

Australian Social Security Law, Policy and Administration

Terry Carney & Peter Hanks

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Australian social security takes two distinct forms: the guarantee of income security and the provision of welfare services to broad sectors of the Australian community. Each of those forms presents a complex blending of social theory and policy choices, contending interests, legislative regulation and administrative practice.

This pioneering study examines some of the central elements of the Australian social security system in the context of the system's theoretical and social policy bases. It reviews and evaluates theories of poverty, the growth of the Australian welfare state and the policy choices implicit in any social security programme.

This book offers a detailed examination of the legal, policy and administrative foundations of three social security programmes which are central to the Australian welfare state — income security for the unemployed, income support for lone parent families, and health care services (medical, nursing home and pharmaceutical benefits). It focuses on the interaction between law and social policy in their evolution and administration, and advances proposals for the future development of Australian social security.

The book is aimed at students of social welfare, sociology, social administration and law, and policy makers.

Terry Carney has taught law at Monash University since 1971. He has chaired a Social Security Appeals Tribunal since 1976 and is chairperson of the National Advisory Council on Social Welfare.

Peter Hanks is an associate professor of law at Monash University, where he has taught since 1969. He is the editor of the *Social Security Reporter* and social security editor of the *Administrative Law Service*.

This book is the first in the Law and Government series, a series which will cover topics dealing with elements of public policy.

Forthcoming in the series

Paul Finn *Law and Government in Colonial Australia*

Ross Cranston *Law, Government and Public Policy*

FOREWORD

The task of understanding and finding a way to reform Australia's social security system has been greatly assisted by the publication of this book. In the 1980s the dimensions of the economic and social problems facing Australia have placed an enormous responsibility on governments interested in genuine reform. As Minister for Social Security in only the third Labor Government for nearly forty years, I am committed to achieving reform of the social security system that will take it into the twenty-first century.

This scholarly contribution reflects at least a decade's commitment by the authors and their colleagues at the Faculty of Law, Monash University to teaching and research in poverty law, social security administration and law reform. As those ten years coincided with the bleak winter of the Fraser government's cutbacks in social provisions and the rise of critiques of the welfare state by an articulate intellectual right, that commitment has been an impressive one indeed.

Not since the main report of the Poverty Inquiry headed by Professor Henderson have we had such a systematic overview of social security policy and law. Henderson, of course, examined social security during the last phases of Australia's long period of post-war economic growth. To an extent, his recommendations for a guaranteed income scheme assumed that the period of economic growth would continue, which of course it did not.

Terry Carney's and Peter Hanks' historical overview provides a perspective on why Henderson's recommendations, which ambitiously integrated the tax and social security systems, met with a general lack of acceptance. Their conclusion is that welfare policy has flowed within a pluralist framework, falling neither exclusively into a conservative nor laborist tradition. Proposals for a new scheme with the payment of income support free of the work test and financed by a flat rate tax were clearly outside the gradualist tradition of social reform in Australia.

While too much emphasis should not be placed on lessons from the past, the authors of this book have no illusions about the difficulties of achieving reform of Australia's social security, acknowledging that real progress will not be easy or instantaneous, but must realistically be scheduled for the medium and longer term future.

An impressive aspect of this book is its theoretical overview, in which the authors make a strong case for relating poverty to economic class and gender relations. In other words, poverty needs to be seen as a function of inequality in its broader sense. Past Australian research has been too influenced by residualist notions of poverty with a predominant emphasis on measuring poverty as a subsistence standard of living.

Equating the concept only with low income has given rise to a lack of concern with the broader resources needed to allow the poor to participate fully in society. Poverty should be seen more broadly in terms of an absolute level of competence to participate in society by all citizens. It is thus appropriate that their work includes an examination of health care, as it is one of the key social resources needed to overcome poverty.

An anti-poverty concern therefore needs to take account of the broader issues of the social wage through programmes providing health, housing, education and income support. What is needed is a social justice strategy that provides opportunities for participation and a floor standard of living for all citizens.

