1061ZA(1) signpost the definitions of the terms "Australian resident" and "seniors health card ordinary income test". Note 1 to new subsection 1061ZA(2) also signposts the definition of "seniors health card ordinary income test". Note 2 to that new subsection informs a reader of the provision of the *Veterans' Entitlements Act 1986* that deals with eligibility for an age service pension.

New section 1061ZB requires a person to be a "holder of a seniors health card" in addition to being qualified for it in order to attract the various benefits and concessions relating to the cardholder's health. Note 1 to the section explains how a person becomes a "holder of a seniors health card" and signposts the definition of that term. Note 2 indicates that concessional pharmaceutical benefits are available to the cardholder under the *National Health Act 1953* as are hearing aid concessions under the *Hearing Services Act 1991*.

To be granted a seniors health card, a person must make a proper claim for it (new subsection 1061ZC(1)). If a claim is not granted because the person was not qualified for it at the time it is made, then the claim is taken not to have been made (new subsection 1061ZC(2)). The following criteria will make a claim for a seniors health card a proper claim for that card:

- it must be in writing and in a form approved by the Secretary to the Department of Social Security (new section 1061ZD);
- it must be lodged at a place or with a person (in Australia) approved by the Secretary and (new section 1061ZE);
- the person must be an Australian resident and in Australia when lodging the claim (new section 1061ZF).

If a claimant or a person representing a claimant for a seniors health card seeks to withdraw a claim for a seniors health card before it has been determined, then the claim will be taken to have not been made (new section 1061ZG).

The Secretary is to determine a claim for a seniors health card (new section 1061ZH). If the Secretary is satisfied that the claimant is qualified then the Secretary must determine that the claimant is entitled to the card (new section 1061ZI). Generally, the date of effect of a determination about entitlement will be the day of the determination or on such other day as is specified in the determination (new subsection 1061ZJ(1)). However, if the determination to allow entitlement to a card is based on the overturning of an appeal against a determination to deny entitlement and either:

- the appeal was sought within 3 months of the determination; or
- the person affected was not notified of the determination to deny entitlement;

then the determination to allow entitlement takes effect on the day on which the original determination (to deny entitlement) was made (new subsections 1061ZJ(2) and (4)). If a determination to deny entitlement to a card is overturned following an appeal which was lodged more than 3 months after that determination, then the date of the determination to allow entitlement to a card takes effect on the day on which the appeal was lodged (new subsection 1061ZJ(3)).

New sections 1061ZK and 1061ZL will provide for notification obligations of a seniors health cardholder.

New section 1061ZK enables the Secretary to give a cardholder a notice that will require him or her to notify the Department of Social Security (DSS) of the occurrence of an event or of a change in circumstances which might affect his or her qualification for the card. This notice has the generic name of a recipient notification notice and is defined in subsection 23(1) of the Principal Act - see also **clause 10**. The provision also sets out the various specifications of the notice as well as details of the possible penalties for refusing or failing to comply with it.

Similarly, new section 1061ZL enables the Secretary to give a cardholder a notice requiring him or her to provide DSS with specific information that might affect his or her qualification for the card. This notice has the generic name of a "recipient statement notice" which is defined in subsection 23(1) of the Principal Act - see also **clause 10**. Notice specifications and penalties for non-compliance are also included in the provision.

New section 1061ZM will provide that a determination that a person is entitled to a seniors health card continues in effect until the person stops being entitled under an automatic disqualification provision (see new sections 1061ZN and 1061ZO) or another determination takes effect under new section 1061ZQ or 1061ZR.

New sections 1061ZN and 1061ZO deal with automatic disqualification for the seniors health card if a cardholder complies with a section 1061ZK notice or does not comply with such a notice respectively. According to new section 1061ZN, a person's entitlement to be a holder of a seniors health card will cease automatically at the end of the notification period relevant to a section 1061ZK notice under the following conditions:

the person was given a recipient notification notice under section 1061ZK;

the person informs the Department of the occurrence of an event or of a change in circumstances as required by the notice and within the notification period specified on the notice;

because of the occurrence of the event or of the change in circumstances, the person's qualification for the card stops; and

a determination is not made that the person's entitlement to the card ends before the end of the notification period (eg under new section 1061ZQ or 1061ZR).

