

SOCIAL SECURITY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Social Security Act 1964. The purpose of the Bill is to make clear that, with certain exceptions, income-related insurance payments received by applicants for benefits are to be treated as income for the purposes of that Act.

The principal exceptions are—

- (a) Debt insurance payments, being payments made under contracts of insurance or by reason of a person's membership of a society, organisation, or body made for the purpose of repaying and used to repay existing debt:
- (b) Health or disability insurance payments, being payments made under contracts of insurance or by reason of membership of societies, organisations, or bodies that provide for the payment or reimbursement of health or disability care costs and that are used to meet those costs.

Clause 1 relates to the Short Title and commencement of the Bill. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 2 provides that the Bill applies only to applications for benefits received after the commencement of the Bill or lodged, but not granted, before that date. *Clause 7* contains transitional provisions that will require the Director-General of Social Welfare to recalculate benefits granted in the period from 1 January 1994 to the date of the commencement of the Bill as if the Bill was in force in that period but only to the extent of paying any deficiency to beneficiaries that results from making that calculation.

Clause 3 inserts into section 3 of the principal Act definitions of the terms “contract of insurance”, “debt insurance payment”, “existing debt”, “health or disability insurance payment”, and “income-related insurance payment” and substitutes a new definition of “income”.

“Contract of insurance” is defined to include a contract or arrangement that, in the opinion of the Director-General of Social Welfare, is similar to or analogous with a contract of insurance.

“Debt insurance payment” is defined to mean a payment made or the value of any credit provided under a contract of insurance or by reason of a person's membership of a society, organisation, or body for the sole purpose of and used to repay existing debt.

“Existing debt” is defined to mean any debt or liability existing on the date on which a contingency occurs that gives rise to a right or eligibility to receive a payment under a contract of insurance or by reason of membership of a society, organisation, or body.

“Health or disability insurance payment” is defined to mean a payment made or the value of any credit or service provided under a contract of insurance or by reason of membership of a society, organisation, or body that provides for the payment or reimbursement of health or disability care costs and that is used to pay or reimburse the costs of health or disability care.

“Income-related insurance payment” is defined to mean a payment or the value of any credit or service that, in the opinion of the Director-General, is made or provided under a contract of insurance or by reason of membership of a society, organisation, or body and made or provided or used for an income-related purpose.

“Income-related purpose”, in relation to a person, is defined to mean the purpose of—

- (a) Replacing lost or diminished income; or
- (b) Maintaining the person or a member of his or her family; or
- (c) Purchasing goods or services for the person or a member of his or her family, being goods or services of a kind that are commonly paid for from income; or
- (d) Enabling the person to make payments that he or she is liable to make and that are commonly made from income.

Clause 3 substitutes a new definition of “income”. It does not effect any substantive change to the existing definition except for the inclusion of income-related insurance payments and the exclusion of debt insurance payments, health or disability insurance payments, and certain other lump sum insurance payments.

The following payments are included in the definition of “income”:

- (a) Periodical income-related insurance payments; and
- (b) Lump sum income-related insurance payments to the extent assessed by the Director-General as being received in respect of income lost within 26 weeks after the event that gave rise to the lump sum payment occurred.

The following payments are excluded from the definition of “income”:

- (a) Debt insurance payments and health or disability insurance payments;
- (b) Lump sum payments under—
 - (i) Any insurance contract on the life of any spouse or the parent of a dependant child; or
 - (ii) Any superannuation scheme, not being a payment for an income-related purpose;
- (c) Lump sum payments received under an insurance contract or by reason of membership of a society, organisation, or body and used to repay existing debt or essential health or disability costs.

Clause 3 adds a new *subsection (4)* to section 3 of the Act specifying matters to which the Director-General is required to have regard in determining whether a payment is an income-related insurance payment or has been made for an income-related purpose.

Clause 4 makes a consequential amendment to section 61E of the Act, which relates to the accommodation supplement, as a result of the proposed new *section 68A*.

Clause 5 makes a consequential amendment to section 61G of the Act, which relates to special benefits, as a result of the proposed new *section 68A*.

Clause 6 inserts a new *section 68A* into the principal Act.

