



Social Security Act 1991

Act No. 46 of 1991 as amended

VOLUME 1 includes: Table of Contents
sections 1 – 117

This compilation was prepared on 20 November 2002
taking into account amendments up to Act No. 95 of 2002

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

This Act contains provisions affected by adjustments to the CPI
For CPI adjusted provisions, see Appendix

Volume 2 includes: sections 146F - 408GI

Volume 3 includes: sections 500 – 567F

Volume 4 includes: sections 568 - 660LG

Volume 5 includes: sections 660XAA - 830

Volume 6 includes: sections 952 - 1061ZAAQ

Volume 7 includes: sections 1061ZA - 1067L-F9

Volume 8 includes: sections 1068- 1157

Volume 9	includes:	sections 1157A - 1237B
Volume 10	includes:	Schedules
Volume 11	includes:	Notes, comprising: Table of Acts Actnotes Table of Amendments
Volume 11A	includes:	Repeal Table
Volume 12	includes:	Endnotes Table A Appendix

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

Contents

Chapter 1—Introductory	1
Part 1.1—Formal matters	1
1 Short title [see Note 1].....	1
2 Commencement.....	1
3 Application of the <i>Criminal Code</i>	1
Part 1.2—Definitions	2
3A Power of Secretary to make determinations etc.	2
4 <i>Family relationships</i> definitions—couples	2
5 <i>Family relationships</i> definitions—children [see Appendix for CPI adjusted figures]	9
5A Single person sharing accommodation	15
6 <i>Double orphan pension</i> definitions.....	18
6A Concession card definitions.....	18
7 <i>Australian residence</i> definitions [see Note 16].....	19
8 <i>Income test</i> definitions.....	27
9 Financial assets and income streams definitions.....	37
9A Meaning of <i>asset-test exempt income stream</i> —lifetime income streams	46
9B Meaning of <i>asset-test exempt income stream</i> —life expectancy or 15 year minimum term income streams	52
10 <i>Maintenance income</i> definitions	56
10A Definitions for Seniors Health Card provisions	60
10B Family actual means test definitions [see Notes 10 and 11]	72
11 <i>Assets test</i> definitions	76
12 <i>Retirement villages</i> definitions	84
12A <i>Granny flat</i> definitions	85
12B <i>Sale leaseback</i> definitions.....	86
12C <i>Special residence and residents</i> definitions	88
13 <i>Rent</i> definitions	89
14 <i>Remote area</i> definitions.....	95
14A <i>Social security benefit liquid assets test</i> definitions.....	96
15 <i>NS activity test</i> definitions	99
16 <i>Industrial action</i> definitions	99
16A <i>Seasonal work</i> definitions.....	100
17 <i>Compensation recovery</i> definitions	109
17A Retirement assistance for farmers definitions.....	116
18 Parenting payment definitions	120

19	<i>Mobility allowance</i> definitions	121
19AA	[<i>see Note 15</i>]	121
19AB	Student Financial Supplement Scheme definitions	121
19B	Financial hardship (Carer payment) liquid assets test definition	126
19C	Severe financial hardship definitions.....	126
19D	Severe financial hardship—crisis payment definition.....	132
20	<i>Indexation and rate adjustment</i> definitions.....	133
21	<i>Bereavement</i> definitions	135
22	<i>Review of decisions</i> definitions.....	136
23	General definitions [<i>see Notes 2 and 5</i>].....	136
Part 1.3—Determinations having interpretative effect		162
24	Person may be treated as not being a member of a couple (subsection 4(2)).....	162
24A	Approved scholarship	162
25	Refugee visas.....	163
28	Approved programs of work for unemployment payment	163
28A	Approval of programs of assistance.....	164
29	Approval of friendly societies	164
30	Approval of mental hospitals.....	164
31	Approval of follow-up rehabilitation programs	164
32	Approval of sheltered employment—non-profit organisation	165
33	Approval of sheltered employment—supported employment.....	165
35	Approval of care organisation.....	166
35A	Personal Care Support	166
36	Major disaster.....	166
37	Dependent child—inmate of a mental hospital	167
38B	Notional continuous period of receipt of income support payments	167
38C	Adult Disability Assessment Tool	169
38D	Child Disability Assessment Tool	170
Part 1.4—Miscellaneous		171
39	Tables, calculators etc. form part of section	171
Chapter 2—Pensions, benefits and allowances		173
Part 2.2—Age pension		173
Division 1—Qualification for and payability of age pension		173
Subdivision A—Qualification		173
43	Qualification for age pension.....	173

Subdivision B—Payability	174
44 Age pension not payable if pension rate nil	174
47 Multiple entitlement exclusion	174
47A Exclusion of certain participants in ABSTUDY Scheme	176
Division 4—Rate of age pension	177
55 How to work out a person’s age pension rate	177
Division 9—Bereavement payments	178
Subdivision A—Death of partner	178
82 Qualification for payments under this Subdivision.....	178
83 Continued payment of partner’s pension or allowance	180
84 Lump sum payable in some circumstances.....	180
85 Adjustment of person’s age pension rate	182
86 Effect of death of person entitled to payments under this Subdivision.....	182
87 Matters affecting payment of benefits under this Subdivision.....	185
Subdivision C—Death of recipient	186
91 Death of recipient	186
Part 2.2A—Pension bonus	187
Division 1—Introduction	187
92A Simplified outline.....	187
92B Definitions.....	187
Division 2—Qualification for pension bonus	189
92C Qualification for pension bonus.....	189
Division 3—Registration as a member of the pension bonus scheme	190
Subdivision A—Membership of the pension bonus scheme	190
92D Application for registration	190
92E Form of application	190
92F Relevant information	190
92G Lodgment of application.....	191
92H Timing of application and registration.....	191
92J Registration	193
92K Duration of membership.....	194
92L Cancellation of membership.....	194
92M Application for registration is not to be treated as a claim.....	194
Subdivision B—Classification of membership of the pension bonus scheme	195
92N Accruing membership.....	195

92P	Non-accruing membership—preclusion periods.....	195
92Q	Non-accruing membership—Secretary’s discretion	195
92R	Continuity of accruing membership is not broken by a period of non-accruing membership	196
92S	Post-75 membership	197
Division 4—Accrual of bonus periods		198
92T	Accrual of bonus periods	198
Division 5—Passing the work test		200
Subdivision A—The work test		200
92U	Work test—full-year period.....	200
92V	Work test—part-year period	201
92W	Secretary’s discretion to treat gainful work outside Australia as gainful work in Australia.....	202
Subdivision B—Gainful work		202
92X	Gainful work—basic rule	202
92Y	Secretary’s discretion to treat activity as gainful work	203
92Z	Irregular, infrequent and minor absences from a workplace count as gainful work	203
93	Management of family financial investments does not count as gainful work	203
93A	Domestic duties in relation to a person’s place of residence do not count as gainful work	204
93B	Evidentiary certificate	205
Subdivision C—Record-keeping requirements		207
93C	Record-keeping requirements	207
Division 6—Amount of pension bonus		211
93D	How to calculate the amount of pension bonus.....	211
93E	Qualifying bonus periods.....	211
93F	Overall qualifying period.....	212
93G	Pension multiple	212
93H	Annual pension rate	213
93J	Amount of pension bonus	213
Division 11—Preclusion periods		216
93U	Disposal preclusion period—disposals before 1 July 2002.....	216
93UA	Disposal preclusion period—disposals on or after 1 July 2002	217
93V	Compensation preclusion period.....	217
93W	Carer preclusion period	217
Part 2.2B—One-off payment to the aged		219
93X	One-off payment to the aged	219

Part 2.3—Disability support pension	220
Division 1—Qualification for and payability of disability support pension	220
Subdivision A—Qualification	220
94 Qualification for disability support pension.....	220
95 Qualification for disability support pension—permanent blindness.....	222
Subdivision B—Payability	223
98 Disability support pension not payable if pension rate nil	223
103 Multiple entitlement exclusion	223
103A Exclusion of certain participants in ABSTUDY Scheme	225
Division 5—Rate of disability support pension	227
117 How to work out a person’s disability support pension rate	227

SOCIAL SECURITY ACT 1991

READER'S GUIDE

This Guide is intended to help you work out where you need to look in the Act to find the information you need. The Guide explains how the Act is arranged and how things like the Table of Parts, the definitions and the notes can help you in reading the Act.

1. Use the Tables of Parts and Provisions to find your area of interest.

The Table of Parts (which is to be found straight after this Guide) is a general list of the contents of the Act. The Table of Provisions (which comes after the Table of Parts) is more detailed—it lists every section in the Act.

2. The Act is divided into 8 Chapters.

Chapter 1 is introductory and contains definitions.

Chapter 2 deals with each payment type under the Act.

Chapter 2A deals with benefits and concessions other than payments under the Act.

Chapter 2B deals with the Student Financial Supplement Scheme under the Act.

Chapter 3 deals with general rules explaining e.g. how to work out the payment rate, how the assets test works etc.

Chapter 4 deals with portability of payments and with international agreements.

Chapter 5 deals with overpayments and debt recovery.

Chapter 6 deals with review of decisions made under the Act.

Chapter 7 deals with administrative matters.

Chapter 8 deals with miscellaneous matters, including offences under the Act.

3. There is a separate Part in Chapter 2 for each payment type.

Chapter 2 is divided into Parts. Each Part deals with one payment type. To find out about a particular type of payment (e.g. newstart allowance), look at the Table of Parts at the beginning of the Act. It will direct you to Part 2.12 for the provisions dealing with newstart allowance.

Within each Part dealing with a payment type, the topics are dealt with in this order:

- qualification and payability (who can get the type of payment?)
- claim (how do you go about claiming it?)
- determination of claim (when is it granted from?)
- rate (if it is granted, what will the rate be?)
- payment (how is it paid?)
- protection (how is your payment protected?)
- recipient obligations (if you get it, what are your obligations?)
- continuation, variation and termination (if you get it, when can the rate be increased or decreased and when can the payment be cancelled or suspended?)
- bereavement payments (what happens if you get it and someone who affects your rate dies?)
- fringe benefits (who can get fringe benefits?) (not applicable to all payments)

4. The other Chapters deal with general topics.

The other Chapters deal with topics that are relevant to several, or to all, payment types. The main provisions of this kind are:

- Seniors Health Card (Part 2A.1)
- Student Financial Supplement Scheme (Chapter 2B)
- rate calculation (Parts 3.1 to 3.9)

-
- income and assets tests (Parts 3.10, 3.11 and 3.12)
 - family allowance income test and the parental means test (Part 3.12A)
 - effect of imprisonment (Part 3.13)
 - effect of compensation (Part 3.14)
 - retirement assistance for farmers (Part 3.14A)
 - New Enterprise Incentive Scheme and Aboriginal Employment Incentive Scheme (Part 3.15)
 - indexation (Part 3.16)
 - advance payment deductions (Part 3.16A)
 - miscellaneous (Part 3.17)
 - international agreements (Part 4.1)
 - overseas portability (Part 4.2)
 - overpayments and debt recovery (Chapter 5)
 - review of decisions (Chapter 6)
 - administration (Chapter 7)
 - miscellaneous (Chapter 8)

5. Definitions are generally in Chapter 1.

The definitions of terms used in the Act are generally at the front of the Act, after the Table of Provisions and the formal citation and commencement provisions. Related definitions have been grouped together to help give a complete picture of the terms relating to a particular topic or concept.

6. The Index of definitions is at section 3.

The Index of defined terms (section 3) has been provided to tell you exactly where a particular term is defined. If you are not sure whether a term is a

defined term, or you are not sure where a term is defined, check the Index at section 3.

7. Notes and examples throughout the Act help explain how certain provisions work.

Notes are to be found throughout the text and these are designed to help you find your way through the document. Notes tell you where to find definitions and alert you to other provisions in this Act and in other legislation that are relevant to the text you are reading. Examples are also used to help explain how some provisions work — in particular those involving complex calculations.

An Act to provide for the payment of certain pensions, benefits and allowances, and for related purposes

Chapter 1—Introductory

Part 1.1—Formal matters

1 Short title [see Note 1]

This Act may be cited as the *Social Security Act 1991*.

2 Commencement

This Act commences on 1 July 1991.

3 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Section 3A

Part 1.2—Definitions

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 *Family relationships definitions—couples*

4(1) In this Act, unless the contrary intention appears:

approved respite care has the meaning given by subsection (9).

armed services widow means a woman who was the partner of:

- (a) a person who was a veteran for the purposes of any provisions of the Veterans' Entitlements Act; or
- (b) a person who was a member of the forces for the purposes of Part IV of that Act; or
- (c) a person who was a member of a peacekeeping force for the purposes of Part IV of that Act;

immediately before the death of the person.

armed services widower means a man who was the partner of:

- (a) a person who was a veteran for the purposes of any provisions of the Veterans' Entitlements Act; or
- (b) a person who was a member of the Forces for the purposes of Part IV of that Act; or
- (c) a person who was a member of a Peacekeeping Force for the purposes of Part IV of that Act;

immediately before the death of the person.

Section 4

illness separated couple has the meaning given by subsection (7).

member of a couple has the meaning given by subsections (2), (3), (3A), (6) and (6A).

partner, in relation to a person who is a *member of a couple*, means the other member of the couple.

partnered has the meaning given by subsection (11).

partnered (partner getting benefit) has the meaning given by subsection (11).

partnered (partner getting neither pension nor benefit) has the meaning given by subsection (11).

partnered (partner getting pension) has the meaning given by subsection (11).

partnered (partner getting pension or benefit) has the meaning given by subsection (11).

partnered (partner in gaol) has the meaning given by subsection (11).

respite care couple has the meaning given by subsection (8).

Member of a couple—general

- 4(2) Subject to subsection (3), a person is a *member of a couple* for the purposes of this Act if:
- (a) the person is legally married to another person and is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis; or
 - (b) all of the following conditions are met:
 - (i) the person has a relationship with a person of the opposite sex (in this paragraph called the *partner*);
 - (ii) the person is not legally married to the partner;
 - (iii) the relationship between the person and the partner is, in the Secretary's opinion (formed as mentioned in subsections (3) and (3A)), a marriage-like relationship;

Section 4

- (iv) both the person and the partner are over the age of consent applicable in the State or Territory in which they live;
- (v) the person and the partner are not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*.

Note: a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961* is a relationship between a person and:

- an ancestor of the person; or
- a descendant of the person; or
- a brother or sister of the person (whether of the whole blood or the part-blood).

Member of a couple—criteria for forming opinion about relationship

- 4(3) In forming an opinion about the relationship between 2 people for the purposes of paragraph (2)(a) or subparagraph (2)(b)(iii), the Secretary is to have regard to all the circumstances of the relationship including, in particular, the following matters:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets and any joint liabilities; and
 - (ii) any significant pooling of financial resources especially in relation to major financial commitments; and
 - (iii) any legal obligations owed by one person in respect of the other person; and
 - (iv) the basis of any sharing of day-to-day household expenses;
 - (b) the nature of the household, including:
 - (i) any joint responsibility for providing care or support of children; and
 - (ii) the living arrangements of the people; and
 - (iii) the basis on which responsibility for housework is distributed;
 - (c) the social aspects of the relationship, including:
 - (i) whether the people hold themselves out as married to each other; and

Section 4

- (ii) the assessment of friends and regular associates of the people about the nature of their relationship; and
 - (iii) the basis on which the people make plans for, or engage in, joint social activities;
 - (d) any sexual relationship between the people;
 - (e) the nature of the people's commitment to each other, including:
 - (i) the length of the relationship; and
 - (ii) the nature of any companionship and emotional support that the people provide to each other; and
 - (iii) whether the people consider that the relationship is likely to continue indefinitely; and
 - (iv) whether the people see their relationship as a marriage-like relationship.
- 4(3A) The Secretary must not form the opinion that the relationship between a person and his or her partner is a marriage-like relationship if the person is living separately and apart from the partner on a permanent or indefinite basis.

Member of a couple—special excluding determination

- 4(6) A person is not a **member of a couple** if a determination under section 24 is in force in relation to the person.

Note: section 24 allows the Secretary to treat a person who is a member of a couple as not being a member of a couple in special circumstances.

- 4(6A) A person who:
- (a) has claimed youth allowance and is not independent within the meaning of Part 3.5; or
 - (b) is receiving a youth allowance and is not independent within the meaning of Part 3.5; or
 - (c) is a member of a couple of which a person referred to in paragraph (b) is the other member;
- is not a **member of a couple** for the purposes of:
- (d) the provisions of this Act referred to in the table at the end of this subsection; and
 - (e) any provision of this Act that applies for the purposes of a provision mentioned in paragraph (d); and

Section 4

- (f) any provision of this Act that applies for the purposes of Module E (Ordinary income test) of the Pension PP (Single) Rate Calculator in section 1068A.

Note: Paragraphs (e) and (f) have the effect of treating a person as not being a member of a couple in provisions that apply for the purposes of the income test, assets test, liquid assets test or compensation recovery provisions, including section 8 (Income test definitions), section 11 (Assets test definitions), section 14A (Social security benefit liquid assets test provisions), section 17 (Compensation recovery definitions), section 19B (Financial hardship provisions liquid assets test definition), Part 2.26 (Fares allowance), Part 3.10 (General provisions relating to the ordinary income test) and Part 3.12 (General provisions relating to the assets test).

Affected provisions

Item	Provisions of this Act	Subject matter
1	Subdivision AB of Division 2 of Part 2.11	Youth allowance assets test
1A	section 500Q	Parenting payment assets test
2	sections 549A to 549C	Youth allowance liquid assets test
3	Subdivision B of Division 2 of Part 2.11A	Austudy payment assets test
4	sections 575A to 575C	Austudy payment liquid assets test
5	section 598	Newstart allowance liquid assets test
6	sections 611 and 612	Newstart allowance assets test
7	sections 660YCK and 660YCK	Mature age allowance assets test
8	section 676	Sickness allowance liquid assets test
9	sections 680 and 681	Sickness allowance assets test
10	sections 733 and 734	Special benefit assets test
11	section 771HF	Partner allowance assets test
11A	Part 2.26	Fares allowance
12	Module E of Pension Rate Calculator A	Ordinary income test
13	Module G of Pension Rate Calculator A	Assets test
14	Module F of Pension Rate Calculator D	Ordinary income test
15	Module H of Pension Rate Calculator D	Assets test

Affected provisions		
Item	Provisions of this Act	Subject matter
16	Module H of Youth Allowance Rate Calculator	Income test
17	Module D of the Austudy Payment Rate Calculator	Income test
18	Module G of Benefit Rate Calculator B	Income test
19	Part 3.14	Compensation recovery

Illness separated couple

4(7) Where 2 people are members of a couple, they are members of an ***illness separated couple*** if:

- (a) they are unable to live together in a matrimonial home as a result of the illness or infirmity of either or both of them; and
- (b) because of that inability to live together, their living expenses are, or are likely to be, greater than they would otherwise be; and
- (c) that inability is likely to continue indefinitely.

Respite care couple

4(8) Where 2 people are members of a couple, they are members of a ***respite care couple*** if:

- (a) one of the members of the couple has entered approved respite care; and
- (b) the member who has entered the approved respite care has remained, or is likely to remain, in that care for at least 14 consecutive days.

4(9) For the purpose of this Act, a person is in ***approved respite care*** on a particular day if the person is eligible for a respite care supplement in respect of that day under section 44-12 of the *Aged Care Act 1997*.

Section 4

Temporarily separated couple

- 4(9A) Two people are members of a *temporarily separated couple* if they:
- (a) are members of a couple for the purposes of this Act; and
 - (b) are legally married to each other; and
 - (c) are living separately and apart from each other but not on a permanent or indefinite basis; and
 - (d) are neither an illness separated nor a respite care couple.

Note: for *member of a couple* see subsection 4(2) and section 24.

Standard family situation categories

- 4(11) For the purposes of this Act:
- (a) a person is *partnered* if the person is a member of a couple; and
 - (b) a person is *partnered (partner getting neither pension nor benefit)* if the person is a member of a couple and the person's partner:
 - (i) is not receiving a social security pension; and
 - (ii) is not receiving a social security benefit; and
 - (iii) is not receiving a service pension or income support supplement; and
 - (c) a person is *partnered (partner getting pension or benefit)* if the person is a member of a couple and the person's partner is receiving:
 - (i) a social security pension; or
 - (ii) a social security benefit; or
 - (iii) a service pension or income support supplement; and
 - (d) a person is *partnered (partner getting pension)* if the person is a member of a couple and the person's partner is receiving:
 - (i) a social security pension; or
 - (ii) a service pension or income support supplement; and
 - (e) a person is *partnered (partner getting benefit)* if the person is a member of a couple and the person's partner is receiving a social security benefit; and

- (f) a person is *partnered (partner in gaol)* if the person is a member of a couple and the person's partner is:
- (i) in gaol; or
 - (ii) undergoing psychiatric confinement because the partner has been charged with committing an offence.

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

Note 2: For *in gaol* see subsection 23(5).

Note 3: For *psychiatric confinement* see subsections 23(8) and (9).

5 Family relationships definitions—children

[see Appendix for CPI adjusted figures]

5(1) In this Act, unless the contrary intention appears:

adopted child means a young person adopted under the law of any place, whether in Australia or not, relating to the adoption of children.

dependent child has the meaning given by subsections (2) to (9).

homeless person, in Part 3.4A (Pension Rate Calculator D) and Part 3.4B (Pension Rate Calculator E), means a person who:

- (a) is not a member of a couple; and
- (b) has no dependent children; and
- (c) either:
 - (i) does not live, and for a continuous period of at least 2 weeks has not lived, at a home of the parents, or of a parent, of the person because the parents are not, or neither parent is, prepared to allow the person to live at such a home; or
 - (ii) does not live at a home of the parents, or of a parent, of the person because domestic violence, incestuous harassment or other exceptional circumstances make it unreasonable to expect the person to live at such a home; and
- (d) is not receiving continuous support, whether directly or indirectly and whether pecuniary or otherwise, from a parent of the person or from another person who is acting as the person's guardian on a long-term basis; and

Section 5

- (e) is not receiving, on a continuous basis, any payment in the nature of income support (other than a social security benefit or a youth training allowance) from the Commonwealth, a State or a Territory.

independent, in Parts 2.11 and 3.5, has the meaning given in section 1067A.

independent young person, in Part 3.4A (Pension Rate Calculator D) and Part 3.4B (Pension Rate Calculator E), means a person who:

- (a) does not live, and for a continuous period of at least 18 weeks has not lived, at a home of the parents, or of a parent, of the person; and
 - (b) has, at a time when the person was not living at such a home:
 - (i) been employed on a full-time basis; or
 - (ii) been receiving a newstart allowance; or
 - (iii) been registered by the Employment Secretary as being unemployed;
- for a period of, or for periods that total, at least 13 weeks;
- (c) does not receive regular financial support from a parent of the person.

parent means:

- (a) (except in Part 2.11 and in the Youth Allowance Rate Calculator in section 1067G):
 - (i) in relation to a young person, other than an adopted child—a natural parent of the young person; or
 - (ii) in relation to an adopted child—an adoptive parent of the young person; or
- (b) in Part 2.11 and in the Youth Allowance Rate Calculator in section 1067G, in relation to a person (*relevant person*):
 - (i) a natural or adoptive parent of the relevant person with whom the relevant person normally lives; or
 - (ii) if a parent referred to in subparagraph (b)(i) is a member of a couple and normally lives with the other member of the couple—the other member of the couple; or

- (iii) any other person (other than the relevant person's partner) on whom the relevant person is wholly or substantially dependent; or
- (iv) if none of the preceding paragraphs applies—the natural or adoptive parent of the relevant person with whom the relevant person last lived.

prescribed educational scheme means:

- (b) the ABSTUDY Scheme; or
- (ca) a Student Financial Supplement Scheme; or
- (e) the Veterans' Children Education Scheme; or
- (f) the Post-Graduate Awards Scheme.

prescribed student child has the meaning given by subsection (11).

student child has the meaning given by subsection (1A).

substitute care, in relation to a person, means care of the person:

- (a) provided by a carer (other than the natural or adoptive parent of the person) in the carer's home under the law of a State or Territory; and
- (b) for which no substitute care allowance or other allowance for the upkeep of the person is being paid to the carer by an authority of the State or Territory.

young person has the meaning given by subsection (1B).

5(1A) A person is a student child at a particular time if:

- (a) at the time, the person:
 - (i) has reached 16, but is under 22, years of age; and
 - (ii) is receiving full-time education at a school, college or university; and
- (b) the person's income in the financial year in which that time occurs will not be more than \$6,403.

5(1B) A person is a young person at a particular time if at that time the person:

- (a) is under 16 years of age; or
- (b) is a student child.

Section 5

Dependent child—under 16

- 5(2) Subject to subsections (3) and (6) to (8), a young person who has not turned 16 is a **dependent child** of another person (in this subsection called the **adult**) if:
- (a) the adult is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the young person, and the young person is in the adult's care; or
 - (b) the young person:
 - (i) is not a dependent child of someone else under paragraph (a); and
 - (ii) is wholly or substantially in the adult's care.
- 5(3) A young person who has not turned 16 cannot be a dependent child if:
- (a) the young person is not in full-time education; and
 - (b) the young person is in receipt of income; and
 - (c) the rate of that income exceeds \$107.70 per week.

Note: the amount in paragraph (c) is indexed annually in line with CPI increases (see sections 1191 to 1194).

Dependent child—16 to 21 years of age

- 5(4) Subject to subsections (5) to (8), a young person is a dependent child of another person at a particular time if:
- (a) at that time, the young person:
 - (i) has reached 16, but is under 22, years of age; and
 - (ii) is wholly or substantially dependent on the other person; and
 - (b) the young person's income in the financial year in which that time occurs will not be more than \$6,403.
- 5(5) A young person who has turned 16 cannot be a **dependent child** of another person if the other person is the young person's partner.

Dependent child—pension, benefit, allowance and Labour Market Program recipients

- 5(6) A young person cannot be a **dependent child** for the purposes of this Act if:

- (a) the young person is receiving a social security pension; or
- (b) the young person is receiving a social security benefit; or
- (c) the young person is receiving payments under a program included in the programs known as Labour Market Programs.

Note: this subsection may not apply if the young person has been receiving the pension, benefit or payment since 1 November 1984: see clause 23 in Schedule 1A.

Dependent child—residence requirements

5(7) For the purposes of this Act (other than the provisions dealing with special benefit), a young person is not to be treated as a **dependent child** of another person (in this subsection called the **adult**) unless:

- (a) if the adult is an Australian resident:
 - (i) the young person is an Australian resident; or
 - (ii) the young person is living with the adult; or
- (b) if the adult is not an Australian resident:
 - (i) the young person is an Australian resident; or
 - (ii) the young person has been an Australian resident and is living with the adult outside Australia; or
 - (iii) the young person had been living with the adult in Australia and is living with the adult outside Australia.

Note: for **Australian resident** see subsection 7(2).

5(8) For the purposes of working out the maximum rate of special benefit under subsection 746(2), a young person is not to be treated as a **dependent child** of another person (in this subsection called the **adult**) unless:

- (a) if the adult is an Australian resident:
 - (i) the young person is an Australian resident or a resident of Australia; or
 - (ii) the young person is living with the adult; or
- (b) if the adult is not an Australian resident—the young person is an Australian resident or a resident of Australia.

Note: **Australian resident** is defined by subsection 7(2) but **resident of Australia** has its ordinary meaning and is not given any special definition by this Act. Subsection 7(3) is relevant to the question of whether a person is **residing in Australia**.

Section 5

- 5(8A) For the purposes of Part 2.10, a young person who is an inmate of a mental hospital is a **dependent child** of a member of a couple if there is in force under subsection 37(3) a determination in respect of the young person and the member of the couple.

Dependent child—inmate of mental hospital

- 5(9) For the purposes of Part 2.17, a young person who is an inmate of a mental hospital is a **dependent child** of another person if a determination under subsection 37(1) in respect of the young person and the other person is in force.

Prescribed student child

- 5(11) A person is a **prescribed student child** if:
- (a) the person is a young person who has reached 16, but is under 22, years of age; and
 - (b) the young person is qualified to receive payments under a prescribed educational scheme.
- 5(12) For the purposes of subsection (11), a young person is, subject to subsection (13), qualified to receive a payment under a prescribed educational scheme if:
- (a) the young person is receiving a payment under a prescribed educational scheme; or
 - (b) someone else is receiving, in respect of the young person, a payment under a prescribed educational scheme; or
 - (c) the Secretary has not formed the opinion that:
 - (i) the young person will not, or would not if an application were duly made, receive a payment under a prescribed educational scheme; and
 - (ii) no other person will, or would if an application were duly made, receive, in respect of the young person, a payment under a prescribed educational scheme.
- 5(13) For the purposes of subsection (11), a young person is not qualified to receive a payment under a prescribed educational scheme if:
- (a) the young person is not receiving a payment under a prescribed educational scheme; and

- (b) no other person is receiving, in respect of the young person, a payment under a prescribed educational scheme; and
- (c) the Secretary is satisfied that the educational scheme rate would be less than the social security rate.

5(14) For the purposes of subsection (13):

- (a) the *educational scheme rate* is the total of the amounts that would be payable to or in respect of the young person under the prescribed educational scheme; and
- (b) the *social security rate* is the Part A rate of family tax benefit for which a person would be eligible (in respect of the young person) if the young person were not a prescribed student child.

5A Single person sharing accommodation

5A(1) For the purposes of this Act, a person is to be treated as a single person sharing accommodation if the person:

- (a) is not a member of a couple; and
- (b) has no dependent children; and
- (c) has, in common with one or more other people, the right to use at least one major area of accommodation.

5A(2) A person is not to be treated as a single person sharing accommodation if the person:

- (a) pays, or is liable to pay, amounts for the person's board and lodging; or
- (ab) is residing in exempt accommodation (see subsections (5A), (5B) and (5C)); or
- (b) is the recipient of a disability support pension or a carer pension; or
- (c) is residing in a nursing home.

5A(3) A person who has the exclusive right to use a bathroom, a kitchen and a bedroom is not to be treated as a single person sharing accommodation solely because the person has the right, in common with one or more other people, to use other major areas of accommodation.

Section 5A

5A(4) A person is not to be treated as a single person sharing accommodation solely because the person shares accommodation with one or more recipient children of the person.

5A(5) If:

- (a) a person lives alone in a caravan or mobile home, or on board a vessel; or
- (b) a person shares accommodation in a caravan, mobile home or vessel solely with one or more recipient children of the person;

the person is not to be treated as a single person sharing accommodation solely because the person has the right, in common with one or more other people, to use one or more major areas of accommodation in a caravan park or marina.

5A(5A) A person's accommodation is *exempt accommodation* if it is in premises that are, in the Secretary's opinion, a boarding house, guest house, hostel, hotel, private hotel, rooming house, lodging house or similar premises.

5A(5B) In forming an opinion about a person's accommodation for the purposes of subsection (5A), the Secretary is to have regard to the characteristics of the accommodation including, in particular, whether or not the following are characteristics of the accommodation:

- (a) the premises are known as a boarding house, guest house, hostel, hotel, private hotel, rooming house, lodging house or similar premises;
- (b) a manager or administrator (other than a real estate agent) is retained to manage the premises or administer the accommodation on a daily or other frequent regular basis;
- (c) staff are retained by the proprietor or manager of the premises to work in the premises on a daily or other frequent regular basis;
- (d) the residents lack control over the day-to-day management of the premises;
- (e) there are house rules, imposed by the proprietor or manager, that result in residents having rights that are more limited than those normally enjoyed by a lessee of private residential accommodation (for example, rules limiting the hours of

Section 5A

residents' access to their accommodation or limiting residents' access to cooking facilities in the premises);

- (f) the person does not have obligations to pay for his or her costs of gas, water or electricity separately from the cost of the accommodation;
- (g) the accommodation is not private residential accommodation, having regard to:
 - (i) the number and nature of bedrooms in the premises; or
 - (ii) the number of people who are not related to one another living at the premises; or
 - (iii) the number and nature of bathrooms in the premises;
- (h) the person's accommodation has not been offered to the person on a leasehold basis;
- (j) there is no requirement that the person pay a bond as security for either the payment of rent or the cost of any damage caused by the person, or for both;
- (k) the person's accommodation is available on a daily or other short-term basis.

5A(5C) Each of the characteristics set out in subsection (5B) points towards the accommodation in question being exempt accommodation.

5A(6) In this section:

major area of accommodation means any of the following, whether identifiably separate from other areas of accommodation or not:

- (a) a bathroom;
- (b) a kitchen;
- (c) a bedroom.

recipient child means a child who receives any of the following, but who does not receive any amount by way of rent assistance:

- (a) a social security payment;
- (c) a payment under the ABSTUDY Schooling scheme or the ABSTUDY Tertiary scheme;
- (d) a service pension;
- (e) a youth training allowance.

Section 6

6 Double orphan pension definitions

In this Act, unless the contrary intention appears:

approved care organisation means an organisation approved by the Secretary under subsection 35(1).

double orphan means a young person who is a double orphan in accordance with section 993 or 994.

6A Concession card definitions

6A(1) In this Act, unless the contrary intention appears:

automatic issue card means:

- (a) a pensioner concession card; or
- (b) an automatic issue health care card.

automatic issue health care card means a health care card issued to a person qualified for the card under Subdivision A of Division 3 of Part 2A.1.

dependant, in relation to a person who is the holder of a pensioner concession card or an automatic issue health care card (other than a health care card for which the person is qualified under subsection 1061ZK(4)), means a person who is:

- (a) the partner; or
- (b) a dependent child;
of the holder of the card.

dependant, in relation to a person who is the holder of a health care card for which the person is qualified under subsection 1061ZK(4) or Subdivision B of Division 3 of Part 2A.1, means a person who is:

- (a) the partner; or
- (b) an FTB child;
of the holder of the card.

dependant, in relation to a person, other than a child in foster care, who has made a claim for a health care card (the **claimant**), means a person who is:

- (a) the partner; or

(b) an FTB child;
of the claimant.