New section 1061ZO will provide that a person's entitlement to a seniors health card will cease automatically on the day after the occurrence of the event or of the change in circumstances under the following conditions:

- the person was given a recipient notification notice under section 1061ZK;
- the person does not inform the Department of the occurrence of an event or of a change in circumstances as required by the notice within the period specified on the notice; and
- because of the occurrence of the event or of the change in circumstances, the person's qualification for the card stops.

Notes after new sections 1061ZN and 1061ZO signpost the definition of "holder of a seniors health card".

If one of the two automatic disenititlement provisions is given effect by the operation of a computer program, then there will be a deemed decision of the Secretary that the relevant automatic disenititlement provision applies (new section 1061ZP).

If the Secretary reaches the requisite state of satisfaction that a holder of a seniors health card is no longer qualified for the card under the Principal Act, then new section 1061ZQ will provide that the Secretary is to make a determination that the cardholder ceases to be entitled to the card. Note 1 to this provision signposts the definition of "holder of a seniors health card". Note 2 indicates that if a self-executing decision under new section 1061ZN or 1061ZO applies, then new section 1061ZP does not apply. Note 3 signposts new section 1061ZV which sets out the date of effect of a decision made under new section 1061ZQ.

New section 1061ZR will provide that a person's entitlement to be a holder of a seniors health card ceases if the person fails to comply with the requirements of a recipient statement notice issued under new section 1061ZL. Note 1 to this provision signposts the definition of "holder of a seniors health card". Note 2 explains that this provision does not apply if new section 1061ZQ applies. Note 3 signposts new section 1061ZV as the provision which establishes the date of effect of a decision made under new section 1061ZR.

New section 1061ZS is similar to new section 1061ZP. Both deal with determinations made with the assistance of computer programs. However, new section 1061ZS deals with determinations which could have been made by the Secretary whereas new section 1061ZP deals with automatic disenititlement determinations (ie, self-executing decisions). In other words, new section 1061ZS provides that if a decision that the Secretary could have made (affecting a person's entitlement to be a holder of a seniors health card) is given effect by the operation of a computer program, then the change will be deemed to have been made because of a determination of the Secretary.

Should a decision be made to cease a person's entitlement to a seniors health card in error under new section 1061ZQ or 1061ZR, then new section 1061ZT allows the Secretary to reverse the incorrect decision. The note to new section 1061ZT signposts new section 1061ZU as the provision which sets out the date of effect for a determination under this provision.

Generally, the date of effect of a favourable determination under new section 1061ZT will take effect on the day of the determination or on such other day as is specified in the determination (new subsection 1061ZU(1)). However, if the decision is based on the overturning of an appeal against a decision to discontinue a person's entitlement to be a holder of a seniors health card and either:

- the appeal was sought within 3 months of the decision; or

the person affected was not notified of the decision to discontinue his or her entitlement to be a holder of a card;

then the decision to reinstate it takes effect on the day on which the original disentitlement decision was made (new subsections 1061ZU(2) and (4)). If a disentitlement decision is overturned following an appeal which was lodged more than 3 months later, then the date of the decision to reinstate entitlement to be a holder of a card takes effect on the day on which the appeal was lodged (new subsection 1061ZU(3)).

New section 1061ZV provides for the date of effect of an adverse determination relating to a seniors health card. Generally, an adverse decision will take effect on the day of the determination or on such later day as is specified in the determination (new subsections 1061ZV(1) to (3)). However, if the adverse determination arises because of a person's contravention of the Principal Act or because the person has made a false statement or misrepresentation, then the date of effect of the adverse determination may be earlier than the day on which the determination is made (new subsections 1061ZV(4) and (5)).

Clause 12 introduces a new Part 3.9 into the Principal Act which sets out the details of how a person can satisfy one of the primary qualification conditions for the card, ie the seniors health card ordinary income test. In fact, new section 1071 explains this in terms of a person satisfying the Seniors Health Card Ordinary Income Test Calculator at the end of the section.

