

# **Social Security Act 1991**

**Act No. 46 of 1991 as amended**

**VOLUME 5** includes: sections 660XAA – 830

## **Chapter 2—Pensions, benefits and allowances**



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## **Part 2.12A—Mature age (pre-1 July 1996) allowances**

### **Division 1—Application of Part**

#### **660XAA Structure of Part**

Part 2.12A deals with 2 payment types, mature age allowance and mature age partner allowance:

- Division 1 deals with the application of this Part.
- Divisions 2, 3 and 11 are divided into Subdivisions that deal with either mature age allowance or mature age partner allowance.
- Divisions 4 to 10 and 12 also deal with both mature age allowance and mature age partner allowance. The sections in those Divisions usually apply to both allowances (eg section 660XDA). However, sometimes a section is divided into subsections dealing with only one of the allowances (eg section 660XDG).

#### **660XAB Time limits on claims of mature age allowance and grant of mature age partner allowance**

660XAB(1) In spite of any other provision of this Part, other than section 660XJO, a person is not to be granted a mature age allowance under this Part unless:

- (a) the person's claim for the allowance was lodged on or before 30 June 1996; and
- (b) the person qualified for the allowance on or before that date.

660XAB(2) In spite of any other provision of this Part, other than section 660XJO, a person is not to be granted a mature age partner allowance unless:

- (a) the person's claim for the allowance is lodged on or before 30 June 1995; and

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**Division 1** Application of Part

Section 660XAB

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- (b) the person qualifies for the allowance on or before 30 June 1995.

660XAB(2A) For the purposes of paragraph (1)(a), if subsection 660XCC(2) applies, the person is taken to have lodged his or her claim on the day on which the person makes his or her initial claim.

660XAB(3) For the purposes of paragraph (2)(a), if subsection 660XCK(2) applies, the person is taken to have lodged his or her claim on the day on which the person makes his or her initial claim.

660XAB(4) In subsection (3):

*initial claim* has the same meaning as in subsection 660XCK(2).

## **Division 2—Qualification for mature age allowance and mature age partner allowance**

### **Subdivision A—Qualification for mature age allowance**

#### **660XBA Qualification for mature age allowance**

660XBA(1) A person is qualified for mature age allowance if the person:

- (a) has turned 60 but has not reached pension age; and
- (b) satisfies the Secretary that the person is unemployed; and
- (d) has been receiving one or a combination of the following:
  - (i) a social security pension;
  - (ii) a social security benefit;
  - (iia) a job search allowance;
  - (iii) a service pension;for a continuous period of at least 12 months immediately before a claim period day; and
- (e) has 10 years qualifying Australian residence, or has a qualifying residence exemption for a mature age allowances.

#### *Receipt of benefits*

660XBA(1B) For the purposes of paragraph (1)(d), if a person ceases:

- (a) to receive one or a combination of the following:
  - (i) a social security pension;
  - (ii) a social security benefit;
  - (iii) a service pension; or
- (b) to be a benefit increase partner;

(ba) a job search allowance;

for a period of less than 13 weeks, the person is taken to have been receiving the pension or benefit, or to be a benefit increase partner, for that period.

660XBA(1B) For the purposes of paragraph (1)(d), if a person ceases to receive one of the following:

- (a) a social security pension;
- (b) a social security benefit;

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Section 660XBB

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(c) a service pension;  
for a period of less than 13 weeks, the person is taken to have been receiving the pension or benefit for that period.

*Exemption from satisfying paragraphs (1) (c) and (d)*

660XBA(2) The qualifications in paragraphs (1)(c) and (1)(d) do not apply if the person has previously received mature age allowance or mature age partner allowance.

660XBA(4) In this section, ***claim period day*** means:

- (a) the day on which the claim is lodged; or
- (b) any other day in the period of 3 months that starts immediately after the day on which the claim is lodged.

Note 1: For ***pension age*** see section 23.

Note 5: For ***qualifying Australian residence*** and ***qualifying residence exemption*** see section 7.

Note 6: Exceptions to the qualification requirements in subsection (1) are set out in this Subdivision.

Note 7: A mature age allowance is not payable in certain situations even if the person is qualified (see Subdivision A of Division 3).

Note 8: A person receiving mature age allowance may be automatically transferred to the age pension if the person becomes qualified for age pension (see subsection 48(3)).

**660XBB Assurance of support**

A person is not qualified for mature age allowance on a day if the Secretary is satisfied that:

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

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

**660XBC Person may be treated as unemployed**

If:

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- (a) a person undertakes paid work on a day; and
  - (b) the Secretary is of the opinion that, taking into account:
    - (i) the nature of the work; and
    - (ii) the duration of the work; and
    - (iii) any other matters relating to the work that the Secretary considers relevant;the work should be disregarded;
- the Secretary may treat the person as being unemployed on that day.

### **660XBE Unemployment due to industrial action**

660XBE(1) A person is not qualified for mature age allowance on a day unless the person satisfies the Secretary that the person's unemployment on that day was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.

660XBE(2) A person is not qualified for mature age allowance on a day unless the Secretary is satisfied:

- (a) that the person's unemployment on that day was due to other people being, or having been, engaged in industrial action or a series of industrial actions; and
- (b) the people, or some of the people, were members of a trade union which was involved in the industrial action; and
- (c) the person was not a member of the trade union on that day.

Note: For *industrial action*, *trade union* and *unemployment* see section 16.

660XBE(3) Subject to subsection (4), subsections (1) and (2) do not prevent a person from being qualified for a mature age allowance on a day that occurs after the relevant industrial action or series of industrial actions has stopped.

660XBE(4) Where the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by a State industrial authority, the Australian Industrial Relations Commission or the Federal Court, a person is not qualified for a mature age allowance in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

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**Division 2** Qualification for mature age allowance and mature age partner allowance

Section 660XBI

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Note: For *State industrial authority* see section 4 of the Workplace Relations Act.

**Subdivision B—Qualification for mature age partner allowance**

**660XBI Qualification for mature age partner allowance**

660XBI(1) A person is qualified for mature age partner allowance if:

- (a) the person is a member of a couple; and
- (b) the person's partner is receiving mature age allowance.

Note 1: For *member of a couple* see section 4.

Note 2: A person is not qualified if an assurance of support is in force (see section 660XBJ).

Note 4: A person who is receiving mature age partner allowance may be automatically transferred to the age pension if the person becomes qualified for the age pension or to wife pension if the person becomes qualified for the wife pension (see subsections 48(3) and 152(3), respectively).

**660XBJ Assurance of support**

A person is not qualified for mature age partner allowance on a day if the Secretary is satisfied that:

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

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

### **Division 3—Payability of mature age allowance and mature age partner allowance**

#### **Subdivision A—Payability of mature age allowance**

##### **660XCA Mature age allowance not payable if allowance rate nil**

660XCA(1) Subject to subsection (2), a mature age allowance is not payable to a person if the person's mature age allowance rate would be nil.

660XCA(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.

##### **660XCF Multiple entitlement exclusion**

660XCF(1) A mature age allowance is not payable to a person if the person is already receiving a service pension.

660XCF(2) If:

- (a) a person is receiving a mature age allowance; and
- (b) another social security pension, a social security benefit or a service pension becomes payable to the person;

the mature age allowance 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 the day on which the mature age allowance ceases to be payable see section 660XJB.

660XCF(3) A mature age allowance is not payable to a woman if:

- (a) the woman is an armed services widow; and
- (b) the woman 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;

unless:

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- (c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and
- (d) before 1 November 1986 the woman was also receiving a social security benefit.

Note 1: For *armed services widow* see subsection 4(1).

Note 2: A widow receiving a payment under the Veterans' Entitlements Act who is not covered by paragraph (b) may be paid at a lower rate (see subsection 1064(5)).

660XCF(4) A mature age allowance is not payable to a man if:

- (a) the man is an armed services widower; and
- (b) the man 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.

Note: For *armed services widower* see subsection 4(1).

**660XCG Educational and other schemes exclusion**

660XCG(1) If:

- (a) a payment is, or may be, made in respect of a person under:
  - (i) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or
  - (ii) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; and
- (b) the payment relates to a period;

mature age allowance is not payable to the person in respect of any part of the period.

Note: For *prescribed educational scheme* see section 5.

660XCG(2) If:

- (a) a person may enrol in a full-time course of education; and
- (b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (1), mature age allowance is payable to the person before the person starts the course.

### **Subdivision B—Payability of mature age partner allowance**

#### **660XCI Mature age partner allowance not payable if allowance rate nil**

660XCI(1) Subject to subsection (2), a mature age partner allowance is not payable to a person if the person's mature age partner allowance rate would be nil.

660XCI(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.

#### **660XCN Multiple entitlement exclusion**

660XCN(1) A mature age partner allowance is not payable to a person if the person is already receiving a service pension.

660XCN(2) If:

- (a) a person is receiving a mature age partner allowance; and
- (b) another social security pension, a social security benefit or a service pension becomes payable to the person;

the mature age partner allowance 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 the day on which the mature age partner allowance ceases to be payable see section 660XJB.

660XCN(3) A mature age partner allowance is not payable to a person if the person 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.

#### **660XCO Educational schemes exclusion**

660XCO(1) If:

- (a) a payment has been, or may be, made in respect of a person under:

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- (ii) the ABSTUDY Scheme; or
  - (iii) a Student Financial Supplement Scheme; and
  - (b) the payment relates to a period;
- mature age partner allowance is not payable to the person in respect of any part of the period.

660XCO(2) If:

- (a) a person may enrol in a full-time course of education; and
  - (b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;
- the Secretary may decide that, in spite of subsection (1), mature age partner allowance is payable to the person before the person starts the course.

**660XCP Commonwealth funded employment program exclusion**

If:

- (a) a person receives, or may receive, income that is paid by a community or group from funds provided under a Commonwealth funded employment program; and
  - (b) the income is paid in respect of a period;
- mature age partner allowance is not payable to the person in respect of any part of the period.

Note: For *Commonwealth funded employment program* see subsection 23(1).

## **Division 6—Rate of mature age allowance and mature age partner allowance**

### **660XFA How to work out a person’s mature age allowance or mature age partner allowance**

A person’s mature age allowance or mature age partner allowance rate is worked out by using Pension Rate Calculator A at the end of section 1064 (see Part 3.2).

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**Division 11—Bereavement payments**

**Subdivision A—Person receiving mature age allowance (death of partner)**

**660XKA Qualification for payments under this Subdivision**

660XKA(1) If:

- (a) a person is receiving a mature age allowance; 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
  - (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 660XKD (person's continued rate) on that payday; and
  - (ii) the amount that would otherwise be payable to the person under section 660XKB (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 660XKB 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 660XKC 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.



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660XKA(2) If:

- (a) a person is receiving a mature age allowance; and
- (b) immediately before starting to receive the allowance 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.

660XKA(3) 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 mature age allowance may, in some circumstances, be the day on which the person's partner died (see subsection 660XJP(6)).

660XKA(4) An election under subsection (3):

- (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.

660XKA(5) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which mature age allowance is payable to the person during the bereavement period is, unless the person has made an election under subsection (3), governed by section 660XKD.