6A(2) For the purposes of the operation of a definition of *dependant* in subsection (1) in relation to a provision of Part 2A.1, a person (the *child*) is an FTB child of another person (the *adult*) if:

(a) the child is an FTB child of the adult within the meaning of the Family Assistance Act; and

(b) either:

(i) the child is under 16 years of age; or

(ii) the child is 16, but not yet 19, years of age and is undertaking secondary studies.

6A(3) For the purposes of the operation of a definition of *dependant* in subsection (1) in relation to a provision of this Act (other than a provision of Part 2A.1), a person (the *child*) is an FTB child of another person (the *adult*) if the child is an FTB child of the adult within the meaning of the Family Assistance Act.

7 Australian residence definitions [see Note 16]

7(1) In this Act, unless the contrary intention appears:

Australian resident has the meaning given by subsection (2).

designated temporary entry permit means:

(a) an old PRC (temporary) entry permit held by the partner or a dependent child (if any) of a citizen of the People's Republic of China if that citizen holds an old PRC (temporary) entry permit; or

(b) a new PRC (temporary) entry permit held by the partner or a dependent child (if any) of a citizen of the People's Republic of China if that citizen holds:

(i) an old PRC (temporary) entry permit; or

(ii) a new PRC (temporary) entry permit.

former refugee means a person who was a refugee but does not include a person who ceased to be a refugee because his or her visa or entry permit (as the case may be) was cancelled.

Section 7

holder, in relation to a visa, has the same meaning as in the *Migration Act 1958*.

new PRC (temporary) entry permit means an entry permit within class 437 of Division 2.6—Group 2.6 in Part 2 of Schedule 1 to the Migration (1993) Regulations as in force before 1 September 1994.

old PRC (temporary) entry permit means a PRC (temporary) entry permit within the meaning of the Migration (1989) Regulations as in force before 1 February 1993.

permanent visa, special category visa, special purpose visa, temporary visa and visa have the same meaning as in the *Migration Act 1958*.

protected SCV holder has the meaning given by subsections (2A), (2B), (2C) and (2D).

qualifying Australian residence has the meaning given by subsection (5).

qualifying residence exemption has the meaning given in subsections (6) and (6AA).

- 7(2) An **Australian resident** is a person who:
- (a) resides in Australia; and
 - (b) is one of the following:
 - (i) an Australian citizen;
 - (ii) the holder of a permanent visa;
 - (iii) a special category visa holder who is a protected SCV holder.

Note: For holder, permanent visa and special purpose visa see subsection (1).

- 7(2A) A person is a **protected SCV holder** if:
- (a) the person was in Australia on 26 February 2001, and was a special category visa holder on that day; or
 - (b) the person had been in Australia for a period of, or for periods totalling, 12 months during the period of 2 years immediately before 26 February 2001, and returned to Australia after that day.

- 7(2B) A person is a ***protected SCV holder*** if the person:
- (a) was residing in Australia on 26 February 2001; and
 - (b) was temporarily absent from Australia on 26 February 2001; and
 - (c) was a special category visa holder immediately before the beginning of the temporary absence; and
 - (d) was receiving a social security payment on 26 February 2001; and
 - (e) returned to Australia before the later of the following:
 - (i) the end of the period of 26 weeks beginning on 26 February 2001;
 - (ii) if the Secretary extended the person's portability period for the payment under section 1218C—the end of the extended period.
- 7(2C) A person who commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001 is a ***protected SCV holder*** at a particular time if:
- (a) the time is during the period of 3 years beginning on 26 February 2001; or
 - (b) the time is after the end of that period, and either:
 - (i) a determination under subsection (2E) is in force in respect of the person; or
 - (ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.
- 7(2D) A person who, on 26 February 2001:
- (a) was residing in Australia; and
 - (b) was temporarily absent from Australia; and
 - (c) was not receiving a social security payment;
- is a ***protected SCV holder*** at a particular time if:
- (d) the time is during the period of 12 months beginning on 26 February 2001; or
 - (e) the time is after the end of that period, and either:
 - (i) at that time, a determination under subsection (2E) is in force in respect of the person; or

Section 7

- (ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.
- 7(2E) A person who is residing in Australia and is in Australia may apply to the Secretary for a determination under this subsection stating that:
 - (a) the person was residing in Australia on 26 February 2001, but was temporarily absent from Australia on that day; or
 - (b) the person commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001.
- 7(2F) If a person makes an application under subsection (2E), the Secretary must make the determination if:
 - (a) the Secretary is satisfied that paragraph (2E)(a) or (2E)(b) applies to the person; and
 - (b) the application was made within whichever of the following periods is applicable:
 - (i) if paragraph (2E)(a) applies to the person—the period of 12 months beginning on 26 February 2001;
 - (ii) if paragraph (2E)(b) applies to the person—the period of 3 years beginning on 26 February 2001.

The Secretary must give a copy of the determination to the person.
- 7(2G) The Secretary must make a determination under this subsection in respect of a person if the person is a protected SCV holder because of subsection (2B). If the Secretary is required to make such a determination:
 - (a) the determination must state that the person was residing in Australia on 26 February 2001, but was temporarily absent from Australia on that day; and
 - (b) the determination must be made within the period of 6 months of the person's return to Australia; and
 - (c) a copy of the determination must be given to the person.
- 7(3) In deciding for the purposes of this Act whether or not a person is residing in Australia, regard must be had to:
 - (a) the nature of the accommodation used by the person in Australia; and

- (b) the nature and extent of the family relationships the person has in Australia; and
- (c) the nature and extent of the person's employment, business or financial ties with Australia; and
- (d) the nature and extent of the person's assets located in Australia; and
- (e) the frequency and duration of the person's travel outside Australia; and
- (f) any other matter relevant to determining whether the person intends to remain permanently in Australia.

7(4) For the purposes of:

- (a) Part 2.2 (age pension); and
- (b) Part 2.3 (disability support pension); and
- (d) Part 2.7 (bereavement allowance); and
- (e) Part 2.8 (widow B pension);

the following apply

- (f) residence of a claimant in an external Territory other than Norfolk Island is taken to be residence in Australia; and
- (g) residence of a claimant in Norfolk Island is taken not to interrupt the continuity of residence of the claimant in Australia

7(4AA) Whether residence in a particular place is residence in an external territory for the purposes of subsection (4) is to be determined as at the time of residence.

7(4B) For the purposes of a newly arrived resident's waiting period, the day on which a permanent visa is granted to a person or a person becomes the holder of a permanent visa is:

- (a) if an initial decision maker decides to grant a visa to the person—that day; or
- (b) if:
 - (i) an initial decision maker decides not to grant a visa to the person; and
 - (ii) on a review of the decision referred to in subparagraph (i), that decision is set aside (however described) and a visa is granted to the person;

Section 7

the day on which the initial decision maker decided not to grant the visa to the person.

7(5) A person has 10 years *qualifying Australian residence* if and only if:

- (a) the person has, at any time, been an Australian resident for a continuous period of not less than 10 years; or
- (b) the person has been an Australian resident during more than one period and:
 - (i) at least one of those periods is 5 years or more; and
 - (ii) the aggregate of those periods exceeds 10 years.

7(6) A person has a *qualifying residence exemption* for a social security pension, a social security benefit (other than a special benefit), a mobility allowance, a pensioner education supplement, a seniors health card or a health care card if, and only if, the person:

- (a) resides in Australia; and
- (b) is either:
 - (i) a refugee; or
 - (ii) a former refugee.

7(6AA) A person also has a qualifying residence exemption for a social security benefit (other than a special benefit), a pension PP (single), carer payment, a mobility allowance, a seniors health card or a health care card if, and only if, the person:

- (b) was a family member of a refugee, or former refugee, at the time the refugee or former refugee arrived in Australia; or
- (f) holds or was the former holder of a visa that is in a class of visas determined by the Minister for the purposes of this paragraph.

7(6B) A person is a *refugee* for the purposes of this section if the person:

- (a) is taken, under the Migration Reform (Transitional Provisions) Regulations, to be the holder of a transitional (permanent) visa because the person was, immediately before 1 September 1994, the holder of:
 - (i) a visa or entry permit that fell within Division 1.3—Group 1.3 (Permanent resident (refugee and

- humanitarian) (offshore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or
- (ii) a visa or entry permit that fell within Division 1.5—Group 1.5 (Permanent resident (refugee and humanitarian) (on-shore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or
- (b) was, immediately before 1 February 1993, the holder of a visa or entry permit of a class prescribed under the Migration Regulations as then in force that corresponds to a visa or entry permit referred to in subparagraph (a)(i) or (ii); or
- (c) is the holder of:
- (i) a permanent protection visa; or
- (ii) a permanent visa of a class referred to in the Table at the end of this subsection; or
- (iii) a permanent visa of a class referred to in a declaration of the Minister under subsection 25(1) that is in force.

Table—Classes of permanent visas giving refugee status and qualifying residence exemption

Item No.	Class description	Relevant item in Schedule 1 to Migration Regulations
1.	Burmese in Burma (Special Assistance) (Class AB)	1102
2.	Burmese in Thailand (Special Assistance) (Class AC)	1103
3.	Cambodian (Special Assistance) (Class AE)	1105
4.	Camp Clearance (Migrant) (Class AF)	1106
5.	Citizens of the Former Yugoslavia (Special Assistance) (Class AI)	1109
6.	East Timorese in Portugal, Macau and Mozambique (Special Assistance) (Class AM)	1113
7.	Minorities of Former USSR (Special Assistance) (Class AV)	1122

Section 7

8.	Refugee and Humanitarian (Migrant) (Class BA)	1127
8A	Sri Lankan (Special Assistance) (Class BF)	1129A
9.	Sudanese (Special Assistance) (Class BD)	1130
10.	Territorial Asylum (Residence) (Class BE)	1131

7(6D) For the purposes of subsection (6AA):

family member, in relation to a person, means:

- (a) a partner of the person; or
- (b) a dependent child of the person; or
- (c) another person who, in the opinion of the Secretary, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).

7(6E) The Minister may, by determination in writing:

- (a) set guidelines for the exercise of the Secretary's power under paragraph (6D)(c); and
- (b) may revoke or vary those guidelines.

7(6F) A determination made under paragraph (6AA)(f) or subsection (6E) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

7(7) For the purposes of paragraph 540(d), subparagraph 593(1)(g)(ii) and paragraph 666(1)(g), a person is ***exempt from the residence requirement*** in respect of a period if:

- (a) throughout the period, the person was the holder of a special category visa; and
- (b) immediately before the period commenced, the person had been residing in Australia for a continuous period of at least 10 years, being a period commencing on or after 26 February 2001;

unless the person's exemption from the residence requirement in respect of the period would result in the person:

- (c) receiving newstart allowance, sickness allowance or youth allowance for a continuous period of more than 6 months because of this subsection; or
- (d) receiving newstart allowance, sickness allowance or youth allowance for more than one non-continuous period because of this subsection; or
- (e) receiving more than one of those allowances because of this subsection.

8 Income test definitions

8(1) In this Act, unless the contrary intention appears:

approved scholarship means a scholarship in relation to which a determination under section 24A is in force.

available money, in relation to a person, means money that:

- (a) is held by or on behalf of the person; and
- (b) is not deposit money of the person; and
- (c) is not the subject of a loan made by the person.

deposit money, in relation to a person, means the person's money that is deposited in an account with a financial institution.

dispose of income has the meaning given by section 1106.

domestic payment has the meaning given by subsection (3).

earned, derived or received has the meaning given by subsection (2).

exempt lump sum has the meaning given by subsection (11).

home equity conversion agreement, in relation to a person, means an agreement under which the repayment of an amount paid to or on behalf of the person, or the person's partner, is secured by a mortgage of the principal home of the person or the person's partner.

Note: see also subsection (7).

income, in relation to a person, means:

Section 8

- (a) an income amount earned, derived or received by the person for the person's own use or benefit; or
 - (b) a periodical payment by way of gift or allowance; or
 - (c) a periodical benefit by way of gift or allowance;
- but does not include an amount that is excluded under subsection (4), (5) or (8).

Note 1: See also sections 1074 and 1075 (business income), sections 1076-1084 (deemed income from financial assets), sections 1095 to 1099D (income from income streams), section 1099F (exempt bond amount does not count as income) and section 1099K (refunded amount does not count as income).

Note 2: where a person or a person's partner has disposed of income, the person's income may be taken to include the amount which has been disposed of—see sections 1106-1112.

Note 3: income is equivalent to ordinary income plus maintenance income.

income amount means:

- (a) valuable consideration; or
- (b) personal earnings; or
- (c) moneys; or
- (d) profits;

(whether of a capital nature or not).

income from personal exertion means an income amount that is earned, derived or received by a person by way of payment for personal exertion by the person but does not include an income amount received as compensation for the person's inability to earn, derive or receive income through personal exertion.

ordinary income means income that is not maintenance income or an exempt lump sum.

Note 1: for ***maintenance income*** see subsection 10(1).

Note 2: amounts received as a series of periodic compensation payments may result in reduction of the person's rate of social security pension or benefit under Part 3.14: if this happens the amounts are not counted as ordinary income (see section 1171).

Note 3: For provisions affecting the amount of a person's ordinary income see sections 1072 and 1073 (ordinary income concept), sections 1074 and 1075 (business income), sections 1076-1084 (deemed income from financial assets) and sections 1095-1099D (income from income streams).

Earned, derived or received

- 8(2) A reference in this Act to an income amount ***earned, derived or received*** is a reference to:
- (a) an income amount earned, derived or received by any means; and
 - (b) an income amount earned, derived or received from any source (whether within or outside Australia).

Domestic payments

- 8(3) A payment received by a person is a ***domestic payment*** for the purposes of this Act if:
- (a) the person receives the payment on the disposal of an asset of the person; and
 - (b) the asset was used, immediately before the disposal, by the person or the person's partner for private or domestic purposes; and
 - (c) the asset was used by the person or the person's partner for those purposes for:
 - (i) a period of 12 months before the disposal; or
 - (ii) if the Secretary considers it appropriate—a period of less than 12 months before the disposal.

Excluded amounts—home equity conversion (not member of a couple)

- 8(4) If a person is not a member of a couple, an amount paid to or on behalf of the person under a home equity conversion agreement is an ***excluded amount*** for the person to the extent that the total amount owed by the person from time to time under home equity conversion agreements does not exceed \$40,000.

Excluded amounts—home equity conversion (member of a couple)

- 8(5) If a person is a member of a couple, an amount paid to or on behalf of the person or the person's partner under a home equity conversion agreement is an ***excluded amount*** for the person to the extent that the total amount owed by the person and the person's partner under home equity conversion agreements from time to time does not exceed \$40,000.

Section 8

Home equity conversion (amount owed)

- 8(6) For the purposes of this Act, the amount owed by a person under a home equity conversion agreement is the principal amount secured by the mortgage concerned and does not include:
- (a) any amount representing mortgage fees; or
 - (b) any amount representing interest; or
 - (c) any similar liability whose repayment is also secured by the mortgage.

Home equity conversion (principal home)

- 8(7) For the purposes of the definition of **home equity conversion agreement** in subsection (1), an asset cannot be a person's **principal home** unless the person or the person's partner has a beneficial interest (but not necessarily the sole beneficial interest) in the asset.

Excluded amounts—general

- 8(8) The following amounts are not income for the purposes of this Act:
- (a) a payment under this Act;
 - (b) any return on a person's investment in:
 - (i) a superannuation fund; or
 - (ii) an approved deposit fund; or
 - (iii) a deferred annuity; or
 - (iv) an ATO small superannuation account;until the person:
 - (v) reaches pension age; or
 - (vi) starts to receive a pension or annuity out of the fund;
 - (c) the value of emergency relief or like assistance;
 - (d) the value of any assistance that:
 - (i) is provided by an eligible organisation within the meaning of the *Homeless Persons Assistance Act 1974*; and
 - (ii) is assistance that consists of providing:
 - (A) accommodation or meals; or

- (B) a ticket, voucher or token that may be exchanged for accommodation or meals;
- (e) a payment under the *Handicapped Persons Assistance Act 1974*;
- (f) a payment under Part III of the *Disability Services Act 1986* or the value of any rehabilitation program (including any follow-up program) provided under that Part;
- (g) a payment of domiciliary nursing care benefit under Part VB of the *National Health Act 1953* as in force immediately before 1 July 1999;
- (h) a payment under a law of the Commonwealth, being a law having an object of assisting persons to purchase or build their own homes;
- (ha) a payment made by a State or Territory for the purpose of assisting the person to purchase or build his or her own home;
- (j) a payment made to the person for or in respect of a dependent child of the person;
- (ja) disability expenses maintenance;
Note: for *disability expenses maintenance* see subsection 10(6).
- (k) insurance or compensation payments made by reason of the loss of, or damage to, buildings, plant or personal effects;
- (ka) where:
 - (i) the person owes money under a mortgage or other arrangement; and
 - (ii) the person has insurance which requires the insurer to make payments to the creditor when the person is unemployed or ill or in other specified circumstances; and
 - (iii) payments are made to the creditor under the insurance; a payment so made;
- (m) money from an investment that is:
 - (i) an investment of payments of the kind referred to in paragraph (k); and
 - (ii) an investment for:
 - (A) a period of not more than 12 months after the person receives the payments; or

Section 8

- (B) if the Secretary thinks it appropriate—of 12 months or more after the person receives those payments;
- (ma) money from an exempt funeral investment;
- Note: for *exempt funeral investment* see subsection 23(1).
- (n) an amount paid:
- (i) by the Federal Republic of Germany under the laws of that Republic; or
 - (ii) by a State of the Federal Republic of Germany under the laws of that State;
- by way of compensation for a victim of National Socialist persecution;
- (p) an amount paid by the Republic of Austria under the laws of that Republic by way of compensation to a victim of National Socialist persecution;
- (q) in the case of a person who pays or who is liable to pay rent, a payment by way of rent subsidy made by the Commonwealth, by a State or Territory or by an authority of the Commonwealth or of a State or Territory to or on behalf of the person who pays or who is liable to pay rent;
- (r) a payment received by a trainee in full-time training under a program included in the programs known as Labour Market Programs, to the extent that the payment includes one or more of the following amounts:
- (i) an amount calculated by reference to a rate of newstart allowance;
 - (ii) an amount known as the training component;
 - (iii) an amount by way of a living away from home allowance;
- (s) in the case of a person who is receiving a social security pension, a social security benefit, a service pension or income support supplement and is in part-time training, or engaged in part-time work experience, under a program included in the programs known as Labour Market Programs—a payment received by the person under that program in respect of the person's expenses associated with his or her participation in the training or work experience;

- (t) a payment received by the person under the scheme known as the New Enterprise Incentive Scheme;
- (u) a benefit under a law of the Commonwealth that relates to the provision of:
 - (i) pharmaceutical, sickness or hospital benefits; or
 - (ii) medical or dental services;
- (v) a payment (other than a periodical payment or a payment representing an accumulation of instalments) made for or in respect of expenses incurred by a person for hospital, medical, dental or similar treatment;
- (va) a payment made by the Mark Fitzpatrick Trust to a person by way of assistance with expenses incurred in relation to a person who has medically acquired HIV infection;
- (vb) a payment made by the New South Wales Medically-Acquired HIV Trust to a person by way of financial assistance with expenses incurred in relation to a person who has medically acquired HIV infection;
- (w) in the case of a member of:
 - (i) the Naval Reserve; or
 - (ii) the Army Reserve; or
 - (iii) the Air Force Reserve;the pay and allowances paid to the person as such a member (other than pay and allowances in respect of continuous full-time service);
- (y) a payment by way of:
 - (i) service pension or income support supplement; or
 - (ia) one-off payment to the aged under regulations made under the Veterans' Entitlements Act; or
 - (ii) attendant allowance under section 98 of the Veterans' Entitlements Act; or
 - (iii) recreation allowance under section 104 of that Act; or
 - (iv) an allowance for the running and maintenance of a motor vehicle under the Vehicle Assistance Scheme referred to in section 105 of that Act; or
 - (v) decoration allowance under section 102 of that Act; or
 - (vi) Victoria Cross allowance under section 103 of that Act; or

Section 8

- (vii) clothing allowance under section 97 of that Act; or
 - (viii) a bereavement payment under Part III, or section 98A of that Act; or
 - (ix) a funeral benefit under Part VI of that Act;
 - (ya) a payment made by the Commonwealth and known as the one-off payment to the aged; or
 - (z) a periodical payment by way of gift or allowance, or a periodical benefit by way of gift or allowance, from the person's father, mother, son, daughter, brother or sister;
- Note: the rule in paragraph 8(8)(z) is reversed in Youth Allowance Rate Calculator (point 1067G-H21), Austudy Payment Rate Calculator (point 1067L-D15), Benefit Rate Calculator B (point 1068-G5) and the Parenting Allowance Rate Calculator (point 1068B-D5). Points 1067G-H21, 1067L-D15, 1068-G5 and 1068A-D6 are contrary intentions (see the opening words in subsection 8(1) and the definition of *income* in that subsection).
- (za) the value of board or lodging received by the person;
 - (zb) a domestic payment;
 - (zc) so much of a payment received by the person as is, in accordance with an agreement between the Commonwealth and a foreign country, applied in reduction of the amount of social security payment that would otherwise be payable to the person under this Act;
 - (zca) so much of a payment received by the person as is, in accordance with an agreement between Australia and a foreign country, applied in reduction of the amount of a payment of youth training allowance that would otherwise be payable to the person under Part 8 of the *Student and Youth Assistance Act 1973*;
 - (zd) a payment made to the person by the Government of New Zealand, being a payment known as:
 - (i) accommodation benefit; or
 - (ii) disability allowance; or
 - (iii) home help payment; or
 - (iv) special benefit; or
 - (v) training incentive allowance;
 - (ze) a payment made to the person by the Government of the United Kingdom, being a payment known as:
 - (i) clothing allowance; or

- (ii) constant attendance allowance; or
- (iii) decoration allowance; or
- (iv) mobility supplement;
- (zf) a payment under the ABSTUDY Scheme;
- (zfa) a payment of financial supplement made to the person under a Student Financial Supplement Scheme;
- (zg) a payment received by the person for serving, or being summoned to serve, on a jury;
- (zh) a payment received by the person for expenses as a witness, other than an expert witness, before a court, tribunal or commission;
- (zi) a payment towards the cost of personal care support services for the person, being a payment made under a scheme approved under section 35A;
- (zj) a payment of an approved scholarship awarded on or after 1 September 1990;

Note: for *approved scholarship* see subsection 8(1).

- (zk) an amount paid by a buyer under a sale leaseback agreement;
- (zl) if a person is a member of an approved exchange trading system—an amount credited to the person's account for the purposes of the scheme in respect of any goods or services provided by the person to another member.

Note: For *approved exchange trading system* see subsections (9) and (10).

- (zm) if a person:
 - (i) is a member of a couple; and
 - (ii) is receiving a social security benefit;a payment received by the person either directly or indirectly from his or her partner.
- (zn) while a person is accruing a liability to pay an accommodation charge—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person.

Note 1: For *rent*, see subsection 13(2).

Note 2: Under subsections 11(6A) and (7), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Section 8

8(8A) For the purposes of the operation of section 5 in determining whether a person is:

- (a) a student child; or
- (b) a dependent child of another person;

this section has effect as if paragraph (8)(zf) were not included.

8(9) An **exchange trading system** is an arrangement between a number of persons (**members**) under which each member may obtain goods or services from another member for consideration that is wholly or partly in kind rather than in cash. Each member has, for the purposes of the arrangement, an account:

(a) to which is credited:

- (i) the amount representing the value of any goods or services provided by the member to another member; or
- (ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash; and

(b) to which is debited:

- (i) the amount representing the value of any goods or services supplied to the member by another member; or
- (ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash.

8(10) An exchange trading system is an **approved exchange trading system** if the Secretary is satisfied that:

- (a) it is a local community-based system; and
- (b) its primary purpose is to help persons maintain their labour skills and keep them in touch with the labour market; and
- (c) it is not a system run by a person or organisation for profit.

8(11) An amount received by a person is an **exempt lump sum** if:

- (a) the amount is not a periodic amount (within the meaning of subsection 10(1A)); and
- (b) the amount is not a leave payment within the meaning of points 1067G-H20, 1067L-D16 and 1068-G7AR; and
- (c) the amount is not income from remunerative work undertaken by the person; and

- (d) the amount is an amount, or class of amounts, determined by the Secretary to be an exempt lump sum.

Note: Some examples of the kinds of lump sums that the Secretary may determine to be exempt lump sums include a lottery win or other windfall, a legacy or bequest, or a gift—if it is a one-off gift.

9 Financial assets and income streams definitions

9(1) In this Act, unless the contrary intention appears:

approved deposit fund means a fund that is an approved deposit fund for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

assessable growth component, in relation to an amount of superannuation benefit, means so much (if any) of the return as is attributable to the assessable period.

assessable period, in relation to a person, means any period during which the person received:

- (a) a social security or service pension or income support supplement; or
- (b) a social security benefit or a youth training allowance; or
- (ba) a job search allowance; or
- (c) a non-benefit PP (partnered); or
- (d) a non-benefit parenting allowance;

except any such period that occurs before a continuous period of at least 2 years during which the person did not receive such a pension, supplement, benefit, allowance or payment.

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

asset-test exempt income stream has the meanings given by sections 9A and 9B.

asset-tested income stream (long term) means an income stream that:

- (a) is not an asset-test exempt income stream; and
- (b) has, on its commencement day:
 - (i) a term of more than 5 years; or

Section 9

- (ii) if the person who has acquired the income stream has a life expectancy of 5 years or less—a term equal to or greater than the person’s life expectancy.

asset-tested income stream (short term) means an income stream that is neither:

- (a) an asset-test exempt income stream; nor;
- (b) an asset-tested income stream (long term).

ATO small superannuation account means an account kept in the name of an individual under the *Small Superannuation Accounts Act 1995*.

commencement day, in relation to an income stream, means the first day of the period to which the first payment under the income stream relates.

deductible amount, in relation to an income stream, means the amount that would be the deductible amount in relation to the income stream under subsection 27H(2) of the Income Tax Assessment Act, if the references in that subsection to an annuity were references to an income stream.

deferred annuity means an annuity that is a deferred annuity for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

defined benefit income stream has the meaning given by subsection (1F).

deprived asset has the meaning given by subsection (4).

financial asset means:

- (a) a financial investment; or
- (b) a deprived asset.

Note: For **deprived asset** see subsection 9(4).

financial investment means:

- (a) available money; or
- (b) deposit money; or
- (c) a managed investment; or
- (d) a listed security; or

- (e) a loan that has not been repaid in full; or
- (f) an unlisted public security; or
- (g) gold, silver or platinum bullion; or
- (h) an asset-tested income stream (short term).

friendly society means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
- (c) a body that is permitted, by a law of a State or Territory, to assume or use the expression ***friendly society***; or
- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory; or
- (e) a body that had, before 13 December 1987, been approved for the purpose of the definition of ***friendly society*** in subsection 115(1) of the 1947 Act.

governing rules, in relation to an income stream, means any trust instrument, other document or legislation, or combination of them, governing the establishment and operation of the income stream.

income stream means:

- (a) an income stream arising under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*; or
- (b) an income stream arising under a public sector superannuation scheme (within the meaning of that Act); or
- (c) an income stream arising under a retirement savings account; or
- (d) an income stream provided by a life insurance business (within the meaning of the *Life Insurance Act 1995*); or
- (e) an income stream provided by a friendly society; or
- (f) an income stream designated in writing by the Secretary for the purposes of this definition, having regard to the guidelines determined under subsection (1E);

Section 9

but does not include any of the following:

- (g) available money;
- (h) deposit money;
- (i) a managed investment;
- (j) a listed security;
- (k) a loan that has not been repaid in full;
- (l) an unlisted public security;
- (m) gold, silver or platinum bullion.

investment:

- (a) in relation to a superannuation fund, approved deposit fund or deferred annuity—has the meaning given by subsection (9); or
- (b) in relation to an ATO small superannuation account—has the meaning given by subsection (9A).

investor, in relation to an ATO small superannuation account, means the person in whose name the account is kept.

life expectancy has the same meaning as **life expectation factor** has in section 27H of the Income Tax Assessment Act.

listed security means:

- (a) a share in a company; or
- (b) another security;

listed on a stock exchange.

managed investment has the meaning given by subsections (1A), (1B) and (1C).

pensioner couple means a couple, one or both of the members of which are receiving a social security pension, a service pension, income support supplement or a rehabilitation allowance.

public unit trust means a unit trust that:

- (a) except where paragraph (b) applies—was, in relation to the unit trust's last year of income, a public unit trust for the purposes of Division 6B of Part III of the Income Tax Assessment Act; or
- (b) where the first year of income of the unit trust has not yet finished—has, at some time since the trust was established,

satisfied at least one of the paragraphs of subsection 102G(1) of the Income Tax Assessment Act.

purchase price, in relation to an income stream, means the sum of the payments made to purchase the income stream (including amounts paid by way of employer and employee contributions) less any commuted amounts.

realise, in relation to an investment, has the meaning given by subsections (10) and (11).

relevant number, in relation to an income stream, means:

- (a) if the income stream is payable for a fixed number of years—that number; or
- (b) if the income stream is payable during the lifetime of a person and no longer—the number of years of the person's life expectancy; or
- (c) if the income stream:
 - (i) is jointly owned by a person and his or her partner and is payable for the lifetime of the person or the partner; or
 - (ii) is payable during the lifetime of a person and then for the lifetime of a reversionary beneficiary;
the number of years of the longer of the relevant life expectancies; or
- (d) in any other case—the number that the Secretary considers appropriate having regard to the number of years in the total period during which the income stream will be, or may reasonably be expected to be, payable.

residual capital value, in relation to an income stream, has the meaning that it has in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

retirement savings account has the meaning that it has in the *Retirement Savings Account Act 1997*.

return:

- (a) in relation to an ATO small superannuation account—means so much of the balance of the account as is attributable to interest; or

Section 9

- (b) in relation to any other investment in the nature of superannuation—means any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment.

superannuation benefit, in relation to a person, means:

- (a) a benefit arising directly or indirectly from amounts contributed (whether by the person or by any other person) to a superannuation fund in respect of the person; or
- (b) a payment under Part 7 of the *Small Superannuation Accounts Act 1995*, where the payment is in respect of an ATO small superannuation account kept in the name of the person.

superannuation contributions surcharge has the meaning that it has in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

superannuation fund means:

- (a) a fund or scheme included in the definition of **superannuation fund** in subsection 27A(1) of the Income Tax Assessment Act, other than a fund covered by subparagraph (a)(ia) of that definition; or
- (b) an eligible resident non-complying superannuation fund within the meaning of the Income Tax Assessment Act.

unlisted public security means:

- (a) a share in a public company; or
- (b) another security;

that is not listed on a stock exchange.

9(1A) Subject to subsections (1B) and (1C), an investment is a **managed investment** for the purposes of this Act if:

- (a) the money or property invested is paid by the investor directly or indirectly to a body corporate or into a trust fund; and
- (b) the assets that represent the money or property invested (the **invested assets**) are not held in the names of investors; and
- (c) the investor does not have effective control over the management of the invested assets; and

Section 9

- (d) the investor has a legally enforceable right to share in any distribution of income or profits derived from the invested assets.

9(1B) Without limiting the generality of subsection (1A) but subject to subsection (1C), the following are *managed investments* for the purposes of this Act:

- (a) an investment in a public unit trust;
- (b) an investment in an insurance bond;
- (c) an investment with a friendly society;
- (d) an investment in a superannuation fund;

Note: see paragraph (1C)(a) for superannuation investments held before pension age is reached.

- (e) an investment in an approved deposit fund;

Note: see paragraph (1C)(b) for investments in approved deposit funds held before pension age is reached.

- (f) an investment in a deferred annuity;

Note: see paragraph (1C)(c) for deferred annuities held before pension age is reached.

- (g) an investment in an ATO small superannuation account.

Note: See paragraph (1C)(ca) for investments in ATO small superannuation accounts held before pension age is reached.

9(1C) The following are not managed investments for the purposes of this Act:

- (a) an investment in a superannuation fund if the investor has not yet reached pension age;
- (b) an investment in an approved deposit fund if the investor has not yet reached pension age;
- (c) an investment in a deferred annuity if the investor has not yet reached pension age;
- (ca) an investment in an ATO small superannuation account if the investor has not yet reached pension age;
- (d) deposit money;
- (e) a loan;
- (f) an asset-test exempt income stream;
- (g) an asset-tested income stream (long term);
- (h) an asset-tested income stream (short term).

Note 2: for *deposit money* see subsection 8(1).

Section 9

Note 3: For provisions relating to when a loan is taken to be made see subsection (2).

Note 4: Asset-test exempt income streams are dealt with under sections 1098 to 1099A.

Note 5: Asset-tested income streams (long term) are dealt with under sections 1099B to 1099D.

9(1E) The Secretary may determine, in writing, guidelines to be complied with when designating an income stream for the purposes of the definition of *income stream* in subsection (1). The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

9(1F) An income stream is a *defined benefit income stream* if the amount of the payments under it:

- (a) is not fully determined by the purchase price; but
- (b) is determined:
 - (i) by reference to the purchaser's salary before retirement or the purchaser's years of service; or
 - (ii) by the governing rules.

