



**Further 1998 Budget Measures  
Legislation Amendment (Social Security)  
Act 1999**

**No. 152, 1999**



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**An Act to amend the *Social Security Act 1991*, and  
for related purposes**

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# Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999

No. 152, 1999

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## An Act to amend the *Social Security Act 1991*, and for related purposes

[Assented to 11 November 1999]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Further 1998 Budget Measures  
Legislation Amendment (Social Security) Act 1999*.

### 2 Commencement

- (1) Subject to subsections (2) to (8) (inclusive), this Act commences on the day on which it receives the Royal Assent.
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- (2) Schedule 1 commences on 1 April 2000.
  - (3) Item 2 and items 8 to 52 of Schedule 2 commence on 20 March 2000.
  - (4) Schedules 4 and 12 commence on the day on which this Act receives the Royal Assent or 1 October 1999, whichever is the later.
  - (5) Subject to subsection (6), Schedule 5 commences on a day to be fixed by Proclamation.
  - (6) If Schedule 5 does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that Schedule commences on the first day after the end of that period.
  - (7) Schedule 9 commences on 1 March 2000.
  - (8) Part 6 of Schedule 6 commences on 1 August 2000.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to special maintenance income**

### *Social Security Act 1991*

#### **1 Section 3 (index)**

Repeal:

special maintenance income 10(1)

#### **2 Subsection 10(1) (definition of *non-cash housing maintenance*) (note)**

Omit “and section 1117”.

#### **3 Subsection 10(1) (definition of *special maintenance income*)**

Repeal the definition and the note.

#### **4 Point 1069-J1 (method statement, step 1, note 2)**

Repeal the note.

#### **5 Point 1069-J1 (method statement, step 6, note)**

Repeal the note, substitute:

Note: The application for the maintenance income test is affected by section 1116 (apportionment of capitalised maintenance income).

#### **6 Point 1069-J3**

Repeal the point.

#### **7 Points 1069-J6 and 1069-J7**

Repeal the points.

#### **8 Section 1117**

Repeal the section.

## Schedule 2—Amendments relating to CDEP

### *Social Security Act 1991*

#### **1 Section 3 (index of definitions)**

Insert the following entries in their appropriate alphabetical positions, determined on a letter-by-letter basis:

CDEP Scheme	23(1)
CDEP Scheme participant	23(1)
CDEP Scheme payment	23(1)
CDEP Scheme quarter	23(1)

#### **2 Section 3 (index of definitions)**

Omit:

Commonwealth funded employment program	23(1)
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#### **3 After section 3**

Insert:

#### **3A Power of Secretary to make determinations etc.**

If:

- (a) a provision of this Act refers to a determination made, approval given or other act done by the Secretary; and
- (b) there is no other provision of this Act expressly conferring power on the Secretary to make the determination, give the approval or do the act;

the Secretary has power by this section to make such a determination, give such an approval or do such an act, as the case requires.

#### **4 Subsection 23(1)**

Insert:

***CDEP Scheme*** means the scheme known as the Community Development Employment Projects Scheme.



**5 Subsection 23(1)**

Insert:

*CDEP Scheme participant* has the meaning given by section 1188B.

**6 Subsection 23(1)**

Insert:

*CDEP Scheme payment* means a payment (expressed as a fortnightly rate) made from the wages component grant under the CDEP Scheme.

**7 Subsection 23(1)**

Insert:

*CDEP Scheme quarter* means:

- (a) such period (if any) as the Secretary determines in respect of the provision in which the expression occurs; or
- (b) in relation to a provision in respect of which there is no determination by the Secretary in force under paragraph (a)—a quarter within the meaning of the CDEP Scheme.

**8 Subsection 23(1) (definition of *Commonwealth funded employment program*)**

Repeal the definition.

**9 Subsection 23(1) (at the end of the definition of *social security recipient status*)**

Add (but not as part of paragraph (b)):

; and includes status held on or after 20 March 2000 as a CDEP Scheme participant receiving the CDEP Scheme Participant Supplement.

**10 Paragraph 408CA(1)(h)**

Repeal the paragraph.

**11 Section 408CG**

Repeal the section, substitute:

#### **408CG Maximum basic rate and remote area allowance not payable to CDEP Scheme participant**

The maximum basic rate, and the remote area allowance, of widow allowance for a period are not payable to a woman who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module J of Benefit Rate Calculator B.

Note 2: For *CDEP Scheme participant* see subsection 23(1).

#### **12 At the end of Division 6 of Part 2.8A**

Add:

#### **408GI CDEP Scheme participant may accumulate widow allowance**

- (1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any widow allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
  - (a) unless paragraph (b) applies, the last day of the quarter; or
  - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- (3) In this section:

*quarter* means a CDEP Scheme quarter.

Note 1: For *CDEP Scheme participant* see section 1188B.

Note 2: For *CDEP Scheme quarter* see subsection 23(1).

#### **13 Paragraph 500I(1)(g)**

Repeal the paragraph.

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## **14 Section 500W**

Repeal the section, substitute:

### **500W Maximum basic rate and remote area allowance not payable to CDEP Scheme participant who is a member of a couple**

The maximum basic rate, and the remote area allowance, of a parenting payment for a period is not payable to a person who is a member of a couple and is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *CDEP Scheme participant* see subsection 23(1).

Note 2: For *remote area allowance* see Module G of PP (partnered) Rate Calculator.

## **15 At the end of Division 5 of Part 2.10**

Add:

### **504N CDEP Scheme participant may accumulate parenting payment**

- (1) A person who is a member of a couple, and is a CDEP Scheme participant in respect of the whole or a part of a quarter, may, by written notice given to the Secretary, choose to accumulate the amounts of any parenting payment that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
  - (a) unless paragraph (b) applies, the last day of the quarter; or
  - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- (3) In this section:

**quarter** means a CDEP Scheme quarter.

Note 1: For *CDEP Scheme participant* see section 1188B.

Note 2: For *CDEP Scheme quarter* see subsection 23(1).

**16 At the end of Division 9 of Part 2.10**

Add:

**Subdivision D—Bereavement payment in respect of a person who was a CDEP Scheme participant**

**514FA Calculation of bereavement payment in respect of former CDEP Scheme participant**

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 500W had not been enacted.

Note: For *CDEP Scheme participant* see section 1188B.

**17 Section 540**

Omit all the words before paragraph (b), substitute:

Subject to this Subdivision, a person is qualified for a youth allowance in respect of a period if:

- (a) either of the following applies:
  - (i) throughout the period the person satisfies the activity test (see Subdivision B) or is not required to satisfy the activity test (see Subdivision C);
  - (ii) the person is a CDEP Scheme participant (see section 1188B) in respect of the period;

**18 Paragraphs 540(b), (c) and (d)**

Before “the person” (first occurring), insert “throughout the period”.

**19 At the beginning of paragraph 546(1)(c)**

Insert “except where the person is a CDEP Scheme participant in respect of the period,”.

**20 Paragraphs 552(c) and (d)**

Repeal the paragraphs, substitute:

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- (c) an assurance of support applies to the person (see section 552B).

## **21 At the end of Subdivision E of Division 2 of Part 2.11**

Add:

### **552C Maximum basic rate and remote area allowance not payable to CDEP Scheme participant**

The maximum basic rate, and the remote area allowance, of youth allowance for a period are not payable to a person who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module K of the Youth Allowance Rate Calculator.

Note 2: For *CDEP Scheme participant* see subsection 23(1).

## **22 At the end of Division 6 of Part 2.11**

Add:

### **559J CDEP Scheme participant may accumulate youth allowance**

- (1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any youth allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
  - (a) unless paragraph (b) applies, the last day of the quarter; or
  - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- (3) In this section:

*quarter* means a CDEP Scheme quarter.

Note 1: For *CDEP Scheme participant* see section 1188B.

Note 2: For *CDEP Scheme quarter* see subsection 23(1).

### **23 At the end of Division 10 of Part 2.11**

Add:

#### **567F Calculation of bereavement payment in respect of former CDEP Scheme participant**

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 552C had not been enacted.

Note: For *CDEP Scheme participant* see section 1188B.

### **24 Paragraphs 593(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the person satisfies the Secretary that:
  - (i) throughout the period the person is unemployed; or
  - (ii) the person is a CDEP Scheme participant in respect of the period; and

Note: For *CDEP Scheme participant* see section 1188B.

- (b) in the case of a person to whom subparagraph (a)(i) applies—throughout the period, or for each period within the period, the person:
  - (i) satisfies the activity test; or
  - (ii) is not required to satisfy the activity test; and

### **25 At the beginning of paragraph 600(1)(c)**

Insert “except where the person is a CDEP Scheme participant in respect of the period,”.

### **26 Paragraph 608(1)(da)**

Repeal the paragraph.

### **27 Section 614A**

Repeal the section, substitute:

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**614A Maximum basic rate and remote area allowance not payable to CDEP Scheme participant**

The maximum basic rate, and the remote area allowance, of newstart allowance for a period are not payable to a person who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module J of Benefit Rate Calculator B.

Note 2: For *CDEP Scheme participant* see subsection 23(1).

**28 At the end of Division 5 of Part 2.12**

Add:

**653A CDEP Scheme participant may accumulate newstart allowance**

- (1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any newstart allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
  - (a) unless paragraph (b) applies, the last day of the quarter; or
  - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- (3) In this section:

*quarter* means a CDEP Scheme quarter.

Note 1: For *CDEP Scheme participant* see section 1188B.

Note 2: For *CDEP Scheme quarter* see subsection 23(1).

**29 At the end of Subdivision AA of Division 9 of Part 2.12**

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Add:

**660LG Calculation of bereavement payment in respect of former CDEP Scheme participant**

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 614A had not been enacted.

Note: For *CDEP Scheme participant* see section 1188B.

**30 Paragraph 660XCA(1)(e)**

Repeal the paragraph.

**31 Section 660XCH**

Repeal the section.

**32 At the end of subsection 660YBA(5)**

Add:

Note: For *CDEP Scheme participant* see section 1188B.

**33 Paragraph 660YCA(1)(e)**

Repeal the paragraph.

**34 Section 660YCH**

Repeal the section, substitute:

**660YCH Maximum basic rate and remote area allowance not payable to CDEP Scheme participant**

The maximum basic rate, and the remote area allowance, of mature age allowance for a period are not payable to a person who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module J of Benefit Rate Calculator B.

Note 2: For *CDEP Scheme participant* see subsection 23(1).



**35 At the end of Division 7 of Part 2.12B**

Add:

**660YGI CDEP Scheme participant may accumulate mature age allowance**

- (1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any mature age allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
  - (a) unless paragraph (b) applies, the last day of the quarter; or
  - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- (3) In this section:

*quarter* means a CDEP Scheme quarter.

Note 1: For *CDEP Scheme participant* see section 1188B.

Note 2: For *CDEP Scheme quarter* see subsection 23(1).

**36 At the end of Division 11 of Part 2.12B**

Add:

**Subdivision D—Bereavement payment in respect of former CDEP Scheme participant**

**660YKH Calculation of bereavement payment in respect of former CDEP Scheme participant**

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is

to be the amount that would have been the amount of the benefit if section 660YCH had not been enacted.

Note: For *CDEP Scheme participant* see section 1188B.

**37 At the end of section 686**

Add:

- (7) Sickness allowance is not payable to a person in respect of a period if the person is a CDEP Scheme participant in respect of the whole or any part of the period.

**38 Paragraph 771HC(1)(e)**

Repeal the paragraph.

**39 Section 771HK**

Repeal the section, substitute:

**771HK Maximum basic rate and remote area allowance not payable to CDEP Scheme participant**

The maximum basic rate, and the remote area allowance, of partner allowance for a period are not payable to a person who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module J of Benefit Rate Calculator B.

Note 2: For *CDEP Scheme participant* see subsection 23(1).

**40 At the end of Division 5 of Part 2.15A**

Add:

**771KN CDEP Scheme participant may accumulate partner allowance**

- (1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any partner allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.

- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
- (a) unless paragraph (b) applies, the last day of the quarter; or
  - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- (3) In this section:

**quarter** means a CDEP Scheme quarter.

Note 1: For *CDEP Scheme participant* see section 1188B.

Note 2: For *CDEP Scheme quarter* see subsection 23(1).

#### **41 At the end of Division 9 of Part 2.15A**

Add:

#### **Subdivision D—Bereavement payment in respect of former CDEP Scheme participant**

#### **771NZAA Calculation of bereavement payment in respect of former CDEP Scheme participant**

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 771HK had not been enacted.

Note: For *CDEP Scheme participant* see section 1188B.

#### **42 Point 1067G-A1 (method statement, step 14)**

After “plus”, insert “, except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of allowance is being worked out,”.

#### **43 Point 1067G-B1**

Omit “A person’s maximum basic rate”, substitute “The maximum basic rate of a person other than a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out”.

**44 At the end of point 1067G-B1**

Add (but not as part of paragraph (c)):

The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see section 552C).

**45 Point 1068-A1 (method statement, step 7)**

After “plus”, insert “, except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of benefit is being worked out,”.

**46 Point 1068-B1**

Omit “A person’s maximum basic rate”, substitute “The maximum basic rate of a person other than a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out”.

**47 Point 1068-B1 (after the third sentence)**

Insert “The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see sections 408CG, 614A, 660YCH and 771HK).”.

**48 Point 1068B-A3 (method statement, step 8)**

After “plus”, insert “, except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of payment is being worked out,”.

**49 Point 1068B-A3A (method statement, step 7)**

After “plus”, insert “, except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of payment is being worked out,”.

**50 Point 1068B-C1**

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After “payable to a person”, insert “other than a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out”.

**51 Point 1068B-C2**

After “payable to a person”, insert “other than a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out”.

**52 Section 1068B (at the end of Module C in the PP (partnered) Rate Calculator)**

Add:

*Maximum basic rate—CDEP Scheme participant*

1068B-C3 The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see section 500W).