New point 1071-1 sets out a method statement showing how to work out whether a person satisfies the seniors health card ordinary income test in a step by step fashion. A note after the method statement explains that the application of the test is affected by provisions concerning investment income (sections 1073 to 1099 of the Principal Act), attributed (or deemed) income (sections 1099A to 1099Q) and disposal of income (sections 1106 to 1112).

If a person who is seeking to satisfy this income test is a member of a couple, then new point 1071-2 provides that the ordinary income to be taken into account is half of the total ordinary income of the person and his or her partner.

New point 1071-3 establishes the seniors health card ordinary income limits that depend on a person's family situation. The limits are colloquially known as the basic pension ordinary income test cut-out points. A cut-out point can be worked out as follows:

Example: How to calculate the cut-out point for a member of a couple.

- Step 1: Find out the current maximum basic rate for an age pensioner who is a member of a couple (see item 2 of Table B to point 1064-B1 of the Principal Act) and multiply it by 2 (currently $\$6767.80 \times 2 = \13535.60).
- Step 2: Find out the current rate of pharmaceutical allowance for an age pensioner who is a member of a couple (see item 2 of the Pharmaceutical Allowance Amount Table to point 1064-C8 of the Principal Act) and multiply it by 2 (currently $\$67.60 \times 2 = \135.20).
- Step 3: Sum the amounts obtained from Steps 1 and 2 (currently $\$13535.60 + \$135.20 = \$13670.80$).
- Step 4: To the amount obtained from Step 3, add the current ordinary income free area for an age pensioner who is a member of a couple (see item 2 of Table E-1 to point 1064-E4 of the Principal Act - currently $\$1976.00$). This gives the **cut-out point** (ie, the **seniors health card ordinary income limit** of $\$15646.80$ - see item 2 of the Seniors Health Card Ordinary Income Limit Table in the proposed new point 1071-3).

At present, these cut-out points are as follows:

family situation	cut-out point
1. Not a member of a couple	\$18,787.60 a year
2. Member of a couple	\$15,646.80 a year
3. Member of an illness separated couple	\$18,475.60 a year
4. Member of a respite care couple	\$18,475.60 a year
5. Partnered (partner in gaol)	\$18,475.60 a year

Also, the cut-out point can be increased by \$624.00 a year for each dependent child of a person - see the definition of "dependent child" in subsections 5(2) to (9) of the Principal Act. These details are reflected in the Seniors Health Card Ordinary Income Limit Table.

Notes 1 and 2 to point 1071-3 signpost the definitions of various terms used in the Seniors Health Card Ordinary Income Limit Table. Note 3 informs a reader that the ordinary income limits in the table are adjusted 4 times a year in line with changes in the consumer price index. The four occasions are 1 January, 20 March, 1 July and 20 September.

Because the limits included in the table are likely to change on several occasions between the time of introduction of this Bill into Parliament and the intended date of effect of the proposal (ie 1 July 1994), new point 1071-4 enables the adjustments of the limits as if the legislation governing the limits (see **clauses 13 and 14**) had been in place on those occasions.

Clause 13 inserts new items into the Indexed and Adjusted Amounts Table of section 1190 of the Principal Act to identify the abbreviated names of the seniors health card ordinary income limits requiring adjustment as a result of the indexation of the components from which the limits are calculated. It also informs the reader about the location of the provisions prescribing the limits in the Principal Act.

Clause 14 provides the rules for adjusting each of the seniors health card ordinary income limits in the table to new point 1071-3 (see **clause 12**) other than the additional limits for dependent children. It inserts a new section 1206C within Part 3.16 of the Principal Act, each subsection of which provides the formula for adjusting each of the 5 items in the table. Basically, the limits are calculated by summing the following components:

- twice the maximum basic rate of the item in Table B of point 1064-B1 (column 3) that corresponds to the particular family situation;
- twice the pharmaceutical allowance rate of the item in the Pharmaceutical Allowance Amount Table of point 1064-C8 (column 3) that corresponds to the particular family situation; and
- the relevant income free area from column 3 of Table E-1 of point 1064-E4.