660XKA(6) For the purposes of this section, a person is a *long term social security recipient* if:

- (a) the person is either receiving a social security benefit or is a benefit increase partner; 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
  - (ia) was receiving a youth training allowance; or
  - (iii) was receiving a service pension; or
  - (iv) was a benefit increase partner.

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660XKA(7) A person is taken to satisfy the requirements of paragraph (6)(b) if:

- (a) the person's receipt of social security pension, social security benefit, youth training allowance or service pension, or the person's status as a benefit increase partner, or a combination of these, was continuous for the period of 12 months; or
- (b) the person was receiving one or other of the payments referred to in paragraph (6)(b) or had the status of a benefit increase partner, or a combination of these, for 46 weeks of the previous 52.

**660XKB Continued payment of partner's pension**

660XKB(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—the amount that would have been payable to the partner under Part III 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.

660XKB(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.

**660XKC 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 660XKD, 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***.

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- 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 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.

**660XKD Adjustment of person's mature age allowance rate**

If:

- (a) a person is qualified for payments under this Subdivision; and
- (b) the person does not elect under subsection 660XKA(3) not to receive payments under this Subdivision;

the rate of the person's mature age allowance during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of mature age allowance payable to the person is the rate at which the mature age allowance 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 mature age allowance is payable to the person is the rate at which the mature age allowance would be payable to the person apart from this Subdivision.

**660XKE 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:

- (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 660XKD, 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***.

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- 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.

**660XKF Matters affecting payment of benefits under this Subdivision**

660XKF(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).

660XKF(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.

### **Subdivision B—Death of person receiving mature age allowance**

#### **660XKG Death of recipient**

660XKG(1) If:

- (a) a person is receiving mature age allowance; 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  
(B) is not receiving a service pension; 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.

660XKG(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 660XGH.

Note 2: For death of a person qualified for bereavement payments under Subdivision A see section 660XKE.

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**Subdivision C—Continuation of mature age partner allowance  
where partner dies**

**660XKH Continuation of mature age partner allowance for  
bereavement period**

If:

- (a) a person is receiving a mature age partner allowance; and
- (b) the person's partner dies;

the person remains qualified for the mature age partner allowance during the bereavement period as if:

- (c) the partner had not died; and
- (d) the partner had continued to receive a mature age allowance; and
- (e) the person and the partner had continued to be members of a couple.

**660XKI Continued mature age partner allowance rate**

Where a person is qualified for a mature age partner allowance because of section 660XKH, the person's mature age partner allowance rate is worked out as follows:

- (a) during the bereavement rate continuation period, the rate of mature age partner allowance is the rate that would have been payable to the person if:
  - (i) the partner had not died; and
  - (ii) where the couple had been an illness separated couple or a respite care couple—they had not been such a couple;
- (b) during the bereavement lump sum period (if any), the rate of payments under this Subdivision is the rate at which a widow B pension would have been payable to the person if he or she had been qualified for a widow B pension.



### **Subdivision D—Person receiving mature age partner allowance (death of partner)**

#### **660XKJ Qualification for payments under this Subdivision**

660XKJ(1) If:

- (a) a person is receiving a mature age partner allowance; and
- (b) the person's partner dies;

the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: Section 660XKK 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 660XKL 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.

660XKJ(2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

660XKJ(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.

#### **660XKK Continued payment of partner's allowance**

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 day that would have been a payday for the partner in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person's partner on that day if the partner had not died.

#### **660XKL Lump sum payable in some circumstances**

If:

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- (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 first day that would have been a payday of the partner on or after 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 of widow B pension that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if a widow B pension had been payable to the person on that 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*.
- 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.

**660XKM 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*

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- 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:
- (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 person's partner on the first day that would have been a payday of the partner on or 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 sections 660XKH and 660XKI, 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.

**660XKN Matters affecting payment of benefits under this Subdivision**

660XKN(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).

660XKN(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 that 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

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representative of the person's partner or anyone else in respect of the payment of that money to the person.

## **Part 2.12B—Mature age (post-30 June 1996) allowance**

### **Division 1—Preliminary**

#### **660YAA Application of Part**

This Part deals with mature age allowance to which Part 2.12A does not apply.

Section 660YBA

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## Division 2—Qualification for mature age allowance

### 660YBA Qualification for mature age allowance

660YBA(1) A person is qualified for a mature age allowance in respect of a period if the person fulfils the requirements set out in this section in respect of the period.

660YBA(2) The first requirement is that the person has reached 60 years of age but has not reached pension age.

Note: For *pension age* see section 23.

660YBA(3) Subject to subsection (4), the second requirement is that either of the following paragraphs applies to the person:

- (a) the person was receiving a job search allowance or a newstart allowance immediately before the claim lodgment day and has been receiving an income support payment for a continuous period of at least 9 months immediately before the claim lodgment day;
- (b) at any time during the period of 13 weeks immediately before the claim lodgment day the person received a social security pension, a service pension, income support supplement, a widow allowance, a partner allowance, sickness allowance, benefit PP (partnered) or a parenting allowance (other than a non-benefit parenting allowance).

Note 1: For *income support payment* see subsection 23(1).

Note 2: For calculation of continuous period of receipt of income support payments see section 38B.

660YBA(4) The requirement set out in subsection (3) does not apply to a person who has previously received mature age allowance under this Part or Part 2.12A.

660YBA(5) The third requirement is that the person satisfies the Secretary that the person has no recent workforce experience.

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

660YBA(6) For the purposes of subsection (5), *recent workforce experience* is employment of 20 hours or more a week for a total of 13 weeks or



more at any time during the 12 months immediately before the claim lodgment day.

660YBA(7) The fourth requirement is that the person is an Australian resident.

Note: For *Australian resident* see section 7.

660YBA(11) In this section:

*claim lodgment day* means the day on which the claim is lodged.

Note: A mature age allowance is not payable in certain situations even if the person is qualified (see Division 3).

### **660YBB Assurance of support**

A person is not qualified for mature age allowance in respect of a period if the Secretary is satisfied that:

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

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

### **Division 3—Payability of mature age allowance**

#### **660YCA Mature age allowance not payable if allowance rate nil**

660YCA(1) Subject to subsection (2), a mature age allowance is not payable to a person if the person's mature age allowance rate would be nil.

660YCA(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.

#### **660YCF Multiple entitlement exclusion**

660YCF(1) A mature age allowance is not payable to a person if the person is already receiving a mature age allowance under Part 2.12A, a service pension or income support supplement.

660YCF(2) If:

- (a) a person is receiving a mature age allowance; and
- (b) another social security benefit, a social security pension, a service pension or income support supplement becomes payable to the person;

the mature age allowance 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 the day on which the mature age allowance ceases to be payable see section 660YJA.

660YCF(3) Subject to subsection (4), a mature age allowance is not payable to a woman if:

- (a) the woman is an armed services widow; and
- (b) the woman 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.

Note 1: For *armed services widow* see subsection 4(1).

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Note 2: A widow receiving a payment under the Veterans' Entitlements Act who is not covered by paragraph (3)(b) may be paid at a lower rate (see subsection 1068(3)).

660YCF(4) Subsection (3) does not apply to a woman if:

- (a) the woman has been receiving a payment referred to in paragraph (3)(b) continuously since before 1 November 1986; and
- (b) before 1 November 1986 the woman was also receiving a social security benefit.

660YCF(5) A mature age allowance is not payable to a man if:

- (a) the man is an armed services widower; and
- (b) the man 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.

Note: For *armed services widower* see subsection 4(1).

**660YCFA Newly arrived resident's waiting period**

660YCFA(1) Subject to this section, a person who:

- (a) has entered Australia on or after 1 January 1993; and
- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

is subject to a newly arrived resident's waiting period.

660YCFA(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a mature age allowance.

Note: For *qualifying residence exemption* see subsections 7(6) and 7(6AA).

660YCFA(4) Subsection (1) does not apply to a person if:

- (a) the person is already subject to a newly arrived resident's waiting period; or
- (b) the person has already served a newly arrived resident's waiting period; or
- (c) the person:
  - (i) has previously entered Australia before 1 January 1993; and

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- (ii) held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.

660YFCA(5) Subsection (1) does not apply to a person if:

- (a) the person is a New Zealand citizen; and
- (b) the person was an Australian resident on 1 February 2000.

**660YCFB Duration of newly arrived resident's waiting period**

660YCFB(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

660YCFB(3) The newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

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

**660YCG Educational and other schemes exclusion**

660YCG(1) Subject to subsections (2) and (3), a mature age allowance is not payable to a person for a period if a payment has been or may be made in respect of the person for that period under:

- (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or
- (b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees.

Note 1: For *prescribed educational scheme* see section 5.

660YCG(2) If:

- (a) a person enrolls in a full-time course of education; and
- (b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (1), mature age allowance is payable to the person for a period before the person starts the course.

660YCG(3) If:

- (a) a person enrolls in a full-time course of education; and
- (b) the course is to last for 6 months or longer; and
- (c) an application is made for a payment in respect of the person under:
  - (ii) the ABSTUDY Schools Scheme; or
  - (iii) the ABSTUDY Tertiary Scheme; and
- (d) the person was receiving mature age allowance immediately before the start of the course;

the Secretary may decide that, in spite of subsection (1), mature age allowance is payable to the person until:

- (e) the application is determined; or
- (f) the end of 3 weeks beginning on the day on which the course starts;

whichever happens first.

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

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

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

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

**660YCI Exclusion for non-payment period for job search allowance, newstart allowance or partner allowance** [see Note 7]

If:

- (a) a period of non-payment of job search allowance, newstart allowance or partner allowance has been imposed in respect of a person; and
- (b) the period has not ended;

mature age allowance is not payable to the person for the period.

Note 2: For the imposition of a period of non-payment of newstart allowance see paragraph 608(1)(j).

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Note 3: For the imposition of a period of non-payment of partner allowance see paragraph 771HC(1)(b).

**660YCJ Allowance not payable if assets value limit exceeded**

[see Appendix for CPI adjusted figures]

660YCJ(1) A mature age allowance is not payable to a person if the value of the person's assets is greater than the person's assets value limit.

660YCJ(2) A person's assets value limit is calculated by working out which family situation in column 2 of the following Table applies to the person; the assets value limit is the corresponding amount in column 3.

<b>Assets value limit table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
<b>Item</b>	<b>Person's family situation</b>	<b>Assets value limit</b>	
		<b>Column 3A</b> <b>Either the person or the partner is a homeowner</b>	<b>Column 3B</b> <b>Neither the person nor the partner is a homeowner</b>
1.	Not member of a couple	\$118,000	\$202,000
2.	Partnered (partner getting neither pension nor allowance)	\$167,500	\$251,500
3.	Partnered (partner getting pension or allowance)	\$83,750	\$125,750

660YCJ(3) If the Secretary determines in writing, for the purposes of column 3A or 3B of an item in the Table at the end of subsection (2), a higher amount in substitution for an amount (the **existing amount**) set out in that column of that item, the higher amount is taken, from and including 1 July 1996, to be substituted for the existing amount. A determination under this subsection is a disallowable instrument.