Subsection (1) provides that where a person receives a debt insurance payment, for the purposes of section 61E of the Act (which relates to the accommodation supplement), the person's accommodation costs are to be treated as reduced by the amount of the payment.

Subsection (2) is similar and applies in relation to special benefits under section 61G of the Act.

Subsection (3) is similar and applies in relation to disability allowances under section 69C of the Act.

Subsection (4) is similar and applies in relation to special assistance under welfare programmes approved by the Minister of Social Welfare under section 124 (1) (d) of the Act.

Subsection (5) provides that where an applicant for a benefit is entitled to receive an income-related insurance payment, the Director-General may grant the benefit on condition that the whole or such part of the benefit as the Director-General may require is repaid when the insurance payment is received. It also provides that where an applicant for a benefit of the kind referred to in any of sections 61EA, 61G, 69C, or 124 (1) (d) of the Act is entitled to receive a debt insurance payment or a health or disability insurance payment, the benefit may be granted on the same condition.

Subsection (6) is similar in effect to *subsection (5)* but applies where a benefit has already been paid without taking into account any income-related insurance payment, debt insurance payment, or health or disability insurance payment.

Clause 7 makes a consequential amendment to section 69C of the Act, which relates to disability allowances, as a result of the proposed new *section 68A*.

Clause 8 is a transitional provision that requires the Director-General to calculate the amount of any benefit that would have been payable to any person during the period from 1 January 1994 to the commencement of the Bill on the basis that the Bill had been in force during that period. If the calculation results in a deficiency in the amount of benefit paid, the amount of that deficiency is to be paid to the beneficiary. If the calculation results in an excess, the amount of the excess is written off.

Clause 9 validates and confirms decisions of the Director-General made before 1 January 1994 in assessing or not assessing insurance payments as income but preserves existing applications for review and appeals under the Act and proceedings before the courts.

SOCIAL SECURITY AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Social Security Act 1964

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Social Security Amendment Act 1994, and shall be read together with and deemed part of the Social Security Act 1964* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the day after the day on which it receives the Royal assent.

10 **2. Application**—Except as provided in section 8 of this Act, this Act applies only in respect of—

(a) Applications for benefits lodged on or after the date on which this Act comes into force; and

15 (b) Applications for benefits lodged, but which have not been granted, before that date.

3. Interpretation—(1) Section 3 (1) of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

*R.S. Vol. 13, p. 403

Amendments: 1983, No. 138; 1984, No. 8; 1985, No. 159; 1986, No. 39; 1987, No. 106; 1988, No. 147; 1989, No. 58; 1990, No. 5; 1990, No. 74; 1990, No. 132; 1991, No. 1; 1991, No. 78; 1991, No. 124; 1991, No. 143; 1992, No. 15; 1992, No. 59; 1992, No. 80; 1992, No. 99; 1993, No. 14; 1993, No. 45; 1993, No. 57

- “ ‘Contract of insurance’ includes a contract or an arrangement that, in the opinion of the Director-General, is similar to or analogous with a contract of insurance:
- “ ‘Debt insurance payment’, in relation to a person, means 5
a payment made, or the value of any credit provided,
on the occurrence of a contingency—
“(a) Under a contract of insurance or by reason of
the person’s membership of any society, organisation,
or body whether corporate or unincorporate; and 10
“(b) To the person or to some other person on
behalf of or for the benefit of the person; and
“(c) For the sole purpose of, and used for, repaying
or paying any amounts on account of any existing
debt of the person: 15
- “ ‘Existing debt’, in relation to a person, means a debt or
liability of the person in existence on the date on
which a contingency occurs that gives rise to a right
or eligibility of the person to receive a payment under 20
a contract of insurance or by reason of the person’s
membership of any society, organisation, or body
whether corporate or unincorporate, whether or not
the debt or liability is due for payment on that date:
- “ ‘Health or disability insurance payment’, in relation to a 25
person, means a payment made, or the value of any
credit or service provided, on the occurrence of a
contingency—
“(a) Under a contract of insurance, or by reason of
the person’s membership of any society, organisation,
or body whether corporate or unincorporate, that 30
provides for the payment or reimbursement of the
costs of health or disability care for the person or a
member of his or her family; and
“(b) To the person or to some other person on
behalf of or for the benefit of the person or a 35
member of his or her family—
and used for paying or reimbursing those costs:
- “ ‘Income-related insurance payment’, in relation to a 40
person, means a payment, or the value of any credit
or service, that, in the opinion of the Director-
General, having regard to the matters specified in
subsection (4) of this section, is—
“(a) Made or provided on the occurrence of a
contingency under a contract of insurance or by 45
reason of the person’s membership of any society,