9(1D) To avoid doubt, neither an accommodation bond nor an accommodation bond balance is a financial investment for the purposes of this Act.

9(2) The following rules apply for the purposes of this Act:

- (a) the acquisition by a person of debentures, bonds or other securities is treated as the making of a *loan* by the person;
- (b) a person is not treated as having made a *loan* merely because:
 - (i) the person has an account with a financial institution; or
 - (ii) the person has paid an entry contribution.

Note: For *entry contribution* see section 1147.

9(3) Subsection (2) does not limit the meaning of the word *loan* in this Act.

9(4) For the purposes of this Act, an asset is a *deprived asset* if:

- (a) a person has disposed of the asset; and

Section 9

- (b) the value of the asset is included in the value of the person's assets by section 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC or 1126AD.
- 9(9) For the purposes of this Act, a person has an *investment* in a superannuation fund, approved deposit fund or deferred annuity if the person has benefits in the fund or under the annuity (whether the benefits are attributable to amounts paid by the person or someone else).
- 9(9A) For the purposes of this Act:
- (a) a person has an *investment* in an ATO small superannuation account if:
 - (i) the account is kept in the name of the person; and
 - (ii) the balance of the account exceeds nil; and
 - (b) the amount or value of that investment equals the balance of the account.
- 9(10) For the purposes of this Act, a person *realises an investment* if, and only if:
- (a) all or part of the amount of the investment is withdrawn; or
 - (b) where the investment is an ATO small superannuation account—the balance of the account is taken to have been withdrawn for the purposes of the *Small Superannuation Accounts Act 1995*; or
 - (c) all or part of the return on the investment is paid to another person; or
 - (d) the investment matures; or
 - (e) the investment is assigned by the person to another person; or
 - (f) the investment is disposed of by the person otherwise than in the way referred to in paragraph (e).
- 9(11) For the purposes of subsection (10), if:
- (a) a person realises an investment; and
 - (b) the return on the investment is paid to another person; the return is taken to be *received* by the person realising the investment.

Section 9A

9A Meaning of *asset-test exempt income stream*—lifetime income streams

General requirements

- 9A(1) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if:
- (a) it is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Secretary has not made a determination under subsection (4) in respect of the income stream; and
 - (b) subject to subsections (1B) and (1C), the Secretary is satisfied that in relation to an income stream, provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and
 - (c) the Secretary is satisfied that the requirements of subsection (2) are being given effect to from the day the income stream commences to be paid.

Determination under subsection (5)

- 9A(1A) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if the Secretary has made a determination under subsection (5) in respect of the income stream.

Guidelines relating to actuarial certificates

- 9A(1B) The Secretary may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force and what constitutes a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules.
- 9A(1C) Paragraph (1)(b) does not apply if, for a period beginning when an actuarial certificate referred to in that paragraph ceases to be in

Section 9A

force and ending not more than 26 weeks later, such an actuarial certificate is not in force.

Requirements of contract/governing rules for provision of income stream

- 9A(2) A contract, or the governing rules, for the provision of an income stream to a person meet the requirements of this subsection if the contract or governing rules specify:
- (a) that payments under the income stream are to be made at least annually throughout the life of the person and, if there is a reversionary beneficiary:
 - (i) throughout the reversionary beneficiary's life; or
 - (ii) if the reversionary beneficiary is a child of the person or of a former reversionary beneficiary under the income stream—at least until he or she turns 16; or
 - (iii) if the child referred to in subparagraph (ii) is a full-time student who has turned 16—at least until the end of his or her full-time studies or until he or she turns 25, whichever occurs sooner; and
 - (b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and
 - (c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the *previous total*), and may not exceed the previous total:
 - (i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or
 - (ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (*recent index number*) exceeds the index number for the same quarter in the immediately preceding year (*base index number*) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:

Section 9A

$$00 \times \left[\frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right] + 1$$

- (d) if the income stream is purchased—that the first payment under the income stream relates to the period commencing on the day on which the income stream is purchased; and
- (e) if the income stream is not purchased—that the first payment under the income stream relates to the period commencing on the day on which the income stream is acquired; and
- (f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and
- (g) that the income stream has no residual capital value; and
- (h) that the income stream cannot be commuted except:
 - (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or
 - (ii) if the commutation is made to the benefit of a reversionary beneficiary or of the person's estate, on the death of the person within 10 years after the commencement day of the income stream; or
 - (iii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream arising under a contract, or governing rules, that meet the requirements of this subsection or subsection 9B(2); or
 - (iv) to the extent necessary to cover any superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the income stream; or
 - (v) to the extent necessary to pay a hardship amount; and
- (i) that the income stream cannot be transferred to a person except:
 - (i) on the death of the primary beneficiary, to a reversionary beneficiary; or
 - (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary; and

Section 9A

- (j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and
- (k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and
- (l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.

9A(2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:

- (a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
- (b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

Matters not required of income stream

- 9A(3) For the purpose of determining whether an income stream meets the requirements of subsection (2), it is immaterial that:
- (a) if the primary beneficiary dies within 10 years after the commencement day of the income stream, a surviving reversionary beneficiary may be paid an amount equal to the total of the payments that the primary beneficiary would (if he or she had not died) have received from the day of the death until the end of the period of 10 years; and
 - (b) if:
 - (i) the primary beneficiary dies within 10 years after the commencement day of the income stream; and
 - (ii) there is no surviving reversionary beneficiary;an amount, not exceeding the difference between:

Section 9A

- (iii) the sum of the amounts that would have been so payable to the primary beneficiary in the period of 10 years; and
 - (iv) the sum of the amounts paid to the primary beneficiary; is payable to the primary beneficiary's estate, and
- (c) if:
- (i) the primary beneficiary dies within 10 years after the commencement day of the income stream; and
 - (ii) there is a surviving reversionary beneficiary who also dies within that period;
- there is payable to the reversionary beneficiary's estate an amount determined as described in paragraph (b) as if that paragraph applied to the reversionary beneficiary.

Determination that income stream not asset-test exempt

- 9A(4) The Secretary may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Secretary is satisfied that the person who has purchased the income stream has commuted an asset-test exempt income stream within 6 months after its commencement day on at least 3 occasions since the person first received a social security payment.

Determination that income stream is asset-test exempt

- 9A(5) The Secretary may determine, in writing, that an income stream that does not meet the requirements of subsection (2) is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary is to have regard to the guidelines determined under subsection (6).

Guidelines to be complied with in making determination

- 9A(6) The Secretary may determine, in writing, guidelines to be complied with when making a determination under subsection (5). The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- 9A(7) In this section:

Section 9A

hardship amount, in relation to a person, means an amount determined by the Secretary for the purposes of this definition if:

- (a) the person applies in writing to the Secretary to be allowed to commute the whole or part of an income stream because of extreme financial hardship; and
- (b) the Secretary is satisfied that:
 - (i) the person's circumstances are exceptional and could not be reasonably foreseen at the time the person purchased the income stream; and
 - (ii) the person has insufficient liquid assets or other assets (excluding the person's principal home) that could be realised to avoid the extreme financial hardship; and
 - (iii) that amount is required to meet unavoidable expenditure.

liquid assets, in relation to a person, means the person's cash and readily realisable assets, and includes:

- (a) the person's shares and debentures in a public company within the meaning of the Corporations Law; and
- (b) managed investments; and
- (c) insurance policies that can be surrendered for money; and
- (d) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and
- (e) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person.

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

unavoidable expenditure, in relation to a person, means one or more of the following:

- (a) essential medical expenses of the person, or the person's partner, to the extent that the expenses are not covered by health insurance or other contracts or arrangements;
- (b) the cost of:
 - (i) replacing the person's principal home; or

Section 9B

- (ii) essential repairs to the person's principal home; to the extent that the cost of the replacement or repairs is not covered by an insurance policy;
- (c) expenditure to buy replacement essential household goods because of the loss of those goods to the extent that the cost of replacement is not covered by an insurance policy.

9B Meaning of *asset-test exempt income stream*—life expectancy or 15 year minimum term income streams

General requirements

9B(1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:

- (a) the person has reached pension age on or before the day on which the person purchases or acquires the income stream; and
- (b) either subsection (1A) or (1B) applies.

9B(1A) This subsection applies if:

- (a) the income stream is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Secretary has not made a determination under subsection (3) in respect of the income stream; and
- (b) subject to subsection (1C), the Secretary is satisfied that, in relation to an income stream provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and
- (c) the Secretary is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid.

9B(1B) This subsection applies if the Secretary has made a determination under subsection (4) in respect of the income stream.

Section 9B

9B(1C) Paragraph (1A)(b) does not apply if, for a period beginning when an actuarial certificate referred to in that paragraph ceases to be in force and ending not more than 26 weeks later, such an actuarial certificate is not in force.

9B(1D) The Secretary may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force and what constitutes a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules.

Requirements of contract/governing rules for provision of income stream

9B(2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:

- (a) that the payments under the income stream are to be made at least annually:
 - (i) if the person's life expectancy is less than 15 years—throughout a period that is not less than the person's life expectancy but, if the person's life expectancy does not consist of a number of whole years, not more than the person's life expectancy rounded up to the next whole number; or
 - (ii) if the person's life expectancy is 15 years or more—throughout a period that is not less than 15 years but not more than the person's life expectancy (rounded up at the person's option, if it does not consist of a whole number of years, to the next whole number); and
- (b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and
- (c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the *previous total*), and may not exceed the previous total:

Section 9B

- (i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or
- (ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (**recent index number**) exceeds the index number for the same quarter in the immediately preceding year (**base index number**) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:
$$00 \times \left[\frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right] + 1$$
- (d) if the income stream is purchased—that the first payment under the income stream relates to the period commencing on the day on which the income stream is purchased; and
- (e) if the income stream is not purchased—that the first payment under the income stream relates to the period commencing on the day on which the income stream is acquired; and
- (f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and
- (g) that the income stream has no residual capital value; and
- (h) that the income stream cannot be commuted except:
 - (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or
 - (ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream provided under a contract, or governing rules, that meet the requirements of this subsection or subsection 9A(2); or
 - (iii) if the legal or equitable interest in the payment resulting from the commutation is transferred on the death of a person to the benefit of a reversionary beneficiary, and on the death of a reversionary beneficiary to the benefit of another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or

Section 9B

- (iv) to the extent necessary to cover any superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the income stream; or
- (v) to the extent necessary to pay a hardship amount; and
- (i) that the income stream cannot be transferred to a person except:
 - (i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and
- (j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and
- (k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and
- (l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.

9B(2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:

- (a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
- (b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

Section 10

Determination that income stream not asset-test exempt

- 9B(3) The Secretary may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Secretary is satisfied that the person who has purchased the income stream has commuted an asset-test exempt income stream within 6 months after its commencement day on at least 3 occasions since the person first received a social security payment.

Determination that income stream is asset-test exempt

- 9B(4) The Secretary may determine, in writing, that an income stream that does not meet the requirements of subsection (2) is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary is to have regard to the guidelines determined under subsection (5).

Guidelines to be complied with in making determination

- 9B(5) The Secretary may determine, in writing, guidelines to be complied with when making a determination under subsection (4). The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

- 9B(6) In this section:

hardship amount has the same meaning as in section 9A.

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

10 **Maintenance income definitions**

- 10(1) In this Act, unless the contrary intention appears:

capitalised maintenance income, in relation to a person, means maintenance income of the person:

- (a) that is neither a periodic amount nor a benefit provided on a periodic basis; and
- (b) the amount or value of which exceeds \$1,500.

Note 1: see also section 1116 (apportionment of capitalised maintenance income).

Note 2: if maintenance income is caught by paragraphs (a) and (b) of the definition, the whole amount or value of the maintenance income is capitalised maintenance income, not just the part of the maintenance income that exceeds the \$1,500 limit.

cash maintenance, in relation to a person, means maintenance income of the person that consists of the amount of a payment received by the person or by a dependent child of the person:

- (a) that is a periodic amount; or
- (b) that is an amount of \$1,500 or less.

Note: a **payment** of an **amount** would have to be a payment of money or the equivalent of a payment of money (e.g. a cheque, money order or electronic funds transfer (EFT)).

child support means financial support under the *Child Support (Assessment) Act 1989* and includes financial support:

- (a) by way of lump sum payment; or
- (b) by way of transfer or settlement of property.

disability expenses maintenance has the meaning given in subsection (6).

maintenance includes child support.

maintenance agreement means a written agreement (whether made within or outside Australia) that provides for the maintenance of a person (whether or not it also makes provision in relation to other matters), and includes such an agreement that varies an earlier maintenance agreement.

maintenance income, in relation to a person, means:

- (a) child maintenance—that is, the amount of a payment or the value of a benefit that is received by the person for the maintenance of a dependent child of the person and is received from:
 - (i) a parent of the child; or
 - (ii) the partner or former partner of a parent of the child; or
- (b) partner maintenance—that is, the amount of a payment or the value of a benefit that is received by the person for the

Section 10

person's own maintenance and is received from the person's partner or former partner; or

- (c) direct child maintenance—that is, the amount of a payment or the value of a benefit that is received by a dependent child of the person for the child's own maintenance and is received from:
- (i) a parent of the child; or
 - (ii) the partner or former partner of a parent of the child;

but does not include disability expenses maintenance.

Note: see also subsection (3) and section 1116 (capitalised maintenance income).

non-cash housing maintenance, in relation to a person, means maintenance income of the person that is not cash maintenance and is received in relation to the provision of a residence that is, or is to be, the person's principal home.

Note: see also subsections (4) and (5).

10(1A) For the purposes of subsection (1), an amount is a ***periodic amount*** if it is:

- (a) the amount of one payment in a series of related payments, even if the payments are irregular in time and amount; or
- (b) the amount of a payment making up for arrears in such a series.

10(3) For the purposes of the definitions of ***maintenance income*** and ***disability expenses maintenance*** in subsection (1):

- (a) a payment received under subsection 76(1) of the *Child Support (Registration and Collection) Act 1988* in relation to a registered maintenance liability (within the meaning of that Act) is taken to be ***received from*** the person who is the payer (within the meaning of that Act) in relation to the liability; and
- (b) a reference to a ***benefit received by a person*** includes a reference to a benefit received by the person because of a payment made to, or a benefit conferred on, another person (including a payment made or benefit conferred under a liability owed to the other person); and
- (c) a reference to a ***payment or benefit received from a person*** includes a reference to a payment or benefit received:

- (i) directly or indirectly from the person; and
 - (ii) out of any assets of, under the control of, or held for the benefit of, the person; and
 - (iii) from the person under or as a result of a court order, a court registered or approved maintenance agreement or otherwise.
- 10(4) For the purposes of the definition of *non-cash housing maintenance* in subsection (1), *maintenance received in relation to the provision of a residence* includes maintenance consisting of:
- (a) a benefit received because of the transfer or settlement of a right or interest in relation to the residence; and
 - (b) where there is a secured housing loan on the residence—a benefit received because of:
 - (i) the payment of interest, charges or other amounts under the loan; or
 - (ii) the repayment of amounts borrowed under the loan; and
 - (c) a benefit received because of the payment of rent (including Government rent), or a like payment, in relation to the residence.
- 10(5) For the purposes of paragraph (4)(b), there is a *secured housing loan* on a residence if:
- (a) there is a loan that is secured by a mortgage or other interest in relation to the residence; and
 - (b) the sole or principal purpose of the loan is to enable the residence, or a right or interest in relation to the residence, to be acquired.
- 10(6) A payment or benefit is *disability expenses maintenance* of a person if:
- (a) the payment or benefit is provided for expenses arising directly from:
 - (i) a physical, intellectual or psychiatric disability; or
 - (ii) a learning difficulty;of a dependent child of the person; and
 - (b) the disability or difficulty is likely to be permanent or to last for an extended period; and

Section 10A

- (c) the payment or benefit is received:
 - (i) by the person for the maintenance of the dependent child; or
 - (ii) by the dependent child for the child's own maintenance; and
- (d) the payment or benefit is received from:
 - (i) a parent of the child; or
 - (ii) the partner or former partner of a parent of the child.

10A Definitions for Seniors Health Card provisions

10A(1) Some of the definitions in this section are the same as definitions in the *Fringe Benefits Tax Assessment Act 1986*. Most of the other definitions in this section are based on definitions in that Act.

10A(2) In this section and in Part 3.9 and Part 3.12A, unless the contrary intention appears:

arm's length loan means a loan where the parties to the loan are dealing with each other at arm's length in relation to the loan.

arm's length transaction means a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

arrangement means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

assessable fringe benefit means a fringe benefit that is:

- (a) a car benefit (see section 1157C); or
- (b) a school fees benefit (see section 1157E); or
- (c) health insurance benefit (see section 1157F); or
- (d) a loan benefit (see section 1157G); or
- (e) a housing benefit (see section 1157I); or
- (f) an expense benefit (see section 1157JA); or

(g) a financial investment benefit (see section 1157JC);
but does not include a car benefit, loan benefit, housing benefit or
expense benefit that is exempt.

Note: For exempt benefits see sections 1157D (car benefits), 1157H (loan
benefits), 1157J (housing benefits) and 1157JB (expense benefits).

associate has the same meaning as in the *Fringe Benefits Tax
Assessment Act 1986*.

Note: Subsection 136(1) of the Fringe Benefits Tax Assessment Act adopts
the definition of **associate** in section 26AB of the Income Tax
Assessment Act. Section 159 of the Fringe Benefits Tax Assessment
Act modifies the way in which the income tax definition applies and
also extends that definition in other ways.

Australian Parliament means:

- (a) the Parliament of the Commonwealth of Australia; or
- (b) the Parliament of a State; or
- (c) the Legislative Assembly for the Australian Capital
Territory; or
- (d) the Legislative Assembly of the Northern Territory of
Australia.

Note: See paragraph (d) of the definition of **current employee**.

car means a motor vehicle that is a road vehicle designed to carry
a load of less than 1 tonne or fewer than 9 passengers but does not
include a motor cycle or similar vehicle.

car benefit has the meaning given by section 1157C.

car fringe benefit means a fringe benefit that is a car benefit.

census population, in relation to an urban centre, means the
census count on an actual location basis of the population of that
urban centre specified in the results of the Census of Population
and Housing taken by the Australian Statistician on 30 June 1981,
being the results published by the Australian Statistician in the
document entitled “Persons and Dwellings in Local Government
Areas and Urban Centres”.

current employee means:

- (a) a person who is an employee within the ordinary meaning of
that word; and

Section 10A

- (b) a person who holds or performs the duties of an appointment, office or position under the Constitution or under a law of the Commonwealth, a State or a Territory; and
- (c) a person who is otherwise in the service of the Commonwealth, a State or a Territory (including service as a member of the Defence Force or as a member of a police force); and
- (d) a member of an Australian Parliament.

current employer means a person who pays or is liable to pay any salary or wages to an employee, and includes:

- (a) in the case of an unincorporated body of persons other than a partnership—the manager or other principal officer of that body; and
- (b) in the case of a partnership—each partner; and
- (c) a government body.

disadvantaged person means a person who is intellectually, psychiatrically or physically handicapped.

dwelling has the meaning given by subsection (7).

eligible urban area means:

- (a) an area that:
 - (i) is situated in an area described in Schedule 2 to the Income Tax Assessment Act; and
 - (ii) is an urban centre with a census population of 28,000 or more; or
- (b) any other area that is an urban centre with a census population of 14,000 or more.

Note: See paragraph (c) of the definition of **special housing location** in subsection (5).

employee means:

- (a) a current employee; or
- (b) a future employee; or
- (c) a former employee.

employer means:

- (a) a current employer; or
- (b) a future employer; or
- (c) a former employer.

employment, in relation to a person, means the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results, will result or has resulted in the person being treated as an employee.

expense benefit has the meaning given by section 1157JA.

expense fringe benefit means a fringe benefit that is an expense benefit.

financial investment benefit has the meaning given by section 1157JC.

financial investment fringe benefit means a fringe benefit that is a financial investment benefit.

foreign income, in relation to a person, means:

- (a) an income amount earned, derived or received by the person from a source outside Australia for the person's own use or benefit; or
- (b) a periodical payment by way of gift or allowance from a source outside Australia; or
- (c) a periodical benefit by way of gift or allowance from a source outside Australia.

Note 1: For **income amount** see subsection 8(1).

Note 2: For **earned, derived or received** see subsection 8(2).

Note 3: This definition does not make use of the definition of **income** in subsection 8(1) and, as a result, the exclusions provided for by subsections 8(4), (5) and (8) do not apply to foreign income.

former employee means a person who has been a current employee.

former employer means a person who has been a current employer.

Section 10A

fringe benefit means a benefit that is provided to an employee or to an associate of the employee by:

- (a) the employer of the employee; or
- (b) an associate of the employer; or
- (c) a person (the **arranger**) other than the employer or an associate of the employer under an arrangement between:
 - (i) the employer or an associate of the employer; and
 - (ii) the arranger or another person;

and that is provided in respect of the employment of the employee.

future employee means a person who will become a current employee.

future employer means a person who will become a current employer.

government body means the Commonwealth, a State, a Territory or an authority of the Commonwealth or a State or Territory.

Note: See paragraph (c) of the definition of **current employer**.

health insurance benefit has the meaning given by section 1157F.

health insurance fringe benefit means a fringe benefit that is a health insurance benefit.

housing benefit has the meaning given by section 1157I.

housing fringe benefit means a fringe benefit that is a housing benefit.

housing loan has the meaning given by subsection (9).

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

in respect of, in relation to the employment of an employee, includes by reason of, by virtue of, or for or in relation directly or indirectly to, that employment.

Note: See definition of **fringe benefit**.

lease includes a sub-lease.

loan includes:

- (a) an advance of money; and
- (b) the provision of credit or any other form of financial accommodation; and
- (c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether expressed or implied) to repay the amount; and
- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

loan benefit has the meaning given by section 1157G.

loan fringe benefit means a fringe benefit that is a loan benefit.

mature person means a person who has reached the age of 60 years.

metropolitan location has the meaning given by subsection (3).

net rental property loss has the meaning given by subsection (15).

non-arm's length arrangement means an arrangement other than an arm's length arrangement.

non-metropolitan location has the meaning given by subsection (4).

obligation, in relation to the payment or repayment of an amount, includes an obligation that is not enforceable by legal proceedings.

place of residence, in relation to a person, means:

- (a) a place at which the person resides; or
 - (b) a place at which the person has sleeping accommodation;
- whether on a permanent or temporary basis and whether or not on a shared basis.

private use, in relation to a car and in relation to an employee or an associate of an employee, means any use of the car by the employee or associate that is not exclusively within the employee's employment.

provide, in relation to a benefit, includes allow, confer, give, grant or perform.

Section 10A

provider, in relation to a benefit, means the person who provides the benefit.

recipient, in relation to a benefit, means the person to whom the benefit is provided.

salary or wages means salary, wages, commission, bonuses or allowances paid (whether at piece-work rates or otherwise) to an employee as such.

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

school fees benefit has the meaning given by section 1157E.

school fees fringe benefit means a fringe benefit that is a school fees benefit.

special housing location has the meaning given by subsections (5) and (6).

stratum unit has the meaning given by subsection (8).

surface route means a route other than an air route.

target foreign income means foreign income that is not:

- (a) taxable income; or
- (b) received in the form of a fringe benefit.

taxi means a motor vehicle that is licensed to operate as a taxi.

unit of accommodation includes:

- (a) a house, flat or home unit; and
- (b) accommodation in a house, flat or home unit; and
- (c) accommodation in a hotel, hostel, motel or guesthouse; and
- (d) accommodation in a bunkhouse or any living quarters; and
- (e) accommodation in a ship, vessel or floating structure; and
- (f) a caravan or other mobile home.

urban centre means an area that is described as an urban centre or bounded locality in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981 and that were published by the Australian Statistician in the document

Section 10A

entitled “Persons and Dwellings in Local Government Areas and Urban Centres”.

work-related travel, in relation to an employee, means:

- (a) travel by the employee between:
 - (i) the employee’s place of residence; and
 - (ii) the employee’s place of employment or any other place from which or at which the employee performs duties of his or her employment; or
- (b) travel by the employee that is incidental to travel in the course of performing the duties of his or her employment.

Metropolitan location

10A(3) The following cities are ***metropolitan locations***:

- (a) Adelaide;
- (b) Brisbane;
- (c) Canberra;
- (d) Darwin;
- (e) Hobart;
- (f) Melbourne;
- (g) Perth;
- (h) Sydney.

Non-metropolitan location

10A(4) A unit of accommodation is in a ***non-metropolitan location*** if the unit of accommodation:

- (a) is in Australia; and
- (b) is not in a metropolitan location; and
- (c) is not in a special housing location.

Special housing location

10A(5) A unit of accommodation is in a ***special housing location*** if the unit of accommodation is at a location that is in Australia and one of the following paragraphs applies to the unit of accommodation:

- (a) the unit of accommodation is at a location that is in an area that:

Section 10A

- (i) is described in Schedule 2 to the Income Tax Assessment Act; and
 - (ii) is an urban centre with a census population of less than 28,000;
 - (b) the unit of accommodation is at a location that is in an area that:
 - (i) is not described in Schedule 2 to the Income Tax Assessment Act; and
 - (ii) is an urban centre with a census population of less than 14,000;
 - (c) at the date of commencement of this section, the unit of accommodation is at a location that is:
 - (i) 40 kilometres or more, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of less than 130,000; or
 - (ii) 100 kilometres or more, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of more than 130,000.
- 10A(6) For the purposes of paragraph (5)(c), the distance, by the shortest practicable surface route, between a location (the *tested location*) and the centre point of an eligible urban area is:
- (a) if there is only one location within the eligible urban area from which distances between the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and that location; and
 - (b) if there are 2 or more locations within the eligible urban area from which distances between parts of the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and the location that is the principal location of those parts.
- 10A(7) A unit of accommodation is a *dwelling* if:
- (a) the unit of accommodation is constituted by, or contained in, a building; and
 - (b) the unit consists, in whole or in substantial part, of residential accommodation.

Section 10A

10A(8) A unit is a *stratum unit* in relation to a dwelling if:

- (a) the unit is a unit on a unit plan registered under a law of a State or Territory that provides for the registration of titles of a kind known as unit titles or strata titles; and
- (b) the unit comprises:
 - (i) a part of a building that contains the dwelling and consists of a flat or home unit; or
 - (ii) a part of a parcel of land and the building containing the dwelling is constructed on that part.

Housing loan

10A(9) A loan is taken to be a *housing loan* if:

- (a) the loan is made to, or used by, a person (whether in his or her own right or jointly with his or her partner) wholly:
 - (i) to enable the person to acquire a prescribed interest in land on which a dwelling or a building containing a dwelling was subsequently to be constructed; or
 - (ii) to enable the person to acquire a prescribed interest in land and construct, or complete the construction of, a dwelling or a building containing a dwelling on the land; or
 - (iii) to enable the person to construct, or complete the construction of, a dwelling or a building containing a dwelling on land in which the person held a prescribed interest; or
 - (iv) to enable the person to acquire a prescribed interest in land on which there was a dwelling or a building containing a dwelling; or
 - (v) to enable the person to acquire a prescribed interest in a stratum unit in relation to a dwelling; or
 - (vi) to enable the person to extend a building that:
 - (A) is a dwelling or contains a dwelling; and
 - (B) is constructed on land in which the person held a prescribed interest;by adding a room or part of a room to the building or the part of the building containing the dwelling, as the case may be; or

Section 10A

- (vii) in a case where the person held a prescribed interest in a stratum unit in relation to a dwelling—to enable the person to extend the dwelling by adding a room or part of a room to the dwelling; or
- (viii) to enable the person to repay a loan that was made to, and used by, the person wholly for a purpose mentioned in subparagraphs (i) to (vii); and
- (b) at the time the loan was made, the dwelling was used or proposed to be used as the person’s usual place of residence.

Note: For prescribed interest see subsections (10) to (14).

Freehold interest

10A(10) If:

- (a) a person; or
 - (b) 2 or more persons as joint tenants or tenants in common;
- acquire, hold or held an estate in fee simple in land or in a stratum unit, the person or those persons are taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

Leasehold interest

10A(11) If:

- (a) a person acquires, holds or held an interest in land or in a stratum unit as lessee or licensee under a lease or licence; and
 - (b) the Secretary is satisfied that the lease or licence gives or gave reasonable security of tenure to the lessee or licensee, for a period of, or for periods aggregating, 10 years or more;
- the person is taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

Instalment contract

10A(12) If:

- (a) a person acquires, holds or held interest in land or in a stratum unit as purchaser of an estate in fee simple in the land or in the stratum unit under an agreement; and

Section 10A

- (b) the agreement provides or provided for payment of the purchase price, or a part of the purchase price, to be made at a future time or by instalments;

the person is taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

Right to acquire leasehold

10A(13) If:

- (a) a person acquires, holds or held an interest in land or in a stratum unit as purchaser of a right to be granted a lease of the land or of the stratum unit under an agreement; and
- (b) the agreement provides or provided for payment of the purchase price, or a part of the purchase price, for the lease to be made at a future time or by instalments; and
- (c) the Secretary is satisfied that the lease will give reasonable security of tenure, to the lessee for a period of, or for periods aggregating, 10 years or more;

the person is taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

Two or more persons acquiring or holding interest under subsection (11), (12) or (13)

10A(14) If:

- (a) 2 or more persons acquire, hold or held an interest referred to in paragraph (11)(a), (12)(a) or (13)(a) in land or in a stratum unit as joint tenants or tenants in common; and
- (b) paragraph (11)(b) or (12)(b) or paragraphs (13)(b) and (c) are satisfied;

those persons are taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

Net rental property loss

10A(15) The **net rental property** loss of a person for a tax year is:

- (a) if the expenses incurred by the person on rental property during that year exceed the person's gross rental property income for that year—the amount by which those expenses exceed that gross rental property income; or

Section 10B

- (b) if the expenses incurred by the person on rental property during that year do not exceed the person's gross rental property income for that year—nil.

10B Family actual means test definitions [see Notes 10 and 11]

10B(1) This section has effect for the purposes of Module G of the Youth Allowance Rate Calculator at the end of section 1067G.

10B(2) Unless the contrary intention appears:

actual means has the meaning given by point 1067G-G8.

AIC scheme means the Commonwealth scheme known as the Assistance for Isolated Children Scheme.

appropriate tax year has the meaning given by point 1067G-G4.

base tax year has the same meaning as in point 1067G-F5.

business has the meaning given by point 1067G-F19A.

claimant/recipient has the meaning given by point 1067G-G7.

combined parental income has the meaning given by point 1067G-F10.

designated parent has the meaning given by subsection (3).

family actual means free area has the meaning given by point 1067G-G14.

income assistance has the meaning given by subsection (4).

independent employment means employment engaged in by a person that is not provided by:

- (a) a family member of the person; or
- (b) a proprietary company, an unlisted public company, a partnership, or a trust, in which the person, or a family member of the person, has an interest.

insolvent under administration has the same meaning as in the *Corporations Act 2001*.

interest in a trust:

- (a) includes:
- (i) the interest of a settlor in property subject to the trust; and
 - (ii) a power of appointment under the trust; and
 - (iii) a power to rescind or vary a provision of, or to rescind or vary the effect of the exercise of a power under, the trust; and
 - (iv) an interest that is conditional, contingent or deferred; but
- (b) does not include:
- (i) the interest of a person as an agent or creditor of the trustee; or
 - (ii) the interest of a person as a person employed by the trustee.

liquid assets means assets that, under subsection 14A(1), are liquid assets for Parts 2.11, 2.11A, 2.12 and 2.14.

net passive business loss, for the appropriate tax year, means a loss that, under subpoint 1067G-F11(4), is a net passive business loss for that year.

passive business means a business that, under point 1067G-F19A, is a passive business for the purposes of subpoint 1067G-F11(4).

relevant person has the meaning given by point 1067G-G7.

savings has the meaning given by subsection (5).

secondary course means a course that is determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act.

secondary student means a person who is receiving youth allowance and is undertaking full-time study in respect of a secondary course.

trust does not include:

- (a) a trust in relation to an account held in a bank only for the benefit of a dependent child of the trustee; or

Section 10B

- (b) a trust under which property of the estate of a deceased person, or of a person who is an insolvent under administration, is distributed; or
- (c) a trust in relation to a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* that is not an excluded fund within the meaning of that Act; or
- (d) a public unit trust in which units are held by 50 or more persons who are not family members of the trustee, or are offered for subscription or purchase by the public; or
- (e) the trust constituted by a trust account that the trustee is required by a law to establish; or
- (f) a charitable trust; or
- (g) a trust created by operation of law.

unlisted public company means a public company that is not listed on a stock exchange.