**53 After Part 3.15**

Insert:

**Part 3.15A—Community Development  
Employment Projects Scheme**

**Division 1—Preliminary**

**1188A General effect of Part**

- (1) This Part has the effect, in certain circumstances, of reducing a person’s social security entitlement in respect of a period in respect of which the person is a CDEP Scheme participant.
- (2) This Part also provides, in certain circumstances, a supplement for a person for a period in respect of which the person is a CDEP Scheme participant.

### 1188B CDEP Scheme participants

- (1) A person is, or is taken to have been, a *CDEP Scheme participant* in respect of a particular day (the *relevant day*) on or after 20 March 1999 if:
- (a) the person's name appeared on the latest CDEP Scheme Participant Schedule, approved on or before the relevant day, and there is no certificate in force, given, after the approval of that Schedule, by an authorised officer stating that the person ceased on or before the relevant day to be a person participating in the CDEP Scheme; or
  - (b) the person's name did not appear on that Schedule but a certificate is in force, given, after the approval of that Schedule, by an authorised officer stating that the person began to participate in the CDEP Scheme on or before the relevant day and there is no certificate in force, given, after the issue of the first-mentioned certificate, by an authorised officer stating that the person ceased on or before the relevant day to participate in the CDEP Scheme.
- (2) Subsection (1) does not apply in relation to a person in respect of a particular day if the Secretary believes, on reasonable grounds, that, on that day:
- (a) the person was no longer participating in the program constituted by the CDEP Scheme; or
  - (b) the person was sick or incapacitated and was not receiving sickness benefits under the CDEP Scheme.
- (3) In this section:

*ATSIC* means the Aboriginal and Torres Strait Islander Commission.

*authorised officer*, in relation to a certificate, means a person authorised by the Chief Executive Officer of ATSIC to give such a certificate.

*CDEP Scheme Participant Schedule* means a schedule of the names of people participating in the CDEP Scheme that has been approved by ATSIC for the purposes of that Scheme.

*relevant day* has the meaning given by subsection (1).

## **Division 2—Reduction in rate of pension or allowance**

### **1188C Reductions in rate of payments under this Act if recipient or partner also receiving payments under CDEP Scheme**

- (1) If:
- (a) an instalment of any of the following:
    - (i) age pension;
    - (ii) disability support pension;
    - (iii) wife pension;
    - (iv) carer payment;
    - (v) parenting payment at the rate applicable for a person who is not a member of a couple;
    - (vi) bereavement allowance;
    - (vii) widow B pension;
    - (viii) special benefit;
    - (ix) special needs pension;
    - (x) mature age allowance under Part 2.12A;
    - (xi) mature age partner allowance;is payable to a person in respect of a payment period or in respect of a pension payday; and
  - (b) a CDEP Scheme payment is payable to the person or the person's partner in respect of the whole or a part of that payment period or in respect of that pension payday, as the case may be;
- the following provisions have effect:
- (c) if a CDEP Scheme payment referred to in paragraph (b) that is payable to the person exceeds the person's threshold:
    - (i) the amount of the instalment is reduced by the part of the CDEP Scheme payment that does not exceed the person's threshold; and
    - (ii) the ordinary income of the person includes the part of the CDEP Scheme payment that exceeds the person's threshold;
  - (d) if a CDEP Scheme payment referred to in paragraph (b) that is payable to the person does not exceed the person's threshold:

- (i) the amount of the instalment is reduced by the amount of the CDEP Scheme payment; and
    - (ii) the CDEP Scheme payment is not ordinary income of the person;
  - (e) if a CDEP Scheme payment referred to in paragraph (b) that is payable to the person's partner exceeds the partner's threshold:
    - (i) the part of the CDEP Scheme payment that does not exceed the partner's threshold is not ordinary income of the person or of the person's partner; and
    - (ii) the ordinary income of the person's partner includes the part of the CDEP Scheme payment that exceeds the partner's threshold;
  - (f) if a CDEP Scheme payment referred to in paragraph (b) that is payable to the person's partner does not exceed the partner's threshold, the CDEP Scheme payment is not ordinary income of the person or of the person's partner.
- (2) If a person who had been receiving instalments of a pension payment, allowance or benefit referred to in paragraph (1)(a) dies, then, in calculating any bereavement payment in respect of the person, any deductions made from the amounts of the instalments under subparagraph (1)(c)(i), (d)(i) or (e)(i) are to be disregarded.
- (3) If:
- (a) a payment of any of the following:
    - (i) widow allowance;
    - (ii) newstart allowance;
    - (iii) youth allowance;
    - (iv) parenting payment at the rate applicable for a person who is a member of a couple;
    - (v) partner allowance;
    - (vi) mature age allowance under Part 2.12B;is payable to a person in respect of a payment period; and
  - (b) a CDEP Scheme payment is payable to the person in respect of the whole or a part of that period;
- the following provisions have effect:
- (c) if the CDEP Scheme payment referred to in paragraph (b) exceeds the person's threshold, the ordinary income of the



person includes the part of the CDEP Scheme payment that exceeds the person's threshold;

- (d) if the CDEP Scheme payment referred to in paragraph (b) does not exceed the person's threshold, the CDEP Scheme payment is not ordinary income of the person.
- (4) This section applies in respect of payment periods beginning on or after 20 March 2000.
- (5) In this section:

***threshold:***

- (a) in relation to a person, means the amount referred to in column 4 of Table A in this subsection that is applicable in relation to the person having regard to the type of pension, allowance, benefit or payment referred to in column 2 of that table that would be payable to the person if the person were not a CDEP Scheme participant and the situation (if any) referred to in column 3 of that table that is applicable to the person; or
- (b) in relation to the partner of a person, means:
  - (i) if the partner is not receiving any pension, allowance, benefit or other payment under this Act—the amount specified in item 7 of column 3B of Table B in point 1068-B1; or
  - (ii) if the partner is receiving a pension, allowance, benefit or other payment under this Act—the amount that would be applicable under the appropriate item in Table A in this subsection if that table applied to the partner, having regard to the type of pension, allowance, benefit or other payment referred to in column 2 of that table that is payable to the partner and the situation (if any) referred to in column 3 of that table that is applicable to the partner.

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**Table A—Threshold amounts**

**Schedule 2** Amendments relating to CDEP

<b>Column 1 Item</b>	<b>Column 2 Type of pension, allowance, benefit or payment</b>	<b>Column 3 Situation</b>	<b>Column 4 Person's threshold</b>
1	Age pension	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
2	Age pension	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
3	Disability support pension	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1 or the amount specified in column 4B of the item of Table B in point 1066A-B1 (including any amount required to be added by point 1066A-C1) that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
4	Disability support pension	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the amount specified in column 4B of the item in Table B in point 1066A-B1 (including any amount required to be added by point 1066A-C1) that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
5	Wife pension		The amount specified in column 3B of item 7 of Table B in point 1068-B1

<b>Table A—Threshold amounts</b>			
<b>Column 1 Item</b>	<b>Column 2 Type of pension, allowance, benefit or payment</b>	<b>Column 3 Situation</b>	<b>Column 4 Person's threshold</b>
6	Carer payment	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
7	Carer payment	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
8	Bereavement allowance	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
9	Bereavement allowance	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
10	Widow B pension		The amount specified in column 3B of item 4A of Table B in point 1068-B1
11	Special needs pension	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
12	Special needs pension	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
13	Mature age allowance under Part 2.12A	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
14	Mature age allowance under Part 2.12A	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
15	Mature age partner allowance		The amount specified in column 3B of item 7 of Table B in point 1068-B1

**Schedule 2** Amendments relating to CDEP

<b>Table A—Threshold amounts</b>			
<b>Column 1 Item</b>	<b>Column 2 Type of pension, allowance, benefit or payment</b>	<b>Column 3 Situation</b>	<b>Column 4 Person's threshold</b>
16	Newstart allowance	Not member of a couple and is under the age of 60	The amount specified in column 3B of item 4A of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
17	Newstart allowance	Not member of a couple, is over the age of 60, and has been receiving for a continuous period of at least 9 months one or more of a social security pension, a social security benefit or a service pension	The amount specified in column 3B of item 5 of Table B in point 1068-B1
18	Newstart allowance	Not member of a couple, is over the age of 60, and has not been receiving for a continuous period of at least 9 months one or more of a social security pension, a social security benefit or a service pension	The amount specified in column 3B of item 4B of Table B in point 1068-B1
19	Newstart allowance	Not member of a couple and has a dependent child	The amount specified in column 3A of item 4A of Table B in point 1068-B1

<b>Table A—Threshold amounts</b>			
<b>Column 1 Item</b>	<b>Column 2 Type of pension, allowance, benefit or payment</b>	<b>Column 3 Situation</b>	<b>Column 4 Person's threshold</b>
20	Newstart allowance	Member of illness separated couple, whether or not the person has a dependent child	The amount specified in column 3B of item 9 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
21	Newstart allowance	Member of a couple whether or not the person has a dependent child	The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
22	Newstart allowance	Member of a couple but partner in gaol	The amount specified in column 3B of item 11 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
23	Widow allowance	Under the age of 60	The amount specified in column 3B of item 4A of Table B in point 1068-B1

**Schedule 2** Amendments relating to CDEP

<b>Table A—Threshold amounts</b>			
<b>Column 1 Item</b>	<b>Column 2 Type of pension, allowance, benefit or payment</b>	<b>Column 3 Situation</b>	<b>Column 4 Person's threshold</b>
24	Widow allowance	Over the age of 60 and has been receiving for a continuous period of at least 9 months one or more of a social security pension, a social security benefit or a service pension	The amount specified in column 3B of item 5 of Table B in point 1068-B1
25	Widow allowance	Over the age of 60 and has not been receiving for a continuous period of at least 9 months one or more of a social security pension, a social security benefit or a service pension	The amount specified in column 3B of item 4B of Table B in point 1068-B1
26	Special benefit	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
27	Special benefit	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser

<b>Table A—Threshold amounts</b>			
<b>Column 1 Item</b>	<b>Column 2 Type of pension, allowance, benefit or payment</b>	<b>Column 3 Situation</b>	<b>Column 4 Person's threshold</b>
28	Partner allowance		The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
29	Mature age allowance under Part 2.12B	Not member of a couple	The amount specified in column 3B of item 5A of Table B in point 1068-B1
30	Mature age allowance under Part 2.12B	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
31	Parenting payment	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
32	Parenting payment	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
33	Youth allowance	Not independent	The amount specified in column 3 of the item of Table BA in point 1067G-B2 that would apply to the person if the person were not a CDEP Scheme participant

<b>Table A—Threshold amounts</b>			
<b>Column 1 Item</b>	<b>Column 2 Type of pension, allowance, benefit or payment</b>	<b>Column 3 Situation</b>	<b>Column 4 Person's threshold</b>
34	Youth allowance	Independent	The amount specified in column 3 of the item of Table BB in point 1067G-B3 that would apply to the person if the person were not a CDEP Scheme participant

Note: For *CDEP Scheme payment* see subsection 23(1).

### **Division 3—CDEP Scheme Participant Supplement**

#### **1188D Entitlement to Supplement: people receiving pension-type payments on or after 20 March 1999**

- (1) This section applies in respect of:
  - (a) payment periods beginning on or after 20 March 1999; and
  - (b) pension paydays occurring on or after that date.
- (2) This section applies to a person in respect of a payment period (the *relevant payment period*) or in respect of a pension payday (the *relevant pension payday*) if:
  - (a) an instalment of any of the following:
    - (i) age pension;
    - (ii) disability support pension;
    - (iii) wife pension;
    - (iv) carer payment;
    - (v) parenting payment at the rate applicable for a person who is not a member of a couple;
    - (vi) bereavement allowance;
    - (vii) widow B pension;
    - (viii) special needs pension;
    - (ix) mature age allowance under Part 2.12A;
    - (x) mature age partner allowance;



is payable to a person in respect of the relevant payment period or the relevant pension payday; and

- (b) the person meets the requirements of subsection (3) or (4).
- (3) The requirements of this subsection are:
- (a) that the person is a CDEP Scheme participant in respect of the relevant payment period or the relevant pension payday; and
  - (b) that a CDEP Scheme payment is payable to the person in respect of the relevant payment period or the relevant pension payday.
- (4) The requirements of this subsection are:
- (a) that the person is a CDEP Scheme participant in respect of the relevant payment period or the relevant pension payday; and
  - (b) that a CDEP Scheme payment was payable to the person:
    - (i) in respect of a payment period the whole or a part of which occurred within the 3 payment periods immediately before the relevant payment period; or
    - (ii) in respect of the 3 pension paydays immediately before the relevant pension payday.
- (5) If this section applies to the person in respect of the relevant payment period or the relevant pension payday, then, subject to subsection (6), a CDEP Scheme Participant Supplement of \$20 is payable to the person in respect of that period or payday.
- Note: For *CDEP Scheme payment* see subsection 23(1).
- (6) A person cannot receive more than one payment of CDEP Scheme Participant Supplement in respect of a fortnightly period.

**1188E Entitlement to Supplement between 20 March 1999 and 19 March 2000: people not covered by section 1188D**

- (1) This section applies in respect of:
- (a) payment periods beginning on or after 20 March 1999 and not later than 19 March 2000; or
  - (b) pension paydays occurring on or after 20 March 1999 and not later than 19 March 2000.

- (2) This section applies to a person in respect of a payment period (the *relevant payment period*) or in respect of a pension payday (the *relevant pension payday*) if the person meets the requirements of subsections (3) and (4).
- (3) The requirements of this subsection are:
- (a) that the person is a CDEP Scheme participant in respect of the relevant payment period or the relevant pension payday; and
  - (b) that a CDEP Scheme payment was payable to the person:
    - (i) in respect of a payment period the whole or a part of which occurred within the 3 payment periods immediately before the relevant payment period; or
    - (ii) in respect of the 3 pension paydays immediately before the relevant pension payday.
- (4) The requirement of this subsection is that the person satisfies the CDEP Scheme Participant Supplement income test in respect of the relevant payment period, or in respect of the payment period in which the relevant pension payday occurs, as mentioned in subsection (5) or (6), as the case requires.
- (5) This is how to work out whether a person who is not a member of a couple satisfies the CDEP Scheme Participant Supplement income test in respect of a payment period.