organisation, or body whether corporate or unincorporate; and

5 “(b) Made or provided to the person or to some other person on behalf of or for the benefit of the person or a member of his or her family; and

“(c) Made or provided or used for an income-related purpose:

10 “ ‘Income-related purpose’, in relation to any person, means the purpose of—

“ (a) Replacing lost or diminished income; or

“ (b) Maintaining the person or a member of his or her family; or

15 “ (c) Purchasing goods or services for the person or a member of his or her family, being goods or services of a kind that are commonly paid for from income; or

“ (d) Enabling the person to make payments that he or she is liable to make and that are commonly made from income:

20 “ ‘Periodical’ means regular or intermittent.”.

(2) Section 3 (1) of the principal Act is hereby amended by repealing the definition of the term “income” (as substituted by section 3 (1) of the Social Security Amendment Act 1984 and amended by section 2 of the Social Security Amendment Act (No. 2) 1988, section 14 (2) of the Social Welfare (Transitional Provisions) Act 1990, section 2 of the Social Security Amendment Act (No. 5) 1991, section 2 of the Social Security Amendment Act (No. 2) 1992, section 2 (2) of the Social Security Amendment Act (No. 4) 1992, and section 2 (4) of the Social Security Amendment Act (No. 3) 1993), and substituting the following definition:

30 “ ‘Income’, in relation to any person,—

35 “ (a) Means any money received or the value in money’s worth of any interest acquired, before income tax, by the person which is not capital (except as hereinafter set out); and

40 “ (b) Includes, whether capital or not and as calculated before the deduction (where applicable) of income tax, any periodical payments made, and the value of any credits or services provided periodically, from any source for income-related purposes and used by the person for income-related purposes; and

“ (c) Includes—

45 “ (i) Any periodical income-related insurance payments; and

- “(ii) Any lump sum income-related insurance payment to the extent that it is assessed by the Director-General as having been received in respect of income lost by the person within a period of 26 weeks after the occurrence of the contingency in respect of which the payment was made,— 5
- whether capital or not and as calculated before the deduction (where applicable) of income tax; and 10
- “(d) Includes—
- “(i) Any payment relating to a situation involving a seasonal layoff:
- “(ii) Any payment contingent on the completion of either a fixed-term engagement or an engagement to complete work specified in a contract: 15
- “(iii) Any payment in lieu of notice terminating employment:
- “(iv) Any payment (including holiday pay) which, if it had not been made in relation to termination of employment, would, in the opinion of the Director-General, have been paid so as to constitute monetary remuneration of the employee: 20
- “(v) Any payment in relation to termination of employment made by a company pursuant to its articles of association or constitution to any of its directors; and 25
- “(e) Includes, as calculated before the deduction (where applicable) of income tax, the value of any goods, services, transport, or accommodation supplied on a regular basis to the person by any other person; but— 30
- “(f) Does not include— 35
- “(i) Any benefit, grant, allowance, or concession received under this Act or the Social Welfare (Transitional Provisions) Act 1990, including the value of any benefit under Part II of this Act: 40
- “(ii) Any pension or allowance under the War Pensions Act 1954 received by any person by reason of his or her own disablement:
- “(iii) Any pension received under Part II or Part IV or Part V of the War Pensions Act 45