- 10B(3) A parent of a person (the ***person concerned***) is a ***designated parent*** for a youth allowance payment period if:
- (a) within 10 years before 1 January in the calendar year in which the youth allowance payment period ends, the parent first entered Australia under a permanent visa or entry permit within the meaning of the *Migration Act 1958* for the grant of which a criterion or requirement was that the parent demonstrate skills in business; or
 - (b) the parent has an interest (the value of which is \$2,500 or more) in assets outside Australia and its external territories; or
 - (c) in the base tax year, the parent had an interest in:
 - (i) a proprietary company; or
 - (ii) an unlisted public company; or
 - (iii) a trust; or
 - (d) in the base tax year, the parent derived income of \$2,500 or more from a source outside Australia and its external territories (except Norfolk Island) that does not consist only of income from a pension or similar payment, and was either:
 - (i) ordinary income; or

Section 10B

- (ii) an amount included in the person concerned's combined parental income; or
 - (e) the parent derived income from salary or wages in the base tax year and has claimed, or will claim, a tax deduction for a business loss (whether for that year or a previous year) that does not consist only of a net passive business loss; or
 - (f) in the base tax year, the parent was a member of a partnership; or
 - (g) in the base tax year, the parent:
 - (i) worked for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not the parent employed one or more other persons; but
 - (ii) was not, in so working, wholly or mainly engaged in a primary production business owned by him or her.
- 10B(4) A payment received by a person is *income assistance* if it is:
- (a) a youth allowance received by a person who is undertaking full-time study; or
 - (b) an austudy payment; or
 - (c) a payment under this Act (except a family tax payment), or the *Veterans' Entitlements Act 1986*, that is exempt from income tax under Division 1AA of Part 3 of the *Income Tax Assessment Act 1936* or Subdivision 52-A, 52-B or 52-C of the *Income Tax Assessment Act 1997*; or
 - (d) a payment under:
 - (i) a Student Financial Supplement Scheme; or
 - (ii) the scheme known as the ABSTUDY scheme; or
 - (iii) the AIC scheme; or
 - (e) an AUSTUDY allowance; or
 - (f) a payment under a scholarship; or
 - (g) a payment by a State or Territory, or a State or Territory authority, to assist the primary, secondary or tertiary education of a student.
- 10B(5) The *savings* of a person include the following amounts:
- (a) the person's share in any profit retained by a company of which the person is a director, or shareholder, who has a substantial influence over whether company profit is distributed to:

Section 11

- (i) the person or a family member of the person; or
 - (ii) another company, or a partnership or trust, in which the person or a family member of the person has an interest;
- (b) the person's share in any profit retained by a partnership of which the person is a member who has a substantial influence over whether partnership profit is distributed to:
- (i) the person or a family member of the person; or
 - (ii) another partnership, or a company or trust, in which the person or a family member of the person has an interest;
- (c) any undistributed profit of a trust that is attributable to the person;
- (d) the total undistributed profit of a trust where:
- (i) the person is a trustee or beneficiary of the trust; and
 - (ii) no part of that undistributed profit is attributable to the person; and
 - (iii) the person controls the trust.

10B(6) For the purposes of subparagraph (5)(d)(iii), a person *controls* a trust if the person has:

- (a) a power of appointment under the trust; or
- (b) a power to rescind or vary a provision of, or to rescind or vary the effect of the exercise of a power under, the trust; or
- (c) a substantial influence over whether trust profit is distributed to:
 - (i) the person or a family member of the person; or
 - (ii) another trust, or a company or partnership, in which the person or a family member of the person has an interest.

11 *Assets test definitions*

11(1) In this Act, unless the contrary intention appears:

accommodation bond has the same meaning as in the *Aged Care Act 1997*.

accommodation bond balance has the same meaning as in the *Aged Care Act 1997*.

accommodation charge has the same meaning as in the *Aged Care Act 1997*.

asset means property or money (including property or money outside Australia).

charge exempt resident has the same meaning as in the *Aged Care Act 1997*.

disposes of assets has the meaning given by section 1123.

exempt assets means assets described in any of paragraphs 1118(1)(a) to (s).

fishing operations means:

- (a) operations relating directly to the taking or catching of fish, turtles, crustacea, oysters or other shellfish; or
- (b) oyster farming; or
- (c) pearling operations;

but does not include:

- (d) whaling; or
- (e) operations conducted otherwise than for the purposes of a business.

forest operations means:

- (a) the planting or tending in a plantation or forest of trees intended for felling; or
- (b) the felling of trees in a plantation or forest;

but does not include operations conducted otherwise than for the purposes of a business.

homeowner has the meaning given by subsection (4).

income year has the same meaning as in the *Income Tax Assessment Act 1997*.

pension year has the meaning given by subsection (10).

Section 11

primary producer means a person whose principal occupation is primary production.

primary production means production resulting directly from:

- (a) the cultivation of land; or
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase; or
- (c) fishing operations; or
- (d) forest operations;

and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

principal home has the meaning given by subsections (5) to (7).

reasonable security of tenure has the meaning given by subsection (8).

unrealisable asset has the meaning given by subsections (12), (13) and (14).

value has the meaning given by subsections (2) and (3).

Note: see also sections 1118 (certain assets to be disregarded in calculating the value of a person's assets), 1121 (effect of charge or encumbrance on value of property) and 1145-1157 (retirement villages).

- 11(2) A reference in this Act to the **value of a particular asset** of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of the person's interest in the asset.
- 11(3) A reference in this Act to the **value of a charge or encumbrance on an asset** of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of that charge or encumbrance in so far as it relates to the person's interest in the asset.
- 11(3A) A reference in this Act to the value of a **liability** of a person is, if the liability is shared by the person with another person, a reference to the value of the person's share of the liability.

Section 11

- 11(3B) For the purposes of this Act, an accommodation bond balance in respect of an accommodation bond paid by a person is taken to be an asset of the person.
- 11(3C) To avoid doubt, a person's entitlement to be paid a pension bonus is taken not to be an asset of the person for the purposes of this Act.
- 11(3D) Subsection (3C) is to be disregarded in determining whether any other entitlement is an asset for the purposes of this Act.

Homeowner

- 11(4) For the purposes of this Act:
- (a) a person who is not a member of a couple is a **homeowner** if:
 - (i) the person has a right or interest in the person's principal home; and
 - (ii) the person's right or interest in the home gives the person reasonable security of tenure in the home; and
 - (b) a person who is a member of a couple is a **homeowner** if:
 - (i) the person, or the person's partner, has a right or interest in one residence that is:
 - (A) the person's principal home; or
 - (B) the partner's principal home; or
 - (C) the principal home of both of them; and
 - (ii) the person's right or interest, or the partner's right or interest, in the home gives the person, or the person's partner, reasonable security of tenure in the home; and
 - (c) a person (whether a member of a couple or not) is a **homeowner** if:
 - (i) the person has sold the person's principal home not more than 12 months previously; and
 - (ii) the person is likely to apply some or all of the proceeds of the sale in acquiring another residence that is to be the person's principal home.

Note: see also section 1145-1157 (retirement villages).

Section 11

Principal home

11(5) A reference in this Act to the *principal home* of a person includes a reference to:

- (a) if the principal home is a dwelling-house—the private land adjacent to the dwelling-house to the extent that the private land, together with the area of the ground floor of the dwelling-house, does not exceed 2 hectares; or
- (b) if the principal home is a flat or home unit—a garage or storeroom that is used primarily for private or domestic purposes in association with the flat or home unit.

Note: for *private land* see subsection (6).

11(6) A reference in subsection (5) to *private land* adjacent to a dwelling-house is a reference to land that is adjacent to the dwelling-house and that is used primarily for private or domestic purposes in association with that dwelling-house.

11(6A) A residence of a person is taken to be the person's *principal home* during:

- (a) if the Secretary is satisfied that the residence was previously the person's principal home but that the person left it for the purpose of going into a care situation—any period during which:
 - (i) the person is accruing a liability to pay an accommodation charge (or would be accruing such a liability, assuming that no sanctions under Part 4.4 of the *Aged Care Act 1997* were currently being imposed on the provider of the care concerned); and
 - (ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and

Note 1: For *rent*, see subsection 13(2).

Note 2: A person can be liable to pay an accommodation charge only if certain conditions are met: see Division 57A of the *Aged Care Act 1997*.

- (b) any period during which the residence is, because of paragraph (a), the principal home of the person's partner.

Note: This subsection is not meant to imply that a person may have more than one principal home at the same time.

- 11(7) A residence of a person is to be taken to continue to be the person's *principal home* during:
- (a) any period (not exceeding 12 months) during which the person is temporarily absent from the residence; and
 - (b) if the person is in a care situation or residential care—the period of 2 years beginning when the person started to be in a care situation or residential care; and
 - (c) any period during which:
 - (i) the person is in a care situation or residential care; and
 - (ii) the residence is, or because of paragraph (a) or (b) continues to be, the principal home of the person's partner; and
 - (d) if:
 - (i) the person is in a care situation or residential care; and
 - (ii) the person's partner dies while in a care situation or residential care; and
 - (iii) the person's partner had been in a care situation or residential care for less than 2 years;
the period of 2 years beginning at the time the person's partner started to be in a care situation or residential care;
and
 - (e) where:
 - (i) the person is in a care situation or residential care; and
 - (ii) the person's partner dies while not residing in a nursing home;
the period of 2 years from the partner's death; and
 - (f) any period of up to 2 years while the person is absent from the residence and is personally providing a substantial level of care in another private residence for another person who needs, or in the Secretary's opinion is likely to need, that level of care in a private residence for at least 14 consecutive days.

Note: For *in a care situation*, see subsection 13(9); for *in residential care* see subsection 23(4CA).

- 11(8) If a person has a right or interest in the person's principal home, the person is to be taken to have a right or interest that gives the person *reasonable security of tenure* in the home unless the

Section 11

Secretary is satisfied that the right or interest does not give the person reasonable security of tenure in the home.

Pension year—disposal of assets

11(10) A reference in sections 1123 to 1128 (disposal of assets) to a ***pension year***, in relation to a person who is receiving:

- (a) a social security or service pension or income support supplement; or
- (b) a social security benefit;

is a reference to:

- (d) if the person is a member of a couple and, immediately before the person and the person's partner became members of that couple, the person was receiving a pension, supplement or benefit referred to in paragraph (a) or (b) or a job search allowance and the person's partner was receiving such a pension, supplement or benefit or a job search allowance—the period of 12 months beginning on the day on which they became members of that couple; or

(e) if:

- (i) the person is a member of a couple but paragraph (d) does not apply; and
- (ii) the person's partner is receiving a pension, supplement or benefit referred to in paragraph (a) or (b) or a job search allowance;

the period of 12 months beginning on the day on which:

- (iii) the pension, supplement or benefit referred to in paragraph (a) or (b) or the job search allowance first became payable to the person; or
- (iv) the pension, supplement or benefit referred to in paragraph (a) or (b) or the job search allowance first became payable to the person's partner;

whichever was the earlier; or

- (f) otherwise—the period of 12 months beginning on the day on which a pension, supplement or benefit referred to in paragraph (a) or (b) or a job search allowance first became payable to the person;

and to each following and each preceding period of 12 months.

No pension year to extend beyond 30 June 2002

- 11(10AAA) No period after 30 June 2002 is, or is a part of, a pension year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a pension year of a person, the part of that period that ends immediately before that date is taken to be a pension year of the person.
- 11(10AA) References in subsection (10) to a social security benefit include references to a non-benefit PP (partnered) and a non-benefit parenting allowance.

Pre-pension year—disposal of assets

- 11(10A) A reference in sections 1124A and 1125A (disposal of assets) to a **pre-pension year**, in relation to a person who is claiming:
- (a) a social security or service pension or income support supplement; or
 - (b) a social security benefit; or
 - (d) a non-benefit PP (partnered); or
 - (e) a non-benefit parenting allowance;
- is a reference to the period of 12 months finishing on the day that is the person's provisional commencement day and each preceding period of 12 months.

No pre-pension year to extend beyond 30 June 2002

- 11(10B) No period after 30 June 2002 is, or is a part of, a pre-pension year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a pre-pension year of a person, the part of that period that ends immediately before that date is taken to be a pre-pension year of the person.

Unrealisable asset

- 11(12) An asset of a person is an **unrealisable asset** if:
- (a) the person cannot sell or realise the asset; and
 - (b) the person cannot use the asset as a security for borrowing.

Section 12

- 11(13) For the purposes of the application of this Act to a social security pension (other than a pension PP (single)), an asset of a person is also an *unrealisable asset* if:
- (a) the person could not reasonably be expected to sell or realise the asset; and
 - (b) the person could not reasonably be expected to use the asset as a security for borrowing.
- 11(14) Without limiting the generality of subsection (12), an asset is an unrealisable asset of a financial hardship farmer if:
- (a) the asset is a life insurance policy on the life of the farmer; or
 - (b) a certificate under subsection 27(1) is in force in respect of the asset.

12 Retirement villages definitions

12(1) In this Act:

actual value has the meaning given by subsection (5).

retirement village has the meaning given by subsections (3) and (4).

retirement village resident has the meaning given by subsection (5).

12(2) A person is a *member of an ordinary couple with different principal homes* if:

- (a) the person is a member of a couple; and
- (b) the person does not share the person's principal home with the person's partner; and
- (c) the person is not a member of an illness separated couple.

12(3) Premises constitute a *retirement village* for the purposes of this Act if:

- (a) the premises are residential premises; and
- (b) accommodation in the premises is primarily intended for persons who are at least 55 years old; and
- (c) the premises consist of:
 - (i) one or more of the following kinds of accommodation:

- (A) self-care units;
 - (B) serviced units;
 - (C) hostel units; and
 - (ii) communal facilities for use by occupants of the units referred to in subparagraph (i).
- 12(3A) For the purposes of paragraph (3)(b), if accommodation in premises is primarily intended for persons who are a certain age that is more than 55 years, the accommodation in those premises is taken to be primarily intended for persons who are at least 55 years old.
- 12(4) Residential premises are also to be taken to constitute a **retirement village** for the purposes of this Act if the Secretary is satisfied that the residential premises have similar functions to those referred to in subsection (3).
- 12(5) A person is a retirement village resident if the person's principal home is in a retirement village.

Note: Subsection (3A) was inserted as a response to the decision of the Federal Court in *Repatriation Commission v Clarke* (unreported, VG73 of 1991).

12A Granny flat definitions

- 12A(1) In this Act, unless the contrary intention appears:
- granny flat interest** has the meaning given by subsection (2).
 - granny flat resident** has the meaning given by subsection (3).
- 12A(2) A person has a granny flat interest in the person's principal home if:
- (a) the residence that is the person's principal home is a private residence; and
 - (b) the person has acquired for valuable consideration or has retained:
 - (i) a right to accommodation for life in the residence; or
 - (ii) a life interest in the residence.

12A(2A) Subsection (2) does not apply:

Section 12B

- (a) to a person to whom Part 3.14A applies because the person has transferred his or her qualifying interest in a farm in accordance with paragraph 1185B(1)(a) or (2)(a); or
- (b) if the person's partner has transferred by way of gift:
 - (i) to an eligible descendant of the person; or
 - (ii) jointly to an eligible descendant of the person and to the descendant's partner;his or her qualifying interest in a farm—to the person's partner;

if the person or the person's partner (as the case may be), on so transferring his or her qualifying interest in the farm, has retained a life interest in the dwelling house on the farm, and in the adjacent private land, that constitute his or her principal home.

- 12A(3) A person is a granny flat resident if the person has a granny flat interest in the person's principal home.

12B Sale leaseback definitions

- 12B(1) In this Act, unless the contrary intention appears:

deferred payment amount has the meaning given by subsections (6) and (7).

initial payment amount has the meaning given by subsection (4).

sale leaseback agreement has the meaning given by subsections (2) and (3).

sale leaseback home has the meaning given by subsection (9).

sale leaseback resident has the meaning given by subsections (10) and (11).

- 12B(2) An agreement is a sale leaseback agreement, in relation to a person, if:
- (a) under the agreement the person agrees to sell his or her principal home; and
 - (b) the residence that is the person's principal home is a private residence; and
 - (c) under the agreement the person retains a right to accommodation in the residence; and

Section 12B

- (d) under the agreement the buyer is to pay an amount when the person vacates the residence or when the person dies.
- 12B(3) An agreement is also a sale leaseback agreement if the Secretary is satisfied that the agreement is substantially similar in its effect to an agreement referred to in subsection (2).
- 12B(4) The initial payment amount, in relation to a sale leaseback agreement, is the amount that the Secretary determines to be the initial amount that the buyer is to pay under the sale leaseback agreement.
- 12B(5) In making the determination the Secretary is to have regard to the following:
- (a) the consideration to be provided by the parties to the sale leaseback agreement;
 - (b) when that consideration is to be provided;
 - (c) the payments that are to be made under the sale leaseback agreement;
 - (d) when those payments are to be made;
 - (e) any other relevant matters.
- 12B(6) The deferred payment amount, in relation to a sale leaseback agreement, is the total amount to be paid by the buyer under the sale leaseback agreement less the initial payment amount.
- 12B(7) If the Secretary considers that, for any special reason in a particular case, the deferred payment amount should be another amount, the deferred payment amount is that other amount.
- Note: sections 1123 to 1128 (disposal of assets) may be relevant to working out the deferred payment amount.
- 12B(8) Without limiting subsection (7), the Secretary may consider that the deferred payment amount should be another amount if:
- (a) the parties to the sale leaseback agreement are not at arm's length; or
 - (b) the parties to the sale leaseback agreement have undervalued the sale leaseback home so as to reduce the total amount to be paid by the buyer under the agreement.
- 12B(9) A residence is a sale leaseback home if the residence is subject to a sale leaseback agreement.

Section 12C

- 12B(10) A person is a sale leaseback resident if:
- (a) the person's principal home is subject to a sale leaseback agreement; and
 - (b) the person is a party to the sale leaseback agreement.
- 12B(11) If a person is a member of a couple, the person is a sale leaseback resident if:
- (a) the person lives in the sale leaseback home; and
 - (b) the person's partner is a sale leaseback resident.
- Note: subsection (11) will only be used if a person is not a sale leaseback resident under subsection (10).

12C *Special residence and residents definitions*

- 12C(1) In this Act, unless the contrary intention appears:
- special residence* has the meaning given by subsection (2).
 - special resident* has the meaning given by subsection (3).
- 12C(2) A residence is a special residence if the residence is:
- (a) in a retirement village; or
 - (b) a granny flat; or
 - (c) a sale leaseback home.
- 12C(3) A person is a special resident if the person is:
- (a) a retirement village resident; or
 - (b) a granny flat resident; or
 - (c) a sale leaseback resident.
- 12C(4) In Division 5 of Part 3.12 (sections 1145A to 1157), a reference to the *actual value* of the assets of a member of a couple is a reference to the value of the assets that are actually assets of the person rather than the person's partner, that is, the value that would be the value of the person's assets apart from the couple's assets deeming provisions.
- 12C(5) In subsection (4):
- couple's assets deeming provisions* means:
 - (a) Pension Rate Calculator A (point 1064-G2); and

- (b) Pension Rate Calculator C (point 1066-G2); and
- (ba) subsections 500Q(4) and (5); and
- (ca) section 660YCK; and
- (d) section 612; and
- (e) section 681; and
- (f) subsection 895(2); and
- (g) section 734.

13 Rent definitions

13(1) In this Act, unless the contrary intention appears:

amount of rent paid or payable has the meaning given by subsections (6) and (7).

board, when used in the expression ***board and lodging***, means the provision of meals on a regular basis in connection with the provision of lodging.

Government rent means rent payable to any of the following authorities:

- (a) The Housing Commission of New South Wales;
- (b) the Director, within the meaning of the *Housing Act 1983* of the State of Victoria;
- (c) The Queensland Housing Commission;
- (d) The Corporation of the Director of Aboriginal and Islanders Advancement established by a law of Queensland;
- (e) the South Australian Housing Trust;
- (f) The State Housing Commission established by a law of Western Australia;
- (g) the Director-General of Housing and Construction holding office under a law of Tasmania;
- (h) the Northern Territory Housing Commission;
- (j) The Commissioner for Housing within the meaning of the *Housing Assistance Act 1987* of the Australian Capital Territory.

Note: Rent payable by a person for living in premises in respect of which someone else pays Government rent may also be regarded as Government rent (see subsection (3AC)).

Section 13

ineligible homeowner means a homeowner other than:

- (a) a person who is a homeowner by virtue of paragraph 11(4)(c) (proceeds of sale of principal home disregarded for 12 months); or
- (b) a person who:
 - (i) is absent from the person's principal home, in relation to which the person is a homeowner; and
 - (ii) is personally providing a substantial level of care in another private residence for another person who needs, or in the Secretary's opinion is likely to need, that level of care in a private residence for at least 14 consecutive days; and
 - (iii) has been absent from the principal home for less than 2 years while providing care as described in subparagraph (ii); or
- (c) a person who is in a care situation but is not residing in a retirement village; or
- (d) a person who pays amounts for the use of a site for a caravan or other vehicle, or a structure, that is the person's principal home; or
- (e) a person who pays amounts for the right to moor a vessel that is the person's principal home.

Note: for ***approved respite care*** see subsection 4(9), for ***in a care situation*** see subsection 13(9), for ***retirement village*** see subsections 12(3) and (4), for ***homeowner*** see subsection 11(4) and for ***principal home*** see subsections 11(5) to (7).

rent has the meaning given by subsections (2) and (4).

residing in a nursing home has the meaning given by subsection (8).

13(2) Amounts are ***rent*** in relation to the person if:

- (a) the amounts are payable by the person:
 - (i) as a condition of occupancy of premises, or of a part of premises, occupied by the person as the person's principal home; or
 - (ia) as a condition of occupancy of premises, or of a part of premises, occupied by the person to allow him or her to provide personally a substantial level of care in a

private residence for another person who needs, or in the Secretary's opinion is likely to need, that level of care in a private residence for at least 14 consecutive days; or

- (ii) for services provided in a retirement village that is the person's principal home; or
 - (iii) if the person is in a care situation and the place where the person receives the care is the person's principal home or would be the person's principal home apart from subsection 11(6A) or (7)—for accommodation in the place where the person receives care; or
 - (iv) for lodging in premises that are the person's principal home; or
 - (v) for the use of a site for:
 - (A) a caravan or other vehicle; or
 - (B) a structure;occupied by the person as the person's principal home; or
 - (vi) for the right to moor a vessel that is occupied by the person as the person's principal home; and
- (b) either:
- (i) the amounts are payable every 3 months or more frequently; or
 - (ii) the amounts are payable at regular intervals (greater than 3 months) and the Secretary is satisfied that the amounts should be treated as rent for the purposes of this Act.

Note: for *retirement village* see subsections 12(3) and (4) and for *principal home* see subsections 11(5) to (7).

13(2A) If:

- (a) youth allowance is payable to a person; and
- (b) the person is not independent (see section 1067A) and is required to live away from home (see section 1067D); and
- (c) the person is attending boarding school while living away from home;

then, for the purposes of subsection (2):

Section 13

- (d) the boarding school is taken to be the person's principal home while the person is attending the school; and
- (e) any fees charged for attending the boarding school are taken to be payable by the person.

13(3) Subparagraphs (2)(a)(ii) to (vi) (inclusive) do not limit the generality of subparagraph (2)(a)(i).

13(3AA) To avoid doubt, an amount that is paid or becomes payable by a person is not rent in relation to the person (either at the time when it is paid or becomes payable or at any later time) if the amount is, or forms part of, a special resident's entry contribution in relation to the person in respect of a retirement village under section 1147, whether the amount is paid or payable (whether wholly or partly) in a lump sum, by instalments or otherwise.

13(3AB) If the whole or any part of an amount that is not rent in relation to a person as mentioned in subsection (3AA) is, or will or may become, repayable to the person, any amount by which the amount so repayable is reduced is not rent in relation to the person (either at the time when the reduction occurs or at any later time).

13(3AC) If a person pays, or is liable to pay, rent for living in premises in respect of which someone else pays Government rent (other than Government rent paid at or above a rate that the authority receiving the rent has told the Department is the market rate), the rent paid or payable by the person for living in those premises is taken to be Government rent, unless the person shares the premises with the person who pays, or is liable to pay, Government rent in respect of those premises and the person's income has been taken into account in calculating the amount of Government rent payable in respect of those premises.

13(3A) If a person is in a care situation and the person's principal home is not the place where the person receives the care, the person's rent may be an amount described in any of the subparagraphs of paragraph 13(2)(a) that applies to the person but cannot include amounts described in different subparagraphs of paragraph 13(2)(a).

Note: Under subsection 11(6A) or (7), the principal home of a person in a care situation may be a place other than the place where the person receives care.

- 13(3B) If an amount described in subparagraph 13(2)(a)(ia) and an amount described in another subparagraph of paragraph 13(2)(a) are payable by a person, the person's rent may be an amount described in either of those subparagraphs but cannot include amounts described in different subparagraphs.

Note: Under subsection 11(6A) or (7), premises occupied by a person as described in subparagraph 13(2)(a)(ia) may not be the person's principal home.

- 13(5) If a law of a State, the Northern Territory or the Australian Capital Territory alters the *name of an authority* referred to in the definition of **Government rent** in subsection (1), a reference to that authority in that definition is to be construed as a reference to the authority under the new name.

Board and lodging

- 13(6) Where:
- (a) a person pays, or is liable to pay, amounts for board and lodging; and
 - (b) it is not possible to work out the part of each of those amounts that is paid or payable for lodging;
- the **amount of rent paid or payable** by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

Nursing homes

- 13(7) Where:
- (a) a person in a care situation pays, or is liable to pay, amounts for accommodation and other services in the care situation; and
 - (b) it is not possible to work out the part of each of those amounts that is paid or payable in respect of accommodation;
- the **amount of rent paid or payable** by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

Section 13

- 13(8) Unless the contrary intention appears, a reference in this Act to a person *residing in a nursing home* is a reference to a person who is:
- (a) residing in premises at which accommodation is provided exclusively or principally for persons who have a mental disability; or
 - (c) a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital.
- 13(8A) Subject to subsections (8B) and (8C), a person is an *aged care resident* for the purposes of this Act if:
- (a) the person is in residential care; and
 - (b) an approval for residential care or flexible care under Part 2.3 of the *Aged Care Act 1997* is in force in respect of the person.
- 13(8B) Without limiting subsection (8A), a person is taken not to be an aged care resident if:
- (a) the person is in approved respite care, and has been in approved respite care for a continuous period of 52 days or less; and
 - (b) immediately before the person became a person in approved respite care, the person was receiving rent assistance.
- 13(8C) The Secretary may determine, for the purposes of subsection (8A), that a person is taken not to be an aged care resident on a day that occurs:
- (a) after the person in fact became an aged care resident; and
 - (b) before the day occurring 15 days after the person in fact became an aged care resident;
- if the Secretary is satisfied that, immediately before the day, the person was liable to pay rent.
- 13(8D) In this section, *rent assistance* means an amount paid or payable under this Act to help cover the cost of rent.
- 13(9) For the purposes of this Act, unless the contrary intention appears, a person is *in a care situation* if:
- (a) the person is residing in a nursing home; or

- (b) the person needs and has been receiving a substantial level of care in a private residence for at least 14 consecutive days; or
- (c) in the Secretary's opinion, the person needs and is likely to receive, a substantial level of care in a private residence for at least 14 consecutive days.

14 Remote area definitions

14(1) In this Act, unless the contrary intention appears:

physically present in a remote area has the meaning given by subsection (2).

remote area means:

- (a) those parts of Australia referred to in paragraphs 1 and 2 of Part I of Schedule 2 to the Income Tax Assessment Act; and
- (aa) those parts of Australia referred to in Part II of Schedule 2 to the Income Tax Assessment Act that are more than 250 kilometres by the shortest practicable surface route from the centre point of the nearest urban centre with a census population (within the meaning of that Act) of 2,500 or more; and
- (ab) those places in Australia that, for the purposes of the Income Tax Assessment Act, are treated by the Commissioner for Taxation as being in a part of Australia referred to in paragraph (aa);
- (b) the Territory of Cocos (Keeling) Islands; and
- (c) the Territory of Christmas Island.

14(2) If:

- (a) a person's usual place of residence is in the remote area; and
 - (b) the person is absent from the remote area for a period;
- the person is to be taken to be *physically present in the remote area* during:
- (c) if the period does not exceed 8 weeks—the whole of that period; or
 - (d) if the period exceeds 8 weeks—the first 8 weeks of that period.

Section 14A

14A Social security benefit liquid assets test definitions

14A(1) In Parts 2.11, 2.11A, 2.12, 2.14 and 2.23A:

liquid assets, in relation to a person, means the person's cash and readily realisable assets, and includes:

- (a) the person's shares and debentures in a public company within the meaning of the *Corporations Act 2001*; and
- (b) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and
- (c) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person;

but does not include:

- (d) an amount that is a qualifying eligible termination payment for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act; or
- (e) in the case of a person who:
 - (i) has claimed or is receiving a youth allowance or an austudy payment; and
 - (ii) is undertaking a tertiary course of education in any year or part of a year;

an amount necessary to cover the reasonable expenses incurred, or likely to be incurred, by the person in that year or that part of a year and that are directly related to his or her undertaking the course, including:

- (iii) up front course fees; and
- (iv) HECS payments; and
- (v) union fees; and
- (vi) costs of text books; and
- (vii) costs of any tools or equipment required to undertake the course, including computer software; and
- (viii) expenses directly related to any field trips undertaken for the purposes of the course; and
- (ix) such other expenses as are approved by the Secretary.

Note 2: For **qualifying eligible termination payment** see subsections 27A(12) to (12D) of the Income Tax Assessment Act.

maximum reserve, in relation to a person, means:

Section 14A

- (a) if the person is not a member of a couple and does not have a dependent child—\$2,500; or
- (b) in any other case—\$5,000.

14A(2) For the purposes of Parts 2.11, 2.11A, 2.12, 2.14 and 2.23A, a person's liquid assets are to be taken to include:

- (a) the liquid assets of the person's partner; and
- (b) the liquid assets of the person and the person's partner.

14A(3) If:

- (a) during the 4 weeks immediately before a person claims youth allowance, austudy payment, newstart allowance or sickness allowance, the person or the person's partner transfers liquid assets to a person of any age who is the natural or adopted child of the person or the partner; and
- (b) either:

- (i) the person transferring receives no consideration or inadequate consideration, in money or money's worth for the transfer; or
- (ii) the Secretary is satisfied that the purpose, or the dominant purpose, of the transfer was to enable the claimant to obtain youth allowance, austudy payment, newstart allowance or sickness allowance;

then the transfer is to be taken, for the purposes of this section, not to have occurred.

14A(4) If:

- (a) a person sells the person's principal home; and
- (b) the person is likely, within 12 months, to apply the whole or part of the proceeds of the sale in acquiring another residence that is to be the person's principal home;

so much of the proceeds of the sale as the person is likely to apply in acquiring the other residence is to be disregarded during that period for the purposes of determining the amount of the person's liquid assets.

14A(5) If:

- (a) a person has or had a debt not related to the person's principal home or to any other residential property in which

Section 14A

the person holds or held, solely or jointly, any right or interest; and

- (b) since becoming unemployed or incapacitated for work or study (as the case requires), the person has, in order to discharge the debt in whole or in part, made a payment that the person was not obliged to make; and
- (c) since becoming unemployed or incapacitated for work or study (as the case requires), the person had not already made such a payment in order to discharge that debt in part;

the amount of the payment referred to in paragraph (b) is to be disregarded for the purposes of determining the amount of the person's liquid assets.

14A(5A) If:

- (a) a person has or had a debt not related to the person's principal home or to any other residential property in which the person holds or held, solely or jointly, any right or interest; and
- (b) since becoming qualified for youth allowance or austudy payment (as the case requires), the person has, in order to discharge the debt in whole or in part, made a payment that the person was not obliged to make; and
- (c) since becoming qualified for youth allowance or austudy payments (as the case requires), the person had not already made such a payment in order to discharge that debt in part;

the amount of the payment referred to in paragraph (b) is to be disregarded for the purposes of determining the amount of the person's liquid assets.

14A(6) For the purpose of determining whether a liquid assets test waiting period applies in relation to a claim for a social security benefit, subsection (5) can apply to a payment made after the claim if the payment is made before such a liquid assets test waiting period would end under section 549A, 575A, 598 or 676 (whichever is applicable).

15 *NS activity test definitions*

15(1) In this Act, unless the contrary intention appears:

average male full-time weekly earnings, in relation to employment undertaken during a calendar year, means the amount set out under the headings “males—full-time adults—average weekly ordinary time earnings” in the document entitled “Average Weekly Earnings, Australia, Preliminary” published by the Australian Statistician most recently before 1 January in that calendar year.

qualified beneficiary has the meaning given by subsection (2).

15(2) A person is a *qualified beneficiary* for a period if one or a combination of the following has been payable to the person for that period:

- (a) a social security benefit;
- (aa) a youth training allowance;
- (ab) a job search allowance;
- (b) a sole parent pension;
- (c) a pension PP (single).

Note: a person is required to be a qualified beneficiary under section 603AA.

16 *Industrial action definitions*

16(1) In this Act, unless the contrary intention appears:

industrial action means any of the following that is not authorised by the employer of the person concerned:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, result of which is a restriction or limitation on, or a delay in, the performance of the work;
- (b) a ban, limitation or restriction on the performance of work or on acceptance of, or offering for, work;
- (c) a failure or refusal by a person to attend for work or a failure or refusal to perform any work at all by a person who attends for work.

Note: see also subsection (2).

Section 16A

trade union includes any organisation or association of employees (whether corporate or unincorporate) that exists or is carried on for the purpose, or for purposes that include the purpose, of furthering the interests of its members in relation to their employment.

Note: see also subsection (3).

unemployment, in relation to a person, includes:

- (a) unemployment of the person arising from:
 - (i) a person or persons being, or having been, engaged in industrial action; and
 - (ii) the termination of the person's employment; and
- (b) a situation where the person:
 - (i) is, or has been, stood down from the person's employment or work; or
 - (ii) is, or has been, suspended from the person's employment or work.