A reform programme in the 1980s needs to start with the recognition of the size and complexity of the social security provisions. Since the early 1970s there has been a significant increase in outlays on social security due in some cases to increases in the real rates of payments, but also to the increased numbers receiving payments such as unemployment benefit and supporting parent's benefit. Current expenditure on social security stands at \$16 billion, representing nearly one quarter of the Government's total budget. Not surprisingly there is some resistance in the electorate to further substantial increases, especially if funded through higher taxation. Even modest increases in programmes incur substantial additional costs. To add one dollar to pension and benefit levels costs \$150 million in full a year.

The dilemma facing governments wishing to address the extent of poverty to be found in the Australian community is therefore a very real one. As the authors point out, in the economic climate of the 1980s there has been no satisfactory solution found in the wake of the collapse of Keynesianism whereby economic policies and social security provisions could be knitted together, as was the case for most of the post-war period.

Extending the means test to include assets, and increasing tax on Superannuation lump sums, have been two of the more difficult decisions taken in order to enhance opportunities to assist the poor. In terms of 'runs on the board' some \$1200 million in new expenditures has been outlaid

on social security in the Labor Government's first three budgets. One third of this new expenditure has been financed through savings measures.

But there are some substantial questions that need to be addressed if a lasting programme of social security reform is to be put in place.

It is for this reason that I announced a Review of Social Security which commenced in early 1986 led by Professor Bettina Cass. The Review, which will continue for two years, will provide a longer term perspective on priorities for the Australian social security system and identify steps to be taken in the shorter term to improve the effectiveness of the system.

In addressing questions of income support for children, sole parents, the aged, unemployed and disabled, I am looking to the Social Security Review to provide some new mechanisms that will allow the government to take positive steps towards a progressive reform of the social security system. The task that we face in reform is a difficult one. We must reinvigorate some of the community support witnessed earlier in this century when Australia prided itself on being a model of social provisions.

Existing social security provisions, particularly for children, should be a source of concern to people who value a society based on responsibility. It is the work of a responsible society that economic policy takes account of social need.

The review will give us the best chance since the Second World War to ensure we develop an integrated plan to attack poverty in Australia, and that Australia develops income transfer programmes which meet the economic and industrial conditions of the 1980s. There will be opportunity for broad community discussion of options for new policies.

Terry Carney and Peter Hanks are to be congratulated on the contribution that they have made to the debate on social security policy. I know that this book will be of lasting benefit to government and the community alike. I look forward to the future contribution that the authors make to the reform process.

Brian Howe
Minister for Social Security

PREFACE

This book began in our work at Monash Law School during the 1970s in developing law courses, and research projects, on poverty and social security in Australia. The times were not auspicious: the orthodox view in legal circles was that such endeavours lacked legitimacy—social policy was relegated to ‘simple paperbacks’. We are indebted to our Faculty and the many students who supported our undergraduate and graduate courses on social security and health policy which challenged this view, and in which many of the themes and arguments of this book were developed.

The prime focus of this work is on inequalities in income and health status, and on the content and the administration and policy implications of the legislative programmes which address those inequalities. The programmes which we review in detail are strategically placed to determine whether inequalities are to be corrected or merely ameliorated. Thus, we concentrate on the income needs of people excluded from the workforce by unemployment and the poverty associated with lone parenthood. The three health subsidy programmes—nursing home, medical, and pharmaceutical benefits—also focus on the crucial contingencies of age and income status, which are most likely to be associated with, or be the product of, health inequalities. The answer to the reader’s ‘why did they?’ question, is that this is a selective analytical study of inequalities of income and health: this is not a comprehensive survey of the vast array of programmes potentially within the purview of social security.