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- Note 1: For *members of a couple, partnered (partner getting neither pension nor allowance)* and *partnered (partner getting pension or allowance)* see section 4.
- Note 2: For *homeowner* see section 11.
- Note 3: If item 2 applies to a person, the value of *all* the assets of the person's partner is to be taken as being included in the value of the person's assets (see subsection 660YCK(1))—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 660YCK(2)).
- Note 4: If a mature age allowance is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).
- Note 5: The assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).
- Note 6: The assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).
- Note 7: The assets value limits of item 2 are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

**660YCK Value of assets of members of couples**

660YCK(1) If:

- (a) a person is a member of a couple; and
- (b) the person's partner is not in receipt of an income support payment;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

660YCK(2) If:

- (a) a person is a member of a couple; and
- (b) the person's partner is in receipt of an income support payment;

the following paragraphs apply:

- (c) the value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner; and

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- (d) the value of the person's assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of the assets of that kind of the person's partner.

Note: For *income support payment* see subsection 23(1).

**660YCL Seasonal workers**

660YCL(1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for mature age allowance, the person, or, if the person is a member of a couple, the person or the person's partner, has been engaged in seasonal work.

Note: For *seasonal work* see subsection 16A(1).

660YCL(2) Mature age allowance is not payable to the person:

- (a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or
- (b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

Note: For *seasonal work preclusion period* see subsection 16A(1).

660YCL(3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):

- (a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and
- (b) the determination has effect accordingly.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).



## **Division 6—Rate of mature age allowance**

### **660YFA How to work out a person's mature age allowance**

A person's mature age allowance rate is worked out by using Benefit Rate Calculator B at the end of section 1068 (see Part 3.6).

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

660YGI(1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any mature age allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.

660YGI(2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:

- (a) unless paragraph (b) applies, the last day of the quarter; or
- (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.

660YGI(3) In this section:

**quarter** means a CDEP Scheme quarter.

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

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

## **Division 11—Bereavement payments**

### **Subdivision A—Preliminary**

#### **660YKA Surviving partner and deceased partner**

If:

- (a) a person is receiving mature age allowance; and
- (b) the person's partner dies;

then, for the purposes of this Division:

- (c) the person is the surviving partner; and
- (d) the person's partner is the deceased partner.

#### **Subdivision B—Continuation of mature age allowance following death of recipient's partner**

#### **660YKB Continuation of mature age allowance for bereavement period**

660YKB(1) This section applies if:

- (a) a person is receiving mature age allowance; and
- (b) the person's partner dies; and
- (c) immediately before the deceased partner died, the partner:
  - (i) was a long-term social security recipient; or
  - (ii) was receiving a social security pension, a service pension or income support supplement; and
- (d) immediately before the deceased partner died, the surviving partner was a long-term social security recipient.

660YKB(2) The surviving partner remains qualified for mature age allowance during the bereavement period as if:

- (a) the deceased partner had not died; and
- (b) the deceased partner had continued to receive an income support payment; and
- (c) the surviving partner and the deceased partner had continued to be members of a couple.

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660YKB(3) The surviving partner's mature age allowance rate during the bereavement rate continuation period is the rate that would have been payable to the surviving partner if:

- (a) the deceased partner had not died; and
- (b) if the couple had been an illness separated couple or a respite care couple—they had not been such a couple.

660YKB(4) The surviving partner's mature age allowance rate during the bereavement lump sum period (if any) is the rate at which mature age allowance would have been payable to the surviving partner if he or she was not a member of a couple.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: For *bereavement period*, *bereavement rate continuation period* and *bereavement lump sum period* see section 21.

Note 3: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Note 4: For *income support payment* see subsection 23(1).

### **Subdivision C—Bereavement payments for person receiving mature age allowance following death of the person's partner**

#### **660YKC Qualification for payments under this Subdivision**

660YKC(1) If:

- (a) a person is receiving mature age allowance; and
- (b) the person's partner dies; and
- (c) immediately before the deceased partner died, the partner:
  - (i) was a long-term social security recipient; or
  - (ii) was receiving a social security pension, a service pension or income support supplement; and
- (d) immediately before the deceased partner died, the surviving partner 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:

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- (i) the amount that would otherwise be payable to the person under section 660YKB (person's continued rate) on that payday; and
- (ii) the amount that would otherwise be payable to the person under section 660YKD (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the surviving partner is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: Section 660YKD provides for the payment to the surviving partner, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the deceased partner during that period if the partner had not died.

Note 2: Section 660YKE provides for payment to the surviving partner of a lump sum that represents the instalments that would have been paid to the deceased partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the deceased partner had not died.

Note 3: For *bereavement period* see section 21.

660YKC(2) A surviving partner who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

660YKC(3) An election under subsection (2):

- (a) must be made by written notice to the Secretary; and
- (b) may be made after the surviving partner 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.

**660YKD Continued payment of deceased partner's previous entitlement**

If a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner, there is payable to the surviving partner, on each of the deceased partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the deceased partner on that payday if he or she had not died.

Note: For *bereavement rate continuation period* see section 21.

### **660YKE Lump sum payable in some circumstances**

If:

- (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the surviving partner as a lump sum an amount worked out using the following Lump Sum Calculator:

#### **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 surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) the deceased partner had not died; and
- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

*Step 2.* Work out the amount that would have been payable to the deceased partner on the deceased partner's payday immediately before the first available bereavement adjustment payday if:

- (a) the deceased partner had not died; and

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- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

*Step 3.* Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

*Step 4.* Work out the amount of mature age allowance that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) mature age allowance had been payable to the surviving partner on that payday; and
- (b) the surviving partner was not a member of a couple on that payday:

the result is called the ***surviving partner's notional rate***.

*Step 5.* Take the surviving partner's notional rate away from the combined rate: the result is called the ***deceased partner's instalment component***.

*Step 6.* Work out the number of the deceased partner's paydays in the bereavement lump sum period.

*Step 7.* Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the surviving partner under this section.

Note: For *bereavement period*, *bereavement lump sum period* and *first available bereavement adjustment payday* see section 21.

**660YKF Effect of death of surviving partner**

If:

- (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
  - (b) the surviving partner dies within the bereavement period; and
  - (c) the Secretary does not become aware of the death of the deceased partner before the surviving partner dies;
- there is payable, as a lump sum, to any person that the Secretary thinks appropriate, an amount worked out using the following Lump Sum Calculator:

#### **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 surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if:

- (a) neither the surviving partner nor the deceased partner had died; and
- (b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

*Step 2.* Work out the amount that would have been payable to the deceased partner on the deceased partner's payday immediately after the day on which the surviving partner dies if:

- (a) neither the surviving partner nor the deceased partner had died; and

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- (b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

*Step 3.* Add the results of Step 1 and Step 2: this result is called the *combined rate*.

*Step 4.* Work out the amount of mature age allowance that would have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if:

- (a) mature age allowance had been payable to the surviving partner on that payday; and
- (b) the surviving partner was not a member of a couple on that payday:

the result is called the *surviving partner's notional rate*.

*Step 5.* Take the surviving partner's notional rate away from the combined rate: the result is called the *deceased partner's instalment component*.

*Step 6.* Work out the number of the surviving partner's paydays in the period that starts on the day on which the surviving partner dies and ends on the day on which the bereavement period ends.

*Step 7.* Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

Note: For *bereavement period* and *first available bereavement adjustment payday* see section 21.

**660YKG Matters affecting payments under this Subdivision**

660YKG(1) If:

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- (a) the surviving partner is qualified for payments under this Subdivision; and
  - (b) after the deceased partner died, an amount to which the deceased partner would have been entitled if he or she 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 surviving partner had 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 surviving partner or from the personal representative of the deceased partner, except to the extent (if any) to which the amount is greater than the amount payable to the surviving partner under this Subdivision;
  - (e) the amount payable to the surviving partner under this Subdivision is to be reduced by the amount referred to in paragraph (b).

660YKG(2) If:

- (a) the surviving partner is qualified for payments under this Subdivision; and
  - (b) an amount to which the deceased partner would have been entitled if the deceased 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 financial institution; and
  - (c) the financial institution pays to the surviving partner, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);
- the financial institution 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 deceased partner or anyone else in respect of the payment of that money to the surviving partner.

Note: For *bereavement period* see section 21.

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

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

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 660YCH had not been enacted.

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

## Part 2.13—Employment entry payment

### 661 Job search allowees over 18 or newstart allowees

661(1) A person is qualified for an employment entry payment under this section if:

- (a) the person has turned 21; and
- (b) the person commences employment; and
- (c) immediately before the person commenced the employment:
  - (i) the person was receiving a newstart allowance; and
  - (ii) the person had been receiving income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph); and

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.

- (d) because the person commences the employment, the person ceases to be qualified for newstart allowance; and
- (e) the employment is, in the Secretary's opinion, likely to continue for more than 4 weeks; and
- (f) the person has not, within the last 12 months, received a payment under this Part.

661(3) If the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed; and
- (b) on the start of that employment, the person would, but for receiving a payment under this subsection, be qualified for a payment under subsection (1) or (2);

the following provisions have effect:

- (c) subject to paragraph (d), the person is qualified for an employment entry payment, which is payable to the person at such time as the Secretary determines;

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- (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.

661(4) The time determined under paragraph (3)(c) is not to be more than 14 days before the person is to commence the employment.

**662 Amount of section 661 payment**

The amount of an employment entry payment under section 661 is \$104.

**664AAA Widow allowance recipients**

664AAA(1) A woman is qualified for an employment entry payment under this section if:

- (a) she commences employment; and
- (b) immediately before she commenced the employment, she was:
  - (i) receiving widow allowance; and
  - (ii) a long-term social security recipient; and
- (c) the income earned by her from the employment results in widow allowance ceasing to be payable; and
- (d) the employment is, in the Secretary's opinion, likely to continue for more than 4 weeks; and
- (e) she has not, within the last 12 months, received a payment under this Part.

Note: For *long-term social security recipient* see subsection 23(1).

664AAA(2) If the Secretary is satisfied that:

- (a) a woman has entered an agreement under which she is to be employed; and
- (b) on the start of that employment, she would, but for receiving a payment under this subsection, be qualified for a payment under subsection (1);

the following provisions have effect:

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- (c) subject to paragraph (d), she is qualified for an employment entry payment, which is payable to her at such time as the Secretary determines;
- (d) she is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to her.

664AAA(3) The time determined under paragraph (2)(c) is not to be more than 14 days before the woman is to commence the employment.

**664AAB Amount of section 664AAA payment**

The amount of an employment entry payment under section 664AAA is \$104.

**664AA Mature age allowance and mature age partner allowance recipients**

*Mature age allowance recipient (Part 2.12A)*

- 664AA(1) A person is qualified for an employment entry payment under this section if:
- (a) the person commences employment; and
  - (b) immediately before the person commences the employment, the person was receiving a mature age allowance under Part 2.12A; and
  - (c) because the person commences the employment, the person ceases to be qualified for a mature age allowance under that Part; and
  - (d) the employment is, in the Secretary's opinion, likely to continue for more than 4 weeks; and
  - (e) the person has not, within the last 12 months, received a payment under this Part.