Industrial action

- 16(2) For the purposes of the definition of **industrial action** in subsection (1), conduct that relates to part only of the duties that a person is required to perform in the course of his or her employment is capable of being **industrial action**.

Trade unions divided into branches

- 16(3) If a trade union is divided into branches (whether or not the branches are themselves trade unions), persons who are members of the respective branches are taken to be **members** of the trade union.

16A Seasonal work definitions

Definitions

- 16A(1) In this Act, unless the contrary intention appears:

relevant AWOTE, in relation to a calendar year, means the amount that, under the heading "Trend Estimates" in the document entitled "Average Weekly Earnings, States and Australia" last published by the Australian Bureau of Statistics before 1 January in that

Section 16A

year, is specified as being the full-time adult ordinary time earnings for Australia for the quarter to which the document relates.

seasonal work means:

- (a) work that, because of its nature or of factors peculiar to the industry in which it is performed, is available, at approximately the same time or times every year, for part or parts only of the year; or
- (b) work that is intermittent and is determined, under subsection (2), to be seasonal work for the purposes of this Act.

Examples: Examples of work described in paragraph (a) are fishing, fruit picking, shearing and work in an industry that is subject to Christmas shutdowns. Examples of work that is intermittent are relief teaching and work as a locum.

seasonal work income means gross income from seasonal work less amounts necessarily expended in relation to that seasonal work that the person can demonstrate are allowable deductions for the purposes of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, as the case may be.

seasonal work preclusion period has the meaning given by subsections (3) and (4).

subject to a seasonal work preclusion period has the meaning given by subsection (11).

Secretary's determination—seasonal work

- 16A(2) The Secretary may determine in writing that a specified kind of work that is intermittent is seasonal work for the purposes of this Act. The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Seasonal work preclusion periods

- 16A(3) If:
- (a) a person is not a member of a couple; and
 - (b) the person has made a claim for newstart allowance, widow allowance, mature age allowance under Part 2.12B or youth allowance; and

Section 16A

- (c) the person was engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim;

the person's *seasonal work preclusion period* in relation to the claim is the period consisting of the number of weeks worked out under subsection (5) that starts on the day on which the claim was lodged.

16A(4) If:

- (a) a person is a member of a couple; and
- (b) the person has made a claim for newstart allowance, mature age allowance under Part 2.12B, partner allowance, parenting payment or youth allowance; and
- (c) the person, or the person's partner, or both, were engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim;

the person's *seasonal work preclusion period* in relation to the claim is the period consisting of the number of weeks worked out under subsection (6), (7) or (8) that starts on the day on which the claim was lodged.

16A(5) If the person is not a member of a couple, the number of weeks in the person's seasonal work preclusion period is worked out as follows:

Method statement

Step 1. Identify each period of continuous seasonal work by the person that ended during the 6 months immediately before the day on which the claim was lodged. If the person has performed seasonal work during 2 periods that are less than 14 days apart, the periods of work and the intervening period are taken to be one continuous period during which the person has performed seasonal work.

Step 2. If a period identified in Step 1 has already been taken into account when working out a seasonal work preclusion period in relation to a previous claim by the person (whether for the same or a different allowance or

payment), disregard the period. Each remaining period is called a *relevant period of seasonal work*.

Step 3. Work out the amount of seasonal work income earned by the person during each of the person's relevant periods of seasonal work, disregarding any income by way of a lump sum that was earned during that period but was not paid to the person before the day on which the claim was lodged.

Step 4. Add together the amounts worked out in Step 3. The result is called the person's *seasonal work earnings*.

Step 5. Divide the person's seasonal work earnings by the amount of the relevant AWOTE for the calendar year in which the claim was lodged. The result is called the person's *AWOTE weeks* and represents the number of weeks (including any part of a week) that a person paid at a rate equal to the relevant AWOTE for that calendar year would have to work to earn an amount equal to the person's seasonal work earnings.

Step 6. Work out the number of weeks in the person's relevant periods of seasonal work by dividing the total number of days included in those periods by 7. The result (including any part of a week) is called the person's *seasonal work weeks*.

Step 6A. If there is a period between one relevant period of seasonal work and another, or between a relevant period of seasonal work and the day on which the claim was lodged, work out the number of weeks in the period (the *intervening period*). This is done by dividing the total number of days in the intervening period by 7.

Step 6B. If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the person's *intervening weeks*.

Section 16A

Step 6C. Add together the number of seasonal work weeks worked out under Step 6 and the number of intervening weeks (if any) worked out under Step 6B. The result (including any part of a week) is called the person's *self-supported weeks*.

Step 7. Subtract the person's self-supported weeks from the person's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the *number of weeks in the person's seasonal work preclusion period*. If the result is a negative number, the number of weeks in the period is taken to be nil.

Note 1: For *relevant AWOTE* see subsection (1).

Note 2: For *seasonal work* see subsection (1).

Note 3: For *seasonal work income* see subsection (1).

16A(6) If:

- (a) the person is a member of a couple; and
- (b) the person was engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim (the *relevant period*); and
- (c) the person's partner was not engaged in seasonal work at any time during the relevant period;

the number of weeks in the person's seasonal work preclusion period is worked out as follows:

Method statement

Step 1. Identify each period of continuous seasonal work by the person that ended during the 6 months immediately before the day on which the claim was lodged. If the person has performed seasonal work during 2 periods that are less than 14 days apart, the periods of work and the intervening period are taken to be one continuous period during which the person has performed seasonal work.

Step 2. If a period identified in Step 1 has already been taken into account when working out a seasonal work

Section 16A

preclusion period in relation to a previous claim by the person (whether for the same or a different allowance or payment), disregard the period. Each remaining period is called a *relevant period of seasonal work*.

- Step 3.* Work out the amount of seasonal work income earned by the person during each of the person's relevant periods of seasonal work, disregarding any income by way of a lump sum that was earned during that period but was not paid to the person before the day on which the claim was lodged.
- Step 4.* Add together the amounts worked out in Step 3. The result is called the person's *seasonal work earnings*.
- Step 5.* Work out the total amount of income from personal exertion earned by the person's partner during the person's relevant periods of seasonal work. Add the amount obtained to the person's seasonal work earnings. The result is called the *couple's combined earnings*.
- Step 6.* Divide the couple's combined earnings by twice the amount of the relevant AWOTE for the calendar year in which the claim was lodged. The result is called the couple's *AWOTE weeks* and represents the number of weeks (including any part of a week) that 2 persons, each paid at a rate equal to the relevant AWOTE for that calendar year, would have to work to earn together an amount equal to the couple's combined earnings.
- Step 7.* Work out the number of weeks in the person's relevant periods of seasonal work by dividing the total number of days included in those periods by 7. The result (including any part of a week) is called the person's *seasonal work weeks*.

Section 16A

- Step 7A.* If there is a period between one relevant period of seasonal work and another, or between a relevant period of seasonal work and the day on which the claim was lodged, work out the number of weeks in the period (the ***intervening period***). This is done by dividing the total number of days in the intervening period by 7.
- Step 7B.* If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the person's ***intervening weeks***.
- Step 7C.* Add together the number of seasonal work weeks worked out under Step 7 and the number of intervening weeks (if any) worked out under Step 7B. The result (including any part of a week) is called the person's ***self-supported weeks***.
- Step 8.* Subtract the person's self-supported weeks from the couple's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the ***number of weeks in the person's seasonal work preclusion period***. If the result is a negative number, the number of weeks in the period is taken to be nil.

Note 1: For ***relevant AWOTE*** see subsection (1).

Note 2: For ***seasonal work*** see subsection (1).

Note 3: For ***seasonal work income*** see subsection (1).

16A(7) If:

- (a) the person is a member of a couple; and
- (b) the person was not engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim (the ***relevant period***); and
- (c) the person's partner was engaged in seasonal work at any time during the relevant period;

the number of weeks in the person's seasonal work preclusion period is worked out as follows:

Method statement

- Step 1.* Identify each period of continuous seasonal work by the partner that ended during the 6 months immediately before the day on which the claim was lodged. If the partner has performed seasonal work during 2 periods that are less than 14 days apart, the periods of work and the intervening period are taken to be one continuous period during which the partner has performed seasonal work.
- Step 2.* If a period identified in Step 1 has already been taken into account when working out a seasonal work preclusion period in relation to a previous claim by the person (whether for the same or a different allowance or payment), disregard the period. Each remaining period is called a *relevant period of seasonal work*.
- Step 3.* Work out the total amount of income from personal exertion earned by the person during the partner's relevant periods of seasonal work. The result is called the *person's earnings*.
- Step 4.* Work out the amount of seasonal work income earned by the partner during each of the partner's relevant periods of seasonal work, disregarding any income by way of a lump sum that was earned during that period but was not paid to the partner before the day on which the claim was lodged.
- Step 5.* Add together the amounts worked out in Step 4. The result is called the partner's *seasonal work earnings*.
- Step 6.* Add the partner's seasonal work earnings and the person's earnings. The result is called the *couple's combined earnings*.

Section 16A

- Step 7.* Divide the couple's combined earnings by twice the amount of the relevant AWOTE for the calendar year in which the claim was lodged. The result is called the couple's **AWOTE weeks** and represents the number of weeks (including any part of a week) that 2 persons, each paid at a rate equal to the relevant AWOTE for that calendar year, would have to work to earn together an amount equal to the couple's combined earnings.
- Step 8.* Work out the number of weeks in the partner's relevant periods of seasonal work by dividing the total number of days included in those periods by 7. The result (including any part of a week) is called the partner's **seasonal work weeks**.
- Step 8A.* If there is a period between one relevant period of seasonal work and another, or between a relevant period of seasonal work and the day on which the claim was lodged, work out the number of weeks in the period (the **intervening period**). This is done by dividing the total number of days in the intervening period by 7.
- Step 8B.* If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the partner's **intervening weeks**.
- Step 8C.* Add together the number of seasonal work weeks worked out under Step 8 and the number of intervening weeks (if any) worked out under Step 8B. The result (including any part of a week) is called the partner's **self-supported weeks**.
- Step 9.* Subtract the partner's self-supported weeks from the couple's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the **number of weeks in the person's seasonal work preclusion period**. If the result is a negative number, the number of weeks in the period is taken to be nil.

Note 1: For *relevant AWOTE* see subsection (1).

Note 2: For *seasonal work* see subsection (1).

Note 3: For *seasonal work income* see subsection (1).

16A(8) If:

- (a) the person is a member of a couple; and
- (b) both the person and the person's partner have engaged in seasonal work during the 6 months immediately before the day on which the claim was lodged;

the number of weeks in the person's seasonal work preclusion period is worked out as follows:

Method statement

Step 1. Work out what would be the number of weeks in the person's seasonal work preclusion period if subsection (6) applied to the person.

Step 2. Work out what would be the number of weeks in the person's seasonal work preclusion period if subsection (7) applied to the person.

Step 3. Compare the number of weeks in each period. The ***number of weeks in the person's seasonal work preclusion period*** is equal to the number of weeks in the longer of the 2 periods.

Subject to a seasonal work preclusion period

16A(11) If a person's seasonal work preclusion period in relation to a claim consists of a number of weeks that is greater than nil, then, except as otherwise provided under this Act, the person is ***subject to that period*** for the purposes of this Act.

17 Compensation recovery definitions

17(1) In this Act, unless the contrary intention appears:

compensation has the meaning given by subsection (2).

Note: See also section 1163B.

Section 17

compensation affected payment means:

- (aa) an age pension; or
- (a) a disability support pension; or
- (b) a parenting payment; or
- (c) a social security benefit; or
- (e) a disability support wife pension; or
- (f) a carer payment; or
- (g) a special needs disability support pension; or
- (h) a special needs disability support wife pension; or
- (i) mature age allowance; or
- (j) mature age partner allowance; or
- (k) a former payment type.

compensation part, in relation to a lump sum compensation payment, has the meaning given by subsections (3) and (4).

compensation payer means:

- (a) a person who is liable to make a compensation payment; or
- (b) an authority of a State or Territory that has determined that it will make a payment by way of compensation to another person, whether or not the authority is liable to make the payment.

disability support wife pension means a wife pension for a woman whose partner receives a disability support pension.

event that gives rise to an entitlement to compensation has the meaning given by subsection (5A).

former payment type means:

- (a) an invalid pension under the 1947 Act; or
- (b) an invalid pension under this Act as previously in force; or
- (ba) a disability wage supplement under this Act as previously in force; or
- (c) a sheltered employment allowance under the 1947 Act; or
- (d) a sheltered employment allowance under this Act as previously in force; or
- (e) an unemployment benefit under the 1947 Act; or
- (f) a sickness benefit under the 1947 Act; or

- (g) a special benefit under the 1947 Act; or
- (h) a sickness benefit under this Act as previously in force; or
- (ha) a job search allowance under this Act as previously in force;
or
- (i) a rehabilitation allowance under the 1947 Act payable in
place of:
 - (i) an invalid pension under the 1947 Act; or
 - (ii) a sheltered employment allowance under the 1947 Act;
or
 - (iii) an unemployment benefit under the 1947 Act; or
 - (iv) a sickness benefit under the 1947 Act; or
 - (v) a special benefit under the 1947 Act; or
- (j) a rehabilitation allowance under this Act as previously in
force payable in place of:
 - (i) a disability support pension; or
 - (ii) an invalid pension under this Act as previously in force;
or
 - (iii) a sheltered employment allowance under this Act as
previously in force; or
 - (iv) a social security benefit; or
 - (v) a sickness benefit under this Act as previously in force;
or
- (k) an invalid wife pension under the 1947 Act; or
- (l) an invalid wife pension under this Act as previously in force;
or
- (m) a special needs invalid pension under this Act as previously
in force; or
- (n) a special needs invalid wife pension under this Act as
previously in force; or
- (o) a carer payment under this Act as previously in force; or
- (p) a sole parent pension under this Act as previously in force;
or
- (q) a parenting allowance under this Act as previously in force;
or
- (r) a parenting payment under this Act as in force immediately
before 1 July 2000; or

Section 17

- (s) a youth training allowance under Part 8 of the *Student Assistance Act 1973* as previously in force; or
- (t) a payment under this Act as previously in force declared by the Minister to be a former payment type for the purposes of Part 3.14.

income cut-out amount, in relation to a person who has received a compensation payment, means the amount worked out using the formula in subsection (8), as in force at the time when the compensation was received.

invalid wife pension means:

- (a) in relation to the 1947 Act, a wife's pension under the 1947 Act for a woman whose husband received an invalid pension under the 1947 Act; or
- (b) in relation to this Act as previously in force, a wife pension for a woman whose partner received an invalid pension under this Act as previously in force.

payment for a period has the meaning given by subsection (7).

periodic payments period means:

- (a) the period to which a periodic compensation payment, or a series of periodic compensation payments, relates; or
- (b) in the case of a payment of arrears of periodic compensation payments—the period to which those payments would have related if they had not been made by way of an arrears payment.

potential compensation payer means a person who, in the Secretary's opinion, may become a compensation payer.

receives compensation has the meaning given by subsection (5).

special needs disability support wife pension means a special needs wife pension for a woman whose partner receives a special needs disability support pension.

special needs invalid wife pension means a special needs wife pension for a woman whose partner received a special needs invalid pension under this Act as previously in force.

Compensation

17(2) Subject to subsection (2B), for the purposes of this Act, **compensation** means:

- (a) a payment of damages; or
- (b) a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme; or
- (c) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme; or
- (d) any other compensation or damages payment;

(whether the payment is in the form of a lump sum or in the form of a series of periodic payments and whether it is made within or outside Australia) that is made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury.

17(2A) Paragraph (2)(d) does not apply to a compensation payment if:

- (a) the recipient has made contributions (for example, by way of insurance premiums) towards the payment; and
- (b) either:
 - (i) the agreement under which the contributions are made does not provide for the amounts that would otherwise be payable under the agreement being reduced or not payable because the recipient is eligible for or receives payments under this Act that are compensation affected payments; or
 - (ii) the agreement does so provide but the compensation payment has been calculated without reference to the provision.

17(2B) A payment under a law of the Commonwealth, a State or a Territory that provides for the payment of compensation for a criminal injury does not constitute compensation for the purposes of this Act.

17(2C) The reference in subsection (2B) to a criminal injury is a reference to a personal injury suffered, or a disease or condition contracted, as a result of the commission of an offence.

Section 17

Compensation part of a lump sum

- 17(3) Subject to subsection (4), for the purposes of this Act, the ***compensation part of a lump sum compensation payment*** is:
- (a) 50% of the payment if the following circumstances apply:
 - (i) the payment is made (either with or without admission of liability) in settlement of a claim that is, in whole or in part, related to a disease, injury or condition; and
 - (ii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or
 - (ab) 50% of the payment if the following circumstances apply:
 - (i) the payment represents that part of a person's entitlement to periodic compensation payments that the person has chosen to receive in the form of a lump sum; and
 - (ii) the entitlement to periodic compensation payments arose from the settlement (either with or without admission of liability) of a claim that is, in whole or in part, related to a disease, injury or condition; and
 - (iii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or
 - (b) if those circumstances do not apply—so much of the payment as is, in the Secretary's opinion, in respect of lost earnings or lost capacity to earn, or both.
- 17(3A) Paragraph (3)(d) does not apply to a compensation payment if:
- (a) the recipient has made contributions (for example, by way of insurance premiums) towards the payment; and
 - (b) the agreement under which the contributions are made does not provide for the amounts that would otherwise be payable under the agreement being reduced or not payable because the recipient is eligible for or receives payments under this Act that are compensation affected payments.
- 17(4) Where a person:
- (a) has received periodic compensation payments; and
 - (b) after receiving those payments, receives a lump sum compensation payment (in this subsection called the ***LSP***); and

(c) because of receiving the LSP, becomes liable to repay an amount (in this subsection called the ***Repaid Periodic Compensation Payment—RPCP***) equal to the periodic compensation payments received;

then, for the purposes of subsection (3), the amount of the lump sum compensation payment is:

LSP – RPCP

17(4A) For the purposes of this Act, a payment of arrears of periodic compensation payments is not a lump sum compensation payment.

Receives compensation

17(5) A person ***receives compensation*** whether he or she receives it directly or whether another person receives it, on behalf of, or at the direction of the first person.

17(5A) For the purposes of subsection (2B) of this section and Part 3.14, the event that gives rise to a person's entitlement to compensation for a disease, injury or condition is:

(a) if the disease, injury or condition was caused by an accident—the accident; or

(b) in any other case—the disease, injury or condition first becoming apparent;

and is not, for example, the decision or settlement under which the compensation is payable.

Insurer

17(6) A reference in Part 3.14 to an ***insurer who is, under a contract of insurance, liable to indemnify*** a compensation payer or a potential compensation payer against a liability arising from a claim for compensation includes a reference to:

(a) an authority of a State or Territory that is liable to indemnify a compensation payer against such a liability, whether the authority is so liable under a contract, a law or otherwise; or

(b) an authority of a State or Territory that determines to make a payment to indemnify a compensation payer against such a liability, whether or not the authority is liable to do so.

Section 17A

17(8) For the purposes of the definition of *income cut-out amount* in subsection (1), the formula is as follows:

$$2.5 \left[\begin{array}{l} \text{Maximum} \\ \text{basic rate} \end{array} + \begin{array}{l} \text{Pharmaceutical amount} \\ \text{for a single person} \end{array} \right] + \begin{array}{l} \text{Ordinary free} \\ \text{area limit} \end{array}$$

52

where:

maximum basic rate means the sum of the amount specified in column 3 of item 1 in Table B in point 1064-B1 and the amount of pension supplement worked out under point 1064-BA2 for a person who is not a member of a couple.

Note: Point 1064-BA2 refers to *maximum basic rate*. *Maximum basic rate* depends on a person's family situation. The rate used here is the rate for a person who is not a member of a couple.

ordinary free area limit means the amount specified in column 3 of item 1 in Table E-1 in point 1064-E4.

pharmaceutical amount for a single person means the amount specified in column 3 of item 1 in the Pharmaceutical Allowance Amount Table in point 1064-C8.

17(9) A determination by the Minister under paragraph (s) of the definition of *former payment type*:

- (a) must be in writing; and
- (b) is a disallowable instrument.

17A Retirement assistance for farmers definitions

17A(1) In this Act, unless the contrary intention appears:

eligible descendant, in relation to a person, means:

- (a) a child, step child or adopted child of the person or of a partner of the person; or
- (b) a descendant in direct line of a child described in paragraph (a); or
- (c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).

eligible former partner of a qualifying farmer has the meaning given by subsection (2).

farm means any land that is used:

- (a) for the purposes of a farm enterprise; or
- (b) in connection with a farm enterprise.

farm enterprise means an enterprise carried on within any of the agricultural, horticultural, pastoral or aquacultural industries.

proprietary company has the meaning that it has in the *Corporations Act 2001*.

qualifying farmer has the meaning given by subsections (3) and (4).

qualifying interest has the meaning given by subsections (5) and (6).

relevant farm asset, in relation to a farm, means any livestock, crop, plant or equipment that is a produce of, or is used for the purposes of, the farm enterprise.

relevant State land law means any of the following laws:

- (a) the *Real Property Act 1900* of New South Wales;
- (b) the **Transfer of Land Act 1958** of Victoria;
- (c) the *Land Title Act 1994* of Queensland;
- (d) the *Transfer of Land Act 1893* of Western Australia;
- (e) the *Real Property Act, 1886* of South Australia;
- (f) the *Land Titles Act 1980* of Tasmania;
- (g) the *Real Property Act 1925* of the Australian Capital Territory;
- (h) the *Real Property Act* of the Northern Territory;
- (i) a law of a Territory (other than the Australian Capital Territory or the Northern Territory) making similar provision for the registration of dealings with land as the laws mentioned above.

transfer:

- (a) in relation to a qualifying interest in a farm—has the meaning given by subsections (7), (8), (10) and (11); or

Section 17A

- (b) in relation to a qualifying interest in a relevant farm asset—
has the meaning given by subsections (9) and (11).

17A(2) A person is an *eligible former partner of a qualifying farmer* if:

- (a) the person was, but no longer is (whether because of death or any other reason), the partner of another person; and
- (b) on the day on which the person ceased to be the partner of the other person, the other person was a qualifying farmer; and
- (c) after ceasing to be the partner of the other person, the person has not again become a member of a couple; and
- (d) the person has a qualifying interest in a farm or farms in which the other person had a qualifying interest.

Note: For *qualifying interest* see subsection (5).

17A(3) A person is a *qualifying farmer* if:

- (a) the person has, has not ceased to have, and has continuously had for a period of at least 15 years, a qualifying interest in a farm; and
- (b) during a period of 15 years, the person or the person's partner:
 - (i) has contributed a significant part of his or her labour and capital to the development of a farm or farms; and
 - (ii) has derived a significant part of his or her income from that farm or those farms.

Note: For *qualifying interest* see subsection (5).

17A(4) A person is also a *qualifying farmer* if:

- (a) the person has a qualifying interest in one or more than one farm; and
- (b) the qualifying interest in the farm, or each of the farms, was acquired by the person before 15 September 1997; and
- (c) the person or the person's partner or former partner has been involved in farming in Australia for a continuous period of 20 years, or for periods that together add up to 20 years, by:
 - (i) contributing a significant part of his or her labour to farm enterprises; and
 - (ii) deriving a significant part of his or her income from farm enterprises.

Section 17A

Note: For *qualifying interest* see subsection (5).

- 17A(5) A person has a *qualifying interest* in a farm if:
- (a) the person has a legal estate or interest in the farm; or
 - (b) the person has a transferable legal right or a transferable licence to occupy the farm for a particular purpose of the farm enterprise; or
 - (c) as the mortgagor of a legal estate or interest in the farm (being an estate or interest that is not registered under a relevant State land law), the person has an equitable estate or interest in the farm; or
 - (d) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm.
- 17A(6) A person has a *qualifying interest* in a relevant farm asset if the person:
- (a) has a legal interest in the farm asset; or
 - (b) is a shareholder in a proprietary company that has a legal estate or interest in the farm asset.
- 17A(7) Subject to subsections (8), (10) and (11), a qualifying interest that a person has in a farm is *transferred* to another person if, and only if, the qualifying interest:
- (a) ceases to be vested in the person; and
 - (b) becomes vested in the other person.
- 17A(8) To avoid any doubt, it is stated that if a person who transfers a legal estate or interest in a farm to another person is, under a relevant State land law, registered as being the proprietor (whether that word or any other word is used) of that estate or interest, the legal estate or interest in the farm is taken not to have become vested in the other person unless and until the transfer is registered in accordance with that law.

Note: For *relevant State land law* see subsection (1).

- 17A(9) Subject to subsection (11), a qualifying interest that a person has in a relevant farm asset is *transferred* to another person if, and only if, the qualifying interest:
- (a) ceases to be vested in the person; and
 - (b) becomes vested in the other person.

Section 18

- 17A(10) If, as the mortgagor of a legal estate or interest in a farm (see paragraph (5)(c)), a person has a qualifying interest in the farm, the person is taken to have **transferred** that qualifying interest in the farm to another person only if the person:
- (a) has, under a relevant State land law, become registered as the proprietor (whether that word or any other word is used) of the legal estate or interest in the farm; and
 - (b) has then transferred that legal estate or interest to the other person.
- 17A(11) If a person has a qualifying interest in a farm or a relevant farm asset because (see paragraphs (5)(d) and (6)(b)) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm, or a legal interest in the relevant farm asset (as the case may be), the person is taken to have **transferred** to another person his or her qualifying interest in the farm or relevant farm asset only if the person:
- (a) has acquired the company's legal estate or interest in the farm or the company's legal interest in the relevant farm asset; and
 - (b) has then transferred it to the other person.

18 Parenting payment definitions

In this Act, unless the contrary intention appears:

benefit PP (partnered) means parenting payment whose rate is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B.

non-benefit PP (partnered) means non-benefit PP (partnered) under this Act as in force immediately before the commencement of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.

parenting payment means:

- (a) pension PP (single); or
- (b) benefit PP (partnered).

pension PP (single) means parenting payment whose rate is worked out under the Pension PP (Single) Rate Calculator in section 1068A.

19 Mobility allowance definitions

In this Act, unless the contrary intention appears:

gainful employment means:

- (a) paid employment (including sheltered employment); and
- (b) self-employment that is intended to result in financial gain.

handicapped person means a person who:

- (a) has a physical or mental disability; and
- (b) has turned 16.

sheltered employment means paid employment in respect of which a direction under section 32 or 33 is in force.

vocational training includes training for a profession or occupation and, where used in Part 2.21 (Mobility allowance), also includes training known as independent living skills or life skills training.

19AA [see Note 15]

19AB Student Financial Supplement Scheme definitions

19AB(1) This section has effect for the purposes of Chapter 2B.

19AB(2) Unless the contrary intention appears:

accumulated FS debt has the meaning given by section 1061ZZEQ.

adjusted accumulated FS debt has the meaning given by section 1061ZZES.

amount notionally repaid has the meaning given by subsection 1061ZZCN(5) or (7), as applicable.

amount outstanding has the meaning given by section 1061ZZCG or 1061ZZCH, as applicable.

Section 19AB

amount repaid has the meaning given by subsection 1061ZZCJ(3), as affected by section 1061ZZCL.

approved course of education or study has the same meaning as in subsection 541B(5).

Note: This expression is used, with the same meaning, in sections 569B and 1061PC.

austudy payment general rate has the meaning given by subsection (3).

AWE has the meaning given by section 1061ZZFF.

category 1 student has the meaning given by section 1061ZZ.

category 2 student has the meaning given by section 1061ZZA.

Commissioner means Commissioner of Taxation.

Commissioner of Taxation includes a Second Commissioner of Taxation and a Deputy Commissioner of Taxation.

contract period of a financial supplement contract has the meaning given by subsection 1061ZZAX(7) or 1061ZZAY(3).

cooling off period means a period referred to in section 1061ZZBD.

discount has the meaning given by section 1061ZZCM.

earlier date has the meaning given by paragraph 1061ZZEQ(2)(b).

eligibility period for a person means an eligibility period under section 1061ZY and includes an eligibility period for the purposes of the Social Security Student Financial Supplement Scheme 1998.

financial corporation means:

- (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution whose sole or principal business activities in Australia are the borrowing of money and the provision of finance; or
- (b) a financial corporation within the meaning of that paragraph; and includes a bank.

Section 19AB

financial supplement contract means a contract referred to in subsection 1061ZZAX(2) or 1061ZZAY(1).

FS assessment debt means an amount that is required to be paid in respect of an accumulated FS debt under section 1061ZZEZ and is included in an assessment made under Division 7 of Part 2B.3 or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998.

FS debt has the meaning given by section 1061ZZEO.

index number for a quarter means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician for the quarter.

intending to undertake a course: see subsection (5).

interest subsidy, in relation to financial supplement paid to a person by a participating corporation under a financial supplement contract, means the part of any subsidy paid by the Commonwealth to the corporation, without cost to the person, in respect of the supplement under the agreement entered into with the corporation under section 1061ZZAG, that is in lieu of interest.

intermediate prescribed amount has the meaning given by section 1061ZZFD.

later date has the meaning given by paragraph 1061ZZEQ(1)(a) or (2)(a), as the case requires.

maximum amount of financial supplement has the meaning given by section 1061ZZAK or 1061ZZAO, as the case requires, as affected by section 1061ZZAQ.

maximum prescribed amount has the meaning given by section 1061ZZFE.

minimum amount of financial supplement has the meaning given by section 1061ZZAP.

minimum prescribed amount has the meaning given by section 1061ZZFC.

Section 19AB

office means a branch office but does not include an agency or administrative office.

original amount has the meaning given by subsection 1061ZZCW(1).

overpayment, for a person in relation to an eligibility period, means either of the following:

- (a) a debt or overpayment that is to be recovered under Chapter 5 from the person during the eligibility period;
- (b) an amount the person is liable to pay to the Commonwealth under section 1061ZZDE, 1061ZZDL, 1061ZZDV or 1061ZZEE that the Secretary has decided is to be recovered during the eligibility period.

participating corporation has the meaning given by subsection 1061ZZAG(3).

principal sum, at a time during the contract period of a financial supplement contract, means the total of the amounts of financial supplement paid under the contract before that time by the participating corporation to the other party to the contract.

relevant debt has the meaning given by section 1061ZZFB.

revised amount has the meaning given by subsection 1061ZZCW(1).

saved amount means an amount referred to in subsection 1061ZZBO(3).

short course means a tertiary course that is designed to be completed in, at most, 30 weeks (including vacations).

Social Security Student Financial Supplement Scheme 1998 means the scheme of that name established by the Minister under Chapter 2B of this Act as in force before the commencement of this section.

supplement entitlement notice given to a person means a notice given to the person under subsection 1061ZZAC(3) or 1061ZZAD(4), or a notice referred to in subsection 1061ZZAE(3).

Section 19AB

termination date of a financial supplement contract means the date set out in the contract under subsection 1061ZZAX(6) or as mentioned in subsection 1061ZZAY(2).

termination notice means a notice given under section 1061ZZCQ or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998.

tertiary course means a tertiary course that is an approved course of education or study.

trade back has the meaning given by section 1061ZZAT.

trade in has the meaning given by section 1061ZZAR.

undertaking a course: see subsection (5).

wrongly paid supplement has the meaning given by subsections 1061ZZDB(4), 1061ZZDI(4), 1061ZZDS(4) and 1061ZZEC(4).

year means a calendar year.

year of income has the same meaning as in the *Income Tax Assessment Act 1936*.

youth allowance general rate has the meaning given by subsection (4).

19AB(3) A person's **austudy payment general rate** is the rate of austudy payment that would be payable to the person if the rate were worked out:

- (a) using the Austudy Payment Rate Calculator; and
- (b) not including any amount as pharmaceutical allowance or remote area allowance.

19AB(4) A person's **youth allowance general rate** is the rate of youth allowance that would be payable to the person if the rate were worked out:

- (a) using the Youth Allowance Rate Calculator; and
- (b) not including any amount as pharmaceutical allowance, rent assistance or remote area allowance.

Section 19B

- 19AB(5) The question whether a person is *intending to undertake a course* or is *undertaking a course* is to be determined, so far as practicable and with any necessary changes, in the same way as the question whether a person is intending to undertake study or is undertaking study, as the case may be, is determined under section 541B.

19B Financial hardship (Carer payment) liquid assets test definition

- 19B(1) In section 198N (exemption from care receiver assets test):

liquid assets, in relation to a person, means:

- (a) the person's cash; and
- (b) the person's shares and debentures in a public company within the meaning of the *Corporations Act 2001*; and
- (c) any amount deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and
- (d) any amount due, and able to be paid, to the person by, or on behalf of, a former employer of the person; and
- (e) any other readily realisable assets of the person;

but does not include an amount that is a qualifying eligible termination payment for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

19C Severe financial hardship definitions

Application of definitions in this section

- 19C(1) The definitions in this section relate to:
- (a) ordinary waiting periods; and
 - (b) liquid assets test waiting periods; and
 - (c) seasonal work preclusion periods; and
 - (d) income maintenance periods.

Note 1: A person who makes a claim for austudy payment or one of the following allowances may have to serve an ordinary waiting period or a liquid assets waiting period, or both, before the person can be paid the allowance:

- (a) newstart allowance;
- (b) sickness allowance;

Section 19C

(c) youth allowance.

Note 2: A person who makes a claim for parenting payment or one of the following allowances:

- (a) newstart allowance;
- (b) partner allowance;
- (c) widow allowance;
- (d) mature age allowance;
- (e) youth allowance;

may be subject to a seasonal work preclusion period.