Terry Carney
Peter Hanks
June 1986

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ABBREVIATIONS

AAR	Administrative Appeal Reports
AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
AC	Appeal Cases Law Reports (England)
ALD	Administrative Law Decisions
ALJR	Australian Law Journal Reports
ALN	Administrative Law Notes
ALP	Australian Labor Party
ALR	Australian Law Reports
AMA	Australian Medical Association
Aust.	Australia
CES	Commonwealth Employment Service
CLR	Commonwealth Law Reports
CPI	Consumer Price Index
Can.	Canada
Cth	Commonwealth of Australia
DLR	Dominion Law Reports (Canada)
DSS	Department of Social Security
FLC	Family Law Cases
Fam LR	Family Law Reports
GDP	Gross domestic product
KB	King's Bench Law Reports (England)
NSW	New South Wales
NZ	New Zealand
NZAR	New Zealand Appeal Reports
OR	Ontario Reports
QB	Queen's Bench Law Reports (England)
SA	South Australia
SSR	Social Security Reporter
Tas.	Tasmania
U & SB Manual	Unemployment and Sickness Benefits Manual
UK	United Kingdom
WLR	Weekly Law Reports (England)

TABLE OF CASES

Numbers in ***bold italics*** indicate references to the text; numbers in **bold** indicate references to the notes.

- Re A (1984) 5 ALN N489; 19 SSR 199 **139**
- Re Aitken (1983) 5 ALN N146; 14 SSR 144 **98**
- Re Alam (1982) 4 ALD 538; 8 SSR 80 **140**
- Alexandra Private Geriatric Hospital Pty Ltd v. Blewett (1984) 56 ALR 265 **207, 212, 214-15, 216**
- Alexandra Private Geriatric Hospital Pty Ltd v. Blewett (1985) 93 FCR 389 (Full Fed. Ct. 12 July 1985) **215-16**
- Re Al-Halidi (1985) 7 ALD 455; ASSC 92-044; 25 SSR 303 **136**
- Re Anderson (1984) 5 ALN N491; 19 SSR 198 **92, 94**
- Re Appenzeller (1984) 7 ALD 347; 23 SSR 275 **139, 143**
- Re Artwinska (1985) 7 ALN N199; ASSC 92-049; 24 SSR 287 **116**
- Attorney-General for Victoria ex. rel. Dale v. Commonwealth (1945) 71 CLR 237 **177, 207, 222**
- Re Mrs B (1984) 6 ALD 609; 22 SSR 246 **136**
- Re Baker (1983) unreported; T82/1 **98**
- Baron v. Director-General of Social Security (1983) 48 ALR 345 **133, 151**
- Beadle v. Director-General of Social Security (1985) 60 ALR 225; 7 ALD 670 **142**
- Re Blanus (1985) 28 SSR 346 **116, 163**
- Re Bouris (1984) 6 ALN N268; 22 SSR 248 **83, 92, 112**
- Re Brabenac (1981) 3 ALN N63; 2 SSR 14 **93, 94**
- Brady, In the Marriage of, (1978) FLC 90-513 4 Fam LR N54 **156**
- Re Brettell (1983) 6 ALN N11; 13 SSR 127 **162**
- British Medical Association v. Commonwealth (1949) 79 CLR 201 **177, 178, 195, 196, 222-3**
- British Oxygen Co. Ltd v. Board of Trade [1971] AC 610 **110**
- Re Bucknell (1985) 25 SSR 299 **116, 117**
- Re Burman (1985) 8 ALN N129; 27 SSR 332 **116**
- Re Burnet (1982) 4 ALN N79; 8 SSR 81 **142, 143**
- Re Chambers (1981) 2 SSR 15 **100**
- Re Chau (1984) 22 SSR 249 **92, 99**
- Re Cleland (1985) unreported; W84/106 **98**
- Re CN (1982) 5 ALN N39; 11 SSR 106 **150**
- Re Conway (1985) 28 SSR 352 **116, 117, 164**