Clauses 15 and 16 insert new Notes in sections 1239 and 1240 of the Principal Act. The new notes indicate to a reader that:

- an automatic disqualification provision about a person's entitlement to a seniors health card which is given effect by a computer program is deemed to be a determination of the Secretary (to ensure a right of review) - see new section 1061ZP; and
- if the Secretary could have made a determination about a person's qualification for a seniors health card but it was made through the use of a computer program, then it is deemed to have been made by the Secretary - see new section 1061ZS.

As well as amendments to the Principal Act to provide a legislative basis for the seniors health card, changes are necessary to the *National Health Act 1953* (the NHA) and the *Hearing Services Act 1991* (the HSA) to allow cardholders to have access to concessional pharmaceutical benefits and to hearing aid concessions respectively.

Clause 17 will amend the definitions of "concessional beneficiary" and "dependant" in section 84 of the NHA. "Concessional beneficiary" is the basic term used to describe a person who belongs to one of several groups of people who have access to concessional pharmaceutical benefits. The definition is to be amended by adding a new paragraph (ac) to indicate that a person who is the holder of a seniors health card under the *Social Security Act 1991* is a "concessional beneficiary" and consequently, has access to concessional pharmaceutical benefits. A Note after new paragraph (ac) will signpost the definition of "holder of a seniors health card" in the Principal Act. This will mean that a cardholder will pay only \$2.60 per item under the Pharmaceutical Benefits Scheme (PBS) up to a total of \$135.20 a year, after which further PBS items are free for that year.

The definition of "dependant" in section 84 of the NHA is also being amended to prevent a dependant of a seniors health cardholder from accessing concessional pharmaceutical benefits except in certain circumstances as follows:

the dependant could do so in his or her own right; or

the dependant is also a dependant of another person who belongs to a category of "concessional beneficiary" in respect of which access of dependants to the concessions is permitted (eg the dependant of the seniors health cardholder is also a dependant of a social security pensioner).

Clause 18 will amend subsection 5(1) of the HSA by inserting a new paragraph (ac). Section 5 defines "eligible person" for the purposes of the HSA. It is a term used to describe, amongst other things, a person who belongs to one of several groups of people who have access to hearing aid concessions. The new paragraph (ac) will indicate that a person who is a holder of a seniors health card under the *Social Security Act 1991* is an "eligible person" and consequently, has access to hearing aid concessions. A Note after new paragraph (ac) will signpost the definition of "holder of a seniors health card" in the Principal Act. This will mean that a cardholder can receive free hearing aids and concessional services (\$25 a year) that cover hearing aid maintenance and batteries available through Australian Hearing Services.

5. Commencement

These amendments will commence on 1 July 1994.

PART 4 - FAMILY PAYMENTS (FOREIGN INCOME)

1. Summary of the proposed changes

The amendments made by Part 4 will mean that foreign income will be taken into account for the purpose of assessing a person's family payment entitlement. The purpose of these amendments is to ensure that family units with a foreign income source (or sources) are not unfairly advantaged compared to families with similar levels of income in Australia. It would not affect families receiving income support payments because they are not subject to the family payment income test (point 1069-H1 of the Principal Act). In any case, recipients of social security pension or benefit (or service pension) should already have had such income taken into account in calculating their social security pension or benefit rate.

2. Background

Family payment is an income assistance payment (as distinct from an income support payment such as a pension, benefit or allowance that might comprise a person's sole source of income) to help parents and guardians (and institutions) meet the cost of raising children. It follows that the purpose of the family payment income test differs from the purpose of the test used for income support payments. First, it measures a family unit's capacity to raise children without any assistance from public revenue. Secondly, it measures the level of assistance needed if it is required. For these reasons and for reasons of administrative practicality, taxable income has been the traditional yardstick for family payment income testing.

However, this gives rise to unfair situations as some family payment clients gain considerable advantages because they have income that is not assessable under the *Income Tax Assessment Act 1936* (the *ITAA*). This would not be the case under, for example, the pension income test because under that test, 'income' includes amounts "earned, derived or received from any source (whether within or outside Australia)" - see subsection 8(2) of the Principal Act. The most common unfair situations occur in respect of families who are newly arrived in, or are returning to, Australia as well as those whose partners work overseas (and, in some cases, are non-residents under the Tax Act) - see sections 23AF and 23 AG and subsection 25(1) of the *ITAA*.