Note 3: An income maintenance period may apply to a person who makes a claim for parenting payment, austudy payment or one of the following allowances:

- (a) newstart allowance;
- (b) partner allowance;
- (c) widow allowance;
- (d) mature age allowance;
- (e) sickness allowance;
- (f) youth allowance.

Note 4: If an income maintenance period applies to the person then, for the duration of the period:

- (a) the payment or allowance claimed may not be payable; or
- (b) the amount of the payment or allowance payable may be reduced.

*Meaning of **in severe financial hardship**: person who is not a member of a couple*

19C(2) A person who is not a member of a couple and who makes a claim for parenting payment, austudy payment or one of the following allowances:

- (a) newstart allowance;
- (b) widow allowance;
- (c) mature age allowance;
- (d) sickness allowance;
- (e) youth allowance;

is **in severe financial hardship** if the value of the person's liquid assets (within the meaning of subsection 14A(1)) is less than the

Section 19C

fortnightly amount at the maximum payment rate of the payment or allowance that would be payable to the person:

- (f) if the person's claim were granted; and
- (g) in the case of a person to whom an income maintenance period applies, if that period did not apply.

Note: For *maximum payment rate* see subsection (8).

Meaning of in severe financial hardship: person who is a member of a couple

19C(3) A member of a couple who makes a claim for parenting payment, austudy payment or one of the following allowances:

- (a) newstart allowance;
- (b) partner allowance;
- (c) mature age allowance;
- (d) sickness allowance;
- (e) youth allowance;

is *in severe financial hardship* if the value of the couple'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 payment or allowance that would be payable to the person:

- (f) if the person's claim were granted; and
- (g) in the case of a person to whom an income maintenance period applies, if that period did not apply.

Note: For *maximum payment rate* see subsection (8).

Meaning of unavoidable or reasonable expenditure

19C(4) *Unavoidable or reasonable expenditure*, in relation to a person who is serving a liquid assets test waiting period or is subject to a seasonal work preclusion period, or a person to whom an income maintenance period applies, includes, but is not limited to, the following expenditure:

- (a) the reasonable costs of living that the person is taken, under subsection (6) or (7), to have incurred in respect of:
 - (i) if the person is serving a liquid assets test waiting period—that part of the period that the person has served; or

Section 19C

- (ii) if the person is subject to a seasonal work preclusion period—that part of the period that has expired; or
- (iii) if an income maintenance period applies to the person—that part of the period that has already applied to the person;
- (b) the costs of repairs to, or replacement of, essential whitegoods situated in the person's home;
- (c) school expenses;
- (d) funeral expenses;
- (e) essential expenses arising on the birth of the person's child or the adoption of a child by the person;
- (f) expenditure to buy replacement essential household goods because of loss of those goods through theft or natural disaster when the cost of replacement is not the subject of an insurance policy;
- (g) the costs of essential repairs to the person's car or home;
- (h) premiums in respect of vehicle or home insurance;
- (i) expenses in respect of vehicle registration;
- (j) essential medical expenses;
- (k) any other costs that the Secretary determines are unavoidable or reasonable expenditure in the circumstances in relation to a person.

However, *unavoidable or reasonable expenditure* does not include any reasonable costs of living other than those referred to in paragraph (a).

Meaning of reasonable costs of living

- 19C(5) The *reasonable costs of living* of a person include, but are not limited to, the following costs:
- (a) food costs;
 - (b) rent or mortgage payments;
 - (c) regular medical expenses;
 - (d) rates, water and sewerage payments;
 - (e) gas, electricity and telephone bills;
 - (f) costs of petrol for the person's vehicle;
 - (g) public transport costs;

Section 19C

- (h) any other cost that the Secretary determines is a reasonable cost of living in relation to a person.

19C(6) For the purposes of paragraph (4)(a), the amount of reasonable **costs of living** that a person who is not a member of a couple is taken to have incurred, may not exceed:

- (a) in the case of a person who is serving a liquid assets test waiting period—the amount of allowance that would have been payable to the person during that part of the waiting period that the person has already served, if the person were not subject to the period; or
- (b) in the case of a person who is subject to a seasonal work preclusion period—the amount of allowance that would have been payable to the person during that part of the person’s preclusion period that has already expired, if the person were not subject to the period; or
- (c) in the case of a person to whom an income maintenance period applies—the amount of allowance or parenting payment (as the case may be) that would have been payable to the person during that part of the income maintenance period that has already applied to the person, if the period did not apply to the person.

19C(7) For the purposes of paragraph (4)(a), the amount of reasonable **costs of living** that a person who is a member of a couple is taken to have incurred, may not exceed:

- (a) in the case of a person who is serving a liquid assets test waiting period—twice the amount of allowance that would have been payable to the person during that part of the waiting period that the person has already served, if the person were not subject to the period; or
- (b) in the case of a person who is subject to a seasonal work preclusion period—twice the amount of allowance or parenting payment (as the case may be) that would have been payable to the person during that part of the person’s preclusion period that has already expired, if the person were not subject to the period; or
- (c) in the case of a person to whom an income maintenance period applies—twice the amount of allowance or parenting payment (as the case may be) that would have been payable

to the person during that part of the income maintenance period that has already applied to the person, if the period did not apply to the person.

Meaning of maximum payment rate

19C(8) For the purposes of subsections (2) and (3), **maximum payment rate**:

- (a) in relation to sickness allowance—means the rate worked out at Step 4 of the Method statement in Module A of the applicable rate calculator; or
- (b) in relation to newstart allowance—means the rate worked out at Step 4 of the Method statement in Module A of the applicable rate calculator; or
- (c) in relation to youth allowance—means the maximum payment rate worked out at Step 4 of the Method statement in Module A of the Youth Allowance Rate Calculator in section 1067G; or
- (ca) in relation to austudy payment—means the maximum payment rate worked out at Step 3 of the Method statement in Module A of the Austudy Payment Rate Calculator in section 1067L; or
- (d) in relation to widow allowance, partner allowance and mature age allowance under Part 2.12B—means the rate worked out at Step 4 of the method statement in Module A of Benefit Rate Calculator B; or
- (da) in relation to pension PP (single)—means the rate worked out at Step 4 of the method statement in point 1068A-A1 in Module A of the Pension PP Rate Calculator; or
- (e) in relation to benefit PP (partnered)—means the rate worked out at step 4 of whichever of the method statements in points 1068B-A2 and 1068B-A3 in Module A of the Benefit PP (Partnered) Rate Calculator is applicable to the person.

Note 1: The Sickness Benefit Rate Calculator, Benefit Rate Calculator A and Benefit Rate Calculator B apply to the calculation of sickness allowance depending on the circumstances of the person claiming the allowance.

Note 2: Benefit Rate Calculator A (under 18) and Benefit Rate Calculator B (over 18) apply to the calculation of newstart allowance.

Section 19D

Secretary to give notice of determination

- 19C(10) If the Secretary makes a determination in relation to a person under paragraph (4)(k) or paragraph (5)(h), the Secretary must give written notice of the determination to the person.

19D Severe financial hardship—crisis payment definition

- 19D(1) The definition in this section relates to one of the qualifications for crisis payment (see sections 1061JG and 1061JH).

- 19D(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.

- 19D(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.

- 19D(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.

- 19D(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.

20 Indexation and rate adjustment definitions

20(1) In this Act, unless the contrary intention appears:

Section 20

CPC rate (combined pensioner couple rate) has the meaning given by subsection (2).

current figure, as at a particular time and in relation to an amount that is to be indexed or adjusted under Part 3.16, means:

- (a) if the amount has not yet been indexed or adjusted under Part 3.16 before that time—the amount; and
- (b) if the amount has been indexed or adjusted under Part 3.16 before that time—the amount most recently substituted for the amount under Part 3.16 before that time.

index number, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

November earnings average, in relation to a year, means the amount called the “All Employees—Average Weekly Total Earnings—Persons” published by the Australian Statistician in respect of a period ending on or before a particular day in November in that year but does not include a preliminary estimate of that amount.

Publication of substituted index numbers

- 20(4) Subject to subsection (5), if at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

Change to CPI reference base

- 20(5) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the reference base for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the change takes place, only to index numbers published in terms of the new reference base.

Publication of substituted AWE amount

- 20(6) If at any time (whether before or after the commencement of this section) the Australian Statistician publishes an amount in substitution for a November earnings average previously published by the Australian Statistician, for that year, the publication of the later amount is to be disregarded for the purposes of this section.

21 Bereavement definitions

- 21(1) In this Act, unless the contrary intention appears:

partner bereavement payment means a payment under section 83, 146G, 189, 238, 514B, 660YKD, 771NW or 823.

- 21(2) For the purposes of this Act, if a person dies:

- (a) the ***bereavement period*** in relation to the person's death is the period of 14 weeks that starts on the day on which the person dies; and
- (b) the ***bereavement notification day*** in relation to the person's death is the day on which the Secretary becomes aware of the death; and
- (c) the ***first available bereavement adjustment payday*** in relation to the person's death is the first payday of the person after the bereavement notification day for which it is practicable to terminate or adjust payments under this Act to take account of the person's death; and
- (d) the ***bereavement rate continuation period*** in relation to the person's death is the period:
 - (i) that begins on the day on which the bereavement period begins; and
 - (ii) that ends:
 - (A) if the first available bereavement adjustment payday is before the end of the bereavement period—on the day before the first available bereavement adjustment payday; or
 - (B) if the first available bereavement adjustment payday occurs on or after the day on which the

Section 22

bereavement period ends—the day on which the bereavement period ends; and

- (e) there is a *bereavement lump sum period* in relation to the person's death if the first available bereavement adjustment payday occurs before the end of the bereavement period and the bereavement lump sum period is the period that begins on the first available bereavement adjustment payday and ends on the day on which the bereavement period ends.

22 Review of decisions definitions

In this Act, unless the contrary intention appears:

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

review, in relation to Divisions 2 and 3 of Part 7.3, means a review:

- (a) by the SSAT under Chapter 6; or
- (b) by the SSAT under Part 9 of the *Student Assistance Act 1973*; or
- (c) by the SSAT under Part 2 of Chapter 9 of the *Child Care Payments Act 1997*.

SSAT means the Social Security Appeals Tribunal.

23 General definitions [see Notes 2 and 5]

23(1) In this Act, unless the contrary intention appears:

1947 Act means the *Social Security Act 1947*.

Aboriginal study assistance scheme means:

- (a) the ABSTUDY Scheme; or
- (b) the Aboriginal Overseas Study Assistance Scheme; or
- (c) a scheme prescribed for the purposes of this definition.

ABSTUDY means the ABSTUDY scheme to the extent that it provides means-test allowances.

ABSTUDY Schooling scheme means the ABSTUDY Schooling part of the ABSTUDY scheme.

ABSTUDY Tertiary scheme means the ABSTUDY Tertiary part of the ABSTUDY scheme.

account, in relation to a financial institution, means an account maintained by a person with the institution to which is accredited money received on deposit by the institution from that person.

activity test breach means a failure, misconduct or any other act to which any of the following provisions, as in force on or after the commencement of this definition, apply:

- (a) subsection 624(1), 625(1), 626(1), 630(1) or 630AA(1), or section 550A, 576A, 628 or 629;
- (b) subsection 103(1), 104(1), 105(1), 108(1) or 108A(1) or section 106 or 107 of the *Student and Youth Assistance Act 1973*.

activity test breach rate reduction period means:

- (a) a period that applies under section 557, 582 or 644AA; or
- (b) a period that applies under section 136AA of the *Student and Youth Assistance Act 1973*.

activity test non-payment period means:

- (a) a period worked out under section 550, 576 or 630A; or
- (b) a period worked out under section 109 of the *Student and Youth Assistance Act 1973*.

activity test penalty period means:

- (a) an activity test non-payment period; or
- (b) an activity test breach rate reduction period

additional child amounts are the amounts set out in the table in point 1210-A1A.

Administration Act means the *Social Security (Administration) Act 1999*.

administrative breach rate reduction period means either or both of the following periods:

- (a) a period that applies under section 558, 583 or 644B;

Section 23

(b) a period that applies under section 136A of the *Student and Youth Assistance Act 1973*.

Agency means the Commonwealth Services Delivery Agency established by the Agency Act.

Agency Act means the *Commonwealth Services Delivery Agency Act 1997*.

approved friendly society means a society, person or body in relation to whom or in relation to which a determination under section 29 is in force.

approved program of work for unemployment payment means a program of work that is declared by the Employment Secretary, under section 28, to be an approved program of work for unemployment payment.

approved program of work supplement means an amount payable under section 644AAA to a person receiving newstart allowance or under section 556A to a person receiving youth allowance.

assurance of support means an assurance of support within the meaning of the Migration (1989) Regulations or the Migration (1993) Regulations.

assurance of support debt means a debt due and payable by a person to the Commonwealth, or a liability of a person to the Commonwealth, because of the operation of:

- (a) subregulation 165(1) of the Migration (1989) Regulations as in force on or before 19 December 1991; or
- (b) regulation 164C of the Migration (1989) Regulations as in force after 19 December 1991 and before 1 February 1993; or
- (c) Part 5 of the Migration (1993) Regulations as in force on or after 1 February 1993;
- (ca) Division 7 of Part 2 of the Migration (1994) Regulations as in force on or after 1 September 1994;

in respect of the payment to another person of a social security payment of a kind mentioned in subregulation 2.38(1) of the

Migration Regulations. *Australia* includes the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Note: see also subsection 7(4), (6) and (7) for special residence rules for external Territories.

AUSTUDY allowance means a benefit paid under the AUSTUDY scheme, being the scheme under Part 2 of the *Student Assistance Act 1973* as previously in force.

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

benefit parenting allowance means benefit parenting allowance under this Act as previously in force.

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

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

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

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.

CEO means the Chief Executive Officer of the Agency.

child care payment decision means a decision of an officer under the *Child Care Payments Act 1997*.

child disability allowance means child disability allowance under Part 2.19 of this Act as in force at any time before 1 July 1999.

comparable foreign payment means a payment-type that is:

- (a) available from a foreign country; and

Section 23

(b) similar to a social security pension.

computer means a device that is used by the Department for storing or processing information.

CSP means the program known as the Community Support Program administered by the Employment Department.

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Note: subsection 3(3) of the *Administrative Appeals Tribunal Act 1975* defines **decision** as including:

- making, suspending, revoking or refusing to make an order or determination;
- giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
- imposing a condition or restriction;
- making a declaration, demand or requirement;
- retaining, or refusing to deliver up, an article;
- doing or refusing to do any other act or thing.

disallowable instrument means a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

discretionary deferment provision means:

- (a) a JSA discretionary deferment provision; or
- (b) an NS allowance discretionary deferment provision.

educational institution means an education institution within the meaning of subsection 3(1) of the *Student and Youth Assistance Act 1973*.

employee, in relation to the Agency, has the same meaning as in the Agency Act.

Employment Department means the Department of Employment, Education and Training.

Employment Minister means the Minister administering the Employment Department.

Employment Secretary means the Secretary to the Employment Department.

exempt funeral investment means:

- (a) a type A funeral investment of not more than \$5,000 (disregarding any return on the investment) that does not relate to a funeral:
 - (i) to which another type A funeral investment relates; or
 - (ii) to which a type B funeral investment relates; or
 - (iii) expenses for which have been paid in advance; or
- (b) a type B funeral investment of not more than \$5,000 (disregarding any return on the investment) that does not relate to a funeral:
 - (i) to which another type B funeral investment relates; or
 - (ii) to which a type A funeral investment relates; or
 - (iii) expenses for which have been paid in advance.

exempt spousal maintenance income means exempt income under paragraph 23(1) or item 5.1 of the table in section 51-30 of the Income Tax Assessment Act but does not include maintenance payments for the benefit of:

- (a) a person who is or has been a child of the maintenance payer; or
- (b) a person who is or has been a child of another person at a time when that other person is or was the spouse of the maintenance payer.

Note: ***exempt income*** in paragraph 23(1) or item 5.1 of the table in section 51-30 of the Income Tax Assessment Act includes both spousal maintenance and child maintenance payments.

external Territory does not include the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island.

Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999*.

Family Assistance Administration Act means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

family assistance law means any one or more of the following:

- (a) the Family Assistance Act;

Section 23

- (b) the Family Assistance Administration Act;
- (c) regulations under the Family Assistance Administration Act;
- (d) Schedules 5 and 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

family member has the meaning given by subsections (14) and (15).

family tax benefit has the meaning given by the Family Assistance Act.

fares allowance means fares allowance under Part 2.26 or under the Social Security (Fares Allowance) Rules 1998, as the case may be.

Farm Household Support Act 1992 includes the DEP scheme, the farm help re-establishment grant scheme and the farm help advice scheme under that Act.

financial hardship farmer means a person in respect of whom a certificate under subsection 26(1) is in force.

financial institution means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

financial supplement means a loan that has been or may be made under a financial supplement contract as defined by section 19AB.

FTB child has the meaning given by section 3 of the Family Assistance Act.

full year course has the meaning given by subsection (10C).

Health Department means the Department dealing with matters relating to health and aged care.

Health Secretary means the Secretary to the Health Department.

higher education institution means an institution that is a higher education institution for the purposes of the *Student Assistance Act 1973*.

Impairment Tables means the Tables in Schedule 1B.

income maintenance period has the meaning given in points 1067G-H11 and 1067G-H12, 1067L-D5 and 1067L-D6, 1068-G7AG and 1068-G7AH, 1068A-E3 and 1068A-E4 and 1068B-D9 and 1068B-D10.

income support payment means a payment of:

- (a) a social security benefit; or
- (aa) a job search allowance; or
- (b) a social security pension; or
- (c) a youth training allowance; or
- (d) a service pension; or
- (e) income support supplement.

income support supplement means income support supplement under Part IIIA of the Veterans' Entitlements Act.

Income Tax Assessment Act means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

job search allowance means job search allowance under this Act as previously in force.

joint ownership includes ownership as joint tenants or as tenants in common.

late starting course has the meaning given by subsection (10D).

life insurance policy, in relation to a financial hardship farmer, includes a life policy within the meaning of the *Life Insurance Act 1995*.

long-term social security recipient, as at a particular time, means:

- (a) a person who, at that time, has had social security recipient status continuously for the previous 52 weeks; or
- (b) a person:
 - (i) who has not, at that time, had social security recipient status continuously for the previous 52 weeks; and
 - (ii) who had social security recipient status at the beginning of the previous 52 weeks; and
 - (iii) who did not lose social security recipient status for more than 6 weeks of the previous 52 weeks.

Section 23

Note: for *social security recipient status* see subsection 23(1).

major disaster means a disaster in respect of which a declaration is in force under section 36.

mature age allowance means:

- (a) in Part 2.12A—mature age allowance under that Part; or
- (b) in Part 2.12B—mature age allowance under that Part; or
- (c) otherwise—mature age allowance under either of those Parts.

maximum Part A rate of family tax benefit is the maximum rate worked out in step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act.

medical practitioner means a person registered and licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

mental hospital means premises in relation to which a declaration by the Secretary under section 30 is in force.

mental hospital patient means:

- (a) a person who:
 - (i) has been admitted to a mental hospital as a patient of the hospital; and
 - (ii) is shown on the records of the hospital as a patient (other than an outpatient) of the hospital; or
- (b) a person who:
 - (i) is being transferred to a mental hospital; and
 - (ii) will become a mental hospital patient within the meaning of paragraph (a) at that hospital; and
 - (iii) immediately before being transferred, was a mental hospital patient within the meaning of paragraph (a) at another mental hospital.

NEIS payment means a payment under the scheme known as the New Enterprise Incentive Scheme.

newly arrived resident's waiting period means:

- (a) a carer payment newly arrived resident's waiting period under sections 201AA and 201AB; or

- (b) a widow allowance newly arrived resident's waiting period under section 408BA; or
- (c) a youth allowance newly arrived resident's waiting period under section 549D; or
- (ca) an austudy payment newly arrived resident's waiting period under section 575D; or
- (cb) a pensioner education supplement newly arrived resident's waiting period under section 1061PU; or
- (d) a mature age allowance newly arrived resident's waiting period under sections 660YCFA and 660YCFB; or
- (e) a newstart allowance newly arrived resident's waiting period under sections 623A and 623B; or
- (f) a sickness allowance newly arrived resident's waiting period under sections 696B and 696C; or
- (g) a special benefit newly arrived resident's waiting period under sections 732 and 739A; or
- (h) a partner allowance newly arrived resident's waiting period under sections 771HC and 771HNA; or
- (j) a mobility allowance newly arrived resident's waiting period under sections 1039AA and 1039AB; or
- (k) a seniors health card newly arrived resident's waiting period under section 1061ZH; or
- (ka) a health care card newly arrived resident's waiting period under section 1061ZQ; or
- (l) a youth training allowance newly arrived resident's waiting period under sections 85 and 101 of the *Student and Youth Assistance Act 1973*.

non-benefit parenting allowance means non-benefit parenting allowance under this Act as previously in force.

officer means a person performing duties, or exercising powers or functions under or in relation to this Act, the Administration Act, the *Farm Household Support Act 1992* or subsection 91A(3) of the *Child Support (Assessment) Act 1989* and, in the case of sections 1312 to 1321 of this Act, includes:

- (a) a person who has been such a person; and
- (b) a person who is or has been appointed, or employed by the Commonwealth and who, as a result of that appointment or

Section 23

employment may acquire or has acquired information concerning a person under this Act or the *Farm Household Support Act 1992*; and

- (c) a person who, although not appointed or employed by the Commonwealth, performs or did perform services for the Commonwealth and who, as a result of performing those services may acquire or has acquired information concerning a person under this Act or the *Farm Household Support Act 1992*.

ordinary waiting period means:

- (a) a newstart allowance ordinary waiting period under sections 620 and 621; or
- (ba) an ordinary waiting period under section 96 of the *Student and Youth Assistance Act 1973*; or
- (c) a sickness allowance ordinary waiting period under sections 693 and 694.

parenting allowance means parenting allowance under this Act as previously in force.

partner of a non-independent YA recipient means a person who is a member of a couple the other member of which is receiving a youth allowance and is not independent within the meaning of Part 3.5.

payday, in relation to a person, means:

- (a) if the person is receiving a social security pension, a social security benefit, a carer allowance, a double orphan pension or a pensioner education supplement—a day on which an instalment of the pension, benefit, supplement or allowance is, or would normally be, paid to the person; or
- (b) if the person is receiving a service pension or income support supplement—a day on which an instalment of the service pension or income support supplement is, or would normally be, paid to the person under the Veterans' Entitlements Act.

pension age:

- (a) when used in Part 3.14A in relation to a person who is a veteran (within the meaning of the Veterans' Entitlements

Act)—has the meaning that it has in section 5QA of that Act;
or

- (b) otherwise—has the meaning given by subsections (5A), (5B), (5C) or (5D).

pension bonus means pension bonus under Part 2.2A.

pension payday means:

- (a) the Thursday that falls on 4 July 1991; and
- (b) each succeeding alternate Thursday up to, and including, Thursday 24 June 1999.

pension period means the instalment period of an instalment of a social security pension.

physical impairment includes sensory impairment.

program of assistance means:

- (a) a program approved under section 28A; or
- (b) a program offered as part of the competitive employment training and placement services as defined by section 7 of the *Disability Services Act 1986*.

protected information means:

- (a) information about a person that is or was held in the records of the Department or of the Agency; or
- (b) information about a person obtained by an officer under the family assistance law that is or was held in the records of the Australian Taxation Office or the Health Insurance Commission; or
- (c) information to the effect that there is no information about a person held in the records of one or more of the following:
 - (i) the Department;
 - (ii) the Agency;
 - (iii) the Australian Taxation Office;
 - (iv) the Health Insurance Commission.

RAS authority means an authority of a State or Territory that is responsible for the administration of the Rural Adjustment Scheme on behalf of the State or Territory.

Section 23

receive has the meaning given by subsections (2), (3), (4), (4AA) and (4AB).

rehabilitation program means:

- (a) a rehabilitation program under Part III of the *Disability Services Act 1986*; or
- (b) a follow-up program in relation to which a determination by the Secretary under section 31 is in force.

Rural Adjustment Scheme means the scheme of assistance established and operated by a State or Territory in accordance with clause 9 of the agreement set out in the Schedule to the *States and Northern Territory Grants (Rural Adjustment) Act 1988*.

Secretary means:

- (a) except in relation to Part 6.3—the Secretary to the Department; or
- (b) in relation to Part 6.3:
 - (i) in the review of a decision made by the CEO or an employee of the Agency as a delegate of the Secretary to the Department or of the Secretary to the Employment Department—the CEO; or
 - (ii) in the review of a decision under the *Student Assistance Act 1973*, other than a decision mentioned in subparagraph (i)—the Secretary to the Employment Department; or
 - (iia) in the review of a decision under the *Child Care Payments Act 1997*, other than a decision mentioned in subparagraph (i)—the Secretary of the Health Department; or
 - (iii) in the review of any other decision—the Secretary to the Department.

section 26 certificate date means the day specified in a certificate issued under subsection 26(1).

service arrangements has the same meaning as in the Agency Act.

service payday means a pension payday within the meaning of the Veterans' Entitlements Act.

service pension means:

- (a) an age service pension under Part III of the Veterans' Entitlements Act; or
- (b) an invalidity service pension under Part III of the Veterans' Entitlements Act; or
- (c) a partner service pension under Part III of the Veterans' Entitlements Act; or
- (d) a carer service pension under Part III of the Veterans' Entitlements Act.

short course means a course of education that lasts for 30 weeks or less including vacations.

social security benefit means:

- (aa) widow allowance; or
- (aab) youth allowance; or
- (aac) austudy payment; or
 - (a) newstart allowance; or
 - (c) sickness allowance; or
 - (d) special benefit; or
 - (e) partner allowance; or
- (ea) a mature age allowance under Part 2.12B; or
- (f) benefit PP (partnered); or
- (g) parenting allowance (other than non-benefit allowance).

social security entitlement means:

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

Section 23

Social Security (Fares Allowance) Rules 1998, in relation to a time after the commencement of Schedule 1 to the *Youth Allowance Consolidation Act 2000*, means those Rules as they continue in force under clause 126 of Schedule 1A.

social security payment means:

- (a) a social security pension; or
- (b) a social security benefit; or
- (c) an allowance under this Act; or
- (e) any other kind of payment under Chapter 2 of this Act; or
- (f) a pension, benefit or allowance under the 1947 Act.

social security pension means:

- (a) an age pension; or
- (b) a disability support pension; or
- (c) a wife pension; or
- (d) a carer payment; or
- (e) a pension PP (single); or
- (ea) a sole parent pension; or
- (f) a bereavement allowance; or
- (g) a widow B pension; or
- (ga) disability wage supplement; or
- (i) a mature age partner allowance; or
- (k) a special needs pension.

social security recipient status, for the purposes of the definition of ***long-term social security recipient***, means:

- (a) in the case of a person who is receiving a youth allowance, an austudy payment or newstart allowance—status as a recipient of a social security pension, a social security benefit, a youth training allowance, an ABSTUDY allowance, an AUSTUDY allowance, a service pension or income support supplement; or
 - (b) in any other case—status as a recipient of a social security pension, a social security benefit, a youth training allowance, a service pension or income support supplement;
- and includes status held on or after 20 March 2000 as a CDEP Scheme participant receiving the CDEP Scheme Participant Supplement.

sole parent pension means sole parent pension under this Act as previously in force.

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.

student assistance benefit decision means a decision of an officer under the *Student and Youth Assistance Act 1973*:

- (a) relating to the AUSTUDY scheme; or
- (b) relating to the Student Financial Supplement Scheme constituted by Part 4A of the *Student Assistance Act 1973*; or
- (c) relating to the recovery of amounts under a current or former special educational assistance scheme.

Student Financial Supplement Scheme means:

- (a) the scheme constituted by Part 4A of the *Student Assistance Act 1973*; or
- (b) the scheme established under Chapter 2B of this Act.

study includes vocational training.

subsection 11(14) asset means an asset that is unrealisable because of subsection 11(14).

TAFE institution means an institution that is a technical and further education institution for the purposes of the *Student Assistance Act 1973*.

taxable income has the same meaning as in the Income Tax Assessment Act.

Section 23

tax file number has the same meaning as in Part VA of the Income Tax Assessment Act.

tax year has the same meaning as **year of income** has in the Income Tax Assessment Act.

Note: section 6 of the Income Tax Assessment Act defines **year of income** as the financial year (1 July to 30 June) or, if another accounting period has been adopted under section 18 of that Act instead of the financial year, that accounting period.

TFN declaration has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.

this Act means this Act as originally enacted or as amended and in force at any time.

type A funeral investment means an investment:

- (a) that:
 - (i) matures on the death of the investor; or
 - (ii) matures on the death of the investor's partner; and
- (b) that cannot be realised before maturity; and
- (c) the return on which is not payable before maturity; and
- (d) the amount paid on whose maturity is to be applied to the expenses of the funeral of the person on whose death it matures.

type B funeral investment means an investment:

- (a) made by:
 - (i) a person who is a member of a couple; or
 - (ii) both members of a couple; and
- (b) that matures on the death of:
 - (i) whichever member of the couple dies first; or
 - (ii) whichever member of the couple dies last; and
- (c) that cannot be realised before maturity; and
- (d) the return on which is not payable before maturity; and
- (e) the amount paid on whose maturity is to be applied to the expenses of the funeral of a member of the couple.

undertaking full-time study has the meaning given in section 541B.

Veterans' Entitlements Act or ***VEA*** means the *Veterans' Entitlements Act 1986*.

waiting period means:

- (aa) a carer payment newly arrived resident's waiting period under sections 201AA and 201AB; or
- (ab) a widow allowance newly arrived resident's waiting period under section 408BA; or
- (b) newstart allowance ordinary waiting period under sections 620 and 621; or
- (ca) a newstart allowance newly arrived resident's waiting period under sections 623A and 623B; or
- (fc) an ordinary waiting period under section 96 of the *Student and Youth Assistance Act 1973*; or
- (fe) a newly arrived residents waiting period under section 101 of the *Student and Youth Assistance Act 1973*; or
- (ff) a mature age allowance newly arrived resident's waiting period under sections 660YCFA and 660YCFB; or
- (g) a sickness allowance ordinary waiting period under sections 693 and 694; or
- (k) a sickness allowance newly arrived resident's waiting period under sections 696B and 696C; or
- (ka) a special benefit newly arrived resident's waiting period under sections 732 and 739A; or
- (kb) a partner allowance newly arrived resident's waiting period under sections 771HC and 771HNA; or
- (n) a mobility allowance newly arrived resident's waiting period under sections 1039AA and 1039AB; or
- (o) a seniors health card newly arrived resident's waiting period under section 1061ZA.

widow means a woman who was the partner of a man immediately before he died.

Youth Allowance Activity Agreement has the meaning given by subsection 544A(5).

youth allowance payment period means a period under section 559A for which youth allowance is or may be payable.

Section 23

Youth Training Activity Agreement has the meaning it was given under subsection 79(4) of the *Student and Youth Assistance Act 1973* immediately before the commencement of the *Social Security Legislation Amendment (Youth Allowance) Act 1998*.

youth training allowance means a youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973* as previously in force.

23(1A) Where:

- (a) a provision of this Act refers to:
 - (i) the greater or greatest, or the higher or highest; or
 - (ii) the lesser or least, or the lower or lowest;of 2 or more amounts; and
 - (b) the amounts are equal;
- the provision is taken to refer to one only of the amounts.

23(1B) Where:

- (a) a provision of this Act refers to the greatest or highest of 3 or more amounts; and
 - (b) 2 or more (but not all) of the amounts are equal and exceed the other amount or other amounts;
- the provision is taken to refer to one only of those equal amounts.

23(1C) Where:

- (a) a provision of this Act refers to the least or lowest of 3 or more amounts; and
 - (b) 2 or more (but not all) of the amounts are equal and are less than the other amount or other amounts;
- the provision is taken to refer to one only of those equal amounts.

23(2) For the purposes of this Act (other than section 735), a person is taken to be **receiving** a payment under this Act from the earliest day on which the payment is payable to the person even if the first instalment of the payment is not paid until a later day.

23(4) For the purposes of this Act, a person is taken to be receiving a social security payment until the latest day on which the payment is payable to the person even if the last instalment of the payment is not paid until a later day.

23(4B) For the purposes of this Act, a person is *severely disabled* if:

(a) a physical impairment, a psychiatric impairment, an intellectual impairment, or 2 or all of such impairments, of the person make the person, without taking into account any other factor, totally unable:

- (i) to work for at least the next 2 years; and
- (ii) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or

(b) the person is permanently blind.

23(4C) For the purposes of this Act, a person is *in disability accommodation* if:

(a) the person:

- (i) is in accommodation for people with disabilities; or
- (ii) is:

(A) in accommodation that is not the principal home of the parents or a parent of the person; and

(B) receiving accommodation support services for people with disabilities; and

(b) the accommodation, or services, for people with disabilities are funded wholly or partly by the Commonwealth, a State or a Territory.

23(4CA) For the purposes of this Act, a person is *in residential care* if the person is being provided with residential care through an aged care service conducted by an approved provider.

23(4CB) In subsection (4CA), the following terms have the same meanings as in the *Aged Care Act 1997*:

aged care service

approved provider

provide

residential care

23(4D) For the purposes of this Act, a person is *living away from the person's parental home* if the person is living away from:

Section 23

- (a) where the person's parents have the same principal home—
that home; or
- (b) where the person has only one parent—the principal home of
that parent; or
- (c) where the person's parents have different principal homes—
all of those homes.