- Re Corbett (1984) 6 ALD 335; 20 SSR 210 **142**
- Crewe v. Anderson [1982] 1 WLR 1209 **106**
- Croft v. Minister of Health (1983) 45 ALR 449 **214**
- Re Danilatos (1981) 3 ALN N100; 3 SSR 29 **138**
- Re Darby (1983) 5 ALN N150; 13 SSR 128 **93, 94**
- Re Davis (1984) 6 ALN N332; 23 SSR 272 **150, 151**
- Re Dikmen (1984) 20 SSR 223 **98**
- Director-General of Social Security v. Harris (1982) 4 ALD 641; 11 SSR 115 **159, 162**
- Director-General of Social Services v. Thomson (1982) 38 ALR 624 **84, 92, 93, 94, 97, 112**
- Re Donald (1983) 5 ALN N186; 14 SSR 140 **150**
- Re Dos Santos (1984) 6 ALN N199; 21 SSR 242 **139, 140**
- Re Doyle (1985) 26 SSR 313 **94**
- Re English (1984) 5 ALN N542; 20 SSR 220 **139, 140, 142**
- Re Errey (1985) 7 ALN N277; 25 SSR 300 **98**
- Re Farah (1984) 20 SSR 222 **94**
- Re Flanigan (1984) 6 ALN N71; 22 SSR 256 **116, 163**
- Re Fremder (1983) 5 ALN N258; 15 SSR 149 **142**
- Furnage v. Social Security Commission (1980) 2 NZLR 75 **151**
- Gadd (1983) 5 ALN N183; 13 SSR 129 **102**
- Re Galati (1984) 6 ALD 538; 22 SSR 235 **138, 142-3**
- General Practitioners Society v. Commonwealth (1980) 145 CLR 532 **177, 178, 185, 195, 196**
- Re Gray (1985) 6 ALN N285 **88**
- Green v. Daniels (1977) 13 ALR 1 **84, 92, 110**
- Re Guse (1981) 4 ALN N20; 6 SSR 62 **94**
- Re Guven (1983) 5 ALN N373; 17 SSR 173 **135**
- Re Haldane-Stevenson (1984) 5 ALN N492; ASSC 92-008; 19 SSR 205 **116**
- Haldane-Stevenson v. Director-General of Social Security (1985) 7 ALD 467; ASSC 92-046; 24 SSR 296 **162, 163**
- Haldane-Stevenson v. Director-General of Social Security (1985) 60 ALR 621; ASSC 92-055; 26 SSR 323 **116, 117**
- Re Harris (1981) 4 ALD 129; 3 SSR 22 **161**
- Harris v. Director-General of Social Security (1985) 59 ALJR 194; 57 ALR 729; ASSC 92-040 **117, 160, 161-2, 163**
- Re Heidemann (1985) 8 ALD 26; 26 SSR 312 **95**
- Re Hennessy (1985) 7 ALN N133; 24 SSR 292 **102, 103**
- Re Hine (1981) 4 SSR 38 **95**
- Ho v. Director-General of Social Security (1983) 1 AAR 350; 17 SSR 179 **138, 139**
- Howells v. Nagrad Nominees Pty Ltd (1982) 43 ALR 283 **213, 214**
- Re Howie (1985) 8 ALN N174; 27 SSR 327 **93, 94**
- Re Hoy (1983) 6 ALD 157; 15 SSR 150 **164**
- Re Huggins (1984) 5 ALN N376; 17 SSR 168 116 Re Hung Manh Ta (1984) 6 ALD 633; 22 SSR 247 **136**
- R v. Hunt; ex parte Sean Investments Pty Ltd (1979) 25 ALR 497 **213**
- Re Hurrell (1985) 7 ALD 33; ASSC 92-034; 23 SSR 266 **100, 112**
- Kajewski, In the Marriage of, (1978) FLC 90-472 **156**
- Re Kellie (1984) 6 ALN N316 **151**
- Re Kolodziej (1985) 7 ALD 660; ASSC 92-053; 26 SSR 315 **116**
- Re Kontogeorgos (1984) 6 ALN N226; 22 SSR 249 **92, 93**
- Re Kramer (1983) 5 ALN N188; 14 SSR 144 **190**