For reasons of equity, the Principal Act will be amended to enable foreign income to be taken into account for the purpose of assessing a person's family payment entitlement. It has been estimated that about 2,500 families are likely to be affected by these changes.

3. Clauses involved in the changes

Clause 2(4): specifies the commencement date as 1 January 1994 immediately after Part 2 of the Bill (clauses 4 to 8 inclusive) commences.

Clause 19: inserts new definitions into section 10A of the Principal Act (family payment income test and parental income test definitions - section 10A inserted by **clause 4** of this Bill).

Clause 20: amends section 1069 of the Principal Act (specifically, Module H of the Family Payment Rate Calculator).

Clause 21: amends section 1157V of the Principal Act (exchange rate to be used to convert foreign income into Australian dollars - section 1157V inserted by **clause 7** of this Bill).

4. Explanation of the changes

Clause 19 will introduce two new terms into section 10A of the Principal Act. Section 10A is inserted by **clause 4** of this Bill. The first new term is "foreign income" that will mean, in relation to a person whose rate of family payment is being calculated:

an 'income amount' 'earned, derived or received' by the person from overseas for the person's own use or benefit (Notes 1 and 2 to the definition will signpost provisions explaining the meaning of the two underlined terms); or

a periodical payment by way of gift or allowance from overseas; or

- a periodical benefit by way of gift or allowance from overseas.

Note 3 to this definition will inform the reader that the definition is not to be confused with the definition of "income" in subsection 8(1) of the Principal Act despite its similarity. Also, it will inform the reader that the exclusions to the definition of "income" in subsections 8(4), (5) and (8) of the Principal Act do not apply to the new definition of "foreign income" to be inserted in subsection 10A(1).

The purpose of the other new term introduced by **clause 19**, ie "target foreign income", is best explained by considering the overall intended effects of Parts 2 and 4 of this Bill. Part 2 of the Bill envisages a new family payment income test commencing from 1 January 1994 that will encompass the value of certain fringe benefits of a person in addition to the taxable income of the person as is currently the case. Part 4 of the Bill adds "foreign income" to the family payment income test from the same date. In some circumstances, a person's taxable income or the value of the person's fringe benefits for family payment income test purposes might include "foreign income". Consequently, the main purpose of the definition of "target foreign income" (together with amendments made by **clause 20**) is to prevent "foreign income" from being counted more than once in the family payment income testing process, ie to prevent "foreign income" from being taken into account as taxable or fringe benefit income as well as foreign income.

Clause 20 will amend various provisions in Module H of the Family Payment Rate Calculator at the end of section 1069 of the Principal Act. Module H deals with the family payment income test. The amendments will achieve the following:

Clause 20(a) will insert a new point 1069-H2C to provide that a person's "target foreign income" (see new definition inserted by **clause 19**) for a tax year includes the target foreign income of the person's partner if he or she is a member of a couple. A Note to the new point will signpost the definition of "target foreign income". "Tax year" is defined in subsection 23(1) of the Principal Act to take on the same meaning as "year of income" in the *ITAA*. Section 6 of the latter Act defines "year of income" as the financial year (1 July to 30 June) or, if another accounting period has been adopted under section 18 of that Act instead of the financial year, that accounting period.

- Submodule 2 of Module H of the Family Payment Rate Calculator contains provisions which identify which tax year to use to work out the rate of family payment payable to a person for a particular payday (points 1069-H11 to H20). As a consequence of the changes made by **clause 6** of this Bill, the word "taxable" will be removed from points 1069-H13 to H17 inclusive and point 1069-H19 and a new point 1069-H21 will be inserted to define "income" for the purposes of Submodule 2 to mean taxable plus notional fringe benefit income. **Clause 20(b)** will amend that definition to include target foreign income so that the same tax year provisions that apply to taxable and notional fringe benefit income also apply to target foreign income. A Note to point 1069-H21 will signpost the definition of "target foreign income".
- **Clause 6** of this Bill inserts, among others, new points 1069-H22 and H27 into Submodule 3 and 4 respectively of Module H of the Family Payment Rate Calculator. These points include Method statements for working out:
 - whether a person satisfies the family payment income test (*Submodule 3*); and
 - the effect of a person's income on a person's additional family payment (*Submodule 4*).