*Mature age allowance recipient (Part 2.12B)*

- 664AA(1A) A person is qualified for an employment entry payment under this section if:
- (a) the person starts employment; and

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- (b) immediately before the person started the employment, the person was receiving a mature age allowance under Part 2.12B; and
- (c) the income earned by the person from the employment results in that mature age allowance ceasing to be payable to the person; and
- (d) the employment is, in the Secretary's opinion, likely to continue for more than 4 weeks; and
- (e) the person has not, within the last 12 months, received a payment under this Part.

*Mature age partner allowance recipient*

664AA(2) A person is qualified for an employment entry payment under this section if:

- (a) the person is a member of a couple; and
- (b) the person commences employment; and
- (c) immediately before the person commences the employment, the person was receiving mature age partner allowance; and
- (d) the income earned by the person from the employment results in mature age allowance ceasing to be payable to the person's partner; and
- (e) the employment is, in the Secretary's opinion, likely to continue for more than 4 weeks; and
- (f) the person has not, within the last 12 months, received a payment under this Part.

664AA(3) If the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed; and
- (b) on the start of that employment, the person would, apart from receiving a payment under this subsection, be qualified for a payment under subsection (1), (1A) or (2);

the following provisions have effect:

- (c) subject to paragraph (d), the person is qualified for an employment entry payment, which is payable to the person at such time as the Secretary determines;
- (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned

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in paragraphs (a) and (b) at the time at which the payment is payable to the person.

664AA(4) The time determined under paragraph (3)(c) is not to be more than 14 days before the person is to start the employment.

### **664AB Amount of section 664AA payment**

The amount of an employment entry payment under section 664AA is \$104.

### **664A Sole parent pension recipients**

664A(1) A person is qualified for an employment entry payment under this section if:

- (a) the person's income from employment rises (including the case where a person commences employment); and
- (b) immediately before the rise in the person's income from employment, the person was receiving a pension PP (single); and
- (c) because of the rise in the person's income from employment, the person's income from employment exceeds the threshold amount; and
- (d) the person's income from employment is, in the Secretary's opinion, likely to exceed the threshold amount for more than 4 weeks; and
- (e) the person has not, within the last 12 months, received a payment under this Part.

664A(2) If the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed or the person's earnings are to be increased; and
- (b) on the start of that employment or increase in those earnings, the person would, but for receiving a payment under this subsection, be qualified for a payment under subsection (1);

the following provisions have effect:

- (c) subject to paragraph (d), the person is qualified for an employment entry payment, which is payable to the person at such time as the Secretary determines;

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- (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.

664A(3) The time determined under paragraph (2)(c) must not be more than 14 days before the person is to commence the employment or the person's income from employment is to rise.

664A(4) In this section:

*threshold amount* means the maximum amount of ordinary income that a person receiving newstart allowance could earn, derive or receive without the allowance ceasing to be payable, if the person:

- (a) was not a member of a couple; and
- (b) was not receiving rent assistance; and
- (c) was not receiving remote area allowance; and
- (d) had turned 21 but had not turned 60; and
- (e) has no dependent children.

**664B Amount of section 664A payment**

The amount of an employment entry payment under section 664A is \$104.

**664C Disability support pension recipients**

664C(1) A person is qualified for an employment entry payment under this section if:

- (a) the person is in paid employment (other than sheltered employment); and
  - (i) the employment is for at least 30 hours per week; or
  - (ii) the person's income from the employment exceeds the threshold amount; and
- (b) immediately before the person commenced the employment, the person was receiving a disability support pension; and
- (c) in the Secretary's opinion the person's employment is likely to continue for more than 4 weeks; and



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- (d) the person has not, within the last 12 months, received a payment under this Part.

Note 1: the amount in subparagraph (a)(ii) is adjusted twice a year by legislative amendment.

664C(2) If the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed; and
- (b) on the start of that employment, the person would but for receiving a payment under this subsection, be qualified for a payment under subsection (1);

the following provisions have effect:

- (c) subject to paragraph (d), the person is qualified for an employment entry payment which is payable to the person at such time as the Secretary determines;
- (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.

664C(3) The time determined under paragraph (2)(c) is not to be more than 28 days before the person is to commence the employment.

664C(4) In this section:

***threshold amount*** means the maximum amount per fortnight that a person receiving newstart allowance can earn, derive or receive without the allowance ceasing to be payable, if the person:

- (a) is not a member of a couple; and
- (b) is not receiving rent assistance; and
- (c) is not receiving remote area allowance; and
- (d) has turned 21 but has not turned 60; and
- (e) has no dependent children.

### **664D Amount of section 664C payment**

The amount of an employment entry payment under section 664C is \$312.

Section 664E

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**664E Widow B pension recipients**

664E(1) A woman is qualified for an employment entry payment under this section if:

- (a) her income from employment rises (including the case where a woman commences employment); and
- (b) immediately before the rise in her income from employment, she was receiving a widow B pension; and
- (c) because of the rise in her income from employment, her income from employment exceeds the threshold amount; and
- (d) her income from employment is, in the Secretary's opinion, likely to exceed the threshold amount for more than 4 weeks; and
- (e) she has not, within the last 12 months, received a payment under this Part.

664E(2) If the Secretary is satisfied that:

- (a) a woman has entered an agreement under which she is to be employed or her earnings are to be increased; and
- (b) on the start of that employment or increase in those earnings, the woman would, apart from receiving a payment under this subsection, be qualified for a payment under subsection (1);

the following provisions have effect:

- (c) subject to paragraph (d), the woman is qualified for an employment entry payment which is payable to her at such time as the Secretary determines;
- (d) the woman is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to her.

664E(3) The time determined under paragraph (2)(c) must not be more than 14 days before the woman is to commence the employment or her income from the employment is to rise.

664E(4) In this section:

***threshold amount*** means the maximum amount of ordinary income that a person receiving newstart allowance could earn,

derive or receive without the allowance ceasing to be payable, if the person:

- (a) was not a member of a couple; and
- (b) was not receiving rent assistance; and
- (c) was not receiving remote area allowance; and
- (d) had turned 21 but had not turned 60.

#### **664F Amount of section 664E payment**

The amount of an employment entry payment under section 664E is \$104.

#### **664FA Disability wage supplement**

664FA(1) A person is qualified for an employment entry payment if the person:

- (a) has made a claim for disability wage supplement; and
- (b) is qualified for disability wage supplement; and
- (c) has not, within the last 12 months, received:
  - (i) a payment under this Part; or
  - (ii) an employment entry payment made under the supported wage system administered by the Human Services Department.

664FA(2) A person is qualified for an employment entry payment if:

- (a) the person has made a claim for disability wage supplement; and
- (b) the person would be qualified for disability wage supplement if the Human Services Secretary had advised the Secretary that the person was participating in the supported wage system administered by the Human Services Department; and
- (c) the Human Services Secretary has advised the Secretary that the person has begun a trial period for the purposes of participating in that supported wage system; and
- (d) the person has not, within the last 12 months, received:
  - (i) a payment under this Part; or

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- (ii) an employment entry payment made under the supported wage system administered by the Human Services Department.

664FA(3) A person is qualified for an employment entry payment if:

- (a) the person has made a claim for disability wage supplement; and
- (b) the person would be qualified for disability wage supplement if the Human Services Secretary had advised the Secretary that the person was participating in the supported wage system administered by the Human Services Department; and
- (c) the Human Services Secretary has advised the Secretary that the person is likely:
  - (i) to participate in that supported wage system; or
  - (ii) to undergo a trial period for the purpose of participating in that supported wage system; and
- (d) the person has not, within the last 12 months, received:
  - (i) a payment under this Part; or
  - (ii) an employment entry payment made under the supported wage system administered by the Human Services Department.

664FA(4) The payment may be made at the time determined by the Secretary but may not be made more than 28 days before the day advised by the Human Services Secretary as the day on which the person is likely to start participating in the system or undergoing the trial period.

**664FB Amount of section 664FA payment**

The amount of an employment entry payment under section 664FA is \$312.

**664G Special benefit recipients**

664G(1) A person is qualified for an employment entry payment under this section if:

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- (a) the person would be qualified for a pension PP (single) apart from paragraphs 500(1)(b) and (d) (Australian residency requirements); and
- (b) the person's income from employment rises (including the case where a person commences employment); and
- (c) immediately before the rise in the person's income from employment, the person was receiving special benefit; and
- (d) because of the rise in the person's income from employment, the person's income from employment exceeds the threshold amount; and
- (e) the person's income from employment is, in the Secretary's opinion, likely to exceed the threshold amount for more than 4 weeks; and
- (f) the person has not, within the last 12 months, received a payment under this Part.

664G(2) If the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed or the person's earnings are to be increased; and
- (b) on the start of that employment or increase in those earnings, the person would, apart from receiving a payment under this subsection, be qualified for a payment under subsection (1);

the following provisions have effect:

- (c) subject to paragraph (d), the person is qualified for an employment entry payment which is payable to the person at such time as the Secretary determines;
- (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.

664G(3) The time determined under paragraph (2)(c) must not be more than 14 days before the person is to commence the employment or the person's income from the employment is to rise.

664G(4) In this section:

***threshold amount*** means the maximum amount of ordinary income that a person receiving newstart allowance could earn,

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derive or receive without the allowance ceasing to be payable, if the person:

- (a) was not a member of a couple; and
- (b) was not receiving rent assistance; and
- (c) was not receiving remote area allowance; and
- (d) had turned 21 but had not turned 60.

**664H Amount of section 664G payment**

The amount of an employment entry payment under section 664G is \$104.

**664HA Carer pension recipients**

664HA(1) A person is qualified for an employment entry payment under this section if:

- (a) the person's income from employment rises (including the case where a person commences employment); and
- (b) immediately before the rise in the person's income from employment, the person was receiving a carer pension; and
- (c) because of the rise in the person's income from employment, the person's income from employment exceeds the threshold amount; and
- (d) the person's income from employment is, in the Secretary's opinion, likely to exceed the threshold amount for more than 4 weeks; and
- (e) the person has not, within the last 12 months, received a payment under this Part.

664HA(2) If the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed or the person's earnings are to be increased; and
  - (b) on the start of that employment or increase in earnings, the person would, but for receiving a payment under this subsection, be qualified for a payment under subsection (1);
- the following provisions have effect:

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- (c) subject to paragraph (d), the person is qualified for an employment entry payment, which is payable to the person at such time as the Secretary determines;
- (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.

664HA(3) The time determined under paragraph (2)(c) must not be more than 14 days before the person is to commence the employment or the person's income from the employment is to rise.

663HA(4) In this section:

**threshold amount** means the maximum amount of ordinary income that a person receiving newstart allowance could earn, derive or receive without the allowance ceasing to be payable, if the person:

- (a) was not a member of a couple; and
- (b) was not receiving rent assistance; and
- (c) was not receiving remote area allowance; and
- (d) had turned 21 but had not turned 60; and
- (e) has no dependent children.