- 5 1954 by the surviving spouse of a deceased member of the New Zealand or any other Commonwealth forces or the Emergency Reserve Corps of the New Zealand mercantile marine in respect of the death of that member:
- 10 “(iv) Any pension or other periodical allowance or any part thereof received by any person from the Government of any Commonwealth country (other than New Zealand) which the Director-General determines is analogous to a pension or allowance specified in subparagraph (ii) or subparagraph (iii) of this paragraph:
- 15 “(v) Any money received by way of funeral benefit from any friendly society:
- “(vi) Any money paid in respect of any military decoration and received by the recipient of such decoration:
- 20 “(vii) Any money received by the Commissioner of Inland Revenue by way of child support which is not required to be paid to the person under the Child Support Act 1991:
- 25 “(viii) Any money received by the Commissioner of Inland Revenue by way of child support which is paid to the person under section 142 of the Child Support Act 1991:
- “(ix) Any money received by way of an independence allowance under section 54 of the Accident Rehabilitation and Compensation Insurance Act 1992:
- 30 “(x) Any amount of output tax charged in respect of a supply of goods and services made by that person:
- 35 “(xi) Any amount of goods and services tax payable by the Commissioner of Inland Revenue to that person:
- “(xii) Any debt insurance payment or any health or disability insurance payment:
- 40 “(xiii) Any lump sum payment received by the person—
- 45 “(A) Under a contract of insurance on the life of the person’s deceased spouse or on the life of a deceased person who was, before his or her death, living together

with the first-mentioned person in a relationship in the nature of marriage; or

“(B) Where the person is a dependent child, under a contract of insurance on the life of his or her deceased parent or step- 5
parent; or

“(C) Under any superannuation scheme, not being a payment the Director-General considers, having regard to the matters specified in **subsection (4)** of this section, is 10
for an income-related purpose:

“(xiv) Any part of a lump sum income-related insurance payment received on the occurrence of a contingency by an applicant for a benefit that has, before the application for the benefit, been used or 15
committed by the applicant—

“(A) To repay or pay any amounts on account of existing debt of the applicant; or 20

“(B) To pay any essential costs arising as a consequence of the applicant’s health or disability (being costs arising from the contingency in respect of which the payment was made) to the extent that 25
assistance towards those costs is not available under this Act or any other Act.”

(3) Section 3 of the principal Act is hereby amended by adding the following subsection:

“(4) In considering, in respect of a person, whether any payment or credit or service is an income-related insurance payment or is for an income-related purpose, as the case may be, the Director-General shall have regard to the following matters: 30

“(a) The nature of the contingency in respect of which the payment or credit or service was made or provided or used: 35

“(b) The nature of the payment or credit or service:

“(c) The manner in which and the occasions on which the payment or credit or service is made or provided or 40
used:

“(d) The manner in which the right or eligibility to the payment or credit or service is expressed in any contract of insurance or in any other document:

“(e) Whether the payment or credit or service is required to be made or provided to any other person and, if so, the relationship between them:

5 “(f) Whether the person has assigned his or her right to receive the payment or credit or service:

“(g) Any other matters that the Director-General considers, in the circumstances of the particular case, to be relevant.”

10 (4) The following enactments are hereby consequentially repealed:

(a) Section 3 of the Social Security Amendment Act 1984:

(b) Section 2 of the Social Security Amendment Act (No. 2) 1988:

15 (c) Section 14 (2) of the Social Welfare (Transitional Provisions) Act 1990;

(d) Section 2 of the Social Security Amendment Act (No. 5) 1991:

(e) The Social Security Amendment Act (No. 2) 1992:

20 (f) Section 2 (2) of the Social Security Amendment Act (No. 4) 1992:

(g) Section 2 (4) of the Social Security Amendment Act (No. 3) 1993.

25 **4. Accommodation supplement**—Section 61E of the principal Act (as substituted by section 10 of the Social Security Amendment Act (No. 3) 1993), is hereby amended by omitting from paragraph (b) (i) of the definition of the term “accommodation costs” the word “Are”, and substituting the words “Subject to section 68A of this Act, are”.