- Re Kyvelos (1981) 3 ALN N120; 3 SSR 30 **139**
- Re Lambe (1981) 3 ALN N72; 1 SSR 5 **148-9, 151**
- Lambe v. Director-General of Social Services (1981) 4 ALD 362; 4 SSR 43 **149, 150, 151**
- Re Lawrie (1984) 5 ALN N474; 19 SSR 205 **116, 163**
- Re Lewis (1985) 8 ALN N232 **116, 117**
- Re Lister and Minister for Health (1978) 18 ALR 25 **233**
- Re Lochner (1985) 8 ALD 51; ASSC 92-061; 27 SSR 326 **94**
- Re Long (1985) 8 ALN N228; ASSC 92-066 **93**
- Re Lynam (1983) 20 SSR 225 **150**
- Lynam v. Director-General of Social Security (1983) 52 ALR 128; 20 SSR 225 **150**
- Re McBow (1984) 6 ALN N83; 20 SSR 224 **116, 164**
- Ex parte H.V. McKay (the Harvester Case) (1907) 2 CAR 1 **39**
- Re McKenna (1981) 3 ALD 219; 2 SSR 13 **93, 99**
- Re Malarbi (1983) 17 SSR 168 **164**
- Re Marsh (1985) 7 ALN N404; 25 SSR 299 **117, 162**
- Re Martens (1984) 6 ALN N339; 22 SSR 248 **92, 93, 97, 100**
- Re Martin (1983) 5 ALN N22; 13 SSR 129 **93**
- Re Measey (1981) 3 SSR 32 **106**
- Mehrtens, In the Marriage of, (1977) FLC 90-288 **156**
- Re Munna (1981) 4 ALN N120; 4 SSR 41 **142, 143**
- Nagrad Nominees Pty Ltd v. Howells (1981) 38 ALR 145 **213**
- Re Nathanielsz (1983) 5 ALN N335; 17 SSR 178 **139**
- Nevistic v. Minister for Immigration and Ethnic Affairs (1981) 34 ALR 639 **163**
- Re Ohl (1984) 22 SSR 250 **103**
- Re Ozdil (1985) 27 SSR 328 **93, 94**
- Re Panke and Director-General of Social Services (1981) 4 ALD 179 **218**
- Re Pasini (1982) 4 ALN N228; 7 SSR 68 **142, 143**
- Re Paula (1985) 7 ALN N182; ASSC 92-042; 24 SSR 288 **116, 117, 162**
- Pavey, In the Marriage of, (1976) 10 ALR 259; 1 Fam LR 11-358 **149**
- Re Payne (1985) 8 ALN N8; ASSC 92-057; 26 SSR 315 **116, 163**
- Re Pearson (1984) 6 ALN N220; 22 SSR 250 **104, 108**
- Re Perry (1982) 10 SSR 94 **100**
- Re Pershouse (1982) 10 SSR 93 **100**
- Re Petropoulos (1984) 6 ALN N137; 21 SSR 235 **142, 143**
- Re Petty and Davis (1982) 4 ALN N214; 10 SSR 99 **151**
- R v. Port of London Authority ex.p. Kynoch [1919] 1 KB 176 **110**
- Re Porter (1985) 24 SSR 293 **92, 94, 97**
- Re Proc and Minister of Community and Social Services (1974) 53 DLR (3d) 512 **148, 149**
- Re Pyc (1983) 13 SSR 128 **98**
- Re Qazag (1984) 5 ALN N521; 20 SSR 219 **136**
- Re RC (1981) 3 ALD 334; 4 SSR 36 **149, 150, 151**
- Redding v. Lee (1983) 47 ALR 241 **159**
- Re Reeves (1983) 5 ALN N226; 15 SSR 153 **98-9, 100, 107, 109, 114**
- Re Rigopoulos (1985) 8 ALN N195; 28 SSR 353 **139**
- Re Robbins (1985) unreported; N85/148 **116**
- Re Rowan (1984) 6 ALN N141; 20 SSR 223 **93**
- Re Savage (1983) 5 ALD 82; 11 SSR 111 **102, 103**
- Savage v. Director-General of Social Security (1983) 5 ALD 82 **102, 103**
- Sean Investments Pty Ltd v. McKellar (1981) 38 ALR 363 **213**
- Sean Investments Pty Ltd v. McKellar (1982) 42 ALR 676 **213**