### **664HB Amount of section 664HA payment**

The amount of an employment entry payment under section 664HA is \$104.

### **664I Partner allowance recipients**

- 664I(1) A person is qualified for an employment entry payment under this section if:
- (a) the person commences employment; and
  - (b) immediately before the person commenced the employment:
    - (i) the person was receiving partner allowance; and
    - (ii) the person's partner had been receiving income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the

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period or any part of it occurred before or after the commencement of this paragraph); and

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.

- (c) because of the income earned by the person from the employment, newstart allowance, youth training allowance or job search allowance ceases to be payable to the person's partner; and
- (d) the employment is, in the Secretary's opinion, likely to continue for more than 4 weeks; and
- (e) the person has not, within the last 12 months, received a payment under this Part.

664I(2) If the Secretary is satisfied that:

- (a) a person has entered an agreement under which the person is to be employed; and
- (b) on the start of that employment, the person would, but for receiving a payment under this subsection, be qualified for a payment under subsection (1);

the following provisions have effect:

- (c) subject to paragraph (d), the person is qualified for an employment entry payment, which is payable to the person at the time the Secretary determines;
- (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) when the payment is payable to the person.

664I(3) The time determined under paragraph (2)(c) is not to be more than 14 days before the person is to commence the employment.

**664J Amount of section 664I payment**

The amount of an employment entry payment under section 664I is \$104.



**665 Need for a claim**

- 665(1) A person is not qualified for an employment entry payment under section 661, 664A, 664C, 664E, 664FA, 664G or 664HA unless the person makes a claim for payment.
- 665(2) A person is not qualified for an employment entry payment under section 661, 663 or 664C if the claim for payment is made more than 28 days after the start of the employment in respect of which the claim is made.
- 665(2A) A person is not qualified for an employment entry payment under section 664FA if the claim for payment is made more than 28 days after the start of the employment in the supported wage system in respect of which the claim is made.
- 665(3) A person is not qualified for an employment entry payment under section 664A, 664E, 664G or 664HA if the claim for payment is made more than 28 days after the rise in income in respect of which the claim was made.
- 665(4) A person is not qualified for an employment entry payment under this Part if the person is qualified for a special employment advance under Part 2.22A and has made a claim under section 1061EP in respect of the same employment.

## **Part 2.13A—Education entry payment**

### **Division 1—Sole parent pension recipients**

#### **665A Payment to a sole parent pensioner**

A person is qualified for an education entry payment under this section if:

- (a) the person is receiving a pension PP (single); and
- (b) a pension education supplement is payable to the person; and

**Note:** Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (c) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

#### **665B Amount of section 665A payment**

The amount of an education entry payment under section 665A is \$208.

#### **665C Need for claim**

A person is not qualified for an education entry payment under section 665A unless the person has made a claim for the payment.

## **Division 2—Recipients of disability support pension or disability wage supplement**

### **665E Payment to a disability support pensioner**

A person is qualified for an education entry payment under this section if:

- (a) the person is receiving a disability support pension; and
- (b) a pension education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (d) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

### **665F Amount of section 665E payment**

The amount of an education entry payment under section 665E is \$208.

### **665G Need for claim**

A person is not qualified for an education entry payment under section 665E unless the person has made a claim for the payment.

### **665I Payment to a widow B pensioner**

A woman is qualified for an education entry payment under this section if:

- (a) the woman is receiving a widow B pension; and
- (b) a pension education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (d) the woman has not received a payment under this Part for which she made a claim in the current calendar year.

**Chapter 2** Pensions, benefits and allowances

**Part 2.13A** Education entry payment

**Division 2** Recipients of disability support pension or disability wage supplement

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**665J Amount of section 665I payment**

The amount of an education entry payment under section 665I is \$200.

## **Division 3—Widow B pension recipients**

### **665K Need for claim**

A person is not qualified for an education entry payment under section 665I unless the person has made a claim for the payment.

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## **Division 4—Special benefit recipients**

### **665M Payment to a special benefit recipient**

A person is qualified for an education entry payment under this section if:

- (a) the person would be qualified for a pension PP (single) apart from paragraphs 500(1)(b) and (d) (Australian residency requirements); and
- (b) the person is receiving special benefit; and
- (c) a pensioner education supplement is payable to the person; and

**Note:** Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (e) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

### **665N Amount of section 665M payment**

The amount of an education entry payment under section 665M is \$208.

### **665P Need for claim**

A person is not qualified for an education entry payment under section 665M unless the person has made a claim for the payment.

## **Division 6—Former job search or newstart allowance recipients**

### **665U Payment to recipient**

665U(1) A person is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that the person intends to enrol in a full-time course of education that is an approved course under the ABSTUDY scheme; or
  - (ii) the person is enrolled in such a course; and
- (b) immediately before starting the course of education:
  - (i) the person is receiving a newstart allowance; and
  - (ii) the person had been receiving income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this section); and

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.

- (c) the person:
  - (i) ceases to be qualified for newstart allowance because the person takes part in the course of education; or
  - (ii) is not qualified for payments under the ABSTUDY scheme because the person takes part in the course to satisfy the activity test under section 601 or to comply with a Newstart Activity Agreement; or
  - (iii) is not qualified for payments under the ABSTUDY scheme because the person takes part in the course to comply with a Case Management Activity Agreement under the *Employment Services Act 1994*; or
- (d) the person has not, within the last 12 months, received a payment under this Part.

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665U(2) A person is also taken to be qualified for an education entry payment under this section if:

- (a) immediately before 20 September 1996, the person:
  - (i) was qualified for an education entry payment under section 665Q of this Act, or under this section, as in force immediately before that date; or
  - (ii) would have been so qualified if the person had, before that date, duly made a claim for the payment; and
- (b) the person has not received the payment.

**665V Amount of section 665U payment**

The amount of an education entry payment under section 665U is \$208.

**665W Need for claim**

A person is not qualified for an education entry payment under section 665U unless the person has made a claim for the payment.



## **Division 7—Mature age allowance recipient**

### **665Y Payment to a mature age allowance recipient**

A person is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that the person intends to enrol in a course of education (whether full-time or part-time) that is an approved course under the ABSTUDY schemes; or
  - (ii) the person is enrolled in such a course; and
- (b) immediately before commencing the course of education, the person is receiving mature age allowance; and
- (c) the person has not, within the last 12 months, received a payment under this Part.

### **665Z Amount of section 665Y payment**

The amount of an education entry payment under section 665Y is \$208.

### **665ZA Need for claim**

A person is not qualified for an education entry payment under section 665Y unless the person has made a claim for the payment.

## **Division 8—Widow allowance recipients**

### **665ZC Payment to a widow allowance recipient**

A woman is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that she intends to enrol in a full-time or part-time course of education that is an approved course under the ABSTUDY scheme; or
  - (ii) she is enrolled in such a course; and
- (b) immediately before she commences the course of education, she:
  - (i) is receiving widow allowance; and
  - (ii) is a long-term social security recipient; and
- (c) she has not, within the last 12 months, received a payment under this Part.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: Transitional provisions apply to this section for 9 months after 1 January 1995 (see section 11 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

### **665ZD Amount of section 665ZC payment**

The amount of an education entry payment under section 665ZC is \$208.

### **665ZE Need for claim**

A person is not qualified for an education entry payment under section 665ZC unless the person has made a claim for the payment.

## **Division 8A—Carer payment recipients**

### **665ZFA Payment to a carer payment recipient**

A person is qualified for an education entry payment under this section if:

- (a) the person is receiving a carer payment; and
- (b) a pensioner education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (d) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

### **665ZFB Amount of section 665ZFA payment**

The amount of an education entry payment under section 665ZFA is \$208.

### **665ZFC Need for claim**

A person is not qualified for an education entry payment under section 665ZC unless the person has made a claim for the payment.

Section 665ZG

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## **Division 9—Mature age partner allowance**

### **665ZG Payment to a mature age partner allowance recipient**

A person is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that the person intends to enrol in a full-time or part-time course of education that is an approved course under the ABSTUDY scheme; or
  - (ii) the person is enrolled in such a course; and
- (b) immediately before the person commences the course of education, the person is receiving a mature age partner allowance; and
- (c) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

### **665ZH Amount of section 665ZG payment**

The amount of an education entry payment under section 665ZG is \$208.

### **665ZJ Need for claim**

A person is not qualified for an education entry payment under section 665ZG unless the person has made a claim for the payment.

## **Division 10—Wife pension recipients**

### **665ZL Payment to a wife pensioner**

A woman is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that she intends to enrol in a full-time or part-time course of education that is an approved course under the ABSTUDY scheme; or
  - (ii) she is enrolled in such a course; and
- (b) immediately before she commences the course of education, she is receiving a wife pension; and
- (c) she has not received a payment under this Part for which she made a claim in the current calendar year.

### **665ZM Amount of section 665ZL payment**

The amount of an education entry payment under section 665ZL is \$200.

### **665ZN Need for claim**

A person is not qualified for an education entry payment under section 665ZL unless the person has made a claim for the payment.

Section 665ZQ

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## Division 11—Partner allowance recipients

### 665ZQ Payment to a partner allowance recipient

A person is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that the person intends to enrol in a full-time course of education that is an approved course under the ABSTUDY scheme; or
  - (ii) the person is enrolled in such a course; and
- (b) immediately before the person commences the course of education, the person:
  - (i) is receiving partner allowance; and
  - (ii) is a long-term social security recipient; and
- (c) the person has not, within the last 12 months, received a payment under this Part.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: Transitional provisions apply to this section for 3 months after 1 July 1995 (see section 12 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

### 665ZR Amount of section 665ZQ payment

The amount of an education entry payment under section 665ZQ is \$208.

### 665ZS Need for claim

A person is not qualified for an education entry payment under section 665ZQ unless the person has made a claim for the payment.

## **Division 12—Parenting allowance recipients**

### **665ZU Payment to a parenting allowance recipient**

A person is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that the person intends to enrol in a full-time or part-time course of education that is an approved course under the AUSTUDY scheme or ABSTUDY scheme; or
  - (ii) the person is enrolled in such a course; and
- (b) immediately before the person commences the course of education, the person:
  - (i) is receiving benefit PP (partnered); and
  - (ii) is a long-term social security recipient; and
- (c) the person has not, within the last 12 months, received a payment under this Part.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: For *benefit PP (partnered)* see section 18.

Note 3: Transitional provisions apply to this section for 3 months after 1 July 1995 (see section 12 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

### **665ZV Amount of section 665ZU payment**

The amount of an education entry payment under section 665ZU is \$208.

### **665ZW Need for claim**

A person is not qualified for an education entry payment under section 665ZU unless the person has made a claim for the payment.

## **Division 13—Protection of education entry payment**

### **665ZY Education entry payment to be absolutely inalienable**

665ZY(1) Subject to subsections (2) and (3) and section 1359, an education entry payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

665ZY(2) The Secretary may make a deduction from an education entry payment payable to a person if the person asks the Secretary:

- (a) to make the deduction; and
- (b) to pay the amount to be deducted to the Commissioner of Taxation.