30 **5. Special benefit**—(1) The principal Act is hereby amended by repealing section 61G (as substituted by section 9 (1) of the Social Security Amendment Act 1981 and amended by section 5 of the Social Welfare (Transitional Provisions) Amendment Act (No. 2) 1993), and substituting the following section:

35 “61G. Subject to section 68A of this Act, the Director-General may, in the Director-General’s discretion, fix a special entitlement to a special benefit in respect of any person, whether or not that person is receiving any other benefit under this Part of this Act or the Social Welfare (Transitional Provisions) Act 1990 or any pension or allowance under the
40 War Pensions Act 1954, if the Director-General is satisfied that, after taking into account all of that person’s financial circumstances and commitments, including any benefit payable

under this Part of this Act or the Social Welfare (Transitional Provisions) Act 1990 and any pension or allowance payable under the War Pensions Act 1954, such a special entitlement is justified.”

(2) The following enactments are hereby consequentially repealed: 5

(a) Section 9 (1) of the Social Welfare Amendment Act 1981:

(b) So much of the Second Schedule to the Social Welfare (Transitional Provisions) Amendment Act (No. 2) 1993 as relates to section 61G of the principal Act. 10

6. Special provisions applying to insurance payments—The principal Act is hereby amended by inserting, after section 68, the following section:

“68A. (1) Where a debt insurance payment in relation to a mortgage security is made to a person or to some other person on his or her behalf or for his or her benefit, for the purposes of section 61E of this Act (which relates to accommodation costs), the payments required to be made by that person under that mortgage security shall be deemed to be reduced by the amount of the debt insurance payment. 15 20

“(2) Where a debt insurance payment or a health or disability insurance payment is made to a person or to some other person on behalf of or for the benefit of the person or a member of his or her family, for the purposes of section 61G of this Act (which relates to special benefits), the commitments of the person shall be deemed to be reduced to such an extent, if any, as the Director-General considers appropriate having regard to the nature of the payment and those commitments. 25

“(3) Where a health or disability insurance payment is made to a person or to some other person on behalf of or for the benefit of the person or a member of his or her family, for the purposes of section 69c of this Act (which relates to disability allowances), any additional expenses of the person arising from his or her disablement, or expenses arising from his or her spouse’s hospitalisation, as the case may be, shall be deemed to be reduced to such an extent, if any, as the Director-General considers appropriate having regard to the nature of the payment and those additional expenses or expenses. 30 35

“(4) Where a debt insurance payment or a health or disability insurance payment is made to a person or to some other person on behalf of or for the benefit of the person or a member of his or her family, for the purposes of any welfare programme approved by the Minister of Social Welfare under and for the 40

purposes of section 124 (1) (d) of this Act, the costs, expenses, and commitments of the person shall be deemed to be reduced to such an extent, if any, as the Director-General considers appropriate having regard to the nature of the payment and those costs, expenses, and commitments.

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“(5) Where an applicant for—

“(a) A benefit is, or may be, entitled or eligible to receive, or receive the benefit of, an income-related insurance payment; or

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“(b) A benefit of a kind referred to in any of sections 61EA, 61G, 69C, and 124 (1) (d) of this Act, is, or may be, entitled or eligible to receive, or receive the benefit of, a debt insurance payment or a health or disability insurance payment,—

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the Director-General may grant a benefit or a rate of benefit subject to the condition that the whole or such part of the benefit as the Director-General may require shall be repaid to the Director-General in the event that the payment is made to the applicant or to some other person on behalf of or for the benefit of the applicant or a member of his or her family; and in any such case the amount of the benefit or the part thereof shall constitute a charge on the amount payable to the applicant or person and may be recovered as a debt due to the Crown from the applicant or person or the person liable to make the payment.

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“(6) Where a person has been granted—

“(a) A benefit, or granted a benefit at a rate, that does not take into account any income-related insurance payment; or

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“(b) A benefit of a kind referred to in any of sections 61EA, 61G, 69C, and 124 (1) (d) of this Act, or granted such a benefit at a rate, that does not take into account any debt insurance payment or health or disability insurance payment,—

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being a payment made to the person or to some other person on behalf of or for the benefit of the person or a member of his or her family and that relates to a contingency that occurred before or during the period in which the benefit is payable, the Director-General may suspend, terminate, or vary the rate of the benefit from such date as the Director-General determines.