- Re Shafer (1983) 5 ALN N252; 16 SSR 159 **116**
- Re Shearing (1983) 6 ALN N12; 13 SSR 132 **151**
- Re Sheppard (1983) 5 ALN N194; 13 SSR 127 **116**
- Re Siebel (1983) 5 ALN N194; 14 SSR 142 **116**
- Re Siviour (1984) 5 ALN N378; 17 SSR 173 **116, 163**
- Re Smith and Smith (1982) 4 ALN 231; 9 SSR 89 **116, 164**
- Re Stoilkovic (1985) 29 SSR 362 **150, 151**
- Re Stuart (1985) 29 SSR 363 **150**
- Re Sunamura (1985) 7 ALN N214; 24 SSR 282 **142**
- Re Szuts (1983) 5 ALD 358; 13 SSR 128 **116, 117, 164**
- Re Tacey (1982) 5 SSR 54 **100**
- Re Tang (1981) 3 ALN N83; 2 SSR 15 **149, 150, 151**
- Re Tate (1984) 22 SSR 249 **98, 99**
- Re Teller (1985) 7 ALN N269; ASSC 92-080; 25 SSR 298 **116**
- Re Te Velde (1981) 3 ALN N111; 3 SSR 23 **94**
- Re Thomson (1981) 3 ALN N86; 2 SSR 12 **94**
- Todd, In the Marriage of, (No.2) (1976) 1 Fam LR 11,186 **156**
- Re Tolomeo (1984) 7 ALN N258; 22 SSR 256 **139, 143**
- R v. Torquay Licensing Justices ex.p. Brockman [1951] 2 QB 784 **110**
- Re Turner (1984) 5 ALN N549; 19 SSR 205 **116**
- Re Vaitoudis (1984) 6 ALN N343; 23 SSR 276 **142, 143**
- Re Valentic (1984) 5 ALN N484 **136**
- Re Varga (1982) 9 SSR 89 **142**
- Re Vavaris (1982) 5 ALN N16; 11 SSR 110 **94**
- Re Vijh (1985) 8 ALD 107; 27 SSR 328 **94**
- Vocale (1985) 8 ALN N67; ASSC 92-060; 26 SSR 313 **117**
- Re 'W' (1983) 5 ALN N160; 14 SSR 141 **137, 151**
- Re Wagner (1983) 16 SSR 159 **98**
- Re Waller (1985) 8 ALD 26; 27 SSR 326 **94, 95, 96**
- Re Ward (1985) 7 ALN N66; 24 SSR 289 **142, 151**
- Re Warwick and Minister of Community and Social Services (1979) 21 OR (2d) 528 **148**
- Re Waterford (1980) 3 ALD 63; 1 SSR 1 **148**
- Re Weekes (1981) 3 ALN N141; 4 SSR 37 **93**
- Re Whittenbury (1983) 5 ALD 374; 13 SSR 130 **102, 116**
- Re Whyte (1981) 4 SSR 37 **100**
- Re Wiebenga (1985) 28 SSR 351 **88**
- Re Wilson (1984) 7 ALD 14; 23 SSR 271 **140, 141**
- Wong, In the Marriage of, (1976) 2 Fam LR 11,159 **156**
- Re Wyllie (1983) 14 SSR 145 **88**
- Re Yilmaz (1984) 17 SSR 174 **83, 92, 95**

TABLE OF LEGISLATION

Numbers in ***bold italics*** indicate references to the text; numbers in **bold** indicate references to the notes.