*Method statement*

- Step 1.* If Benefit Rate Calculator B does not apply to the person, assume that it applies.
- Step 2.* Work out the total amount of any CDEP Scheme payments payable to the person in respect of the period.
- Step 3.* Assume that the person's ordinary income worked out on a fortnightly basis is increased by that total amount.
- Step 4.* Assume that the person's maximum basic rate is the sum of:

- (a) the amount specified in column 3B of item 4A of Table B in point 1068-B1; and
- (b) the amount specified in column 4 of item 1 of Table F in point 1068-F15.

*Step 5.* Work out the person's provisional payment rate for the period under Benefit Rate Calculator B on the assumptions referred to in Steps 3 and 4.

*Step 6.* The person satisfies the CDEP Scheme Participant Supplement income test in respect of the period if the person's provisional payment rate worked out under Step 5 is greater than zero.

- (6) This is how to work out whether a person who is a member of a couple satisfies the CDEP Scheme Participant Supplement income test in respect of a payment period.

*Method statement*

*Step 1.* If Benefit Rate Calculator B does not apply to the person, assume that it applies.

*Step 2.* Work out the total amount of any CDEP Scheme payments payable to the person in respect of the period.

*Step 3.* Assume that the person's ordinary income worked out on a fortnightly basis is increased by that total amount.

*Step 4.* Work out the total amount of any CDEP Scheme payments payable to the person's partner in respect of the period.

*Step 5.* Assume that the person's partner's ordinary income worked out on a fortnightly basis is increased by the total amount worked out under Step 4.

*Step 6.* Assume that the person's maximum basic rate is the sum of:

- (a) the amount specified in column 3B of item 7 of Table B in point 1068-B1; and
  - (b) the amount specified in column 4 of item 2 of Table F in point 1068-F15.
- Step 7.* Work out the person's provisional payment rate for the period under Benefit Rate Calculator B on the assumptions referred to in Steps 3, 5 and 6.
- Step 8.* The person satisfies the CDEP Scheme Participant Supplement income test in respect of the period if the person's provisional payment rate worked out under Step 7 is greater than zero.

- (7) If this section applies to the person in respect of the relevant payment period or the relevant pension payday then, subject to subsections (8) and (9), a CDEP Scheme Participant Supplement of \$20 is payable to the person in respect of that period or payday.
  - (8) A CDEP Scheme Participant Supplement is not payable to a person under subsection (7) if:
    - (a) the Secretary has made a request of the person in respect of the tax file number of the person or of his or her partner; and
    - (b) the person has failed to satisfy the request; and
    - (c) the Secretary has not exempted the person from having to satisfy the request.
- Note 1: *CDEP Scheme participant* see subsection 23(1).
- Note 2: For *CDEP Scheme payment* see subsection 23(1).
- (9) A person cannot receive more than one payment of CDEP Scheme Participant Supplement in respect of a fortnightly period.

**1188F Entitlement to Supplement on or after 20 March 2000: people not covered by section 1188D**

- (1) This section applies in respect of payment periods beginning on or after 20 March 2000.
- (2) Subject to subsection (3), this section applies to a person:

- (a) in respect of a payment period (the *relevant payment period*) if the person is qualified in respect of that period for any of the following:
    - (i) widow allowance;
    - (ii) newstart allowance;
    - (iii) youth allowance;
    - (iv) special benefit;
    - (v) parenting payment at the rate applicable for a person who is a member of a couple;
    - (vi) partner allowance;
    - (vii) mature age allowance under Part 2.12B; or
  - (b) in respect of a payment period (also the *relevant payment period*) if the person is qualified in respect of that period for any of the following:
    - (i) age pension;
    - (ii) disability support pension;
    - (iii) wife pension;
    - (iv) carer payment;
    - (v) parenting payment at the rate applicable for a person who is not a member of a couple;
    - (vi) bereavement allowance;
    - (vii) widow B pension;
    - (viii) special needs pension;
    - (ix) mature age allowance under Part 2.12A;
    - (x) mature age partner allowance;but the pension, payment or allowance for which the person is qualified under this paragraph is not payable to the person in respect of that period.
- (3) This section does not apply to a person in respect of the relevant payment period unless the person meets the requirements of subsections (4), (5), (6) and (7) in respect of the relevant payment period.
- (4) The requirements of this subsection are:
- (a) that the person is a CDEP Scheme participant in respect of the relevant payment period; and
  - (b) that a CDEP Scheme payment was payable to the person in respect of a payment period the whole or a part of which

occurred within the 3 payment periods immediately before the relevant payment period.

- (5) The requirement of this subsection is that the person satisfies the CDEP Scheme Participant Supplement income test in respect of the relevant payment period as mentioned in subsection (8) or (9), as the case requires.
- (6) The requirement of this subsection is that the relevant payment period does not fall within:
  - (a) a waiting period; or
  - (b) a liquid assets test waiting period; or
  - (c) a lump sum preclusion period; or
  - (d) a compensation preclusion period (see Part 3.14).
- (7) The requirement of this subsection is that the relevant payment period occurs within a period in respect of which the relevant allowance, benefit or payment referred to in paragraph (2)(a) or the relevant pension, payment or allowance referred to in paragraph (2)(b) is not payable to the person because of the operation of a provision of this Act relating to:
  - (a) seasonal or intermittent workers; or
  - (b) the value of the assets of the person or of his or her partner.
- (8) This is how to work out whether a person who is not a member of a couple satisfies the CDEP Scheme Participant Supplement income test in respect of a payment period.

*Method statement*

- Step 1.* If Benefit Rate Calculator B does not apply to the person, assume that it applies.
- Step 2.* Work out the total amount of any CDEP Scheme payments payable to the person in respect of the period.
- Step 3.* Assume that the person's ordinary income worked out on a fortnightly basis is increased by that total amount.
- Step 4.* Assume that the person's maximum basic rate is the sum of:

- (a) the amount specified in column 3B of item 4A of Table B in point 1068-B1; and
  - (b) the amount specified in column 4 of item 1 of Table F in point 1068-F15.
- Step 5.* Work out the person's provisional payment rate for the period under Benefit Rate Calculator B on the assumptions referred to in Steps 3 and 4.
- Step 6.* The person satisfies the CDEP Scheme Participant Supplement income test in respect of the period if the person's provisional payment rate worked out under Step 5 is greater than zero.

- (9) This is how to work out whether a person who is a member of a couple satisfies the CDEP Scheme Participant Supplement income test in respect of a payment period.

- Method statement*
- Step 1.* If Benefit Rate Calculator B does not apply to the person, assume that it applies.
- Step 2.* Work out the total amount of any CDEP Scheme payments payable to the person in respect of the period.
- Step 3.* Assume that the person's ordinary income worked out on a fortnightly basis is increased by that total amount.
- Step 4.* Work out the total amount of any CDEP Scheme payments payable to the person's partner in respect of the period.
- Step 5.* Assume that the person's partner's ordinary income worked out on a fortnightly basis is increased by the total amount worked out under Step 4.
- Step 6.* Assume that the person's maximum basic rate is the sum of:

- (a) the amount specified in column 3B of item 7 of Table B in point 1068-B1; and
- (b) the amount specified in column 4 of item 2 of Table F in point 1068-F15.

*Step 7.* Work out the person's provisional payment rate for the period under Benefit Rate Calculator B on the assumptions referred to in Steps 3, 5 and 6.

*Step 8.* The person satisfies the CDEP Scheme Participant Supplement income test in respect of the period if the person's provisional payment rate worked out under Step 7 is greater than zero.

- (10) If this section applies to the person in respect of the relevant payment period, then, subject to subsections (11) and (12), a CDEP Scheme Participant Supplement of \$20 is payable to the person in respect of that period.
- (11) A CDEP Scheme Participant Supplement is not payable to a person under subsection (10) if:
  - (a) the Secretary has made a request of the person in respect of the tax file number of the person or of his or her partner; and
  - (b) the person has failed to satisfy the request; and
  - (c) the Secretary has not exempted the person from having to satisfy the request.

Note 1: *CDEP Scheme participant* see subsection 23(1).

Note 2: For *CDEP Scheme payment* see subsection 23(1).

- (12) A person cannot receive more than one payment of CDEP Scheme Participant Supplement in respect of a fortnightly period.

**1188G Notification of periods in respect of which a CDEP Scheme payment is not payable**

If:

- (a) section 1188F applies to a person; and



(b) a CDEP Scheme payment is payable to the person in respect of a payment period beginning on or after 20 March 2000; and

(c) a CDEP Scheme payment is not payable to the person in respect of the next following payment period;

the person must notify the Secretary, as soon as practicable after section 1188F ceases to apply to the person, that a CDEP Scheme payment is not payable to the person in respect of that following payment period.

**1188H Person receiving CDEP Scheme Participant Supplement to be taken to be in receipt of social security benefit or pension**

A person who receives a CDEP Scheme Participant Supplement in respect of a payment period beginning on or after 20 March 2000 is taken, for the purposes of this Act, to be in receipt of the social security benefit or social security pension for which the person is qualified in respect of that period.

**1188J CDEP Scheme participant may accumulate supplement**

- (1) A person who is a CDEP Scheme participant, and is not in receipt of a social security pension, in respect of the whole or a part of a quarter beginning on or after 20 March 2000 may, by written notice given to the Secretary, choose to accumulate the amounts of any supplement that:
  - (a) became or become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant and is not in receipt of a social security pension; and
  - (b) have not already been paid.
- (2) A person who is or was a CDEP Scheme participant in respect of the whole or a part of a quarter ending before 20 March 2000 is taken to have chosen under this subsection to accumulate the amounts of any supplement that became payable to the person in respect of that quarter.

- (3) If a person makes a choice under subsection (1), the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after:
- (a) unless paragraph (b) applies—the last day of the quarter or 19 March 2000, whichever is the later; or
  - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases or 19 March 2000, whichever is the later.
- (4) Any accumulated amounts payable to a person to whom subsection (2) applies are to be paid at such times (not later than 19 March 2000) as the Secretary determines.
- (5) In this section:

**quarter** means a CDEP Scheme quarter.

Note 1: For *CDEP Scheme participant* see section 1188B.

Note 2: For *CDEP Scheme quarter* see subsection 23(1).

### **1188K Need for a claim**

- (1) A person who wants to be granted a CDEP Scheme Participant Supplement must make a proper claim for the supplement.
- (2) To be a proper claim, a claim must be made in such manner, and within such period, as the Secretary determines.

## **Division 4—Transitional**

### **1188L Existing CDEP Scheme participants to be treated as long-term social security recipients**

A person who, if this Part had been in force on 19 March 2000, would have been a CDEP Scheme participant in respect of that day for the purposes of this Part is taken, for the purposes of the definition of *long-term social security recipient* in subsection 23(1), to have had social security recipient status continuously for the period of 52 weeks ending on that day.

**1188M Certain people receiving CDEP Scheme Participant Supplement to be taken to have been receiving social security benefit for 9 months**

A person who receives CDEP Scheme Participant Supplement:

- (a) in respect of both 19 March 2000 (the *first qualifying day*) and the following day (the *second qualifying day*); or
- (b) in respect of both the payment period in which the first qualifying day occurs and the payment period in which the second qualifying day occurs;

is taken, for the purposes of the definition of *pensioner* in subsection 4(1) of the *National Health Act 1953*, to have been receiving the social security benefit on the first qualifying day for a continuous period of 9 months.

**54 After subsection 1231(1A)**

Insert:

- (1B) If the person concerned elects in writing that this subsection is to apply in relation to him or her, the Secretary may decide under subsection (1A) that the amount by which each payment of the person's social security payment is to be reduced is such amount as results in reducing the payment to nil.

**55 Benefits of single parents who are CDEP participants not to be reduced**

- (1) Section 1188C inserted in the *Social Security Act 1991* by item 53 does not apply in respect of a person who, immediately before the day on which this Act receives the Royal Assent:
  - (a) was in receipt of parenting payment at the rate applicable for a person who is not a member of a couple; and
  - (b) was a CDEP participant.
- (2) However, if such a person ceases on or after that day to be a CDEP participant, subitem (1) ceases to have effect in respect of the person whether or not he or she afterwards again becomes a CDEP participant.

## Schedule 3—Amendments relating to special employment advance

### *Social Security Act 1991*

#### **1 Section 3 (index)**

Insert the following entry in its appropriate alphabetical position, determined on a letter-by-letter basis:

special employment advance qualifying entitlement 23(1)

#### **2 Subsection 23(1)**

Insert:

*special employment advance qualifying entitlement* means:

- (a) an austudy payment; or
- (b) a carer payment; or
- (c) a disability support pension; or
- (d) a mature age allowance; or
- (e) a mature age partner allowance; or
- (f) a newstart allowance; or
- (g) a pension PP (single); or
- (h) a widow B pension; or
- (i) a widow allowance; or
- (j) a wife pension; or
- (k) a youth allowance.

#### **3 Paragraph 129(1)(b)**

Omit “either or both”, substitute “any one or more”.

#### **4 Subparagraph 129(1)(b)(ii)**

Omit “and”.

#### **5 At the end of paragraph 129(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of disability support

pension payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account; and

**6 Subsection 129(2) (method statement, step 1)**

Omit "or advance payment of disability support pension", substitute ", advance payment of disability support pension or special employment advance of disability support pension".

**7 Paragraph 171(1)(b)**

Omit "either or both", substitute "any one or more".

**8 Subparagraph 171(1)(b)(ii)**

Omit "and".

**9 At the end of paragraph 171(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of wife pension payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account; and

**10 Subsection 171(2) (method statement, step 1)**

Omit "or advance payment of wife pension", substitute ", advance payment of wife pension or special employment advance of wife pension".