23(5) For the purposes of this Act, a person is *in gaol* if the person:

- (a) is imprisoned in connection with the person's conviction for
an offence; or
- (b) is being lawfully detained in a place other than a prison, in
connection with the person's conviction for an offence; or
- (c) is undergoing a period of custody pending trial or sentencing
for an offence.

Pension age

23(5A) A man reaches *pension age* when he turns 65.

23(5B) A woman born before 1 July 1935 reaches *pension age* when she
turns 60.

23(5C) A woman born within the period specified in column 2 of an item
in the following Table reaches *pension age* when she turns the age
specified in column 3 of that item.

Table—Pension age for women

Column 1	Column 2	Column 3
Item no.	Period within which woman was born (both dates inclusive)	Pension age
1.	From 1 July 1935 to 31 December 1936	60 years and 6 months
2.	From 1 January 1937 to 30 June 1938	61 years
3.	From 1 July 1938 to 31 December 1939	61 years and 6 months
4.	From 1 January 1940 to 30 June 1941	62 years
5.	From 1 July 1941 to 31 December 1942	62 years and 6 months
6.	From 1 January 1943 to 30 June 1944	63 years
7.	From 1 July 1944 to 31 December 1945	63 years and 6 months
8.	From 1 January 1946 to 30 June 1947	64 years

Table—Pension age for women		
Column 1	Column 2	Column 3
Item no.	Period within which woman was born (both dates inclusive)	Pension age
9.	From 1 July 1947 to 31 December 1948	64 years and 6 months

23(5D) A woman born on or after 1 January 1949 reaches *pension age* when she turns 65.

Transferee to social security benefit

Psychiatric confinement

23(8) Subject to subsection (9), *psychiatric confinement* in relation to a person includes confinement in:

- (a) a psychiatric section of a hospital; and
- (b) any other place where persons with psychiatric disabilities are, from time to time, confined.

23(9) The confinement of a person in a psychiatric institution during a period when the person is undertaking a course of rehabilitation is not to be taken to be *psychiatric confinement*.

Served the waiting period

23(10) If a person is subject to an ordinary waiting period for a social security benefit under Part 2.12 (newstart allowance) or Part 2.14 (sickness allowance), the person is to be taken to have *served the waiting period* if, and only if:

- (a) the waiting period has ended; and
- (b) the person was, throughout the waiting period, qualified for the social security benefit.

Note 2: for *ordinary waiting period* see sections 610 and 691.

23(10A) If a person is subject to a liquid assets test waiting period for a social security benefit, the person is to be taken to have *served the waiting period* if, and only if:

- (a) the waiting period has ended; and
- (b) the person was, apart from the liquid assets test provision concerned, qualified for the benefit throughout so much of

Section 23

the waiting period as occurs after the claim for the benefit was made.

23(10B) For the purposes of subsection (10A), the liquid assets test provisions are sections 549A to 549C, 575A to 575C, 598 and 676.

23(10C) For the purposes of this Act:

full year course means:

- (a) a course of education that starts:
 - (i) on 1 January; or
 - (ii) after 1 January and before 1 April; or
 - (iii) on 1 July; or
 - (iv) after 1 July and before 1 August;and lasts for more than 30 weeks (including vacations); or
- (b) an articulated short course sequence whose first course starts:
 - (i) on 1 January; or
 - (ii) after 1 January and before 1 April; or
 - (iii) on 1 July; or
 - (iv) after 1 July and before 1 August;and the length of whose courses (including vacations) add up to more than 30 weeks.

23(10D) For the purposes of this Act:

late starting course means:

- (a) a course of education that starts:
 - (i) on 1 April; or
 - (ii) after 1 April and before 1 July; or
 - (iii) after 31 July;and lasts for more than 30 weeks (including vacations); or
- (b) an articulated short course sequence whose first course starts:
 - (i) on 1 April; or
 - (ii) after 1 April and before 1 July; or
 - (iii) after 31 July;and the length of whose courses (including vacations) add up to more than 30 weeks.

23(10E) In subsections (10C) and (10D):

articulated short course sequence means a sequence of 2 or more articulated short courses that:

- (a) is undertaken by a person during a 12 month period; and
- (b) begins on the first day of the first course in the sequence; and
- (c) ends at the end of the last day of the last course in the sequence.

23(10F) For the purposes of subsection (10E), if:

- (a) a person undertakes at least 2 short courses of education; and
- (b) the person starts the second short course and (if applicable) each subsequent short course:
 - (i) within 28 days after completing the immediately preceding short course; or
 - (ii) within such longer period after completing the immediately preceding short course as the Secretary approves on being satisfied that this was due to circumstances beyond the person's control; and
- (c) each of the short courses is an approved course of education or study within the meaning of paragraph 1061PB(1)(b); and
- (d) the person may, as a result of undertaking each of the short courses, receive an accreditation or an award from an educational institution for another approved course of education or study within the meaning of paragraph 1061PB(1)(b);

each of the short courses is an *articulated short course*.

Participation in pension loans scheme

23(11) For the purposes of this Act, a person is *participating in the pension loans scheme* if:

- (a) the person has made a request to participate in the scheme under section 1136; and
- (b) because of the request, the rate of the pension or allowance payable to the person is:
 - (i) the maximum payment rate; or
 - (ii) some other rate nominated by the person;

Section 23

whichever is the lower; and

Note: For *maximum payment rate* see Step 4 of the Method statement in Module A of the relevant Pension Rate Calculator.

- (c) the person owes a debt to the Commonwealth under section 1135.

Notices that are taken to be given but are not received

23(12) If:

- (a) section 1302A of this Act applies to a notice of a decision under this Act; or
(b) sections 28A and 29 of the *Acts Interpretation Act 1901* apply to a notice under this Act;

section 1302A applies, or sections 28A and 29 apply, to the notice even if the Secretary is satisfied that the person did not actually receive the notice.

Note: An example of a circumstance that is likely to satisfy the Secretary that the person did not actually receive the notice is if the notice is sent back to the Department marked “return to sender” or “not at this address” or “whereabouts unknown”.

23(14) For the purposes of this Act other than Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a *family member* in relation to a person (the *relevant person*):

- (a) the partner, father or mother of the relevant person;
(b) a sister, brother or child of the relevant person;
(c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as one of the relevant person’s relations described in paragraph (a) or (b).

23(15) For the purposes of Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a *family member* in relation to a person (the *relevant person*):

- (a) a parent of the relevant person;
(b) a child of a parent of the relevant person who is wholly or substantially dependent on the parent, being either a child under 16 or a child who:
(i) is at least 16 years of age but has not yet attained the maximum age for youth allowance under section 543B (disregarding subsection 543B(2)); and

- (ii) is not independent (see section 1067A); and
- (iii) is not receiving a pension, benefit or allowance referred to in Module L of the Rate Calculator.

Note: For parent see subsection 5(1), paragraph (b) of the definition of *parent*.

- 23(14) A reference in this Act to a social security payment being not payable includes a reference to its being not payable under the Administration Act.
- 23(15) A reference in this Act to the social security law is a reference to this Act, the Administration Act and any other Act that is expressed to form part of the social security law.
- 23(16) A reference in this Act to a provision of the social security law is a reference to a provision of this Act, the Administration Act or any other Act that is expressed to form part of the social security law.

Part 1.3—Determinations having interpretative effect

24 Person may be treated as not being a member of a couple (subsection 4(2))

24(1) Where:

- (a) a person is legally married to another person; and
- (b) the person is not living separately and apart from the other person on a permanent or indefinite basis; and
- (c) the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

24(2) Where:

- (a) a person has a relationship with a person of the opposite sex (the *partner*); and
- (b) the person is not legally married to the partner; and
- (c) the relationship between the person and the partner is a marriage-like relationship; and
- (d) the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

24A Approved scholarship

24A(1) The Minister may determine in writing that a scholarship, or a class of scholarships:

- (a) awarded outside Australia; and

(b) not intended to be used wholly or partly to assist recipients to meet living expenses;
is an approved scholarship, or a class of approved scholarships, as the case may be, for the purposes of this Act.

24A(2) The Minister must cause a copy of a determination to be laid before each House of the Parliament within 15 sitting days of that House after the determination is made.

25 Refugee visas

25(1) If:

- (a) after the commencement of this section, a class of permanent visas (other than a class referred to in the Table in subsection 7(6B)) is prescribed by regulations made for the purposes of section 31 of the *Migration Act 1958*; and
- (b) the Minister is of the view that a person holding a visa of that class should be regarded as a refugee for the purposes of section 7;

the Minister may declare in writing that class of visas to be a class of visas for the purposes of subparagraph 7(6B)(c)(iii).

25(2) The declaration is a disallowable instrument.

28 Approved programs of work for unemployment payment

28(1) The Employment Secretary may declare, in writing, particular programs of work to be approved programs of work for unemployment payment.

28(2) The Employment Secretary must not declare a particular program of work to be an approved program of work for unemployment payment if persons participating in the program would be required to work:

- (a) if the persons are under 21—more than 24 hours in each fortnight of their respective participation in the program; and
- (b) if the persons are not under 21—more than 30 hours for each fortnight of their respective participation in the program.

Section 28A

- 28(3) For the purposes of subsection (2), each fortnight of participation in the program is a fortnight in respect of which the person receives a payment of newstart allowance.

28A Approval of programs of assistance

The Secretary of the Department of Employment, Education and Training may, by writing, approve:

- (a) a course of vocational training; or
- (b) a labour market program; or
- (c) another course or program;

(other than a rehabilitation program) as a program of assistance for the purposes of this Act.

29 Approval of friendly societies

The Secretary may determine that:

- (a) a friendly society; or
- (b) a person or body that, in the Secretary's opinion:
 - (i) is similar in character to a friendly society; and
 - (ii) provides benefits similar to the benefits provided by a friendly society;

is an *approved friendly society* for the purposes of this Act.

30 Approval of mental hospitals

If the Secretary is satisfied that accommodation for persons with a mental disability is provided at particular premises, he or she may declare the premises to be a mental hospital for the purposes of this Act.

31 Approval of follow-up rehabilitation programs

The Secretary may determine that:

- (a) a follow-up program under Part III of the *Disability Services Act 1986*; or
- (b) each of the programs included in a class of follow-up programs under that Part;

are follow-up programs for the purposes of this Act.

32 Approval of sheltered employment—non-profit organisation

32(1) If the Secretary is satisfied that:

- (a) a non-profit organisation provides paid employment for disabled persons at certain premises; and
- (b) at least 50% of the persons employed at the premises are disabled persons;

the Secretary may determine that the paid employment provided at the premises by the organisation is sheltered employment.

Note: *Sheltered employment* is relevant to the definition of *gainful employment* in section 19.

32(2) For the purposes of subsection (1), a **disabled person** is a person:

- (a) who is:
 - (i) permanently incapacitated for work; and
 - (ii) the degree of the incapacity for work is 85% or more; and
 - (iii) 50% or more of the incapacity for work is directly caused by a physical or mental impairment; or
- (b) who, in the Secretary's opinion, would satisfy paragraph (a) if the person were no longer engaged in paid employment.

33 Approval of sheltered employment—supported employment

33(1) If:

- (a) the Minister administering the *Disability Services Act 1986* has approved a grant of financial assistance to a non-profit organisation under subsection 10(1) of that Act; and
- (b) the financial assistance relates to the provision by the organisation of supported employment services within the meaning of section 7 of that Act;

the Secretary may determine that the paid employment to which those supported employment services relates is sheltered employment.

Note: *Sheltered employment* is relevant to the definition of *gainful employment* in section 19.

33(2) Subject to subsection (3), a determination under subsection (1) may relate to employment provided before or after the day of determination.

Section 35

- 33(3) A determination under subsection (1) may not relate to employment provided before 5 June 1987.

35 Approval of care organisation

- 35(1) The Secretary may approve:
- (a) a charitable or religious organisation; and
 - (b) any other organisation;
- that co-ordinates or provides residential care services to young people in Australia, as an approved care organisation, for the purposes of this Act.
- 35(2) The Secretary may approve, under subsection (1), a charitable or religious organisation which is wholly or partly funded by contributions from:
- (a) the Consolidated Revenue Fund of the Commonwealth; or
 - (b) the consolidated revenue of a State or of the Australian Capital Territory or the Northern Territory.

35A Personal Care Support

The Minister may, in writing, determine that a scheme for the provision of personal care support is an approved scheme for the purposes of this Act.

36 Major disaster

- 36(1) The Minister may declare that a disaster that:
- (a) caused a significant number of deaths, serious illnesses or serious injuries; and
 - (b) caused severe and widespread damage to property;
- is a major disaster for the purposes of this Act.
- 36(2) The disaster may be one that occurs naturally or otherwise.
- 36(3) A declaration under this section is to be made by notice in the *Gazette*.
- 36(4) The Minister may, in writing, delegate to the Secretary the Minister's powers under subsection (1).

37 Dependent child—inmate of a mental hospital

- 37(3) A young person is taken to be a *dependent child* of a member of a couple (the *adult*) for the purposes of Part 2.10 (parenting payment) if:
- (a) the young person is an inmate of a mental hospital; and
 - (b) the mental hospital is either:
 - (i) maintained by the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or
 - (ii) mainly dependent upon financial assistance from the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; and
 - (c) the adult is making a reasonable contribution towards the expenses of maintaining the young person; and
 - (d) the Secretary determines that the young person is to be taken to be a dependent child of the adult.

38B Notional continuous period of receipt of income support payments

- 38B(1) The object of this section is to treat a person in certain circumstances as having received an income support payment in respect of a continuous period even though the person did not actually receive such a payment during a part or parts of the period.
- 38B(2) A continuous period in respect of which a person has received income support payments can only start on a day on which the person is receiving such a payment and can only end on a day when the person is receiving such a payment, and the following provisions of this section have effect subject to this section.
- 38B(3) Subject to subsection (4), in determining the continuous period in respect of which a person has received income support payments, any period of not longer than 6 weeks in respect of which the person did not receive an income support payment is taken to have been a period in respect of which the person received such a payment.

Section 38B

38B(4) If a person is taken, because of subsection (3), to have received income support payments in respect of a continuous period of at least 12 months, then, in determining, as at a time after the end of that period of 12 months, the continuous period in respect of which the person has received income support payments, any period of not longer than 13 weeks in respect of which the person did not receive an income support payment is taken to have been a period in respect of which the person received such a payment.

38B(5) In determining for the purposes of subsection (4) the length of a period in respect of which a person did not receive an income support payment, any part of the period that occurred immediately before the end of the period of 12 months referred to in that subsection is to be taken into account.

EXAMPLE OF APPLICATION OF SUBSECTION (5)

Facts:

John receives an income support payment for 48 weeks. He is then employed for 14 weeks. After the 14 weeks he again begins to receive an income support payment. How does his break in payments affect the calculation of his continuous period of receipt of income support payments?

Application:

At the end of the first 4 weeks of John's employment he may be taken, under subsection 38B(3), to have received income support payments for a continuous period of 12 months because no longer than 6 weeks have elapsed since he actually received such a payment.

Therefore, as John may be taken to have accrued 12 months continuous receipt of income support payments, he may have a period, under subsection 38B(4), of not longer than 13 weeks without income support payments and still be taken to be in continuous receipt.

However, under subsection 38B(5), the period of not longer than 13 weeks allowed under subsection 38B(4) must include the period of 4 weeks that occurred immediately before, as well as the 10 weeks immediately after, John was taken to have accrued 12 months duration.

As his total period in which he did not receive income support payments was 14 weeks, it exceeds the 13 weeks allowed under subsection 38B(4). His continuous period in receipt of income support ceased, under subsection 38B(2), on the last day he received payment before he started employment.

A new period of continuous receipt of income support payments will begin when John resumes income support payments after his 14 week break.

38B(6) For the purposes of this section, a person who was receiving an income support payment is taken to have continued to receive the payment in respect of a period if:

- (a) for the duration of the period, the person remained qualified to receive the income support payment by the operation of the exercise of the discretion under:
 - (i) section 516 of this Act as in force at a time before 20 September 1996; or
 - (ii) section 595 of this Act or subsection 68(1) of the *Student and Youth Assistance Act 1973* (disregard a period of employment);but the person's rate of payment was reduced to nil because of the operation of:
 - (iii) section 1067G, 1067L or 1068 of this Act; or
- (b) the period was a period of non-payment that was imposed under paragraph 547(c), section 553B or paragraph, 608(1)(j) or 771HC(1)(b) on the person in respect of the income support payment other than a period of non-payment imposed because the person was a seasonal worker.

Note: For *income support payment* see subsection 23(1).

38C Adult Disability Assessment Tool

38C(1) The Secretary may, by determination in writing:

- (a) devise a test for assessing the disability, emotional state, behaviour and special care needs of a person aged 16 or more; and
- (b) provide a method for rating the person by giving him or her, on the basis of the results of the test, a score in accordance with a scale of the kind described in subsection (2).

38C(2) The scale referred to in subsection (1) is a scale that provides for a range of scores that indicate the different levels of physical, intellectual or psychiatric disability of persons.

38C(3) The determination is, in this Act, referred to as the ***Adult Disability Assessment Tool***.

38C(4) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 38D

38D Child Disability Assessment Tool

38D(1) The Secretary may, by determination in writing:

- (a) devise a test for assessing the functional ability, behaviour and special care needs of a person aged under 16; and
- (b) provide a method for rating the person by giving him or her, on the basis of the results of the test, a score in accordance with a scale of the kind described in subsection (2).

38D(2) The scale referred to in subsection (1) is a scale that provides for a range of negative and positive scores and under which:

- (a) a negative score indicates an absence of a physical, intellectual or psychiatric disability at a significant level; and
- (b) a positive score indicates the presence of a physical, intellectual or psychiatric disability at a significant level.

38D(3) The determination may, in addition, declare that a physical, intellectual or psychiatric disability specified in the determination is a recognised disability for the purposes of section 953.

38D(4) The determination, in so far as it provides (in accordance with subsections (1) and (2)) for a test for assessing, and a method for rating, the functional ability, behaviour and special care needs of a person aged under 16 is, in this Act, referred to as the ***Child Disability Assessment Tool***.

38D(5) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 1.4—Miscellaneous

39 Tables, calculators etc. form part of section

- 39(1) For the purposes of this Act, a Table and a Key to a Table are to be taken to be part of:
- (a) if the Table occurs in a section containing subsections—the subsection immediately preceding the Table; and
 - (b) if the Table occurs in a section that does not contain subsections—the section.
- 39(1A) For the purposes of this Act, a Note is to be taken to be part of:
- (a) if the Note immediately follows a section that does not contain subsections—the section; or
 - (b) if the Note immediately follows a subsection—the subsection; or
 - (c) if the Note immediately follows a point in a Rate Calculator—the point; or
 - (d) if the Note immediately follows a Step in a Method Statement and is aligned with the text of the Step—the Step; or
 - (e) if the Note immediately follows a Table—the Table; or
 - (f) if the Note immediately follows a paragraph and is aligned with the text of the paragraph—the paragraph; or
 - (g) if the Note immediately follows a clause in a Schedule—the clause in the Schedule; or
 - (h) if the Note immediately follows a subclause in a Schedule—the subclause in the Schedule.
- 39(2) For the purposes of this Act, a Calculator (whether a Rate Calculator, a Lump Sum Calculator or any other Calculator) is to be taken to be part of the section immediately preceding the Calculator.
- 39(3) Rate Calculators are divided into Modules (for example, Module A).

Section 39

39(4) A Module of a Rate Calculator is divided into points and some points are divided into subpoints.

39(5) The points in a Module are numbered as follows:

- (a) the initial number (followed by a dash) identifies the section that immediately precedes the Rate Calculator;
- (b) the letter following the dash is the letter allocated to the Module in which the point occurs;
- (c) the final number identifies the order of the point within the Module.

Example: point 1068-E8 is the eighth point in Module E of the Rate Calculator at the end of section 1068.

Note: paragraph (5)(a) has been adopted so that if a reader is looking for a particular section of the Act and opens a page that happens to be in the middle of a Rate Calculator, the reader will know whether the section the reader is looking for is before or after that page.

Chapter 2—Pensions, benefits and allowances

Part 2.2—Age pension

Division 1—Qualification for and payability of age pension

Subdivision A—Qualification

43 Qualification for age pension

43(1) A person is qualified for an age pension if the person has reached pension age and any of the following applies:

- (a) the person has 10 years qualifying Australian residence;
- (b) the person has a qualifying residence exemption for an age pension;
- (c) the person was receiving a widow B pension, a widow allowance, a mature age allowance or a partner allowance, immediately before reaching that age;
- (d) if the person reached pension age before 20 March 1997—the person was receiving a widow B pension, a widow allowance or a partner allowance, immediately before 20 March 1997.

Note 1: For *qualifying Australian residence* see section 7.

Note 2: For *pension age* see subsections 23(5A), (5B) (5C) and (5D).

43(1A) A woman is qualified for an age pension if:

- (a) the woman has reached pension age; and
- (b) the woman's partner has died; and
- (c) both the woman and her partner were Australian residents when her partner died; and
- (d) the woman was an Australian resident for a continuous period of at least 104 weeks immediately before the day she lodged the claim for the age pension.

43(3) Subsection (1) has effect subject to subsection 6(3) of the *Social Security (International Agreements) Act 1999*.

Section 44

Subdivision B—Payability

44 Age pension not payable if pension rate nil

- 44(1) Subject to subsection (2), an age pension is not payable to a person if the person's age pension rate would be nil.
- 44(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
- (a) the social security law; or
 - (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

47 Multiple entitlement exclusion

- 47(1) An age pension is not payable to a person if the person is already receiving a service pension.
- 47(2) If:
- (a) a person is receiving an age pension; and
 - (b) another social security pension or a service pension becomes payable to the person;
- the age pension is not payable to the person.
- Note 1: another payment type will generally not become payable to the person until the person claims it.
- Note 2: For *social security pension* see subsection 23(1).
- Note 3: for the day on which the age pension ceases to be payable see section 71A.
- 47(3) An age pension is not payable to a person who:
- (a) is an armed services widow or an armed services widower; and
 - (b) is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
 - (c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.

47(4) Subsection (3) does not apply if:

- (a) the person:
 - (i) was on 20 March 1995 receiving; and
 - (ii) has from that day continuously received; and
 - (iii) is receiving;
the age pension; and
- (b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the age pension.

47(5) Subsection (3) does not apply if:

- (a) before 20 March 1995, the person had made a claim for age pension; and
- (b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and
- (c) on or after 20 March 1995, the person was granted age pension; and
- (d) the person has since that time continued to receive, and is receiving, the pension.

47(6) Subsection (3) does not apply if:

- (a) before 20 March 1995:
 - (i) the person had made a claim for age pension; and
 - (ii) the claim had been rejected; and
 - (iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and
- (b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and
- (c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted age pension; and
- (d) the person has since that time continued to receive, and is receiving, the pension.

Section 47A

47A Exclusion of certain participants in ABSTUDY Scheme

47A(1) If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and
- (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
- (d) the payment relates to a period;

age pension is not payable to the person in respect of any part of the period.

47A(2) If:

- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
- (b) the payment for which the person is qualified is a payment that:
 - (i) is made on the basis that the person is a full-time student; and
 - (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
 - (iii) relates to a period;

age pension is not payable to the person in respect of any part of the period.

47A(3) If:

- (a) a person may enrol in a full-time course of education; and
- (b) a payment referred to in subsection (2) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (2), age pension is payable to the person before the person starts the course.

Division 4—Rate of age pension

55 How to work out a person's age pension rate

A person's age pension rate is worked out:

- (a) if the person is not permanently blind—using Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or
- (b) if the person is permanently blind—using Pension Rate Calculator B at the end of section 1065 (see Part 3.3).

Division 9—Bereavement payments

Subdivision A—Death of partner

82 Qualification for payments under this Subdivision

82(1) If:

- (a) a person is receiving an age pension; and
- (b) the person is a member of a couple; and
- (c) the person's partner dies; and
- (d) immediately before the partner died, the partner:
 - (i) was receiving a social security pension; or
 - (ii) was receiving a service pension or income support supplement; or
 - (iii) was a long-term social security recipient; and
- (e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
 - (i) the amount that would otherwise be payable to the person under section 85 (person's continued rate) on that payday; and
 - (ii) the amount that would otherwise be payable to the person under section 83 (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: section 83 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: section 84 provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

82(1A) If:

- (a) a person is receiving an age pension; and
- (b) immediately before starting to receive the age pension the person was receiving partner bereavement payments; and
- (c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;

the person is qualified for payments under this Subdivision to cover the remainder of the bereavement period.

82(2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

Note: if a person makes an election, the date of effect of any determination to increase the person's rate of age pension may, in some circumstances, be the day on which the person's partner died (see subsection 80(5A)).

82(3) An election under subsection (2):

- (a) must be made by written notice to the Secretary; and
- (b) may be made after the person has been paid an amount or amounts under this Subdivision; and
- (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

82(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which age pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 85.

82(5) For the purposes of this section, a person is a *long term social security recipient* if:

- (a) the person is receiving a social security benefit; and
- (b) in respect of the previous 12 months, the person:
 - (i) was receiving a social security pension; or
 - (ii) was receiving a social security benefit; or
 - (iia) was receiving a youth training allowance; or
 - (iii) was receiving a service pension or income support supplement.

82(6) A person is taken to satisfy the requirements of paragraph (5)(b) if:

Section 83

- (a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or
- (b) the person was receiving one or a combination of the payments referred to in that paragraph for 46 weeks of the previous 52.

83 Continued payment of partner's pension or allowance

83(1) If a person is qualified for payments under this Subdivision in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period the following amount:

- (a) where the partner was receiving a social security pension—the amount that would have been payable to the partner on the payday if the partner had not died; or
- (b) where the partner was receiving a service pension or income support supplement—the amount that would have been payable to the partner under Part III or IIIA of the Veterans' Entitlements Act on the service payday that:
 - (i) where the first Thursday after the partner's death was a service payday—precedes the partner's payday; or
 - (ii) in any other case—follows the partner's payday; if the partner had not died.

83(2) For the purposes of subsection (1), if the couple were, immediately before the partner's death, an illness separated couple or a respite care couple, the amounts are to be worked out as if they were not such a couple.

84 Lump sum payable in some circumstances

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

LUMP SUM CALCULATOR

This is how to work out the amount of the lump sum:

Method statement

- Step 1* Work out the amount that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if:
- (a) the person's partner had not died; and
 - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2* Work out the amount that would have been payable to the person's partner on the partner's payday or service payday immediately before the first available bereavement adjustment payday if:
- (a) the partner had not died; and
 - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3* Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
- Step 4.* Work out the amount that, but for section 85, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.
- Step 5.* Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.

Section 85

Step 6. Work out the number of paydays of the partner in the bereavement lump sum period.

Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

85 Adjustment of person's age pension rate

If:

- (a) a person is qualified for payments under this Subdivision; and
- (b) the person does not elect under subsection 82(2) not to receive payments under this Subdivision;

the rate of the person's age pension during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of age pension payable to the person is the rate at which the pension would have been payable to the person if:
 - (i) the person's partner had not died; and
 - (ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;
- (d) during the bereavement lump sum period (if any), the rate at which age pension is payable to the person is the rate at which the age pension would be payable to the person apart from this Subdivision.

86 Effect of death of person entitled to payments under this Subdivision

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the person's partner before the person dies;

there is payable, to such person as the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

LUMP SUM CALCULATOR

This is how to work out the amount of the lump sum:

Method statement

Step 1 Work out the amount that would have been payable to the person on the person's payday immediately after the day on which the person died if:

Section 86

- (a) neither the person nor the person's partner had died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Step 2. Work out the amount that would have been payable to the partner on the person's payday or service payday immediately after the day on which the person died if:

- (a) neither the person nor the partner had died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

Step 4. Work out the amount that, but for section 85, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.

Step 5. Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.

Step 6. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.

Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

87 Matters affecting payment of benefits under this Subdivision

87(1) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
- (e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

87(2) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and
- (c) the bank pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

Section 91

Subdivision C—Death of recipient

91 Death of recipient

91(1) If:

- (a) a person is receiving age pension; and
- (b) either:
 - (i) the person is not a member of a couple; or
 - (ii) the person is a member of a couple and the person's partner:
 - (A) is not receiving a social security pension; and
 - (C) is not receiving a service pension or income support supplement; and
- (c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the person's payday after the person's death if the person had not died.

91(2) If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1: for amounts owing to the recipient before the recipient's death see section 65.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 86.

Part 2.2A—Pension bonus

Division 1—Introduction

92A Simplified outline

The following is a simplified outline of this Part:

- A person who qualifies for an age pension but defers claiming that pension may be able to get a single lump-sum *pension bonus*.
- A person who wants to get a pension bonus must *register* as a *member of the pension bonus scheme*.
- To get a pension bonus, a person must accrue between 1 and 5 *bonus periods* while deferring age pension.
- Generally, a bonus period runs for 1 year.
- To accrue a bonus period, the person must *pass the work test* for that period.
- To pass the work test for a year, either the person, or the person's partner, must *gainfully work* for at least 960 hours during that year.
- The amount of a person's pension bonus depends on the number of accrued bonus periods and the person's annual rate of age pension. A person may get a bigger bonus by accruing more bonus periods.

92B Definitions

In this Part:

accruing member of the pension bonus scheme has the meaning given by section 92N.

Section 92B

bonus period has the meaning given by section 92T.

carer preclusion period has the meaning given by section 93W.

compensation preclusion period has the meaning given by section 93V.

disposal preclusion period has the meaning given by section 93U or 93UA.

full-year period means a continuous period of 365 days.

gainful work has the meaning given by sections 92X to 93A (inclusive).

non-accruing member of the pension bonus scheme has the meaning given by sections 92P and 92Q.

part-year period means a continuous period of less than 365 days.

passing the work test has the meaning given by sections 92U and 92V.

post-75 member of the pension bonus scheme has the meaning given by section 92S.

registration as a member of the pension bonus scheme means registration under section 92J.

Division 2—Qualification for pension bonus

92C Qualification for pension bonus

A person is qualified for a pension bonus if:

- (a) both:
 - (i) the person starts to receive an age pension at or after the time when the person makes a claim for the pension bonus; and
 - (ii) that age pension is received otherwise than because of a scheduled international social security agreement (within the meaning of section 1208); and
- (b) the person has not received an age pension at any time before making a claim for the pension bonus; and
- (c) the person is registered as a member of the pension bonus scheme; and
- (d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and
- (e) the person has not received:
 - (i) a social security pension (other than an age pension or a carer payment); or
 - (ii) a social security benefit; or
 - (iii) a service pension (other than a carer service pension); or
 - (iv) an income support supplement (other than an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act);at any time after the person qualified for an age pension; and
- (f) the person has not already received:
 - (i) another pension bonus; or
 - (ii) a bonus under Part IIIAB of the Veterans' Entitlements Act.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

Section 92D

**Division 3—Registration as a member of the pension
bonus scheme**

Subdivision A—Membership of the pension bonus scheme

92D Application for registration

A person may apply for registration as a member of the pension bonus scheme.

92E Form of application

An application must be in writing and must be in accordance with a form approved by the Secretary.

92F Relevant information

92F(1) An approved form may require the applicant to provide relevant information (see subsection (4)).

92F(2) The Secretary may, by written notice given to the applicant, require the applicant to give the Secretary, within a specified period, further relevant information. The Secretary may refuse to register the applicant until the applicant gives the Secretary the information.

92F(3) A period specified for the purposes of subsection (2) must run for at least 14 days after the notice was given.

92F(4) For the purposes of this section, *relevant information* includes (but is not limited to):

- (a) information that would be likely to assist the Secretary in advising the applicant about the operation of this Part; and
- (b) information that is relevant to determining whether a disposal preclusion period, compensation preclusion period or carer preclusion period has arisen, or is likely to arise, in relation to the applicant; and
- (c) a statement of the applicant's present expectations in relation to any or all of the following matters:

- (i) the number of bonus periods that the person is likely to accrue while registered as a member of the pension bonus scheme;
- (ii) the likely nature and extent of the person's participation in the workforce during those periods;
- (iii) if the person has a partner—the likely nature and extent of the partner's participation in the workforce during those periods.

92G Lodgment of application

92G(1) An application must be lodged:

- (a) at an office of the Department; or
- (b) at a place approved by the Secretary; or
- (c) with a person approved by the Secretary.

92G(2) A place or person approved under subsection (1) may be a place or person within or outside Australia.

92H Timing of application and registration

Age pension qualification date on or after 1 July 1998

92H(1) If a person's date of qualification for the age pension occurs on or after 1 July 1998:

- (a) the person must lodge an application during the period that begins 13 weeks before the person's date of qualification for the age pension and ends 13 weeks after that date; and
- (b) if registration occurs as a result of an application lodged within that period—the registration takes effect on the person's date of qualification for the age pension.

Note: The Secretary may extend the period: see subsection (3).

Age pension qualification date before 1 July 1998

92H(2) If a person's date of qualification for the age pension occurs before 1 July 1998:

- (a) the person must lodge an application during the period that begins on the commencement of this section and ends 13 weeks after 1 July 1998; and

Section 92H

- (b) if registration occurs as a result of an application lodged within that period—the registration takes effect on 1 July 1998.

Note: The Secretary may extend the period: see subsection (3).

Late applications

92H(3) The Secretary may extend the period within which a person must lodge an application. If registration occurs as a result of an application lodged during an extended period, the registration takes effect:

- (a) on the date on which the application is lodged; or
- (b) if the Secretary decides that it should take effect on another date—on that other date.