Commonwealth Acts and Bills

Aged Persons Homes Act 1954 **205**
Part III **206**

Aged Persons Homes Act 1969 **206**

Commonwealth Constitution **183**

s.51(14) **22, 178**

s.51(23A) **167, 177, 178, 184, 195, 196, 205, 222**

s.81 **178**

s.96 **167, 178**

Crimes Act 1918

s.6 **196**

s.7 **196**

s.7A **196**

s.86 **196**

Family Law Act 1975 **126, 134, 152-3, 156, 157, 158**

s.72 **151, 156**

s.75 **155-6**

Health Acts Amendment Act 1981
191, 192, 193

Health Insurance Act 1973 **187, 195, 199, 229**

s.3 **193**

s.4C **231**

s.5 **189**

s.5B **189, 231-2**

s.5D **189, 231**

s.5E **189, 231**

s.8 **188**

s.10 **187, 190, 192, 193, 194, 229**

s.11 **200**

s.12 **201**

s.14 **194**

s.16A **195**

s.16B **195, 196**

s.16C **195, 196**

s.17 **195, 198, 200**

s.18 **195**

s.19 **195**

s.19B **196, 197**

s.19C **196**

s.19D **196**

s.19E **196**

s.20 **187, 188, 189, 190, 194**

s.20A **190, 191, 194, 199, 200**

s.21 **193**

s.23 **189**

s.30 **198**

s.32 **198**

s.39 **192**

s.79 **197**

s.80 **197**

s.82 **197**

s.104 **197**

s.105 **197**

s.119 **197**

s.124A **197**

s.126 **193, 195, 198**

s.124C **200**

s.124D **200**

s.124E **200**

s.124F **200**

s.124H **200**

s.129 **196**

s.129AA **196**

s.129AAA **196**

Health Insurance Amendment Act
1976 **189**

- Health Insurance Amendment Act 1978 **191**
- Health Insurance Amendment Act (No. 2) 1978 **190, 191, 229**
- Health Insurance Amendment Act 1979 **192**
- Health Insurance Commission Act 1973 **187**
s.8A **189**
- Health Insurance Commission Amendment Act 1976 **189**
- Health Insurance Levy Act 1976
s.6 **188**
s.7 **188**
- Health Insurance Levy Act 1978
s.3 **190**
s.7 **190**
- Health Insurance Levy Assessment Act 1976 **188**
s.5 **189**
- Health Insurance Levy Bill 1974 **187**
- Health Legislation Act (No. 2) 1983 **218**
- Health Legislation Amendment Act (No. 2) 1982 **229**
- Health Legislation Amendment Act 1983 **193, 194**
s.7 **231**
- Health Legislation Amendment Act 1985
s.7 **198**
s.9 **200**
s.10 **199**
- Income Tax Assessment Act 1936 **140**
s.23 **165**
s.251T **188**
s.251V **188**
s.82HA **183**
s.159K **164**
s.159S **188, 189**
s.159XA **192**
- Income Tax Assessment Act (No. 5) 1973 **164**
- Income Tax Assessment Act (No. 2) 1975 **188**
- Income Tax Assessment Amendment Act (No. 2) 1976 **165**
- Income Tax (Assessment and Rates) Amendment Act 1981 **193**
- Matrimonial Causes Act 1959 **126, 134**
- Medicare Levy Act 1983 **194**
s.6 **193**
s.7 **194**
s.12 **193**
- National Health Act 1953 **183, 209, 213, 229, 230, 233**
s.4 **160, 183, 227, 231**
s.13 **184**
s.13A **184**
s.14 **184**
s.33 **187**
s.39A **208, 209, 210**
s.40AA **208, 209, 210, 212, 213, 214, 215, 216**
s.40AB **207, 208**
s.40AD **211**
s.40AE **211**
s.40AF **207, 208**
s.47 **207, 208**
s.49 **208**
s.57A **207**
s.73 **189**
s.82L **186**
s.84 **160, 225**
s.84A **230**
s.85 **224, 230**
s.85A **230**
s.86 **160, 230**
s.87 **160, 224, 225, 231, 232**
s.88 **230**
s.89 **230**
s.90 **230**
s.92 **230**
s.92A **231, 232**
s.92B **232**
s.94 **230**
s.95 **232**
s.98A **200, 233, 234**
s.98B **200, 234**
s.98BA **200, 234**
s.98BC **200, 234**
s.98BE **234**
s.98C **234**
s.98E **233**
s.99 **233**
s.103 **232**
s.105AB **208, 232**
s.110 **232**
s.115 **232**
s.117A **211**
Part III **223**
Part IV **223**
Part V **215**