**11 Paragraph 221(1)(b)**

Omit "either or both", substitute "any one or more".

**12 Subparagraph 221(1)(b)(ii)**

Omit "and".

**13 At the end of paragraph 221(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of carer payment payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account; and

**14 Subsection 221(2) (method statement, step 1)**

Omit “or advance payment of carer payment”, substitute “, advance payment of carer payment or special employment advance of carer payment”.

**15 Paragraph 388(1)(b)**

Omit “either or both”, substitute “any one or more”.

**16 Subparagraph 388(1)(b)(ii)**

Omit “and”.

**17 At the end of paragraph 388(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of widow B pension payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and

**18 Subsection 388(2) (method statement, step 1)**

Omit “or advance payment of widow B pension”, substitute “, advance payment of widow B pension or special employment advance of widow B pension”.

**19 Paragraph 408HB(1)(b)**

Omit “either or both”, substitute “any one or more”.

**20 Subparagraph 408HB(1)(b)(ii)**

Omit “and”.

**21 At the end of paragraph 408HB(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of widow allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and

**22 Subsection 408HB(2) (method statement, step 1)**

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Omit “or advance payment of widow allowance”, substitute “, advance payment of widow allowance or special employment advance of widow allowance”.

**23 Paragraph 505A(1)(b)**

Omit “either or both”, substitute “any one or more”.

**24 Subparagraph 505A(1)(b)(ii)**

Omit “and”.

**25 At the end of paragraph 505A(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of parenting payment payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and

**26 Subsection 505A(2) (method statement, step 1)**

Omit “or advance payment of parenting payment”, substitute “, advance payment of parenting payment or special employment advance of parenting payment”.

**27 Paragraph 560A(1)(b)**

Repeal the paragraph, substitute:

- (b) either or both of the following apply:
  - (i) instalments of youth allowance payable to the person are being paid (whether on the person’s own behalf or not) to the credit of the account;
  - (ii) a special employment advance of youth allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and

**28 Subsection 560A(2) (method statement, step 1)**

After “youth allowance”, insert “or special employment advance of youth allowance”.

**29 Paragraph 585A(1)(b)**

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Repeal the paragraph, substitute:

- (b) either or both of the following apply:
  - (i) instalments of austudy payment payable to the person are being paid (whether on the person's own behalf or not) to the credit of the account;
  - (ii) a special employment advance of austudy payment payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account;  
and

**30 Subsection 585A(2) (method statement, step 1)**

After "austudy payment", insert "or special employment advance of austudy payment".

**31 Paragraph 655(1)(b)**

Omit "either or both", substitute "any one or more".

**32 Subparagraph 655(1)(b)(ii)**

Omit "and".

**33 At the end of paragraph 655(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of newstart allowance payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account;  
and

**34 Subsection 655(2) (method statement, step 1)**

Omit "or advance payment of newstart allowance", substitute "advance payment of newstart allowance or special employment advance of newstart allowance".

**35 Paragraph 660XHB(1)(b)**

Omit "either or both", substitute "any one or more".

**36 Subparagraph 660XHB(1)(b)(ii)**

Omit "and".

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**37 At the end of paragraph 660XHB(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of mature age allowance or mature age partner allowance payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account; and

**38 Subsection 660XHB(2) (method statement, step 1)**

Omit "or advance payment of mature age allowance or mature age partner allowance", substitute ", advance payment of mature age allowance or mature age partner allowance or special employment advance of mature age allowance or mature age partner allowance".

**39 Paragraph 660YHB(1)(b)**

Omit "either or both", substitute "any one or more".

**40 Subparagraph 660YHB(1)(b)(ii)**

Omit "and".

**41 At the end of paragraph 660YHB(1)(b)**

Add:

- (iii) a special employment advance, or an instalment of special employment advance, of mature age allowance payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account; and

**42 Subsection 660YHB(2) (method statement, step 1)**

Omit "or advance payment of mature age allowance", substitute ", advance payment of mature age allowance or special employment advance of mature age allowance".

**43 At the end of section 665**

Add:

- (4) A person is not qualified for an employment entry payment under this Part if the person is qualified for a special employment

advance under Part 2.22A and has made a claim under section 1061EP in respect of the same employment.

#### 44 After Part 2.22

Insert:

### Part 2.22A—Special employment advances

#### Division 1—Qualification for special employment advance

##### 1061EM Qualification for special employment advance

- (1) Subject to section 1061EO, a person is qualified for a special employment advance at a particular time (the *relevant time*) only if:
  - (a) the person is qualified for a special employment advance qualifying entitlement at the relevant time; and
  - (b) the person has been receiving an income support payment for a continuous period of 3 months immediately before the day on which the person's application for the special employment advance is made; and
  - (c) either of the following applies:
    - (i) the person or, if the person is a member of a couple, the person's partner has earned from casual work in Australia, but has not received, income (the *unreceived income*);
    - (ii) the Secretary is satisfied that the person has received a definite offer of employment in Australia (the *offered employment*) for a period of not less than 6 weeks and needs financial assistance from the Commonwealth to enable him or her to take up the employment; and
  - (d) subsection (2) or (3), as the case requires, applies for the purpose of determining whether the person is qualified for a special employment advance at the relevant time; and
  - (e) where subparagraph (c)(i) applies—the person is in severe financial hardship; and
  - (f) the Secretary is satisfied that the person will not suffer financial hardship as a result of the recovery by the Commonwealth of the special employment advance.

- (2) This subsection applies for the purpose of determining whether a person is qualified for a special employment advance at the relevant time only where:
- (a) the person's application for the advance was based on the effect of the unreceived income on the person's special employment advance qualifying entitlement; and
  - (b) the person is not a CDEP Scheme participant; and
  - (c) either of the following subparagraphs applies:
    - (i) if the person were qualified for the special employment qualifying entitlement on the next payday for the entitlement at a rate equal to the maximum basic rate of the entitlement, the rate of the entitlement on that payday would be reduced by at least 50% as a result of the person or the person's partner having earned the unreceived income;
    - (ii) subparagraph (i) does not apply in respect of the person but, if the person were qualified for the special employment qualifying entitlement on 2 or more paydays for the entitlement at a rate equal to the maximum basic rate of the entitlement, the average of the rates of the entitlement on those paydays would be reduced by at least 50% as a result of the person or the person's partner having earned the unreceived income.
- (3) This subsection applies for the purpose of determining whether a person is qualified for a special employment advance at the relevant time only where the person's application for the advance was based on the person's need for financial assistance from the Commonwealth to enable him or her to take up the offered employment and:
- (a) if the person were qualified for the special employment qualifying entitlement on each of the paydays for the entitlement that occur in the period of 6 weeks referred to in subparagraph (1)(c)(ii) at a rate equal to the maximum basic rate of the entitlement, the average of the rates of the entitlement on those paydays:
    - (i) would be reduced by at least 50% as a result of the person having taken up the offered employment; or
    - (ii) would be so reduced if Module J of the Youth Allowance Rate Calculator in section 1067G or Module

E of the Austudy Payment Rate Calculator were disregarded; or

- (b) the person would cease to be qualified for the special employment advance qualification upon his or her taking up the offered employment.

**1061EN Meaning of *in severe financial hardship***

- (1) For the purposes of paragraph 1061EM(1)(e) as it applies to a person who makes a claim for special employment advance, the person is *in severe financial hardship* if:
  - (a) where the person is not a member of a couple—the value of the person’s liquid assets (within the meaning of subsection 14A(1)) is less than the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the person; or
  - (b) where the person is a member of a couple—the value of the person’s liquid assets (within the meaning of subsection 14A(2)) is less than twice the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the person.
- (2) If the person referred to in subsection (1) is a CDEP Scheme participant, then, in determining for the purposes of that subsection the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement payable to the person, the person’s maximum basic rate is taken to be the rate that would be that maximum basic rate if sections 408CG, 500W, 552C, 614A, 660YCH and 771HK had not been enacted.

**1061EO Person not qualified in certain circumstances**

- (1) A person is not qualified for a special employment advance if:
  - (a) the person is qualified for an employment entry payment under Part 2.13 and has made a claim under section 665 in respect of the offered employment; or
  - (b) the lump sum amount, or the total of the amounts of the instalments, as the case may be, of the special employment advance to which the person would be entitled under Division 4 is less than \$50; or

- (c) the person owes a debt to the Commonwealth (whether arising under this Act or not) and the debt is recoverable under Part 5.2 by means of deductions from the person's social security payment; or
  - (d) where subparagraph 1061EM(1)(c)(ii) applies in respect of the person—the person is participating in a program for the placing of people in employment and the program has been declared by the Secretary, in writing, to be a program to which this paragraph applies.
- (2) A declaration under paragraph (1)(d) is a disallowable instrument.

## **Division 2—Claim for special employment advance**

### **1061EP Claim**

- (1) A person who wants a special employment advance under this Part must make a proper claim for the advance in accordance with this Division.
- (2) To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.
- (3) The claimant must specify the amount of special employment advance sought.

### **1061EQ Lodgment of claim**

- (1) To be a proper claim, a claim must be lodged:
  - (a) at an office of the Department; or
  - (b) at a place approved for the purpose by the Secretary; or
  - (c) with a person approved for the purpose by the Secretary.
- (2) A place or person approved under subsection (1) must be a place or person in Australia.
- (3) The claimant must be in Australia when the claim is lodged.

### **1061ER Provisions relating to claims**

- (1) Subject to subsection (2), if a claim based on the effect of the unreceived income on the claimant's special employment advance

qualifying entitlement is lodged before the first payday for that entitlement on which an instalment of that entitlement is not payable or is reduced as a result of the claimant, or the claimant's partner, having earned the income, the claim is taken to have been made on that payday.

(2) If:

(a) the claimant's special employment advance qualifying entitlement referred to in subsection (1) is an entitlement in respect of which the Secretary has determined that this subsection applies; and

(b) the claim is lodged before the payday referred to in subsection (1);

the Secretary may treat the claim as having been made on a day earlier than that payday that the Secretary considers appropriate having regard to the kind of entitlement concerned.

(3) A claim based on the need for financial assistance from the Commonwealth to take up the offered employment must set out:

(a) particulars (including the duration) of the employment; and

(b) the way in which the financial assistance is to be expended to enable the claimant to take up the employment.

(4) This section has effect subject to section 1061ES.

### **1061ES Person contacting Department before lodging claim**

(1) If:

(a) a person contacts the Department in relation to his or her claiming a special employment advance; and

(b) the person is, on the day on which he or she contacts the Department, qualified for the special employment advance; and

(c) the person lodges a claim for the special employment advance within 14 days after the day on which he or she contacts the Department; and

(d) the Department has a record of the person contacting the Department;

the person is taken to have made a claim for the special employment advance on the later of the following days:

(e) the day on which the person contacted the Department;

(f) the day on which the claim would, apart from this section, be taken under section 1061ER to be made.

(2) In this section:

*contacts the Department* includes contacts the Department by post or telephone or by the transmission of a message by the use of facsimile, computer equipment or any other electronic means.

### **1061ET Claim may be withdrawn**

- (1) A claimant for a special employment advance or a person acting on behalf of a claimant may withdraw a claim that has not been determined.
- (2) A claim that is withdrawn is taken not to have been made.
- (3) A withdrawal may be made orally or in writing.

## **Division 3—Determination of claim and payment of special employment advance**

### **1061EU Secretary to determine claim**

- (1) The Secretary must determine the claim in accordance with this Act.
- (2) Subject to subsection (3), the Secretary must grant the claim if the Secretary is satisfied that the claimant is qualified for the special employment advance.
- (3) Subject to subsection (4), the Secretary must refuse a claim that is based on the effect of the unreceived income on the claimant's special employment advance qualifying entitlement if the Secretary is satisfied that the income will be received within 2 days after the claim is lodged.
- (4) Subsection (3) does not apply if the Secretary considers that the claimant's financial needs are such that the claim should be granted.

**1061EV Payment of special employment advance**

If the claim is granted, the special employment advance is to be paid:

- (a) subject to paragraph (b), in a lump sum as soon as practicable after the claim is granted; or
- (b) if the Secretary considers that it is appropriate for the advance to be paid by instalments—by instalments at such times and in such amounts as the Secretary determines.

**Division 4—Amount of special employment advance**

**1061EW Where claim based on effect of unreceived income on special employment advance qualifying entitlement**

- (1) This section applies where the claim was based on the effect of the unreceived income on the claimant's special employment advance qualifying entitlement.
- (2) Subject to section 1061EY, the total amount of the special employment advance payable to the claimant is to be the smallest of the following amounts:
  - (a) the amount sought in the claim for the advance;
  - (b) the amount by which the instalment, or the sum of the amounts by which the instalments, of the claimant's special employment advance qualifying entitlement is or will be reduced because of the unreceived income;
  - (c) \$500;
  - (d) if an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth—the difference between that amount and \$500.

**1061EX Where claim based on claimant's need for financial assistance to take up offered employment**

- (1) This section applies where the claim was based on the claimant's need for financial assistance to take up offered employment.
  - (2) Subject to the following provisions of this section and section 1061EY, the total amount of the special employment advance
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payable to the claimant is to be the smallest of the following amounts:

- (a) the amount sought in the claim for the advance;
- (b) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;
- (c) \$500.

(3) If:

(a) an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth; and

(b) the sum of:

- (i) the amount referred to in paragraph (a); and
- (ii) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;

is not more than \$500;

the total amount of the special employment advance payable to the claimant is the amount referred to in subparagraph (b)(ii).

(4) If:

(a) an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth; and

(b) the sum of:

- (i) the amount referred to in paragraph (a); and
- (ii) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;

is more than \$500;

the following paragraphs have effect:

- (c) where the amount referred to in paragraph (a) is less than \$500 and the claimant satisfies the Secretary that the claimant would have sufficient financial resources to enable him or her to take up the offered employment if the total amount of the special employment advance payable were an amount equal to the difference between \$500 and the amount referred to in paragraph (a)—the total amount of the special

employment advance payable to the claimant is an amount equal to that difference;

(d) where paragraph (c) does not apply—no amount of special employment advance is payable to the claimant.