92H(4) The Secretary must not make a decision to extend the period within which a person must lodge an application unless, if it were assumed that the person had been a member of the pension bonus scheme throughout the pre-application period:

- (a) the person would have been a non-accruing member for all of the pre-application period; or
- (b) both:
 - (i) the person would have been an accruing member for some or all of the pre-application period; and
 - (ii) the person would have passed the work test for each test period that is applicable to the person.

Note 1: *Pre-application period* is defined by subsection (5).

Note 2: *Test period* is defined by subsection (6).

92H(5) For the purposes of this section, the *pre-application period* is the period beginning on:

- (a) in the case of a person whose date of qualification for the age pension occurs on or after 1 July 1998—the person's date of qualification for the age pension; or
 - (b) in the case of a person whose date of qualification for the age pension occurs before 1 July 1998—1 July 1998;
- and ending on the date on which the person lodged the application.

92H(6) For the purposes of this section, to work out what is a *test period*:

- (a) identify the *overall accruing period*, which is that part of the pre-application period for which, if it were assumed that the person had been a member of the pension bonus scheme throughout the pre-application period, the person would have been an accruing member of the scheme;
- (b) if the overall accruing period is 365 days or less—the overall accruing period is the only test period;
- (c) if the overall accruing period is longer than 365 days—each of the following periods is a test period:
 - (i) the full-year period beginning at the start of the overall accruing period;
 - (ii) if 2 or more succeeding full-year periods are included in the overall accruing period—each of those full-year periods;
 - (iii) the remainder (if any) of the overall accruing period.

92H(7) For the purposes of subsection (4), the Secretary is taken to have waived compliance with the applicable record-keeping requirements in relation to each test period.

Date of qualification for the age pension

92H(8) For the purposes of this section, a person's *date of qualification for the age pension* is to be worked out on the assumption that being an Australian resident were an additional qualification for an age pension.

92H(9) For the purposes of this section, if a person would otherwise have 2 or more dates of qualification for the age pension, only the first date is to be counted.

92J Registration

92J(1) If an application is made in accordance with this Subdivision, the Secretary must register the applicant as a member of the pension bonus scheme.

92J(2) This section has effect subject to subsection 92F(2).

Section 92K

92K Duration of membership

A person's membership of the pension bonus scheme begins on the date on which the registration of that membership takes effect and continues until the membership is cancelled under this Act.

92L Cancellation of membership

A person's membership of the pension bonus scheme is cancelled if:

- (a) the person's claim for pension bonus is determined; or
- (b) the person starts to receive:
 - (i) a social security pension (other than an age pension or a carer payment); or
 - (ii) a social security benefit; or
 - (iii) a service pension (other than a carer service pension); or
 - (iv) an income support supplement (other than an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act);at any time after the person qualified for an age pension; or
- (c) the person does not make a proper claim for a pension bonus when the person claims age pension; or
- (d) the person requests the Secretary, in writing, to cancel the person's membership.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

92M Application for registration is not to be treated as a claim

To avoid doubt, an application for registration as a member of the pension bonus scheme is not to be treated as a claim for the purposes of any law of the Commonwealth.

Subdivision B—Classification of membership of the pension bonus scheme

92N Accruing membership

For the purposes of this Part, a person's membership of the pension bonus scheme at a particular time is **accruing** unless the person's membership is non-accruing or post-75 at that time.

92P Non-accruing membership—preclusion periods

Disposal preclusion period

92P(1) For the purposes of this Part, if a person is subject to a disposal preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is **non-accruing** at that time.

Note: *Disposal preclusion period* is defined by section 93U.

Compensation preclusion period

92P(2) For the purposes of this Part, if a person is subject to a compensation preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is **non-accruing** at that time.

Note: *Compensation preclusion period* is defined by section 93V.

Carer preclusion period

92P(3) For the purposes of this Part, if a person is subject to a carer preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is **non-accruing** at that time.

Note: *Carer preclusion period* is defined by section 93W.

92Q Non-accruing membership—Secretary's discretion

92Q(1) The Secretary may, by written notice published in the *Gazette*, declare that, for the purposes of this Part, a specified kind of member of the pension bonus scheme is a **non-accruing** member throughout a period ascertained in accordance with the

Section 92R

declaration. The period must not begin before the publication of the notice.

92Q(2) The kinds of members that may be specified under subsection (1) include (but are not limited to):

- (a) a member who is a participant in the Community Development Employment Program; and
- (b) a member who is in gaol (see subsection 23(5)); and
- (c) a member who is undergoing psychiatric confinement (see subsections 23(8) and (9)) because the member has been charged with committing an offence; and
- (d) a member who is not a participant in the workforce, but whose partner:
 - (i) is a participant in the workforce; and
 - (ii) is not a registered member of the pension bonus scheme or of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act; and
 - (iii) intends to become a registered member of the pension bonus scheme or of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act; and
- (e) a member who is on sick leave for a continuous period of at least 4 weeks and not more than 26 weeks.

92Q(3) A declaration under this section has effect accordingly.

92R Continuity of accruing membership is not broken by a period of non-accruing membership

If:

- (a) a person has been an accruing member of the pension bonus scheme for a continuous period (the *first accruing membership period*) (including a period that is applicable because of one or more applications of this section); and
- (b) the first accruing membership period is followed by a continuous period of non-accruing membership of the scheme; and
- (c) the period of non-accruing membership is followed by a further continuous period of accruing membership of the scheme (the *second accruing membership period*);

Section 92S

the first accruing membership period and the second accruing membership period are together taken to constitute a continuous period of accruing membership of the scheme.

92S Post-75 membership

A person's membership of the pension bonus scheme is *post-75* at all times after the person reaches age 75.

Division 4—Accrual of bonus periods

92T Accrual of bonus periods

Full-year bonus period

92T(1) The first **bonus period** that accrues to a person is the full-year period of the person's accruing membership of the pension bonus scheme:

- (a) that began on whichever of the following dates is applicable:
 - (i) if the person was an accruing member of the pension bonus scheme on the date the person's registration as a member took effect—the date the registration took effect;
 - (ii) in any other case—the date on which the person first became an accruing member of the pension bonus scheme; and
- (b) for which the person passes the work test.

Note: *Accruing membership* is defined by section 92N.

92T(2) Each succeeding full-year period of the person's accruing membership of the pension bonus scheme:

- (a) that is specified in the person's claim for pension bonus; and
- (b) for which the person passes the work test;

is a **bonus period** that accrues to the person.

Part-year bonus period

92T(3) A part-year period of the person's accruing membership of the pension bonus scheme is a **bonus period** that accrues to the person if:

- (a) the person passes the work test for that period; and
- (b) the person specifies the period in the person's claim for pension bonus; and
- (c) the period begins immediately after the end of a full-year bonus period that accrues to the person; and
- (d) the period is the last bonus period that accrues to the person.

Note: *Accruing membership* is defined by section 92N.

Section 92T

Bonus periods must be consecutive

- 92T(4) A person cannot accrue more than one bonus period unless:
- (a) the bonus periods are consecutive; or
 - (b) the bonus periods are separated only by a period of non-accruing membership.

Division 5—Passing the work test

Subdivision A—The work test

92U Work test—full-year period

For the purposes of this Part, a person *passes the work test* for a full-year period of the person's accruing membership of the pension bonus scheme if:

- (a) in any case—the person satisfies the Secretary that the total number of hours gainfully worked by the person during that period was at least 960 and that at least 640 of that total number of hours were worked in Australia; or
- (b) if the person had only one partner during that period—the person satisfies the Secretary that the total number of hours gainfully worked by the person's partner during that period while the partner was a partner of the person and was:
 - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
 - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;was at least 960 and that at least 640 of that total number of hours were worked in Australia; or
- (c) if the person had 2 or more partners during that period—the person satisfies the Secretary that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:
 - (i) accruing members, or post-75 members, of the pension bonus scheme; or
 - (ii) accruing members, or post-70/75 members, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;was at least 960 and that at least 640 of that total number of hours were worked in Australia;

and either:

Section 92V

- (d) the person satisfies the Secretary that the applicable record-keeping requirements (see section 93C) have been complied with in relation to that period; or
- (e) the Secretary decides to waive compliance with the applicable record-keeping requirements in relation to that period.

92V Work test—part-year period

92V(1) For the purposes of this Part, a person *passes the work test* for a part-year period of the person's accruing membership of the pension bonus scheme if:

- (a) in any case—the person satisfies the Secretary that the total number of hours gainfully worked by the person during that period was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or
- (b) if the person had only one partner during that period—the person satisfies the Secretary that the total number of hours gainfully worked by the person's partner during that period while the partner was a partner of the person and was:
 - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
 - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or
- (c) if the person had 2 or more partners during that period—the person satisfies the Secretary that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:
 - (i) accruing members, or post-75 members, of the pension bonus scheme; or
 - (ii) accruing members, or post-70/75 members, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

Section 92W

was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia;

and either:

- (d) the person satisfies the Secretary that the applicable record-keeping requirements (see section 93C) have been complied with in relation to that period; or
- (e) the Secretary decides to waive compliance with the applicable record-keeping requirements in relation to that period.

92V(2) For the purposes of this section, the *pro-rated number of hours* applicable to a period is worked out using the formula:

$$960 \times \frac{\text{Number of days in the period}}{365}$$

92W Secretary's discretion to treat gainful work outside Australia as gainful work in Australia

92W(1) If a person satisfies the Secretary that:

- (a) the person, or the person's partner, has carried on gainful work outside Australia; and
- (b) because of special circumstances, the gainful work should be treated as gainful work carried on in Australia;

the Secretary may determine that this Part has effect as if the gainful work were carried on in Australia.

92W(2) The determination has effect accordingly.

Subdivision B—Gainful work

92X Gainful work—basic rule

92X(1) For the purposes of this Part, *gainful work* is work for financial gain or reward, whether as an employee, a self-employed person or otherwise, where:

- (a) the work involves a substantial degree of personal exertion on the part of the person concerned; and
- (b) the work is carried on within or outside Australia.

Section 92Y

92X(2) Subsection (1) is to be ignored in determining the meaning of an expression used in a provision of this Act other than this Part.

92Y Secretary's discretion to treat activity as gainful work

92Y(1) If a person satisfies the Secretary that:

- (a) the person, or the person's partner, has engaged in a particular activity; and
- (b) the activity involves a substantial degree of personal exertion on the part of the person or the person's partner, as the case may be; and
- (c) the activity does not consist of voluntary work for a charitable, welfare or community organisation; and
- (d) because of special circumstances, the activity should be treated as gainful work;

the Secretary may determine that this Part has effect as if the activity were *gainful work*.

92Y(2) The determination has effect accordingly.

92Z Irregular, infrequent and minor absences from a workplace count as gainful work

For the purposes of this Part, if a person is engaged in gainful work, the total hours gainfully worked by the person during a period are to be determined as if the person had been engaged in *gainful work* during any absences from the workplace that are irregular, infrequent and minor.

93 Management of family financial investments does not count as gainful work

93(1) Unless the Secretary otherwise determines, work undertaken by a person is taken not to be *gainful work* for the purposes of this Part to the extent to which the work consists of the management or administration of one or more financial investments in which any of the following has a legal or equitable interest:

- (a) a member of the person's family group (see subsection (2));
- (b) a company that is a family company in relation to the person (see subsection (2));

Section 93A

- (c) the trustee or trustees of a trust that is a family trust in relation to the person (see subsection (2)).

Note: *Financial investment* is defined by section 9.

93(2) In this section:

family company, in relation to a person, means a company where:

- (a) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of any or all of the members of the person's family group; or
- (b) any or all of the members of the person's family group are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting of the company; or
- (c) both:
 - (i) the company has one or more shareholders; and
 - (ii) each shareholder is a member of the person's family group.

family group, in relation to a person, means the group consisting of the person and the family members of the person. If the person has no family members, the person is taken to be a family group in his or her own right.

Note: *Family member* is defined by subsection 23(1).

family trust, in relation to a person, means a trust where a member of the person's family group benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

93A Domestic duties in relation to a person's place of residence do not count as gainful work

- 93A(1) Unless the Secretary otherwise determines, work undertaken by a person is taken not to be *gainful work* for the purposes of this Part if the work consists of carrying out:
- (a) domestic tasks; or
 - (b) household maintenance tasks; or
 - (c) gardening tasks; or

Section 93B

- (d) similar tasks;
in relation to:
- (e) the person's place of residence; or
- (f) if the person has 2 or more places of residence—any of those places of residence.

93A(2) For the purposes of this section, a *place of residence* includes:

- (a) if the place is a dwelling-house—any land or building that is adjacent to the dwelling-house and that is used primarily for private or domestic purposes in association with that dwelling-house; or
- (b) if the place is a flat or home unit—a garage or storeroom that is used for private or domestic purposes in association with the flat or home unit.

93B Evidentiary certificate

Hours worked during full-year period

93B(1) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that:

- (a) the member was an accruing member of the scheme throughout a specified full-year period; and
- (b) the total number of hours gainfully worked by the member during that period was at least a specified number of hours; and
- (c) the total number of hours gainfully worked in Australia by the member during that period was at least a specified number of hours.

93B(2) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that:

- (a) the member was an accruing member of the scheme throughout a specified full-year period; and
- (b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:
 - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or

Section 93B

- (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;
was at least a specified number of hours; and
- (c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:
 - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
 - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;
was at least a specified number of hours.

Hours worked during part-year period

- 93B(3) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:
- (a) that the member was an accruing member of the scheme throughout a specified part-year period; and
 - (b) the total number of hours gainfully worked by the member during that period; and
 - (c) the total number of hours gainfully worked in Australia by the member during that period.
- 93B(4) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:
- (a) that the member was an accruing member of the scheme throughout a specified part-year period; and
 - (b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:
 - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
 - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act; and

Section 93C

- (c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:
- (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
 - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act.

Record-keeping requirements

93B(5) If:

- (a) a person makes a request for a certificate under subsection (1), (2), (3) or (4) relating to a particular period; and
 - (b) the applicable record-keeping requirements have not been complied with in relation to that period (see section 93C);
- the Secretary may refuse to issue the certificate.

Non-accruing membership

93B(6) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that the member was a non-accruing member of the scheme throughout a specified period.

Evidence

93B(7) In any proceedings relating to this Part, a certificate under this section is prima facie evidence of the matters in the certificate.

Subdivision C—Record-keeping requirements**93C Record-keeping requirements***Record-keeping requirements for person*

93C(1) For the purposes of the application of paragraph 92U(a) or 92V(1)(a) or subsection 93B(1) or (3) to a person, the applicable record-keeping requirements have been complied with in relation to a period of the person's accruing membership of the pension bonus scheme if:

Section 93C

- (a) in a case where the person has:
 - (i) been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the person during that period; or
 - (ii) lodged an income tax return that relates to any gainful work carried on by the person during that period;the person would be in a position to produce a copy of the certificate or of the return, as the case may be, to the Secretary if the Secretary were to require the person to produce that copy; and
- (b) both:
 - (i) the person has kept a recognised work record (see subsection (3)) in relation to gainful work carried on by the person during that period; and
 - (ii) the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

Record-keeping requirements for partner of person

93C(2) For the purposes of the application of paragraph 92U(b) or (c) or 92V(1)(b) or (c) or subsection 93B(2) or (4) to a partner of a person, the applicable record-keeping requirements have been complied with in relation to a period of the person's accruing membership of the pension bonus scheme if:

- (a) in a case where the partner has been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the partner during that period while the partner was a partner of the person and was:
 - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
 - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the *Veterans' Entitlements Act*;

Section 93C

the person would be in a position to produce a copy of the certificate to the Secretary if the Secretary were to require the person to produce that copy; and

- (b) in a case where the partner has lodged an income tax return that relates to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:
- (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
 - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

the person would be in a position to produce a copy of the return to the Secretary if the Secretary were to require the person to produce that copy; and

- (c) in any case—the partner has kept a recognised work record (see subsection (3)) in relation to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:
- (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
 - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

and the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

Recognised work record

93C(3) For the purposes of this section, a ***recognised work record***, in relation to a person, is a written statement signed by the person that sets out, in relation to gainful work carried on by the person during a particular period:

- (a) the nature of the gainful work; and
- (b) the dates on which the gainful work was carried on; and
- (c) the total number of hours gainfully worked; and
- (d) the total number of hours gainfully worked in Australia; and

Chapter 2 Pensions, benefits and allowances

Part 2.2A Pension bonus

Division 5 Passing the work test

Section 93C

- (e) in a case where any of the gainful work was carried on in the capacity of employee—the name or names of the employer or employers concerned; and
- (f) such other particulars as the Secretary requires.

Division 6—Amount of pension bonus

93D How to calculate the amount of pension bonus

- 93D(1) To calculate the amount of a person's pension bonus:
- (a) work out which of the person's bonus periods count as qualifying bonus periods (see section 93E);
 - (b) work out the person's overall qualifying period (see section 93F);
 - (c) work out the person's pension multiple (see section 93G);
 - (d) work out the person's annual pension rate (see section 93H);
 - (e) apply the appropriate formula in section 93J.

Note: *Bonus period* is defined by section 92T.

- 93D(2) For the purposes of this Division, a number of years is to be calculated to 3 decimal places. However, if a number worked out in accordance with this subsection would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the number is to be increased by 0.001.

93E Qualifying bonus periods

- 93E(1) For the purposes of this Division, if a person has accrued only one bonus period, that bonus period is the person's *qualifying bonus period*.
- 93E(2) For the purposes of this Division, if a person has accrued only 2 bonus periods, each of those bonus periods is a *qualifying bonus period*.
- 93E(3) For the purposes of this Division, if a person has accrued only 3 bonus periods, each of those bonus periods is a *qualifying bonus period*.
- 93E(4) For the purposes of this Division, if a person has accrued only 4 bonus periods, each of those bonus periods is a *qualifying bonus period*.

Section 93F

93E(5) For the purposes of this Division, if a person has accrued only 5 bonus periods, each of those bonus periods is a *qualifying bonus period*.

93E(6) For the purposes of this Division, if:

- (a) a person has accrued more than 5 bonus periods; and
- (b) the last bonus period is a full-year period;

each of the 5 most recent bonus periods are *qualifying bonus periods*.

93E(7) For the purposes of this Division, if:

- (a) a person has accrued more than 5 bonus periods; and
- (b) the last bonus period is a part-year period;

each of the 5 most recent full-year bonus periods are *qualifying bonus periods*.

93F Overall qualifying period

93F(1) For the purposes of this Division, if a person has only one qualifying bonus period, that period is the person's *overall qualifying period*.

93F(2) For the purposes of this Division, if a person has 2 or more qualifying bonus periods, the person's *overall qualifying period* is the period:

- (a) beginning at the start of the first qualifying bonus period; and
- (b) ending at the end of the last qualifying bonus period.

However, any period of non-accruing membership of the pension bonus scheme is taken not to form part of the person's overall qualifying period.

93G Pension multiple

For the purposes of this Division, a person's *pension multiple* is worked out using the formula:

$0.094 \times \text{No. of years in the person's overall qualifying period}$

93H Annual pension rate

For the purposes of this Division, a person's *annual pension rate* is:

- (a) if the person is not permanently blind—the rate that would be the person's provisional payment rate under the 1064-A1 Method statement, ascertained as at the date of grant of the age pension, if it were assumed that Steps 2 and 3 were omitted from that Method statement; or
- (b) if the person is permanently blind—the sum of:
 - (i) the person's maximum basic rate under Table B in point 1065-B1; and
 - (ii) the person's pension supplement worked out under point 1065-BA2;
 calculated in each case as at the date of grant of the age pension.

93J Amount of pension bonus

No change in marital status during overall qualifying period

93J(1) If:

- (a) a person was a member of a couple throughout the person's overall qualifying period; or
- (b) a person was not a member of a couple at any time during the person's overall qualifying period;

the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (7)):

$$\text{Annual pension rate} \times \text{Pension multiple} \times \frac{\text{No. of years in the person's overall qualifying period}}{\text{overall qualifying period}}$$

Change in marital status during overall qualifying period

93J(2) If subsection (1) does not apply to a person, the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (7)):

Section 93J

$$\left[\begin{array}{l} \text{Annual} \\ \text{notional} \\ \text{single} \\ \text{pension} \\ \text{rate} \end{array} \times \text{Pension} \times \begin{array}{l} \text{No. of} \\ \text{single} \\ \text{years} \\ \text{during} \\ \text{overall} \\ \text{qualifying} \\ \text{period} \end{array} \right] + \left[\begin{array}{l} \text{Annual} \\ \text{notional} \\ \text{partnered} \\ \text{pension} \\ \text{rate} \end{array} \times \text{Pension} \times \begin{array}{l} \text{No. of} \\ \text{partnered} \\ \text{years} \\ \text{during} \\ \text{overall} \\ \text{qualifying} \\ \text{period} \end{array} \right]$$

93J(3) For the purposes of this section, a person's *annual notional single pension rate* is equal to:

- (a) if the person is not permanently blind—the sum of:
 - (i) the adjusted percentage of the person's maximum basic rate under Table B in point 1064-B1; and
 - (ii) the person's pension supplement worked out under point 1065-BA2;
 calculated in each case as at the date of grant of the age pension and assuming that the person was not a member of a couple at that date; or
- (b) if the person is permanently blind—the sum of:
 - (i) the person's maximum basic rate under Table B in point 1065-B1; and
 - (ii) the person's pension supplement worked out under point 1065-BA2;
 calculated in each case as at the date of grant of the age pension and assuming that the person was not a member of a couple at that date.

93J(4) For the purposes of this section, a person's *annual notional partnered pension rate* is equal to:

- (a) if the person is not permanently blind—the sum of:
 - (i) the adjusted percentage of the person's maximum basic rate under Table B in point 1064-B1; and
 - (ii) the person's pension supplement worked out under point 1064-BA2;
 calculated in each case as at the date of grant of the age pension and assuming that the person was a member of a couple at that date; or
- (b) if the person is permanently blind—the sum of:
 - (i) the person's maximum basic rate under Table B in point 1065-B1; and

Section 93J

(ii) the person's pension supplement worked out under point 1065-BA2;
calculated in each case as at the date of grant of the age pension and assuming that the person was a member of a couple at that date.

93J(5) For the purposes of this section, a person's *adjusted percentage* is the percentage worked out using the following formula (for rounding up, see subsection (8)):

$$\frac{\text{Annual pension rate}}{\text{Maximum basic rate}} \times 100$$

where:

maximum basic rate is the person's maximum basic rate under the 1064-B1 Table, ascertained as at the date of grant of the age pension.

93J(6) For the purposes of this section:

- (a) the number of *single years* during the overall qualifying period is the number of years during the overall qualifying period when the person was not a member of a couple; and
- (b) the number of *partnered years* during the overall qualifying period is the number of years during the overall qualifying period when the person was a member of a couple.

Rounding up

93J(7) An amount calculated under subsection (1) or (2) is to be rounded to the nearest 10 cents (with 5 cents being rounded up).

93J(8) A percentage worked out under subsection (5) is to be calculated to 3 decimal places. However, if a percentage worked out under subsection (5) would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the percentage is to be increased by 0.001.

Division 11—Preclusion periods

93U Disposal preclusion period—disposals before 1 July 2002

93U(1A) This section applies only to disposals of assets that took place before 1 July 2002.

93U(1) For the purposes of this Part, if:

(a) either:

(i) a person has, during a designated year of the person, disposed of an asset of the person; or

(ii) the partner of a person has, during a designated year of the person, disposed of an asset of the partner; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person and/or the person's partner during that designated year, exceeds \$10,000;

the person is subject to a *disposal preclusion period* throughout the period of 5 years that starts on the day on which the disposition referred to in paragraph (a) took place.

Note: *Designated year* is defined by subsection (3).

93U(2) For the purposes of this Part, if:

(a) a person ceases to be a member of a couple (whether because of the death of the person's partner or for any other reason); and

(b) immediately before the cessation, the person was subject to a particular disposal preclusion period that arose wholly because the person's partner disposed of a particular asset; and

(c) if that disposition had been disregarded, the person would not have been subject to that disposal preclusion period;

then, despite subsection (1), that disposal preclusion period ends at the cessation.

93U(3) For the purposes of this section, a *designated year* of a person is:

(a) the 12-month period ending on the day the person qualified for age pension; and

- (b) each preceding 12-month period; and
- (c) each succeeding 12-month period.

93U(4) This section applies to a disposal even if the disposal took place before the commencement of this section.

93UA Disposal preclusion period—disposals on or after 1 July 2002

A person is subject to a *disposal preclusion period* throughout any period for which an amount is included in the value of the person's assets under section 1126AA, 1126AB, 1126AC or 1126AD.

93V Compensation preclusion period

93V(1) For the purposes of this Part, if a person receives a lump sum compensation payment, the person is subject to a *compensation preclusion period* throughout the lump sum preclusion period.

93V(2) For the purposes of this Part, if a person receives a series of periodic compensation payments, the person is subject to a *compensation preclusion period* throughout the periodic payments period.

93V(3) This section applies to a payment even if it was received before the commencement of this section.

93W Carer preclusion period

93W(1) For the purposes of this Part, if a person receives:

- (a) a carer payment; or
- (b) a carer service pension; or
- (c) an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act;

during a particular period, the person is subject to a *carer preclusion period* throughout that period.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

Chapter 2 Pensions, benefits and allowances

Part 2.2A Pension bonus

Division 11 Preclusion periods

Section 93W

93W(2) This section applies to a carer payment, a carer service pension or an income support supplement even if it was received before the commencement of this section.

Part 2.2B—One-off payment to the aged

93X One-off payment to the aged

- (1) A person is qualified for one-off payment to the aged if:
 - (a) the person has reached pension age on or before 22 May 2001; and
 - (b) a social security pension or a social security benefit is payable to the person on 22 May 2001; and
 - (c) the person is not:
 - (i) a veteran of pension age who is eligible to be paid an age service pension, or an invalidity service pension, under the Veterans' Entitlements Act on 22 May 2001; or
 - (ii) a person (other than a veteran of pension age) who is eligible to be paid a partner service pension, or income support supplement, under the Veterans' Entitlements Act on 22 May 2001; or
 - (iii) a person of pension age who is in receipt of a pension described in subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*; or
 - (iv) a person who, under the ABSTUDY Scheme, has received a one-off payment to the aged.
- (2) The amount of the one-off payment to the aged is a one-off payment of \$300.

Part 2.3—Disability support pension

Division 1—Qualification for and payability of disability support pension

Subdivision A—Qualification

94 Qualification for disability support pension

- 94(1) A person is qualified for disability support pension if:
- (a) the person has a physical, intellectual or psychiatric impairment; and
 - (b) the person's impairment is of 20 points or more under the Impairment Tables; and
 - (c) one of the following applies:
 - (i) the person has a continuing inability to work;
 - (ii) the Health Secretary has informed the Secretary that the person is participating in the supported wage system administered by the Health Department, stating the period for which the person is to participate in the system; and
 - (d) the person has turned 16; and
 - (e) the person either:
 - (i) is an Australian resident at the time when the person first satisfies paragraph (c); or
 - (ii) has 10 years qualifying Australian residence, or has a qualifying residence exemption for a disability support pension; or
 - (iii) is born outside Australia and, at the time when the person first satisfies paragraph (c) the person:
 - (A) is not an Australian resident; and
 - (B) is a dependent child of an Australian resident; and the person becomes an Australian resident while a dependent child of an Australian resident.

Note 1: For *Australian resident*, *qualifying Australian residence* and *qualifying residence exemption* see section 7.

Note 2: for Impairment Tables see section 23(1) and Schedule 1B.

- 94(2) A person has a ***continuing inability to work*** because of an impairment if the Secretary is satisfied that:
- (a) the impairment is of itself sufficient to prevent the person from doing any work within the next 2 years; and
 - (b) either:
 - (i) the impairment is of itself sufficient to prevent the person from undertaking educational or vocational training or on-the-job training during the next 2 years; or
 - (ii) if the impairment does not prevent the person from undertaking educational or vocational training or on-the-job training—such training is unlikely (because of the impairment) to enable the person to do any work within the next 2 years.

Note: For ***work*** see subsection (5).

- 94(3) In deciding whether or not a person has a ***continuing inability to work*** because of an impairment, the Secretary is not to have regard to:
- (a) the availability to the person of educational or vocational training or on-the-job training; or
 - (b) if subsection (4) does not apply to the person—the availability to the person of work in the person's locally accessible labour market.

- 94(4) For the purposes of subparagraph (2)(b)(ii), if a person has turned 55, the Secretary may, in considering whether educational or vocational training is likely to enable the person to do work, have regard to the likely availability to the person of work in the person's locally accessible labour market.

- 94(5) In this section:

educational or vocational training does not include a program designed specifically for people with physical, intellectual or psychiatric impairments.

on-the-job training does not include a program designed specifically for people with physical, intellectual or psychiatric impairments.

Section 95

work means work:

- (a) that is for at least 30 hours per week at award wages or above; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

Person not qualified in certain circumstances

- 94(6) A person is not qualified for a disability support pension on the basis of a continuing inability to work if the person brought about the inability with a view to obtaining a disability support pension or a sickness allowance or with a view to obtaining an exemption, because of the person's incapacity, from the requirement to satisfy the activity test for the purposes of job search allowance, newstart allowance, youth training allowance, youth allowance or austudy payment.

Note: a person who is receiving a disability support pension may be automatically transferred to the age pension if the person becomes qualified for the age pension (see subsection 48(3)).

95 Qualification for disability support pension—permanent blindness

- 95(1) A person is qualified for a disability support pension if:
- (a) the person is permanently blind; and
 - (b) the person has turned 16; and
 - (c) the person:
 - (i) is an Australian resident at the time when the person first satisfies paragraph (a); or
 - (ii) has 10 years qualifying Australian residence; or
 - (ia) has a qualifying residence exemption for a disability support pension; or
 - (iii) is born outside Australia and, at the time when the person first satisfies paragraph (a), the person:
 - (A) is not an Australian resident; and

(B) is a dependent child of an Australian resident;
and the person becomes an Australian resident while a
dependent child of an Australian resident.

Note: for *Australian resident* and *qualifying Australian residence* see
section 7.

Person not qualified in certain circumstances

95(2) A person is not qualified for a disability support pension on the
basis of blindness if the person brought about the blindness with a
view to obtaining a disability support pension or a sickness
allowance or with a view to obtaining an exemption, because of
the person's blindness, from the requirement to satisfy the activity
test for the purposes of job search allowance, newstart allowance,
youth training allowance, youth allowance or austudy payment.

Note: a person who is receiving a disability support pension may be
automatically transferred to the age pension if the person becomes
qualified for the age pension (see subsection 48(3)).

Subdivision B—Payability

98 Disability support pension not payable if pension rate nil

98(1) Subject to subsection (2), a disability support pension is not
payable to a person if the person's disability support pension rate
would be nil.

98(2) Subsection (1) does not apply to a person if the person's rate
would be nil merely because an advance pharmaceutical allowance
has been paid to the person under:

- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

103 Multiple entitlement exclusion

103(1) A disability support pension is not payable to a person if the
person is already receiving a service pension.

103(2) If:

- (a) a person is receiving a disability support pension; and

Section 103

(b) another social security pension or a social security benefit or service pension becomes payable to the person;
the disability support pension is not payable to the person.

Note 1: another payment type will generally not become payable to the person until the person claims it.

Note 2: *social security benefit* includes newstart allowance.

Note 3: for the day on which the disability support pension ceases to be payable see section 136.

103(3) A disability support pension is not payable to a person who:

- (a) is an armed services widow or an armed services widower;
and
- (b) is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
- (c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.

103(4) Subsection (3) does not apply if:

- (a) the person:
 - (i) was on 20 March 1995 receiving; and
 - (ii) has from that day continuously received; and
 - (iii) is receiving;
the disability support pension; and
- (b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the disability support pension.

103(5) Subsection (3) does not apply if:

- (a) before 20 March 1995, the person had made a claim for disability support pension; and
- (b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and

- (c) on or after 20 March 1995, the person was granted disability support pension; and
- (d) the person has since that time continued to receive, and is receiving, the pension.

103(6) Subsection (3) does not apply if:

- (a) before 20 March 1995:
 - (i) the person had made a claim for disability support pension; and
 - (ii) the claim had been rejected; and
 - (iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and
- (b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and
- (c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted disability support pension; and
- (d) the person has since that time continued to receive, and is receiving, the pension.

103A Exclusion of certain participants in ABSTUDY Scheme

103A(1) If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and
- (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
- (d) the payment relates to a period;

disability support pension is not payable to the person in respect of any part of the period.

103A(2) If:

- (a) a person is qualified for a payment under the ABSTUDY Scheme; and

Section 103A

(b) the payment for which the person is qualified is a payment that:

(i) is made on the basis that the person is a full-time student; and

(ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and

(iii) relates to a period;

disability support pension is not payable to the person in respect of any part of the period.

103A(3) If:

(a) a person may enrol in a full-time course of education; and

(b) a payment referred to in subsection (2) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (2), disability support pension is payable to the person before the person starts the course.

Division 5—Rate of disability support pension

117 How to work out a person's disability support pension rate

A person's disability support pension rate is worked out:

- (a) if the person is not permanently blind and paragraph (b) does not apply to the person—using Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or
- (b) if the person is not permanently blind and has not turned 21—using Pension Rate Calculator D at the end of section 1066A (see Part 3.4A); or
- (c) if the person is permanently blind and paragraph (d) does not apply to the person—using Pension Rate Calculator B at the end of section 1065 (see Part 3.3); or
- (d) if the person is permanently blind and has not turned 21—using Pension Rate Calculator E at the end of section 1066B (see Part 3.4B).