Clauses 20(c) to (e) amend points 1069-H22 and H27 to include new steps in those two Method statements to take target foreign income into account for family payment income testing purposes.

Clause 7 of this Bill inserts a new Part 3.12A into the Principal Act that will deal with general provisions relating to the family payment income test and the parental means test. One of the provisions in new Part 3.12A is new section 1157V that will set the exchange rate to be used for valuing foreign currency income for the purposes of the family payment income test and the parental means test. The rate to be used will generally be the market exchange rate available at the Commonwealth Bank on 1 July in the appropriate tax year. New subsection 1157V(3) will provide that the market exchange rate is to be the on-demand airmail buying rate for the currency concerned available at the Commonwealth Bank. **Clause 21** will amend new section 1157V by inserting a new subsection 1157V(1A) to apply the new foreign exchange conversion rule to target foreign income for the purposes of the Family Payment Rate Calculator.

5. Commencement

These amendments will commence on 1 January 1994, immediately after the commencement of Part 2 of this Bill.

PART 5 - CONVERSION OF FOREIGN CURRENCY AMOUNTS

1. Summary of the proposed changes

This Part will amend the Principal Act to provide that the exchange rates (for nominated currencies) for converting foreign currency income into Australian dollars (\$A) in the income testing process would be updated every pension payday. The rates would be based on the actual market exchange rate available at the Commonwealth Bank on the previous pension payday. The changes will come into effect from the date of Royal Assent.

2. Background

Division 2 of Part 3.10 of the Principal Act sets out the current rules for converting foreign currency amounts into \$A for the purpose of assessing the rate of social security pension payable to a person.

Section 1102 sets a base exchange rate for a currency nominated by the Secretary to the Department of Social Security under subsection 1100(1). It is the average of the actual market exchange rates available on each working day of the first month of the foreign exchange period. (The underlined terms are defined in subsection 23(1) of the Principal Act.) If that first month was month one, then the base exchange rate would be used for rate assessments during months four, five and six. The next rate would be set from month four and would have effect during months seven, eight and nine. For the purpose of this explanation, call the month from which the value of the base exchange rate is drawn the 'base month'.

Under the current legislation, the base exchange rate applies under normal circumstances. However, section 1103 provides for the use of an 'emergency' exchange rate if the actual market exchange rate differs from the base exchange rate by 10% or more for 10 consecutive days not in a base month.

Under normal circumstances, a base exchange rate applies for three months. At the end of that period it is five months old. Apart from it not being contemporary, the fact that it is fixed for three months accentuates the result of any movement of the actual market exchange rate away from the base exchange rate. Experience has shown that a persistent downward or upward trend in the actual market exchange rate gives rise to a significant distortion in the rates of pension being paid to that which would be paid if more current exchange rates were used instead of the base rate. Experience has also shown that the 'emergency' rule in section 1103 is inadequate in dealing with sudden movements in currencies - this became apparent when sterling devalued suddenly in September 1992.

The existing foreign currency rules were developed during the legislation review that gave rise to the clear English rewrite of the Act. At that time, a factor influencing the type of foreign currency conversion scheme that could be used was the speed and frequency that exchange rates could be fed into the computer system to calculate social security pension payment instalments each fortnight. Since then, the system has been improved to the extent that it is now possible to insert exchange rates on a fortnightly basis. This gives a more accurate Australian dollar valuation of a social security pensioner's foreign currency income given the extent of fluctuations in exchange rates.

Accordingly, the Principal Act is to be amended so that a new exchange rate for each nominated currency will apply every pension payday. It will be based on the actual market exchange rate available at the Commonwealth Bank on the previous pension payday. This will mean that, instead of being up to 5 months old, the exchange rates used would be, at most, a fortnight old.

3. Clauses involved in the changes

Clause 2(1): specifies the commencement date of **clauses 22 to 26** (except **clause 23**) as the day of Royal Assent.