(5) If:

(a) the claimant is not a member of a couple; and

(b) the value of the claimant's liquid assets (within the meaning of subsection 14A(1)) exceeds the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the claimant;

the total amount of the special employment advance that, apart from this subsection, would be payable to the claimant under subsections (2) to (4) is reduced by the amount of the excess.

(6) If:

(a) the claimant is a member of a couple; and

(b) the value of the claimant's liquid assets (within the meaning of subsection 14A(2)) exceeds twice the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the claimant;

the total amount of the special employment advance that, apart from this subsection, would be payable to the claimant under subsections (2) to (4) is reduced by the amount of the excess.

(7) In determining for the purposes of subsection (5) or (6) the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to a claimant who is a CDEP Scheme participant, the claimant's maximum basic rate is taken to be the rate that would be that maximum basic rate if sections 408CG, 500W, 552C, 614A, 660YCH and 771HK had not been enacted.

### **1061EY Reduction of special employment advance by amount of any employment entry payment**

If:

(a) a person claims a special employment advance; and

- (b) an employment entry payment has been paid, or is payable, to the person in respect of the employment referred to in subparagraph 1061EM(1)(c)(i) or (ii);
- the total amount of the special employment advance that, apart from this section, would be payable to the person is reduced by the amount of the employment entry payment.

## **Division 5—Payment of special employment advance**

### **1061EZ Special employment advance to be paid to person or nominee**

- (1) Subject to subsection (3), an amount that is payable to a person under this Part is to be paid to the person.
- (2) The Secretary may direct that the whole or a part of an amount that is payable to a person under this Part is to be paid to someone else on behalf of the person.
- (3) If the Secretary gives a direction under subsection (2), the amount is to be paid in accordance with the direction.

### **1061EZA How payment is to be made**

- (1) An amount that is to be paid to a person under section 1061EZ may only be paid in accordance with this section.
- (2) Subject to this section, the amount is to be paid to the credit of a bank account nominated and maintained by the person.
- (3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.
- (4) If the person has not nominated an account for the purposes of subsection (2), then, subject to subsections (5) and (6), the amount is not to be paid.
- (5) If:
  - (a) an amount has not been paid because of subsection (4); and
  - (b) the person nominates an account for the purposes of subsection (2);the amount is to be paid under subsection (2).

- (6) The Secretary may permit amounts payable under this Part to be paid to people or to particular classes of people in a different way or in different ways from that provided for by subsection (2).

## **Division 6—Protection of special employment advance**

### **1061EZB Special employment advance to be absolutely inalienable**

- (1) Subject to this section and section 1359, a special employment advance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Note: The effect of a garnishee order on a special employment advance is dealt with in the Part of this Chapter that deals with the relevant special employment advance qualifying entitlement. For example, the effect of a garnishee order on a special employment advance that has been paid to an account with a financial institution maintained by a person who is entitled to a disability support pension is dealt with in Part 2.3 (which deals with disability support pension).

- (2) The Secretary may make deductions from an amount payable to a person under this Part if the recipient asks the Secretary:
- (a) to make the deductions; and
  - (b) to pay the amounts to be deducted to the Commissioner of Taxation.

Note: The Secretary must make deductions from a person's social security payment if requested by the Commissioner of Taxation (see section 1359).

- (3) The Secretary may make deductions from an amount payable to a person under this Part if the recipient consents under section 1234A to the Secretary making the deductions.

Note: Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a social security payment.

## **Division 7—Repayment of special employment advance**

### **1061EYC Repayment of special employment advance**

- (1) If a person receives a special employment advance or an instalment of a special employment advance under this Part, the person must

repay the special employment advance or instalment to the Commonwealth by one or more of the following methods:

- (a) deductions from the person's special employment advance qualifying entitlement under Chapter 3 (General provisions relating to payability and rates);
  - (b) a method provided for by Chapter 5 (Overpayments and debt recovery);
  - (c) a method (other than a method described in paragraph (a) or (b)) that is acceptable to both the person and the Secretary.
- (2) Subsection (1) does not affect the Secretary's powers and duties under Part 5.4 (Non-recovery of debts) if the amount of the special employment advance or instalment that has not been repaid becomes a debt due to the Commonwealth.

**45 Part 3.2 (Pension Rate Calculator A, Module A, point 1064-A1, method statement, step 12 )**

Repeal the step, substitute:

*Step 12.* The *rate of pension* is the amount obtained by:

- (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module H).

**46 Part 3.3 (Pension Rate Calculator B, Module A, point 1065-A1, method statement, step 5 )**

Repeal the step, substitute:

*Step 5.* Work out the *non-income/assets tested rate* by:

- (a) subtracting from the maximum payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module E).

**47 Part 3.4 (Pension Rate Calculator C, Module A, point 1066-A1, method statement, step 12)**

Repeat the step, substitute:

*Step 12.* The *rate of pension* is the amount obtained by:

- (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module H).

**48 Part 3.4A (Pension Rate Calculator D, Module A, point 1066A-A1, method statement, step 13)**

Repeat the step, substitute:

*Step 13.* The *rate of pension* is the amount obtained by:

- (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and

- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module I).

**49 Part 3.4B (Pension Rate Calculator E, Module A, point 1066B-A1, method statement, step 6)**

Repeal the step, substitute:

*Step 6.* Work out the *non-income/assets tested rate* by:

- (a) subtracting from the maximum payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module F).

**50 Part 3.5 (Youth Allowance Rate Calculator, Module A, point 1067G-A1, method statement, step 14)**

Repeal the step, substitute:

*Step 14.* The *rate of allowance* is the amount obtained by:

- (a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and

- (c) except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of allowance is being worked out, adding any amount payable by way of remote area allowance (see Module K).

**51 Part 3.5A (Austudy Payment Rate Calculator, Module A, point 1067L-A1, method statement, step 6)**

Repeal the step, substitute:

- Step 6.* The *rate of payment* is the amount obtained by:
- (a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and
  - (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
  - (c) adding any amount payable by way of remote area allowance (see Module F).

**52 Part 3.6 (Benefit Rate Calculator B, Module A, point 1068-A1, method statement, step 7)**

Repeal the step, substitute:

- Step 7.* The *rate of benefit* is the amount obtained by:
- (a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and
  - (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and



- (c) except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of benefit is being worked out, adding any amount payable by way of remote area allowance (see Module J).

**53 Part 3.6A (Pension PP (Single) Rate Calculator, Module A, point 1068A-A1, method statement, step 7)**

Repeal the step, substitute:

- Step 7.* The *rate of pension PP (single)* is the amount obtained by:
- (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and
  - (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
  - (c) adding any amount payable by way of remote area allowance (see Module F).

**54 After Part 3.16A**

Insert:

**Part 3.16B—Special employment advance deductions**

**1206Q Special employment advance deduction**

- (1) Subject to subsection (2) and section 1206T, a special employment advance deduction is to be made from the rate of a social security entitlement that is payable to a person if:
  - (a) the person has received a special employment advance or an instalment of a special employment advance; and

- (b) the person has not yet repaid the whole of the special employment advance or instalment; and
- (c) the amount of the special employment advance or instalment that has not been repaid is not a debt under section 1224EA.

Note: For *social security entitlement* see subsection 23(1).

- (2) A special employment advance deduction may be made from a person's rate on:
  - (a) if the special employment advance is paid as a lump sum—the payday next following the day on which the lump sum is paid; or
  - (b) if the special employment advance is paid by instalments—the payday next following the day on which the last instalment of the special employment advance is paid;or on any later payday.
- (3) In this section:  
*social security entitlement* includes a PP (partnered).

**1206R Amount of special employment advance deduction—basic calculation**

Subject to sections 1206S, 1206T, 1206U and 1206V, a special employment advance deduction is such amount as the Secretary determines.

**1206S Person may request larger special employment advance deduction**

- (1) Subject to subsection (2) and sections 1206T, 1206U and 1206V, a person's special employment advance deduction is increased to a larger amount if the person asks the Secretary in writing for the special employment advance deduction to be the larger amount.
- (2) Subsection (1) does not apply if the Secretary is satisfied that the person would suffer severe financial hardship if the special employment advance deduction were the larger amount.

**1206T Reduction of special employment advance deduction in cases of severe financial hardship**

- (1) Subject to subsection (2) and sections 1206U and 1206V, if:
- (a) a person applies in writing to the Secretary for a special employment advance deduction to be decreased, or to be stopped, because of severe financial hardship; and
  - (b) the Secretary is satisfied that:
    - (i) the person's circumstances are exceptional and could not reasonably have been foreseen at the time of the person's claim for the special employment advance; and
    - (ii) the person would suffer severe financial hardship if the special employment advance deduction that would otherwise apply were to continue;

the Secretary may determine in writing that, for the period stated in the determination, the special employment advance deduction is to be a lesser amount (which may be a nil amount) stated in the determination.

- (2) At any time while the determination is in force, the Secretary may:
- (a) vary the determination so as to require to be deducted from the person's rate a special employment advance deduction larger than the deduction (if any) previously applying under the determination, but smaller than the deduction applying immediately before the determination; or
  - (b) revoke the determination;
- but only if the Secretary is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.
- (3) A variation or revocation of a determination must be in writing.

**1206U The final special employment advance deduction**

- (1) If a special employment advance deduction that would otherwise be deducted from a person's rate exceeds the part of the special employment advance that the person has not yet repaid (by previous deductions under this Part or otherwise), the amount of that special employment advance deduction is to be equal to the part that the person has not yet repaid.

- (2) This section has effect subject to section 1206V.

**1206V Provisional payment rate insufficient to cover special employment advance deduction**

- (1) If the provisional payment rate referred to in the relevant Rate Calculator is less than the special employment advance deduction would be apart from this subsection, the special employment advance deduction is taken to be equal to the provisional payment rate.
- (2) If:
- (a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and
  - (b) the provisional payment rate worked out for the person using Pension Rate Calculator A in accordance with Step 1 of the Method statement in point 1065-A1 in Pension Rate Calculator B is less than the special employment advance deduction would be apart from this subsection;
- the special employment advance deduction is taken to be equal to the provisional payment rate referred to in paragraph (b).
- (3) If:
- (a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and
  - (b) the maximum payment rate for the person worked out in Step 4 of that Method statement is less than the special employment advance deduction would be apart from this subsection;
- the special employment advance deduction is taken to be equal to the maximum payment rate referred to in paragraph (b).
- (4) If:
- (a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and
  - (b) the provisional payment rate worked out for the person using Pension Rate Calculator D in accordance with Step 1 in the Method statement in point 1066B-A1 in Pension Rate
-

Calculator E is less than the special employment advance deduction would be apart from this subsection;  
the special employment advance deduction is taken to be equal to the provisional payment rate referred to in paragraph (b).

(5) If:

- (a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and
- (b) the maximum payment rate for the person worked out in Step 5 of that Method statement is less than the special employment advance deduction would be apart from this subsection;

the special employment advance deduction is taken to be equal to the maximum payment rate referred to in paragraph (b).

### **1206W Rounding of amounts**

Amounts worked out under this Part must be rounded to the nearest cent (rounding 0.5 cent upwards).

### **55 After section 1224E**

Insert:

#### **1224EA Debts arising from special employment advances of special employment advance qualifying entitlements**

If:

- (a) a person has received a special employment advance of a special employment advance qualifying entitlement (the *first entitlement*) or an instalment of such an advance; and
- (b) the first entitlement ceases to be payable to the person; and
- (c) when the first entitlement ceases to be payable, the person has not repaid the whole of the advance or instalment; and
- (d) the person does not receive another special employment advance qualifying entitlement or PP (partnered) immediately after the first entitlement ceases to be payable;

the amount that has not been repaid is a debt due to the Commonwealth.

## Schedule 4—Introduction of crisis payment

### Part 1—Amendment of Social Security Act

#### *Social Security Act 1991*

##### **1 Subsection 14A(1)**

Omit “and 2.14”, substitute “, 2.14 and 2.23A”.

##### **2 Subsection 14A(2)**

Omit “and 2.14”, substitute “, 2.14 and 2.23A”.

##### **3 After section 19C**

Insert:

##### **19D Severe financial hardship—crisis payment definition**

- (1) The definition in this section relates to one of the qualifications for crisis payment (see sections 1061JG and 1061JH).
- (2) A person who is not a member of a couple is in *severe financial hardship* for the purposes of qualifying for a crisis payment if the value of the person’s liquid assets (within the meaning of subsection 14A(1)) is less than the fortnightly amount at the maximum payment rate of the social security pension or the social security benefit that is payable to the person.
- (3) A person who is a member of a couple is in *severe financial hardship* for the purposes of qualifying for a crisis payment if the value of the person’s liquid assets (within the meaning of subsections 14A(1) and (2)) is less than twice the fortnightly amount at the maximum payment rate of the social security pension or the social security benefit that is payable to the person.
- (4) For the purposes of working out whether a CDEP Scheme participant is in severe financial hardship as defined in this section, the maximum payment rate of social security pension or social security benefit that would have been payable to the participant if he or she had not been a CDEP Scheme participant is taken to be payable to the participant.

Note: For *CDEP Scheme Participant* see section 1188B.