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“(7) For the purposes of this Act, the amount of any income-related insurance payment or any debt insurance payment or any health or disability insurance payment shall, to the extent the Director-General so determines, be reduced by the amount

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of any costs incurred by an applicant for a benefit or a beneficiary in obtaining receipt of that payment.

“(8) For the purposes of this section, “benefit” includes the granting of special assistance under any welfare programme approved under section 124 (1) (d) of this Act.”

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7. Disability allowance—(1) Section 69c of the principal Act (as inserted by section 12(1) of the Social Security Amendment Act 1975) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) A disability allowance shall not be payable to or on account of any such person unless the Director-General is satisfied that payment of a disability allowance is warranted having regard to—

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“(a) The nature and extent of the disablement of that person; and

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“(b) Subject to section 68A of this Act, any additional expenses arising from the disablement of that person.”

(2) Section 69c (5) of the principal Act (as so inserted) is hereby amended by inserting, after the words “this section”, the words “but subject to section 68A of this Act”.

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8. Transitional provisions—(1) In this section,—

“Benefit” includes the granting of special assistance under any welfare programme approved under section 124 (1) (d) of this Act:

“Mortgage security” and “premises” have the meanings ascribed to them in section 61E of this Act:

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“Specified period” means the period commencing on the 1st day of January 1994 and ending on the close of the day on which this Act receives the Royal assent;—

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and other terms and expressions have the meanings ascribed to them in section 3 of the principal Act.

(2) Subject to subsection (3) of this section, where a beneficiary was granted a benefit at a reduced rate during the specified period by reason of any debt insurance payment or health or disability insurance payment or income-related insurance payment, as the case may be, made to the beneficiary or to some other person on behalf of or for the benefit of the beneficiary or a member of his or her family, the following provisions shall apply:

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(a) The Director-General shall calculate the difference between the amount of the benefit paid during that period and the amount of the benefit that would

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otherwise have been payable if this Act had been in force during that period:

- 5 (b) Where the result of the calculation is a deficiency in the payment made, the Director-General shall pay the amount of the deficiency to the beneficiary without further appropriation than this section; but may apply the amount of any such deficiency in reduction of the amount of any excess in the payment made of any other benefit affected by this section:
- 10 (c) Where the result of the calculation is an excess in the payment made, the Director-General shall write off the amount of that excess under the authority of this section to the extent that it is not offset by the amount of any deficiency of payment of any other benefit affected by this section:
- 15 (d) The Director-General shall also make such adjustments as are appropriate to the rate of the benefit payable after this Act comes into force.
- (3) No beneficiary—
- 20 (a) Who was granted an accommodation supplement and another benefit during the specified period; and
- (b) Whose rate of accommodation supplement or other benefit during that period was or were affected by reason of any debt insurance payment made to the beneficiary or to some other person on behalf of or for the benefit of the beneficiary, being a payment in respect of the beneficiary's mortgage security over his or her premises,—
- 25 shall have the total rate of payment that is made to him or her under that accommodation supplement and other benefit reduced by reason only of the coming into force of this Act, but nothing in this subsection shall prevent the Director-General subsequently reviewing the rate of accommodation supplement or other benefit, or both, payable to that beneficiary.
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- 35 **9. Savings**—(1) Subject to subsection (2) of this section, every decision or determination of the Director-General made before the 1st day of January 1994 in assessing or deciding not to assess any debt insurance payment or health or disability insurance payment or income-related insurance payment, as the case may be, as income for any purpose under the principal Act is hereby confirmed and declared to be and always to have been valid.
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- (2) Nothing in subsection (1) of this section affects—
- (a) Any application under section 10A of the principal Act for the review of a decision made by an applicant or a beneficiary before the 14th day of September 1994 or the decision of a review committee on any such application; or 5
 - (b) Any appeal under section 12J of the principal Act against a decision or determination lodged by an applicant or a beneficiary before the 14th day of September 1994 or the decision of the Appeal Authority on any such appeal; or 10
 - (c) Any proceedings in any court in relation to a decision or determination commenced by an applicant or a beneficiary before the 14th day of September 1994 or the decision of the court in any such proceedings. 15
- (3) In this section, terms and expressions have the meanings ascribed to them in section 3 of the principal Act.