Clause 2(2): specifies the commencement date of **clause 23** as 12 November 1991.

Clause 22: amends subsection 23(1) of the Principal Act (general definitions).

Clause 23: amends section 1100 of the Principal Act (scope of application of foreign currency conversion rules).

Clause 24: repeals sections 1101 to 1105 of the Principal Act and inserts a new section 1101 (determination of the value of payments received in a foreign currency).

Clause 25: amends section 1250 of the Principal Act (non-reviewable decisions).

Clause 26: amends section 1253 of the Principal Act (SSAT review powers).

4. Explanation of the changes

Clause 22 will omit the definitions of "actual market exchange rate" and "foreign exchange period" from subsection 23(1) of the Principal Act as they will no longer be required.

Clause 23 will make a minor technical amendment to include Pension Rate Calculators D and E at the end of sections 1066A and 1066B of the Principal Act respectively within the ambit of the application of the foreign currency conversion provisions. These rate calculators were inserted into the Principal Act by section 20 of the *Social Security (Disability and Sickness Support) Amendment Act 1991* and there should have been a consequential amendment to include them in section 1100 at the same time. This amendment will achieve that outcome.

Clause 24 will repeal the complex foreign currency conversion rules currently in operation and replace them with much simpler and more contemporary rules. New subsection 1101(1) will provide that foreign currency income (to which the provision applies) that is to be taken into account in working out a person's social security pension for a particular payday is to be converted into \$A at the market exchange rate for the previous payday. New subsection 1101(3) defines the market exchange rate as the on-demand airmail buying rate for that currency available at the Commonwealth Bank of Australia as at the start of business in Australia each working day. New subsection 1101(2) makes provision for those occasions when, for example, there is a national public holiday on a pension payday. In those cases, the rate to be used is the market exchange rate available on the most recent working day before the pension payday.

Clauses 25 and 26 will amend sections 1250 and 1253 by omitting paragraphs (1)(l) and (4)(j) respectively. Under the current foreign exchange conversion rules, the date from which an emergency exchange rate can be used (see section 1104 of the Principal Act) is not reviewable. As there is no need to retain that provision under the simplified system, the corresponding exemptions from reviewability can be removed.

5. Commencement

These amendments will commence on the day of Royal Assent except **clause 23** which will be taken to have commenced on 12 November 1991.

PART 6 - EXTENSION OF ADVANCE PHARMACEUTICAL ALLOWANCE

1. Summary of the proposed changes

The changes provide for the continuation of the payment of advance pharmaceutical allowance until 31 December 1994.

2. Background

The payment of pharmaceutical allowance was introduced in November 1990 to offset the introduction of a charge for pharmaceutical benefits for persons who had previously received prescriptions free under the Pharmaceutical Benefits Scheme.

As an interim measure, advance payments of that allowance were introduced to assist pensioners of limited means with high pharmaceutical requirements to adjust to the changes in the Pharmaceutical Benefits Scheme. It was available only to maximum rate pensioners who met the eligibility criteria in terms of prescriptions bought and non-pension income and assets. These pensioners could receive lump sum advances of the pharmaceutical allowance, rather than receive it as a fortnightly instalment with their pension.

It is now proposed to continue the availability of advances until 31 December 1994.

3. Clauses involved in the change

Clause 2(1): specifies the commencement date as the date of Royal Assent.

Clause 27: amends the date on which the sunset clause for the payment of advance pharmaceutical allowance will come into effect.

Clause 28: Inserts a note to inform the reader of the existence of a sunset provision.

4. Explanation of the changes

In the absence of any amending legislation, Part 2.23 of the Principal Act would be repealed with effect from 1 January 1994 due to the operation of subsection 2(6) (a commencement provision) and section 49 (a sunset provision) of the *Social Security Legislation Amendment Act (No 4) 1991*.

Clause 27 amends the commencement provision so that the sunset provision will now operate from 1 January 1995.

As the sunset provision is not set out in the Principal Act itself, **clause 28** will alert the reader to the existence of a sunset provision.