(5) In this section:

**maximum payment rate**, in relation to each of the following social security payments, means (unless otherwise stated below) the rate worked out at Step 4 of the Method statement in Module A of the relevant Rate Calculator:

- (a) for the following pensions if the recipient is not blind:
  - (i) age pension;
  - (ii) disability support pension (recipient has turned 21);
  - (iii) carer pension;
  - (iv) wife pension;the Rate Calculator at the end of section 1064; or
- (b) for age pension and disability support pension (recipient has turned 21) if the recipient is blind—the Rate Calculator at the end of section 1065; or
- (c) for widow B pension—the Rate Calculator at the end of section 1066; or
- (d) for disability support pension if the recipient is under 21 and not blind—Step 5 of the Method statement in Module A of the Rate Calculator at the end of section 1066A; or
- (e) for disability support pension if the recipient is under 21 and is blind—Step 5 of the Method statement in Module A of the Rate Calculator at the end of section 1066B; or
- (f) for the following allowances:
  - (i) newstart allowance;
  - (ii) widow allowance;
  - (iii) sickness allowance;
  - (iv) partner allowance;
  - (v) mature age allowance granted under Part 2.12B;the Rate Calculator at the end of section 1068; or
- (g) for mature age allowance granted under Part 2.12A—the Rate Calculator at the end of section 1064; or
- (h) for a pension PP (single)—the Rate Calculator at the end of section 1068A; or
- (i) for benefit PP (partnered)—point 1068B-A4; or
- (j) for mature age partner allowance—the Rate Calculator at the end of section 1064; or

- (k) for special benefit—section 746; or
- (l) for youth allowance—the Rate Calculator at the end of section 1067G; or
- (m) for austudy payment—Step 3 of the Method statement in Module A of the Rate Calculator at the end of section 1067L.

**4 Section 408FA (note)**

Repeal the note.

**5 Section 643 (note)**

Repeal the note.

**6 Section 660YFA (note)**

Repeal the note.

**7 Subsection 746(2)**

Omit “and section 1161 (release from gaol or from psychiatric confinement)”.

**8 Subsection 746(2) (note 1)**

Repeal the note.

**9 Subsection 746(2) (note 2)**

Omit “Note 2”, substitute “Note”.

**10 Subsection 771KE(2)**

Omit “and section 1161 (release from gaol)”.

**11 Subsection 771KE(2) (note 1)**

Repeal the note.

**12 Subsection 771KE(2) (note 2)**

Omit “Note 2”, substitute “Note”.

**13 After Part 2.23**

Insert:



## **Part 2.23A—Crisis payment**

### **Division 1—Qualification for crisis payment**

#### **1061JG Qualification—release from gaol or psychiatric confinement**

A person is qualified for a crisis payment if, after the commencement of this section:

- (a) the person is released from gaol, or from psychiatric confinement that the person was undergoing because he or she had been charged with committing an offence, after spending at least 14 days in gaol or such confinement; and
- (b) the person claims the crisis payment either while the person was in gaol or psychiatric confinement, or within 7 days after being released; and
- (c) on the day on which the claim for the crisis payment is made (including the day on which it is taken to have been made under subsection 1061JN(3):
  - (i) the person is qualified for a social security pension or social security benefit; and
  - (ii) the person is in severe financial hardship (see section 19D).

#### **1061JH Qualification—extreme circumstances forcing departure from home**

- (1) A person is qualified for a crisis payment if, after the commencement of this section:
  - (a) the person has left, or cannot return to, his or her home because of an extreme circumstance; and
  - (b) the extreme circumstance makes it unreasonable to expect the person to remain in, or return to, the home; and
  - (c) the person has established, or intends to establish, a new home; and
  - (d) at the time the extreme circumstance occurred, the person was in Australia; and
  - (e) the person makes a claim for a crisis payment within 7 days after the extreme circumstance occurred; and
  - (f) on the day on which the claim is made:

- (i) the person is in severe financial hardship (see section 19D); and
- (ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit and the person is qualified for the pension or benefit; and
- (g) during the 12 months immediately preceding the day on which the claim is made, no more than 3 crisis payments have been payable to the person.

Note: Examples of extreme circumstances that would qualify a person for crisis payment are the person's house being burnt down, or the person being subjected to domestic or family violence.

- (2) A person is not qualified for a crisis payment in respect of an extreme circumstance if the Secretary is satisfied that the extreme circumstance is brought about with a view to obtaining a crisis payment.

**1061JJ Crisis payment not payable in addition to disaster relief payment**

A crisis payment is not payable to a person in respect of an extreme circumstance if the person is qualified for a disaster relief payment (whether under this Act or otherwise) in respect of the same extreme circumstance.

**1061JK Crisis payment not payable if assurance of support in force**

A person is not qualified for a crisis payment if the Secretary is satisfied that at the time the person would otherwise have been qualified for crisis payment:

- (a) an assurance of support was in force in respect of the person (the *assuree*); and
- (b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and
- (c) it was reasonable for the assuree to accept that support.

Note: For *assurance of support* see subsection 23(1).

## **Division 2—Claim for crisis payment**

### **1061JL Need for a claim**

- (1) A person who wants to be granted a crisis payment must make a proper claim for that payment.
- (2) For the purposes of subsection (1), if:
  - (a) a claim for a crisis payment is made by or on behalf of a person; and
  - (b) the claim is based on the qualifications set out in section 1061JH; and
  - (c) at the time when the claim is made, the claim cannot be granted because the person is not qualified for the payment; the claim is taken not to have been made.

### **1061JM Form of claim**

To be a proper claim, a claim must be in writing and must be in accordance with a form approved by the Secretary.

### **1061JN Lodgment of claim and day on which claim taken to be lodged**

- (1) To be a proper claim, a claim must be lodged:
  - (a) at an office of the Department; or
  - (b) at a place approved for the purpose by the Secretary; or
  - (c) with a person approved for the purpose by the Secretary.
- (2) A place or person approved under subsection (1) must be a place or person in Australia.
- (3) If:
  - (a) a person who is in gaol or in psychiatric confinement lodges a claim for a crisis payment; and
  - (b) the person is not, on the day on which the claim is lodged, qualified for the crisis payment; and
  - (c) the person becomes qualified for the crisis payment within 21 days after the day on which the claim is lodged;

the claim is taken to have been made on the first day the person becomes qualified for the crisis payment.

(4) If:

- (a) a person contacts the Department in relation to his or her claiming a social security payment; and
- (b) the person is, on the day on which he or she contacts the Department, qualified for crisis payment and in Australia; and
- (c) the person lodges a claim for crisis payment within 14 days after he or she contacts the Department; and
- (d) the Department has a record of the person contacting the Department;

the person is taken to have made a claim for crisis payment on the day on which he or she contacted the Department.

(5) In this section:

*contacts the Department* includes contacts the Department by post or telephone or by the transmission of a message by the use of facsimile, computer equipment or any other electronic means.

#### **1061JP Claimant must be in Australia**

A claim by a person is not a proper claim unless the person is in Australia on the day on which the claim is lodged.

#### **1061JQ Claim may be withdrawn**

- (1) A claimant for a crisis payment or a person on behalf of a claimant may withdraw a claim that has not been determined.
- (2) A claim that is withdrawn is taken to have not been made.
- (3) A withdrawal may be made orally or in writing.

### **Division 3—Determination of claim**

#### **1061JR Secretary to determine claim**

The Secretary must, in accordance with this Act, determine the claim.

### **1061JS Grant of claim**

The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

- (a) the person is qualified for a crisis payment; and
- (b) the crisis payment is payable.

### **1061JT Date of effect of determination**

(1) Subject to subsections (2), (3) and (4), a determination under section 1061JR takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

(2) If:

- (a) a decision (the *previous decision*) is made rejecting a person's claim for crisis payment; and
- (b) a notice is given to the person advising the person of the making of the previous decision; and
- (c) the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
- (d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

(3) If:

- (a) a decision (the *previous decision*) is made rejecting a person's claim for crisis payment; and
- (b) a notice is given to the person advising the person of the making of the previous decision; and
- (c) the person applies to the Secretary under section 1240 more than 3 months after the notice is given, for review of the previous decision; and
- (d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

(4) If:

- (a) a decision ( the *previous decision*) is made rejecting a person's claim for crisis payment; and
  - (b) no notice is given to the person advising the person of the making of the previous decision; and
  - (c) the person applies to the Secretary under section 1240 for review of the previous decision; and
  - (d) a determination granting the claim is made as a result of the application for review;
- the determination takes effect on the day on which the previous decision took effect.

## Division 4—Amount of crisis payment

### 1061JU Amount of payment

- (1) Subject to subsection (2), the amount of a crisis payment payable to a person is half the fortnightly amount at the maximum basic rate of the social security pension or social security benefit that is payable to the person.
- (2) If a person is a CDEP Scheme participant, the amount of a crisis payment payable to the person is half the fortnightly amount at the maximum basic rate of the social security pension or social security benefit that the person is taken to be receiving under section 1188H.

Note: For *CDEP Scheme participant* see section 1188B.

- (3) If, under section 1188H, the person is taken to be receiving more than one social security pension or social security benefit, the person is taken, for the purposes of subsection (2), to be receiving the pension or benefit with the higher maximum basic rate.
- (4) In this section:

*maximum basic rate*, in relation to each of the following social security payments, means (unless otherwise stated below) the rate worked out at Module B of the relevant Rate Calculator:

- (a) for the following pensions if the recipient is not blind:
  - (i) age pension;
  - (ii) disability support pension (recipient has turned 21);
  - (iii) carer pension;

- (iv) wife pension;  
the Rate Calculator at the end of section 1064; or
- (b) for age pension and disability support pension (recipient has turned 21) if the recipient is blind—the Rate Calculator at the end of section 1065; or
- (c) for widow B pension—the Rate Calculator at the end of section 1066; or
- (d) for disability support pension if the recipient is under 21 and not blind—the Rate Calculator at the end of section 1066A; or
- (e) for disability support pension if the recipient is under 21 and is blind—the Rate Calculator at the end of section 1066B; or
- (f) for the following allowances:
  - (i) newstart allowance;
  - (ii) widow allowance;
  - (iii) sickness allowance;
  - (iv) partner allowance;
  - (v) mature age allowance granted under Part 2.12B;the Rate Calculator at the end of section 1068; or
- (g) for mature age allowance granted under Part 2.12A—the Rate Calculator at the end of section 1064; or
- (h) for a pension PP (single)—the Rate Calculator at the end of section 1068A; or
- (i) for benefit PP (partnered)—Module C of the Rate Calculator at the end of section 1068B; or
- (j) for mature age partner allowance—the Rate Calculator at the end of section 1064; or
- (k) for special benefit—section 746; or
- (l) for youth allowance—the Rate Calculator at the end of section 1067G; or
- (m) for austudy payment—Step 3 of the Method statement in Module A of the Rate Calculator at the end of section 1067L.

## **Division 5—Payment of crisis payment**

### **1061JV Payment into bank account**

- (1) An amount that is to be paid to a person under Division 4 is to be paid in the manner set out in this section.
- (2) Subject to this section, the amount is to be paid to the credit of a bank account nominated and maintained by the person.
- (3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.
- (4) The Secretary may direct that the whole or part of the amount be paid to the person in a different way from that provided for by subsection (2).
- (5) If the Secretary gives a direction under subsection (2), the amount is to be paid in accordance with the direction.

## **Division 6—Protection of crisis payment**

### **1061JW Crisis payment to be absolutely inalienable**

- (1) Subject to subsections (2) and (3) and section 1359, a crisis payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.
- (2) The Secretary may make a deduction from a crisis payment payable to a person if the person asks the Secretary;
  - (a) to make the deduction; and
  - (b) to pay the amount to be deducted to the Commissioner of Taxation.
- (3) The Secretary may make a deduction from a person's crisis payment if the person consents under section 1234A to the Secretary making that deduction.

Note: The Secretary must make a deduction from a person's crisis payment if requested by the Commissioner of Taxation (see section 1359).

Note: Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a social security payment.



**1061JX Effect of garnishee or attachment order**

If:

- (a) a person has an account with a financial institution; and
- (b) a court order in the nature of a garnishee order comes into force in respect of the account; and
- (c) a crisis payment payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account during the 4-week period immediately before the court order came into force;

the court order does not apply to the amount of the crisis payment in the account.

**14 Division 1 of Part 3.13 (heading)**

Repeal the heading.

**15 Section 1158**

Repeal the section (but not the notes), substitute:

**1158 Some social security payments not payable during period in gaol or in psychiatric confinement following criminal charge**

An instalment of a social security pension, a social security benefit, a parenting payment or a pensioner education supplement is not payable to a person in respect of a day on which the person is:

- (a) in gaol; or
- (b) undergoing psychiatric confinement because the person has been charged with an offence.

**16 Divisions 2, 3 and 4 of Part 3.13**

Repeal the Divisions.

**Part 2—Consequential amendments**

***Income Tax Assessment Act 1997***

**17 Section 52-10 (after table item 4.4)**

Insert:

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**Schedule 4** Introduction of crisis payment  
**3** Consequential amendments

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5.1 **Crisis payment** Exempt Exempt Not applicable Not applicable

**18 Section 52-40 (after table item 4)**

Insert:

5 **Crisis payment** Part 2.23A Not applicable Not applicable

**19 Application**

The amendments made by this Part apply to assessments for the 1999-2000 income year and later income years.

**Part 3—Application**

**20 Crisis payment not payable**

If:

- (a) on a day that occurs within 14 days before the commencement of this Schedule, an instalment of social security pension is payable to a person who on that day is in gaol or undergoing psychiatric confinement because the person has been charged with an offence; and
- (b) the person is released from gaol or the psychiatric confinement within 14 days after the commencement of this Schedule; and
- (c) the person claims crisis payment within 7 days after being released;

the crisis payment is not payable to the person.

## **Schedule 5—Amendments relating to newly arrived residents' waiting periods**

### **Part 1—Amendments**

#### *Social Security Act 1991*

##### **1 Subsection 7(6AA)**

After “pension PP (single)”, insert “, carer payment”.

##### **2 Section 201AA (first occurring)**

Re-number as section 201AAA.

##### **3 Subsection 201AA(1)**

Repeal the subsection (but not the note), substitute:

- (1) A person is subject to a newly arrived resident's waiting period if the person:
- (a) enters Australia on or after 4 March 1997; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

##### **4 Subsection 201AA(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a carer payment.

##### **5 Paragraphs 201AA(3)(b) and (4)(b)**

Repeal the paragraphs, substitute;

- (b) either a carer or a special need relative.