- Part V Div 2 **207**
 Part V Div 3 **197**
 Part VA **206**
 Part VI **223**
 Part VI Div 1 **184**
 Part VI Div 2 **183**
 Part VI Div 3 **184**
 Part VII **223**
 Schedule 1 **185**
 Schedules 2-7 **185**
- National Health Act 1955
 s.4 **183**
- National Health Act 1958 **183**
 s.15 **186**
- National Health Act 1959 **224, 225**
- National Health Act 1962 **206**
- National Health Act 1968 **206, 207**
- National Health Act 1969 **184**
 s.15 **184**
- National Health Act 1970 **184**
- National Health Act 1972 **207, 210**
- National Health Act 1976
 s.11 **187**
 s.12 **226**
- National Health Amendment Act
 (No. 4) 1976
 s.6 **233**
- National Health Amendment Act
 (No. 3) 1979 **227**
 s.4 **191**
- National Health Amendment Act
 (No. 2) 1980 **227**
 s.3 **191**
- National Health Amendment Act
 1983
 s.3 **214**
- National Health Bill (No. 2) 1974 **188**
- National Health and Pensions
 Insurance Act 1938 **24**
- National Health and Pensions
 Insurance Bill 1938 **24**
- National Health (Pharmaceutical
 Benefits) Amendment Act 1981 **234**
- National Health Services Act 1948 **183**
 s.6 **182-3**
- National Welfare Fund Act 1943 **66**
- National Welfare Fund Repeal Act
 1985 **26**
- Nursing Home Subsidy Act 1956 **206**
- Nursing Homes Assistance Act 1974
 216, 220
 s.6 **217**
 s.12 **217**
 s.15 **217**
- Pharmaceutical Benefits Act 1944
 177, 222
- Pharmaceutical Benefits Act 1946
 s.7A **177**
- Pharmaceutical Benefits Act 1947 **223**
 s.7A **223**
- Repatriation Act 1920 **135**
 s.123AB **231**
- Social Security Act 1947 **72, 88, 89,**
 91, 105, 129, 132, 134, 135, 136,
 137, 145, 148, 150, 152, 159, 162
 s.6 **135, 137, 139, 146, 163, 164**
 s.6AA **33, 74**
 s.6AC **33, 117**
 s.6AE **33, 160**
 s.6AF **33**
 s.7 **97**
 s.12 **88**
 s.13 **88**
 s.22 **20**
 s.28 **33, 153-4, 159, 160, 162, 163**
 s.28A **153**
 s.46 **163**
 s.47 **117**
 s.50 **217**
 s.59 **122, 132-3, 136, 140, 145, 146,**
 150
 s.60 **132, 134, 136, 138, 139, 145,**
 159
 s.61 **142**
 s.61A **138**
 s.61B **138**
 s.62 **152**
 s.63 **33, 153-4, 156, 157, 159, 161,**
 162
 s.64 **154, 161, 162**
 s.65A **154, 160**
 s.70 **161**
 s.76 **117**
 s.83AAA **134, 135, 136, 146**
 s.83AAC **134, 136, 138**
 s.83AAD **152, 157, 158**
 s.83AAE **154, 159, 165**
 s.83AAG **138, 154, 160**
 s.83AB **141**
 s.83AD **141, 141-3, 144**
 s.83AE **141**
 s.83AF **138**