5. Commencement

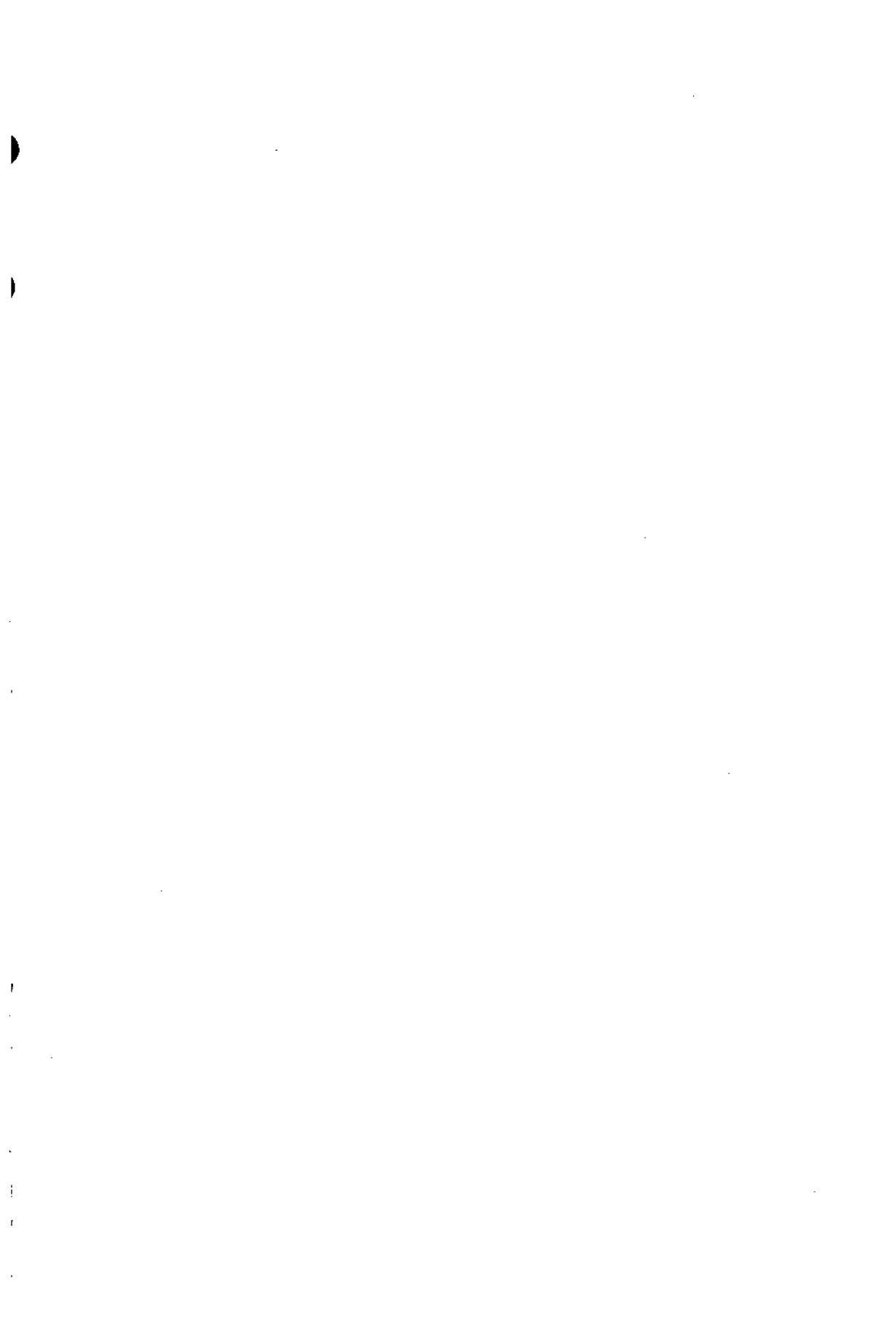
The changes will come into effect on the day of Royal Assent.

SCHEDULE

CONSEQUENTIAL AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

The Schedule makes minor consequential amendments to the *Social Security Act 1991* from 1 January 1994 that are consequential upon the amendments contained in Part 2 of the Bill that will ensure that both the income test for family payment and the parental income test for job search allowance and sickness allowance claimants and recipients under 18 take account of certain employer provided fringe benefits.







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