##### **6 Subsection 201AA(5)**

Repeal the subsection, substitute:

- (5) Subsection (1) does not apply to a person if:
- (a) the person is already subject to a newly arrived resident's waiting period; or

- (b) the person has already served a newly arrived resident's waiting period; or
- (c) at the commencement of this subsection, the person has already been an Australian resident for a period of, or periods totalling, 104 weeks.

**7 Subsection 201AA(6)**

Repeal the subsection, substitute:

- (6) In this section:

*carer* has the same meaning as in the Migration Regulations.

*special need relative* has the same meaning as in the Migration Regulations as in force on 30 November 1998.

**8 Paragraphs 201AB(a) and (b)**

Repeal the paragraphs, substitute:

- (a) starts on the day the person first became an Australian resident; and
- (b) ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

**9 Subparagraph 408BA(2)(d)(ia)**

After "1 April 1996", insert "and before the commencement day".

**10 After subparagraph 408BA(2)(d)(ia)**

Insert:

- (ib) if the woman entered Australia on or after the commencement day—the woman has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks before the day she lodged the claim for the allowance; or

**11 Subsection 408BA(2) (note 3)**

Omit "the purposes of this section (see subsection (4))", substitute "some purposes (see subsections (4) and (4A))".

**12 At the end of subsection 408BA(4A)**

Add "or (2)(d)(ib)".

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**13 At the end of section 408BA**

Add:

(6) In this section:

*commencement day* means the day on which Schedule 5 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* commences.

**14 Paragraph 623A(1)(b)**

Repeal the paragraph, substitute:

(b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

**15 Subsection 623A(1) (note)**

Repeal the note.

**16 At the end of section 623A**

Add:

(6) Subsection (1) does not apply to a person if:

- (a) the person is a New Zealand citizen; and
- (b) the person was an Australian resident on the day this subsection commences; and
- (c) when the person claimed newstart allowance the person had been:
  - (i) an Australian resident for the 12 months immediately preceding the claim; or
  - (ii) continuously present in Australia for the 6 months immediately preceding the claim.

**17 Subsection 623B(1)**

Repeal the subsection, substitute:

(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

**18 Subsection 623B(3)**

Repeal the subsection, substitute:

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- (3) If subsection (2) does not apply, the newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Note: This rule does not apply to people who were already subject to, or had already served, a newly arrived resident's waiting period before the commencement of this rule. Clause 121 of Schedule 1A to this Act continues the application of the previous rules to those people.

**19 Paragraph 660YCFA(1)(b)**

Repeal the paragraph, substitute:

- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

**20 Subsection 660YCFA(1) (note)**

Repeal the note.

**21 At the end of section 660YCFA**

Add:

- (5) Subsection (1) does not apply to a person if:
- (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on the day this subsection commences.

**22 Subsection 660YCFB(1)**

Repeal the subsection, substitute:

- (1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

**23 Subsection 660YCFB(3)**

Repeal the subsection, substitute:

- (3) If subsection (2) does not apply, the newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Note: This rule does not apply to people who were already subject to, or had already served, a newly arrived resident's waiting period before the

commencement of this rule. Clause 121 of Schedule 1A to this Act continues the application of the previous rules to those people.

**24 Paragraph 696B(1)(b)**

Repeal the paragraph, substitute:

- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

**25 Subsection 696B(1) (note)**

Repeal the note.

**26 At the end of section 696B**

Add:

- (6) Subsection (1) does not apply to a person if:
  - (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on the day this subsection commences.

**27 Subsection 696C(1)**

Repeal the subsection, substitute:

- (1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

**28 Subsection 696C(3)**

Repeal the subsection, substitute:

- (3) If subsection (2) does not apply, the newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Note: This rule does not apply to people who were already subject to, or had already served, a newly arrived resident's waiting period before the commencement of this rule. Clause 121 of Schedule 1A to this Act continues the application of the previous rules to those people.

**29 Paragraph 771HNA(1)(b)**

Repeal the paragraph, substitute:

- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

**30 Subsection 771HNA(1) (note)**

Repeal the note.

**31 At the end of section 771HNA**

Add:

- (5) Subsection (1) does not apply to a person if:
  - (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on the day this subsection commences.

**32 Subsection 771HNB(1)**

Repeal the subsection, substitute:

- (1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

**33 Subsection 771HNB(3)**

Repeal the subsection, substitute:

- (3) If subsection (2) does not apply, the newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Note: This rule does not apply to people who were already subject to, or had already served, a newly arrived resident's waiting period before the commencement of this rule. Clause 121 of Schedule 1A to this Act continues the application of the previous rules to those people.

**34 Section 771HNA (second occurring)**

Re-number as section 771HNC.

**35 Paragraph 1039AA(1)(b)**

Repeal the paragraph, substitute:

- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;



**36 Subsection 1039AA(1) (note)**

Repeal the note.

**37 At the end of section 1039AA**

Add:

- (5) Subsection (1) does not apply to a person if:
  - (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on the day this subsection commences.

**38 Section 1039AB**

Repeal the section (including the note), substitute:

**1039AB Duration of newly arrived resident's waiting period**

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day the person first became an Australian resident; and
- (b) ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

**39 Subsection 1061ZA(2)**

Omit "and (4)", substitute ", (4) and (7)".

**40 Paragraph 1061ZA(2)(b)**

Repeal the paragraph, substitute:

- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

**41 Subsection 1061ZA(2) (note)**

Repeal the note.

**42 At the end of section 1061ZA**

Add:

- (7) Subsection (2) does not apply to person if:
  - (a) the person is a New Zealand citizen; and

- (b) the person was an Australian resident on the day this subsection commences.

**43 Section 1061ZAA**

Repeal the section, substitute:

**1061ZAA Duration of newly arrived resident's waiting period**

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day the person first became an Australian resident; and  
(b) ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

**44 At the end of Schedule IA**

Add:

**121 Changes to newly arrived resident's waiting period**

If a person is subject to a newly arrived resident's waiting period immediately before the commencement of Schedule 5 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* (the *amending Act*), this Act continues to apply to the person in relation to the waiting period as if the amendments made by the amending Act had not been made.

**45 At the end of Schedule 4**

Add:

**Part D**

**Notes dated 2 July 1998 between the Government of Australia and the Government of New Zealand agreeing that Article 15 of the Agreement is to be deleted.**

No. Legal 98/290

The Department of Foreign Affairs and Trade presents its compliments to the New Zealand High Commission and has the honour to refer to the Agreement between the Government of Australia and the Government of New Zealand on Social Security, signed at Wellington on 19 July 1994, as amended by the First

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and Second Protocols to the Agreement between the Government of Australia and the Government of New Zealand on Social Security of 7 September 1995 ("the Agreement") and to recent discussions between the Department of Social Security of Australia and the Department of Social Welfare of New Zealand concerning the need to amend the Agreement, so as to remove the provisions relating to benefits for the unemployed.

The Department of Foreign Affairs and Trade now has the honour to propose the following amendment to the Agreement:

Article 15 of the Agreement shall be deleted.

If the foregoing proposal is acceptable to the Government of New Zealand, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the New Zealand High Commission's reply to that effect, shall constitute an Agreement between the Government of Australia and the Government of New Zealand which shall enter into force on the first day of September 1998 provided that prior to that date the Government of Australia and the Government of New Zealand have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or if that notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the New Zealand High Commission the assurances of its highest consideration.

CANBERRA  
2 July 1998

A/NZ/2/4/2

The New Zealand High Commission presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Department's Note No Legal 98/290 of 2 July which reads as follows:

The Department of Foreign Affairs and Trade presents its compliments to the New Zealand High Commission and has the honour to refer to the Agreement between the Government of Australia and the Government of New Zealand on Social Security, signed at Wellington on 19 July 1994, as amended

**Schedule 5** Amendments relating to newly arrived residents' waiting periods  
**Part 1** Amendments

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by the First and Second Protocols to the Agreement between the Government of Australia and the Government of New Zealand on Social Security of 7 September 1995 ("the Agreement") and to recent discussions between the Department of Social Security of Australia and the Department of Social Welfare of New Zealand concerning the need to amend the Agreement, so as to remove the provisions relating to benefits for the unemployed.

The Department of Foreign Affairs and Trade now has the honour to propose the following amendment to the Agreement:

Article 15 of the Agreement shall be deleted.

If the foregoing proposal is acceptable to the Government of New Zealand, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the New Zealand High Commission's reply to that effect, shall constitute an Agreement between the Government of Australia and the Government of Zealand which shall enter into force on the first day of September 1998 provided that prior to that date the Government of Australia and the Government of New Zealand have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or if that notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

The New Zealand High Commission has further the honour to confirm that the above is acceptable to the Government of New Zealand and that the Department's Note and this reply shall constitute an Agreement Between the Government of New Zealand and the Government of Australia which shall enter into force on the first day of September 1998 provided that prior to that date the Government of New Zealand and the Government of Australia have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or that if notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

The New Zealand High Commission takes this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

New Zealand High Commission

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CANBERRA  
2 July 1998

***Health Insurance Act 1973***

**46 Paragraph 5BA(2)(c)**

After "Australian resident", insert "and in Australia".

**47 At the end of subsection 5BA(2)**

Add:

- ; or (d) before the commencement of this paragraph, has been an Australian resident for a period of, or periods totalling, 104 weeks.

**48 Subsection 5BA(3)**

Repeal the subsection, substitute:

- (3) If a person is subject to a newly arrived disadvantaged low income resident's waiting period, the period:
- (a) starts on the day the person first became an Australian resident; and
  - (b) ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

## **Part 2—Saving**

### **49 Saving**

If a person is subject to a newly arrived disadvantaged low income resident's waiting period immediately before the commencement of this Schedule, the *Health Insurance Act 1973* continues to apply to the person in relation to the waiting period as if the amendments made to that Act by this Schedule had not been made.

## **Schedule 6—Amendments relating to periods of overseas residence and travel**

### **Part 1—Amendments relating to portability of pensions**

#### *Social Security Act 1991*

#### **1 Paragraphs 1220(1)(d), (e) and (f)**

Repeal the paragraphs, substitute:

- (d) within the period of 12 months after the person again becomes an Australian resident, the person is granted, or is transferred to:
  - (i) an age pension; or
  - (ii) a disability support pension; or
  - (iii) a bereavement allowance; and
- (e) after the pension or allowance is granted, or the person is transferred to the pension or allowance, as the case may be, but before the end of that period of 12 months, the person leaves Australia; and

#### **2 Paragraphs 1220(2)(d), (e) and (f)**

Repeal the paragraphs, substitute:

- (d) within the period of 12 months after the person arrives in Australia, the person is granted, or is transferred to:
  - (i) an age pension; or
  - (ii) a disability support pension; or
  - (iii) a bereavement allowance; and
- (e) after the pension or allowance is granted, or the person is transferred to the pension or allowance, as the case may be, but before the end of that period of 12 months, the person leaves Australia; and

## Part 2—Amendments relating to rates of pensions payable under portability provisions

### *Social Security Act 1991*

#### **3 After subsection 1220B(1)**

Insert:

- (1AA) If a person is transferred from one payment to another while the person is absent from Australia, this section has effect as if the transfer had occurred immediately before the person left Australia.

#### **4 After point 1221-B8**

Insert in Module B:

1221-B9 If:

- (a) a person who is already receiving a social security payment (the *former payment*) becomes qualified for another social security payment (the *new payment*); and
- (b) point 1221-B6, 1221-B7 or 1221-B8 applied to the person in relation to the former payment;

that point continues to apply to the person in relation to the new payment.



## **Part 3—Amendments relating to the grant of pensions overseas**

### *Social Security Act 1991*

#### **5 Subparagraph 1212(3)(c)(iii)**

Repeal the subparagraph.

#### **6 Subparagraph 1212(3)(c)(vi)**

Repeal the subparagraph.

#### **7 After subsection 1212(3)**

Insert:

(3AA) If:

- (a) a person outside Australia becomes qualified for an age pension; and
  - (b) if the person had been in Australia, subsection 48(3) would have applied to the person in relation to the age pension;
- subsection (3) of this section applies to the person in relation to the age pension as if paragraph (d) were omitted.

#### **8 Subsection 1212(4) (note 1)**

After “transferees”, insert “(other than those covered by subsection (3AA))”.

**Part 4—Amendments relating to the application of international agreements where persons transfer to another pension while overseas**

*Social Security Act 1991*

**9 At the end of section 43**

Add:

- (3) Subsection (1) has effect subject to subsection 1208(6) (continued operation of scheduled international social security agreement in relation to certain recipients of age pension).

**10 At the end of section 1208**

Add:

- (6) If:
- (a) immediately before he or she reaches pension age, a person is receiving a social security payment (other than age pension) solely because of the operation of a scheduled international social security agreement; and
  - (b) on reaching pension age, the person becomes qualified for age pension because of the operation of paragraph 43(1)(c);
- the age pension is taken to be payable to the person under the agreement referred to in paragraph (a).

**Part 5—Amendments relating to the waiver of debts  
arising under international agreements**

*Social Security Act 1991*

**11 At the end of section 1235**

Add:

; or (c) a debt due to the Commonwealth under a scheduled  
international social security agreement.

## **Part 6—Amendments relating to the transfer to age pension of persons temporarily overseas**

### *Social Security Act 1991*

#### **12 At the end of point 1210-A1**

Add:

Note 4: Point 1210-A3 imposes a limit on the international agreement portability rate.

#### **13 After point 1210-A2**

Insert in Module A:

##### *Limit on international agreement portability rate*

1210-A3 If a person's international agreement portability rate as calculated under point 1210-A1 would exceed the rate (the notional rate) that would be the person's notional agreement pension rate under that point if the person had a residence factor of 1, the person's international agreement portability rate is the rate that equals the notional rate.