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

665ZY(3) The Secretary may make a deduction from a person's education entry payment if the person consents under section 1234A to the Secretary making that deduction.

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

### **665ZZ Effect of garnishee or attachment order**

665ZZ(1) If:

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

the court order does not apply to the saved amount (if any) in the account.



665ZZ(2) The saved amount is worked out as follows:

*Method statement*

*Step 1.* Work out the amount of education entry payment paid to the credit of the account as mentioned in paragraph (1)(c).

*Step 2.* Subtract from that amount the total amount withdrawn from the account during the 4-week period referred to in paragraph (1)(c): the result is the *saved amount*.

665ZZ(3) This section applies to an account whether it is maintained by a person:

- (a) alone; or
- (b) jointly with another person; or
- (c) in common with another person.

Note: A person affected by a garnishee order may have other saved amounts.

## **Part 2.14—Sickness allowance**

### **Division 1—Qualification for and payability of sickness allowance**

#### **Subdivision A—Basic qualification**

#### **666 Qualification for sickness allowance**

666(1) A person is qualified for sickness allowance in respect of a period if:

- (a) the person is incapacitated for work or study throughout the period because of sickness or an accident; and
- (b) the incapacity is caused wholly or virtually wholly by a medical condition arising from the sickness or accident; and
- (c) the incapacity is, or is likely to be, of a temporary nature; and
- (ca) one of the following applies:
  - (i) immediately before the incapacity occurred the person was in employment (whether the person was self-employed, or was employed by another person, on a full-time, part-time, casual or temporary basis) and the Secretary is satisfied that, when the incapacity ends, the employment will be again available to the person (whether or not the same kind of work will be available);
  - (ii) immediately before the incapacity occurred the person was in full-time education and was receiving payments under the ABSTUDY scheme and the Secretary is satisfied that the person is committed to resuming full-time study under that scheme when the incapacity ends;
  - (iii) immediately before the incapacity occurred the person was undertaking qualifying study and receiving austudy payment, and the Secretary is satisfied that the person is committed to resuming qualifying study when the incapacity ends; and

- (e) before the period begins the person has turned 21; and
- (f) before the period ends the person has not turned, or is not likely to turn, pension age; and
- (g) throughout the period, the person:
  - (i) is an Australian resident; or
  - (ii) is exempt from the residence requirement within the meaning of subsection 7(7).

Note 1: see section 677 for the circumstances in which sickness allowance is not payable to a person even though the person is qualified for the allowance.

Note 3: for *pension age* see section 23.

666(2) In this section:

*work*, in relation to a person, means work that the person has contracted to perform under a contract of employment that:

- (a) the person had immediately before the person becomes incapacitated; and
- (b) continues after the person becomes incapacitated.

*Person not qualified in certain circumstances*

666(9) A person is not qualified for sickness allowance in respect of an incapacity if the Secretary is satisfied that the incapacity is brought about with a view to obtaining youth allowance, austudy payment, newstart allowance, youth training allowance, sickness allowance or disability support pension.

### **667 Person undertaking rehabilitation program may qualify for sickness allowance**

667(3) A person is qualified for sickness allowance in respect of a period (in this subsection called the *rehabilitation period*) if:

- (a) immediately before the rehabilitation period began the person was receiving sickness allowance in respect of a period; and
- (b) the person is undertaking a rehabilitation program during the rehabilitation period; and
- (c) the program is intended to enhance the person's ability to work; and

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- (ca) the length of the person's participation in the program is, or is likely to be, at least 6 weeks; and
- (d) the person's participation in the program is, or is likely to, end within the period of 208 weeks after the allowance commenced to be payable to the person; and
- (e) subsection (4) or (4A) applies to the person.

667(4) This subsection applies to a person during a period if:

- (a) before the period begins the person has turned 21; and
- (b) before the period ends the person has not turned, or is not likely to turn, pension age; and
- (c) a person is an Australian resident throughout the period.

Note: for *pension age* see section 23.

*Person not qualified in certain circumstances*

667(5) A person is not qualified for sickness allowance in respect of an incapacity if the Secretary is satisfied that the incapacity is brought about with a view to obtaining youth allowance, austudy payment, job search allowance, newstart allowance, youth training allowance, sickness allowance or disability support pension.

**669 Time limit on qualification for sickness allowance**

669(1) A person who is receiving sickness allowance ceases to be qualified for sickness allowance 14 days after the person's maximum allowance period ends.

669(2) The *maximum allowance period* for a person is the period specified in the determination granting the person's claim for sickness allowance as the maximum period for which the sickness allowance is payable to the person.

669(3) The period specified in the determination is not to be more than:

- (a) if the person's claim for sickness allowance is supported by a medical certificate:
  - (i) the period specified in the medical certificate as the period for which the person is incapacitated for work;
  - or

- (ii) the period of 13 weeks;  
whichever is the lesser; or
- (b) if the claim is not supported by a medical certificate because of the person's participation in a rehabilitation program—the period of the person's participation in the program; or
- (c) in any other case—the period of 4 weeks.

669(4) For the purposes of subsection (3), the person's maximum allowance period commences on the first day the allowance becomes payable to the person.

Note: for the day on which sickness allowance becomes payable to a person see section 715.

*Secretary may extend maximum allowance period*

669(5) If:

- (a) a person is receiving sickness allowance; and
- (b) the person gives the Secretary a certificate of a medical practitioner containing the matters listed in subsection 704(1) and in accordance with the form approved under subsection 704(2); and
- (c) the Secretary is satisfied that the person's incapacity for work will continue after the end of the person's maximum allowance period;

the Secretary may extend the maximum allowance period by a period of not more than 13 weeks.

669(5A) If:

- (a) a person was receiving sickness allowance; and
- (b) within 14 days after the end of the person's maximum allowance period the person gives the Secretary a certificate of a medical practitioner containing the matters listed in subsection 704(1) and in accordance with the form approved under subsection 704(2); and
- (c) the Secretary is satisfied that the person's incapacity for work has continued after the end of the person's maximum allowance period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period of not more than 13 weeks from the end of the previous maximum exemption period.

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669(6) If:

- (a) a person is receiving sickness allowance; and
- (b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (5)(b)) that the person's incapacity for work will continue after the end of the person's maximum allowance period; and
- (c) the Secretary is satisfied that:
  - (i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (5)(b) before the person's maximum allowance period ends; and
  - (ii) the person's incapacity for work will continue after the end of the person's maximum allowance period;

the Secretary may extend the maximum allowance period by a period of not more than 4 weeks.

669(6A) If:

- (a) a person was receiving sickness allowance; and
- (b) within 14 days after the end of the person's maximum allowance period the person gives the Secretary written evidence (other than a certificate referred to in paragraph (5A)(b)) that the person's incapacity for work will continue after the end of the person's maximum allowance period; and
- (c) the Secretary is satisfied that:
  - (i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (5A)(b); and
  - (ii) the person's incapacity for work has continued after the end of the person's maximum allowance period and that the incapacity will continue;

the Secretary may extend the maximum allowance period by a period of not more than 4 weeks from the end of the previous maximum allowance period.

669(7) If:

- (a) a person is receiving sickness allowance; and

- (b) the person gives the Secretary a certificate referred to in paragraph (5)(b) before the end of the person's maximum allowance period; and
- (c) before the end of the person's maximum allowance period, the Secretary does not satisfy himself or herself that the person's incapacity for work will continue after the end of that period; and
- (d) the sole or dominant cause of the Secretary failing to satisfy himself or herself is an act or omission of an officer of the Department;

the Secretary may extend the person's maximum allowance period by a period of not more than 4 weeks.

Note: if the person's maximum allowance period is extended under this subsection, the Secretary may further extend the person's maximum allowance period under subsection (5).

### **676 Liquid assets test waiting period**

- 676(1) Subject to subsections (2), (6) and (7), if the value of a person's liquid assets exceeds the person's maximum reserve on:
- (a) the day on which the person becomes incapacitated for work or study; or
  - (b) the day on which the person claims sickness allowance;
- the person is not qualified for sickness allowance for a period unless the person has served the liquid assets test waiting period in relation to the claim before the beginning of that period.

Note 1: for *liquid assets* see section 14A.

Note 2: for *maximum reserve* see section 14A.

Note 4: for serving the liquid assets test waiting period see subsection 23(10A).

- 676(2) Subsection (1) does not apply to a person if:
- (a) the person is a transferee to sickness allowance; or
  - (b) the person has been in receipt of sickness allowance in respect of any period during the 4 weeks immediately before the person's current claim for sickness allowance is made.

Note: For *transferee to sickness allowance* see subsections 23(6) and (7).

- 676(3) The liquid assets test waiting period in relation to the claim is to be worked out under subsections (3A), (3B) and (3C).

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676(3A) Work out the number of formula weeks (disregarding any fractions of a week) in relation to the claim using the formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

*liquid assets* means the person's liquid assets.

*maximum reserve amount* means the maximum reserve in relation to the person under subsection 14(1).

*divisor* means, in relation to a person:

- (a) if the person is not a member of a couple and does not have a dependent child—\$500; or
- (b) otherwise—\$1,000.

676(3B) If the number of formula weeks is equal to or greater than 13 weeks, the liquid assets test waiting period in relation to the claim is 13 weeks.

676(3C) If subsection (3B) does not apply, the liquid assets test waiting period in relation to the claim is the number of weeks equal to the number of formula weeks.

676(4) Subject to subsection (5), if the person is not a member of a couple, the liquid assets test waiting period in relation to the claim starts on the day on which the person became incapacitated for work or study.

676(4A) Subject to subsection (5), if the person is a member of a couple, the liquid assets test waiting period in relation to the claim starts on the last occurring of the following days:

- (a) the day on which the person became incapacitated for work or study;
- (b) if, when the claim is made, the person's partner is unemployed—the day on which the person's partner became unemployed;
- (c) if, when the claim is made, the person's partner is incapacitated for work or study—the day on which the person's partner became incapacitated for work or study.



676(5) If:

- (a) a person becomes qualified for austudy payment; and
- (b) because of paragraph 572(c), austudy payment is not payable to the person while the person is subject to a liquid assets test waiting period (see section 575A); and
- (c) within the liquid assets test waiting period referred to in paragraph (b):
  - (i) the person becomes incapacitated for study; and
  - (ii) the person claims sickness allowance;

the liquid assets test waiting period in relation to the claim for sickness allowance starts on the day on which the person becomes qualified for austudy payment.

676(6) Subsection (1) does not apply to a person if, at any time during the 12 months preceding:

- (a) the day on which the person becomes incapacitated for work;  
or
- (b) the day on which the person claims sickness allowance;

the person or their partner was serving a liquid assets test waiting period that started during that 12 months.

676(7) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

### **Subdivision B—Situations where allowance not payable (general)**

#### **677 Sickness allowance not payable if allowance rate nil**

677(1) Subject to subsection (2), sickness allowance is not payable to a person if the person's sickness allowance rate would be nil.

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- 677(2) Subsection (1) does not apply to a person if the person’s sickness allowance 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.

**680 Assets test—allowance not payable if assets value limit exceeded**

[see Appendix for CPI adjusted figures]

- 680(1) A sickness allowance is not payable to a person if the value of the person’s assets is more than the person’s assets value limit.
- 680(3) A person’s assets value limit is worked out using the following Table: work out which family situation applies to the person; the assets value limit is the corresponding amount in column 3.

Assets value limit table			
Column 1	Column 2	Column 3	
Item	Person’s family situation	Assets value limit	
		Column 3A Either person or partner homeowner	Column 3B Neither person nor partner homeowner
1.	Not member of a couple	\$110,750	\$190,250
2.	Partnered (partner getting neither pension nor benefit)	\$157,500	\$237,000
3.	Partnered (partner getting pension or benefit)	\$78,750	\$118,500

Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit)* and *partnered (partner getting pension or benefit)* see section 4.

Note 2: for *homeowner* see section 11.

Note 3: if item 2 applies to a person, the value of *all* the assets of the person’s partner is to be taken as being included in the value of the person’s assets (see subsection 680(1)—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the

person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 680(2)).

- Note 4: if a sickness allowance is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (sections 1131 and 1132).
- Note 5: the assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).
- Note 6: the assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).
- Note 7: the item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

### **681 Value of assets of members of couples**

681(1) If:

- (a) the person is a member of a couple; and
- (b) the person's partner:
  - (i) is not in receipt of a social security or service pension or income support supplement; and
  - (ii) is not in receipt of a social security allowance;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

681(2) If:

- (a) the person is a member of a couple; and
- (b) the person's partner is in receipt of:
  - (i) a social security or service pension or income support supplement; or
  - (ii) a social security allowance;

the value of:

- (c) the person's assets is taken to be 50% of the sum of the value of the person's assets and the value of the partner's assets; and
- (d) the person's assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of assets of that kind of the person's partner.

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**685 Full-time students**

- 685(1) Subject to subsection (2), sickness allowance is not payable to a person who is enrolled in a full-time course of education or of vocational training for the period that:
- (a) starts when the person starts the course; and
  - (b) finishes when the person:
    - (i) completes the course; or
    - (ii) abandons the course; or
    - (iii) gives notice to the provider of the course that the person:
      - (A) wishes to withdraw from the course; or
      - (B) wishes to withdraw from such number of subjects that the person's course will no longer be a full-time course; and
  - (c) includes periods of vacation.
- 685(2) Subsection (1) does not prevent a sickness allowance from being payable for any period during which:
- (a) a person is enrolled in a full-time course of education that is part of a rehabilitation program that the Secretary has required the person to undertake under section 697; or
  - (b) the person has deferred a course of education.

**686 Multiple entitlement exclusion** [see Note 5]

- 686(1) Sickness allowance is not payable to a person if the person is already receiving a service pension, income support supplement, a job search allowance or a newstart allowance.
- 686(2) If:
- (a) a person is receiving sickness allowance; and
  - (b) a social security pension, another social security benefit, a youth training allowance, service pension or income support supplement becomes payable to the person;
- the sickness allowance 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 benefit* see subsection 23(1).

Note 3: for the day on which the sickness allowance ceases to be payable see section 728D.

686(3) Sickness allowance is not payable to a woman if:

- (a) the woman is an armed services widow; and
- (b) the woman 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;

unless:

- (c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and
- (d) before 1 November 1986 the woman was also receiving a social security benefit.

Note: for *armed services widow* see subsection 4(1).

686(4) Sickness allowance is not payable to a man if the man is a widower who 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.

686(5) Sickness allowance is not payable to a person for a period if a payment has been or may be made in respect of the person for that period under:

- (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or
- (b) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or
- (c) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or
- (d) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note: for *prescribed educational scheme* see section 5.

686(6) If:

- (a) a person starts a full-time course of education; and

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(b) a payment under a scheme referred to in subsection (5) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (5), sickness allowance is payable to the person for a period before the person starts the course.

686(7) Sickness allowance is not payable to a person in respect of a period if the person is a CDEP Scheme participant in respect of the whole or any part of the period.

**Subdivision C—Situations where allowance not payable  
(waiting periods)**

**693 Ordinary waiting period**

A person is subject to an ordinary waiting period unless:

(a) at some time in the 13 weeks immediately before the person's provisional commencement day, the person received an income support payment; or

Note: For *income support payment* see subsection 23(1).

(e) the following conditions apply:

(i) the person is a member of a couple;

(ii) the person's partner dies;

(iii) immediately before the partner's death, the person was receiving a partner allowance;

(iv) within the period of 4 weeks that starts on the day after the day on which the partner dies, the person claims a sickness allowance; or

(f) the Secretary is satisfied that the person is in severe financial hardship.

Note 1: For *provisional commencement day* see section 687.

Note 2: For *social security benefit* see subsection 23(1).

Note 3: For *social security pension* see subsection 23(1).

Note 4: For *service pension* see subsection 23(1).

Note 5: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

### **694 Duration of ordinary waiting period**

694(1) If a person:

- (a) is subject to an ordinary waiting period; and
- (c) is not disqualified for sickness allowance under section 676 (liquid assets test);

the ordinary waiting period is the period of 7 days that starts on the person's provisional commencement day.

Note 1: For *provisional commencement day* see section 687.

Note 3: If the person is subject to a newly arrived resident's waiting period, the newly arrived resident's waiting period runs concurrently with the ordinary waiting period.

694(3) If a person:

- (a) is subject to an ordinary waiting period; and
- (c) is disqualified for sickness allowance under section 676 (liquid assets test);

the ordinary waiting period is the period of 7 days that starts on the day after the end of the period referred to in subsection 676(3).

694(6) If:

- (a) after the commencement of this subsection, a person becomes unemployed and claims newstart allowance; and
- (b) because of sections 620 and 621 (ordinary waiting period), newstart allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i) or (ii), as the case may be:
  - (i) if the person is not disqualified for newstart allowance under section 598 (liquid assets test)—the person's newstart allowance provisional commencement day; or
  - (ii) if the person is disqualified for newstart allowance under section 598 (liquid assets test)—the day after the day on which the person's newstart allowance liquid assets waiting period ends; and
- (c) during that period the person becomes temporarily incapacitated for work and claims sickness allowance;

then, despite subsections (1), (2) and (3), the person's ordinary waiting period is a period of 7 days starting on the applicable day.

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**696B Newly arrived resident's waiting period**

696B(1) Subject to this section, a person who:

- (a) has entered Australia on or after 1 January 1993; and
- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

is subject to a newly arrived resident's waiting period.

696B(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a sickness allowance.

Note: For *qualifying residence exemption* see subsection 7(6).

696B(3) Subsection (1) does not apply to a person:

- (a) if, immediately before this section commenced, the person had held a valid designated temporary entry permit for a continuous period of at least 26 weeks; or
- (b) if:
  - (i) immediately before this section commenced, the person had held a valid designated temporary entry permit for a continuous period (*permit period*) of less than 26 weeks; and
  - (ii) that permit was continued in force as a temporary visa by regulations made under the *Migration Reform Act 1992*; and
  - (iii) the period during which that permit continued to be in force as a temporary visa together with the permit period is at least 26 weeks.

Note: For *designated temporary entry permit* see subsection 7(1).

696B(5) Subsection (1) does not apply to a person if:

- (a) the person is already subject to a newly arrived resident's waiting period; or
- (b) the person has already served a newly arrived resident's waiting period; or
- (c) the person:
  - (i) has previously entered Australia before 1 January 1993; and



- (ii) held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.

696B(6) Subsection (1) does not apply to a person if:

- (a) the person is a New Zealand citizen; and
- (b) the person was an Australian resident on 1 February 2000.

### **696C Duration of newly arrived resident's waiting period**

696C(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

696C(2) If:

- (a) immediately before this section commenced, the person held a valid designated temporary entry permit; and
- (b) that permit was continued in force as a temporary visa by regulations made under the *Migration Reform Act 1992*; and
- (c) that temporary visa was in force immediately before the person was granted his or her permanent visa;

the newly arrived resident's waiting period ends 26 weeks after the day on which the designated temporary entry permit was granted to the person.

Note: For *designated temporary entry permit* see subsection 7(1).

696C(3) If subsection (2) does not apply, the newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

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

## **Division 4—Rate of sickness allowance**

### **709 How to work out a person's sickness allowance rate**

A person's sickness allowance rate is to be worked out using Benefit Rate Calculator B at the end of section 1068.

## **Division 9—Bereavement payments**

### **Subdivision AA—Death of partner**

#### **728PA Qualification for payments under this Subdivision**

728PA(1) If:

- (a) a person is receiving a sickness allowance; and
- (b) the person is a long-term social security recipient; and
- (c) the person is a member of a couple; and
- (d) the person's partner dies; and
- (e) 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
- (f) 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 728PD (person's continued rate) on that payday; and
  - (ii) the amount (if any) that would otherwise be payable to the person, under section 728PB (continued payment of partner's pension or allowance) 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 728PB 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 728PC 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.

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Note 3: for *long-term social security recipient* see subsection 23(1).

728PA(2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

728PA(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.

728PA(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which sickness allowance is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 728PD.

**728PB Continued payment of partner's pension or benefit**

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, an amount equal to the amount that would have been payable to the partner on that payday if the partner had not died.

**728PC 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.* Add up:

- (a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and
- (b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is called the *combined rate*.

*Step 2.* Work out the amount that, but for section 728PD, 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 3.* Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.

*Step 4.* Work out the number of the partner's paydays in the bereavement lump sum period.

*Step 5.* Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

**728PD Adjustment of a person's sickness allowance rate**

If:

- (a) a person is qualified for payments under this Subdivision; and

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- (b) the person does not elect under subsection 728PA(2) not to receive payments under this Subdivision;

the rate of the person's sickness allowance during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of sickness allowance payable to the person is the rate at which the allowance would have been payable to the person if the person's partner had not died;
- (d) during the bereavement lump sum period (if any), the rate at which sickness allowance is payable to the person is the rate at which the allowance would be payable to the person apart from this Subdivision.

**728PE 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.* Add up:

- (a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday immediately after the day on which the person dies; and

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- (b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is called the *combined rate*.

*Step 2.* Work out the amount that, but for section 728PD, 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 3.* Take the person's individual rate away from the combined pensioner couple rate: the result is called the *partner's instalment component*.

*Step 4.* 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 5.* Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

**728PF Matters affecting payments under this Subdivision**

728PF(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:

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- (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).

728PF(2) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the 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.



## **Part 2.15—Special benefit**

### **Division 1—Qualification for and payability of special benefit**

#### **Subdivision A—Qualification**

#### **729 Qualification for special benefit**

729(1) A person is qualified for a special benefit for a period if the Secretary determines, in accordance with subsection (2), that a special benefit should be granted to the person for the period.

Note: special benefit is a discretionary benefit and is available only to a person who is not able to get any other income support payment (see paragraphs (2)(a) and (b) below).