## Schedule 7—Amendments relating to youth allowance and newstart allowance: unsuitable work

### *Social Security Act 1991*

#### **1 Subsection 541D(1)**

Omit “For the purposes of”, substitute “Subject to subsections (1A) and (1B), for the purposes of”.

#### **2 After subsection 541D(1)**

Insert:

(1A) If:

- (a) a person seeks work in an area (the *new area*) that is outside the area (the *old area*) in which the person’s home is situated; and
- (b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area; the work offered is not unsuitable for the person because of paragraph (1)(g), (ga) or (ha) unless:
  - (c) the person is under the age of 18; or
  - (d) the person or the person’s partner is pregnant; or
  - (e) the person or the person’s partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or
  - (f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person’s partner; or
  - (g) the person or the person’s partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or
  - (h) the person or the person’s partner has significant caring responsibilities in the old area; or
  - (i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or

- (j) it is more appropriate for the person to participate in education or training than to accept the offer; or
- (k) the person would suffer severe financial hardship if the person were to accept the offer.

(1B) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (1A) to seek work outside the area at the time when the representation is made.

### **3 Subsection 601(2A)**

Omit "subsection (2AA)", substitute "subsections (2AA) and (2AB)".

### **4 Paragraph 601(2A)(i)**

Omit "and subsection (2AB) applies to the person".

### **5 After subsection 601(2A)**

Insert:

(2AA) If:

- (a) a person seeks work in an area (the *new area*) that is outside the area (the *old area*) in which the person's home is situated; and
- (b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area;

the work offered is not unsuitable for the person because of paragraph (2A)(g) or (i) unless:

- (c) the person is under the age of 18 or over the age of 50; or
- (d) the person or the person's partner is pregnant; or
- (e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or
- (f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or

- (g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or
  - (h) the person or the person's partner has significant caring responsibilities in the old area; or
  - (i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or
  - (j) it is more appropriate for the person to participate in education or training than to accept the offer; or
  - (k) the person would suffer severe financial hardship if the person were to accept the offer.
- (2AB) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (2AA) to seek work outside the area at the time when the representation is made.

## **Schedule 8—Amendments relating to claim made for youth or newstart allowance after moving to area of lower employment prospects**

### *Social Security Act 1991*

#### **1 Subsection 553B(1)**

Repeal the subsection, substitute:

- (1) Subject to subsection (1B), if the Secretary considers that a person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, the person is subject to an employment-related exclusion for a period of 26 weeks.
- (1A) Subsection (1) extends to a person who makes a claim for youth allowance on or after the day on which the person moved to the new place of residence and before the end of the period referred to in that subsection.
- (1B) If a person who is subject to an employment-related exclusion under subsection (1) (including that subsection as it applies by subsection (1A)) does either of the following during the period of the exclusion:
  - (a) moves back to the place of residence (the *original place of residence*) the movement from which made him or her subject to the exclusion;
  - (b) moves to another place of residence a movement to which from the original place of residence would not have made him or her subject to the exclusion;the period of the exclusion ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.

#### **2 At the end of subsection 553B(3)**

Add:

- ; or (e) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme
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circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been subjected to domestic or family violence in the original place of residence).

### **3 Section 597**

Repeal the section.

### **4 Subsection 634(1)**

Omit “subsection (2)”, substitute “subsections (1B) and (2)”.

### **5 At the end of subsection 634(1)**

Add:

- (1A) Subsection (1) extends to a person who makes a claim for newstart allowance on or after the day on which the person moved to the new place of residence and before the end of the period referred to in that subsection.
- (1B) If a person to whom a newstart allowance is not payable under subsection (1) for a period of 26 weeks (including that subsection as it applies by subsection (1A)) does either of the following during that period:
- (a) moves back to the place of residence (the *original place of residence*) the movement from which resulted in newstart allowance not being payable to him or her;
  - (b) moves to another place of residence a movement to which from the original place of residence would not have resulted in newstart allowance not being payable to him or her;
- the period of 26 weeks ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.

### **6 At the end of subsection 634(3)**

Add:

- ; or (d) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person

**Schedule 8** Amendments relating to claim made for youth or newstart allowance after moving to area of lower employment prospects

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had been subjected to domestic or family violence in the original place of residence).

**7 At the end of subsection 634(3)**

Add:

Note: For *family member* see subsection 23(1).

**8 Subsection 634(4) (note)**

Repeal the note.

## **Schedule 9—Amendment relating to pensioner education supplement**

### *Social Security Act 1991*

#### **1 Section 1061PZG**

Repeal the section, substitute:

#### **1061PZG Rate of pensioner education supplement**

- (1) If a person:
  - (a) is a sub-50% concessional study-load student in respect of a course; and
  - (b) is not receiving any of the following:
    - (i) a disability support pension under this Act;
    - (ii) an invalidity service pension under the Veterans' Entitlements Act;
    - (iii) an invalidity income support supplement under the Veterans' Entitlements Act;

the pensioner education supplement fortnightly rate for the person is \$30.00.
- (2) The pensioner education supplement fortnightly rate for a person to whom subsection (1) does not apply is \$60.00.
- (3) The rate of pensioner education supplement for a person is a daily rate worked out by dividing the person's fortnightly rate by 14.
- (4) For the purposes of this section, a person is a ***sub-50% concessional study-load student*** in respect of a course if the person is a 25% concessional study-load student in respect of the course for the purposes of Subdivision B of Division 1 of this Part who is undertaking, or who intends to undertake, less than one half of the normal amount of full-time study, determined in accordance with section 1061PF, in respect of that course.

## **Schedule 10—Minor technical amendment**

### ***Health Insurance Act 1973***

#### **1 Paragraph 5BA(4)(a)**

Omit “or”, substitute “and”.

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## Schedule 11—Administrative provisions

### *Social Security Act 1991*

#### 1 At the end of Chapter 2

Add:

### **Part 2.27—Early payment of first instalment of social security benefit**

#### **1061ZAAR Early payment of first instalment of social security benefit**

- (1) If, after the commencement of this section:
  - (a) the Secretary determines:
    - (i) that a claim by a person for a social security benefit is to be granted; or
    - (ii) that a social security benefit is payable to a person under a resumption of payment provision; and
  - (b) the Secretary is satisfied that, if the person is required to wait until the end of:
    - (i) the first instalment period in relation to the benefit; or
    - (ii) the first instalment period in relation to the benefit after the resumption of payment of the benefit;for payment of an instalment, the person will suffer severe financial hardship;the Secretary may determine that a specified amount is to be paid to the person in advance.
- (2) An amount paid to a person under subsection (1) is taken to be an advance payment of part of the first instalment payable to the person after the grant of the claim or the resumption of payment of the social security benefit, as the case may be.
- (3) In this section:

***resumption of payment provision*** means section 408NG, 510G, 565E, 590E, 660J, 660YJP, 728P, 766 or 771NQ.

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**2 At the end of Part 3.13**

Add:

**1159A Early claim for social security pension or benefit**

(1) If:

- (a) a detained person makes a claim for a social security pension or benefit; and
- (b) the person is not, on the day on which the claim is made, qualified for the pension or benefit; and
- (c) the person becomes qualified for the pension or benefit within 21 days after the claim is made;

the claim is taken to be made on the first day on which the person is qualified for the pension or benefit.

(2) The following subsections and section do not apply to a detained person:

- (a) 48(2) and 46(3);
- (b) 106(2) and 100(3);
- (c) 152(2) and 150(3);
- (d) 203(2) and 201(3);
- (e) 322(2) and 318(3);
- (f) 369(2) and 366(3);
- (g) 408DA(2) and 408CC(4);
- (h) 501(2) and 500K(4);
- (i) 554(2);
- (j) 579(2);
- (k) 635(2);
- (l) 660XCC(3);
- (m) 660XDA(2);
- (n) 660YCC(4);
- (o) 660YDA(2);
- (p) 699(2);
- (q) 740(2);
- (r) 771IA(2) and 771HN(3A);
- (s) 789(2) and 784(3).

(3) In this section:

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*detained person* means a person who:

- (a) is in gaol; or
- (b) is undergoing psychiatric confinement because he or she has been charged with committing an offence.

**1159B Grant of social security pension, benefit or crisis payment**

- (1) The Secretary must determine that a claim for a social security pension, social security benefit or crisis payment is to be granted if the Secretary is satisfied that:
  - (a) the claimant:
    - (i) is in gaol; or
    - (ii) is undergoing psychiatric confinement because he or she has been charged with committing an offence; and
  - (b) the claimant is expected:
    - (i) to be in gaol or psychiatric confinement for at least 14 days; and
    - (ii) to be released within 21 days after the day on which the claim is made; and
  - (c) the claimant is expected to be qualified for the pension, benefit or crisis payment immediately after the claimant's release from gaol or confinement, whether or not the claimant is qualified at the time the claim is made; and
  - (d) the pension, benefit or crisis payment is expected to be payable to the claimant immediately after the claimant's release from gaol or confinement.

**1159C Early payment of social security pension, benefit or crisis payment to person in gaol or confinement**

- (1) If:
  - (a) a claim for a social security pension, social security benefit or crisis payment is granted because of section 1159B; and
  - (b) the Secretary thinks it necessary to pay the pension, benefit or crisis payment before the claimant is released from gaol or confinement in order to ensure that the claimant, on release, will not suffer severe financial hardship;the Secretary may determine that a specified amount is to be paid to the person before the person's release.

- (2) Subsection (1) has effect in spite of section 41.
- (3) An amount paid under a determination under subsection (1) in relation to a claim for a pension or benefit is not to exceed the amount that, in the Secretary's opinion, would be the total of the amounts payable to the person for the first 7 days on which the pension or benefit is payable to the person.
- (4) An amount paid under subsection (1) in relation to a claim for a pension or benefit is taken to be a payment of the instalment or instalments, or of that part of the instalment or instalments, that relate to the days referred to in subsection (3).
- (5) An amount paid to a person under subsection (1) in relation to a claim for a crisis payment is taken to be a payment of the crisis payment.

**1159D Early payment of first instalment of social security pension or benefit to person after release from gaol or confinement**

- (1) If, after the commencement of this section, a person is released from gaol or from psychiatric confinement that the person was undergoing because he or she had been charged with committing an offence, and:
  - (a) either while the person was in gaol or psychiatric confinement, or within 7 days after the person's release, the person claims a social security pension or benefit; and
  - (b) the Secretary determines that a claim by the person for a social security pension or benefit is to be granted; and
  - (c) the Secretary is satisfied that, if the person is required to wait until the end of the first instalment period in relation to the pension or benefit for payment of an instalment, the person will suffer severe financial hardship;the Secretary may determine that a specified amount is to be paid to the person in advance.
- (2) If, after the commencement of this section, a person is released from gaol or from psychiatric confinement that the person was undergoing because he or she had been charged with committing an offence, and:



- 
- (a) the Secretary determines that a social security pension or benefit is payable to the person under a resumption of payment provision; and
- (b) the Secretary is satisfied that, if the person is required to wait until the end of the first instalment period in relation to the pension or benefit after the resumption of payment of the pension or benefit for payment of an instalment, the person will suffer severe financial hardship;
- the Secretary may determine that a specified amount is to be paid to the person in advance.
- (3) An amount paid under a determination under subsection (1) or (2) in relation to a claim or a resumption of payment determination is not to exceed the amount that, in the Secretary's opinion, would be the total of the amounts payable to the person for the first 7 days on which the pension or benefit is payable to the person.
- (4) An amount paid under subsection (1) or (2) in relation to a claim for a pension or benefit or a resumption of payment determination is taken to be a payment of the instalment or instalments, or of that part of the instalment or instalments, that relate to the days referred to in subsection (3).
- (5) In this section:

*resumption of payment provision* means section 79, 146C, 183, 232, 353, 401, 408NG, 510G, 565E, 590E, 660J, 660XJO, 660YJP, 728P, 766, 771NQ or 819.

### 3 After subsection 1223(1)

Insert:

- (1AA) Subject to subsection (1AB), subsection (1) does not apply to a payment made under section 1159C.
- (1AB) If a person to whom a payment under section 1159C has been made is not released from gaol or psychiatric confinement on the person's expected release day, subsection (1AA) does not apply to the person.
- (1AC) A day is a person's *expected release day* for the purposes of subsection (1AB) if there are reasonable grounds for believing that

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the person will be released from gaol or psychiatric confinement on that day.

#### **4 After subsection 1223AA(1BA)**

Insert:

(1C) If:

- (a) a payment of a pension, benefit or crisis payment has been made to a person under section 1159C; and
- (b) immediately after the release of the person from gaol or psychiatric confinement:
  - (i) the person was not qualified for the pension, benefit or crisis payment; or
  - (ii) although the person was qualified for the pension, benefit or crisis payment, the pension, benefit or crisis payment was not payable to the person;

the amount of the payment is a debt due to the Commonwealth.

#### **5 Application—claims**

- (1) Section 1159A of the *Social Security Act 1991* as in force immediately after the commencement of this Schedule does not apply in relation to a claim made before the commencement of this Schedule.
- (2) Section 1159B of the *Social Security Act 1991* as in force immediately after the commencement of this Schedule applies in relation to a claim whether the claim is made before or after the commencement of this Schedule.

## **6 Application—section 1161**

If:

- (a) before the commencement of this Schedule, a person is released from gaol, or from psychiatric confinement that the person was undergoing because he or she had been charged with committing an offence, after spending at least 7 days in gaol or such confinement; and
- (b) the person claims widow allowance, youth allowance, austudy payment, newstart allowance, sickness allowance, partner allowance, or mature age allowance under Part 2.12B, within 7 days after being released; and
- (c) the claim is made after the commencement of this Schedule; and
- (d) the claim is granted;

section 1161 of the *Social Security Act 1991* as in force immediately before the commencement of this Schedule applies to the rate of the benefit or allowance claimed by the person.

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*[Minister's second reading speech made in—  
House of Representatives on 11 February 1999  
Senate on 22 March 1999]*

(10/99)