729(2) The Secretary may, in his or her discretion, determine that a special benefit should be granted to a person for a period if:

- (a) no social security pension is payable to the person during the period; and
- (b) no other social security benefit is payable to the person for the period; and
- (bb) the person is not disqualified for a benefit PP (partnered) for the period solely because of the operation of section 500C (unemployment due to industrial action); and
- (c) the person is not disqualified for a newstart allowance for the period because of the operation of one or more of the following:
  - (ii) section 596 (unemployment due to industrial action);
  - (iii) section 597 (move to area of lower employment prospects); and
- (d) if the person is qualified for a newstart allowance but the allowance is not payable to the person for the period—that result is not produced because of the operation of one or more of the following:
  - (i) section 625 (person failing to enter into a Newstart Activity Agreement);

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- (ia) section 626 (person failing to comply with a Newstart Activity Agreement);
- (ii) section 624 (person failing to satisfy activity test);
- (iii) section 628 (unemployment due to voluntary act);
- (iv) section 629 (unemployment due to misconduct);
- (v) section 630 (refusal of job offer);
- (va) section 630AA (failing to provide information);
- (vi) section 631 (person failing to comply with notification requirement);
- (viii) section 633 (seasonal workers);
- (ix) section 634 (move to area of lower employment prospects); and
- (da) the person is not disqualified for a youth allowance for the period because of the operation of:
  - (i) section 541A (failure to satisfy the activity test); or
  - (ii) section 544 (requirements relating to Youth Allowance Activity Agreements); and
- (db) the person is not disqualified for an austudy payment for the period because the person fails to satisfy the activity test within the meaning of section 569; and
- (dc) youth allowance is not payable to the person for the period and that result is not because of the operation of:
  - (i) section 550 (application of activity test non-payment period); or
  - (ii) section 553B (move to an area of lower employment prospects); or
  - (iii) section 565C (failure to comply with section 561C, 1304 or 1305 notices); and
- (dd) austudy payment is not payable to the person for the period and that result is not because of the operation of:
  - (i) section 576 (application of activity test non-payment period); or
  - (ii) section 588D (non-compliance with section 586C notification obligations); and
- (e) the Secretary is satisfied that the person is unable to earn a sufficient livelihood for the person and the person's dependants (if any) because of age, physical or mental

disability or domestic circumstances or for any other reason;  
and

(f) the person:

(i) is an Australian resident; or

(v) is the holder of a visa that is in a class of visas determined by the Minister for the purposes of this subparagraph.

Note 1: for *Australian resident* see subsection 7(2).

729(3) The Secretary is not to determine that a special benefit should be granted to a person for a period if the Secretary is satisfied that the benefit is not payable to the person for that period.

729(4) For the purposes of paragraph (2)(d), a newstart allowance is to be taken to be not payable to a person for a period because of the operation of a provision if:

(a) the person has claimed the allowance for the period and the allowance is not payable to the person because of the operation of the provision; or

(b) were the person to claim the allowance for the period the allowance would not be payable to the person because of the operation of the provision.

729(4A) For the purposes of paragraph (2)(dc) a youth allowance is taken to be not payable to a person for a period because of the operation of a provision if:

(a) the person has claimed the allowance for the period and the allowance is not payable to the person because of the operation of the provision; or

(b) were the person to claim the allowance for the period the allowance would not be payable to the person because of the operation of the provision.

729(4B) For the purposes of paragraph (2)(dd), an austudy payment is taken not to be payable to a person for a period because of the operation of a provision if:

(a) the person has claimed the payment for the period and the payment is not payable to the person because of the operation of the provision; or

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- (b) were the person to claim the payment for the period, the payment would not be payable to the person because of the operation of the provision.

729(6) If:

- (a) a person was receiving a social security pension, a service pension or income support supplement; and
- (b) the person claims a special benefit within 14 days of the day on which the last instalment of the person's pension was paid; and
- (c) the person becomes qualified for a special benefit at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for a special benefit for the whole of the 14 day period.

Note: subsection (6) operates when a person transfers from a pension to a special benefit and the person is not qualified for a special benefit immediately after the day on which the person's last instalment of pension is paid. The subsection deems the person to be so qualified. As a result, the person may be paid a special benefit for the period beginning on the day after the day on which the person's last instalment of pension was paid. The subsection aims to ensure that there is minimal disruption to a person's payments when a person transfers from a pension to a special benefit.

**729A Time limit on qualification for certain recipients of special benefit**

729A(1) This section applies to a person who is receiving special benefit if:

- (a) the person's maximum benefit period is 13 weeks or less; and
- (b) the Secretary determines that this section should apply to the person.

729A(2) The *maximum benefit period* for a person is the period specified in the determination granting the person's claim for special benefit as the maximum period for which the special benefit is payable to the person.

729A(3) If:

- (a) the section applies to a person; and

- (b) the Secretary is satisfied that the person's qualification for special benefit will continue after the end of the person's maximum benefit period; and
- (c) the Secretary determines that this subsection should apply to the person;

the Secretary may determine that special benefit should be granted to the person for a period of not more than 13 weeks.

729A(4) Subject to section 729B, if:

- (a) the Secretary has determined that special benefit should be granted to the person for a period of not more than 13 weeks under subsection (3) or this subsection; and
- (b) the Secretary is satisfied that the person's qualification for special benefit will continue after the end of that period; and
- (c) the Secretary determines that this subsection should apply to the person;

the Secretary may determine that special benefit should be granted to the person for a further period of not more than 13 weeks.

### **729B Certain recipients of special benefit cease to be qualified for special benefit after 52 weeks**

729B(1) A person to whom subsection 729A(4) applies ceases to be qualified for special benefit if the person has received special benefit in respect of the immediately preceding period of 52 weeks.

729B(2) The Secretary may make a written determination that subsection (1) does not apply to a person if the Secretary is satisfied:

- (a) that the person's qualification for special benefit will end during the next 13 weeks; or
- (b) that the person's qualification for special benefit will continue after the end of the period of 65 weeks commencing on the person's provisional commencement day.

Note: for *provisional commencement day* see section 731.

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**729C Consequence of subsection 729B(2) determination**

729C(1) If the Secretary:

- (a) is satisfied of the matter mentioned in paragraph 729B(2)(a);  
and
- (b) makes a determination under subsection 729B(2) in relation to a person;

then the person ceases to be qualified for special benefit if:

- (c) the person has received special benefit in respect of the immediately preceding 65 weeks; and
- (d) the Secretary is satisfied that this subsection should apply to the person.

729C(2) If the Secretary:

- (a) is satisfied of the matter mentioned in paragraph 729B(2)(b);  
and
- (b) makes a determination under subsection 729B(2) in relation to a person;

the Secretary may determine that special benefit should be granted to the person for a period.

**730 Determination of period**

The period determined by the Secretary under subsection 729(2) is not to begin before the person's provisional commencement day.

**Subdivision B—Payability**

**732 Special benefit not payable if benefit rate nil**

732(1) Subject to subsection (2), special benefit is not payable to a person if the person's special benefit rate would be nil.

732(2) Subsection (1) does not apply to a person if the person's special benefit 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.

**733 Assets test—benefit not payable if assets value limit exceeded**

[see Appendix for CPI adjusted figures]

- 733(1) A special benefit is not payable to a person if:
- (a) the person is not excluded from the special benefit assets test; and
  - (b) the value of the person’s assets exceeds the person’s assets value limit.
- 733(2) A person is excluded from the special benefit assets test if the person:
- (a) has not turned 18; and
  - (b) is not independent within the meaning of section 1067A.
- 733(3) A person’s assets value limit is worked out using the following table: work out which family situation applies to the person; the assets value limit is the corresponding amount in the *assets value limit* column.

<b>Assets value limit table</b>			
Column 1	Column 2	Column 3	
Item	Person’s family situation	Assets value limit	
		Column 3A	Column 3B
		Either person or partner homeowner	Neither person nor partner homeowner
1.	Not member of a couple	\$110,750	\$190,250
2.	Partnered (partner getting neither pension nor benefit)	\$157,500	\$237,000
3.	Partnered (partner getting pension or benefit)	\$78,750	\$118,500

Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit)* and *partnered (partner getting pension or benefit)* see section 4.

Note 2: for *homeowner* see section 11.

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- Note 3: if item 2 applies to a person, the value of *all* the assets of the person's partner is to be taken as being included in the value of the person's assets (see subsection 734(1)—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 734(2)).
- Note 4: if a special benefit is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).
- Note 5: the assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).
- Note 6: the assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).
- Note 7: the item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

**734 Value of assets of members of couples**

734(1) If:

- (a) the person is a member of a couple; and
- (b) the person's partner:
  - (i) is not in receipt of a social security, service pension or income support supplement; and
  - (ii) is not in receipt of a social security benefit;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

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

734(2) If:

- (a) the person is a member of a couple; and
- (b) the person's partner is in receipt of:
  - (i) a social security, service pension or income support supplement; or
  - (ii) a social security benefit;

the following provisions have effect:



- (c) the value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner; and
- (d) the value of the person's assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of assets of that kind of the person's partner.

### **735 Multiple entitlement exclusion**

735(1) Special benefit is not payable to a person if the person is already receiving a service pension or income support supplement.

735(2) If:

- (a) a person is receiving special benefit; and
- (b) a social security pension, another social security benefit, service pension or income support supplement becomes payable to the person;

the special benefit 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* and *social security benefit* see subsection 23(1).

Note 3: for the day on which the special benefit ceases to be payable see section 762A.

735(3) Special benefit is not payable to a woman if:

- (a) the woman is an armed services widow; and
- (b) the woman 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;

unless:

- (c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and
- (d) before 1 November 1986 the woman was also receiving a social security benefit.

Note: for *armed services widow* see subsection 4(1).

735(4) Special benefit is not payable to a man if:

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- (a) the man is an armed services widower; and
- (b) the man 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.

Note: for *armed services widower* see subsection 4(1).

**737 Full-time students**

737(1) Subject to subsection (3), a special benefit is not payable to a person:

- (a) who has turned 18; or
- (b) who satisfies both of the following:
  - (i) the person has not turned 16; and
  - (ii) the person is not a SPB homeless person;

if the person is enrolled in a full-time course of education or of vocational training.

Note: for *SPB homeless person* see section 739.

*Period for which benefit not payable*

737(2) The period for which a special benefit is not payable under subsection (1) is the period that:

- (a) starts when the person starts the course; and
- (b) finishes when the person:
  - (i) completes the course; or
  - (ii) abandons the course; or
  - (iii) gives notice to the provider of the course that the person:
    - (A) wishes to withdraw from the course; or
    - (B) wishes to withdraw from such number of subjects that the person's course will no longer be a full-time course; and
- (c) includes periods of vacation.

*Subsection (1) does not apply in certain cases*

737(3) Subsection (1) does not prevent a special benefit from being payable for any period during which:

- (a) a person is enrolled in a course that the Secretary has required the person to undertake under section 736; or
- (b) the person has deferred a course of education.

### **738 Payments under certain education schemes**

738(1) Subject to subsections (2) and (3), a special benefit is not payable to a person:

- (a) who has turned 18; or
- (b) who satisfies both of the following:
  - (i) the person has not turned 16;
  - (ii) the person is not a SPB homeless person;

if a payment has been made or may be made in respect of the person for the same period under:

- (c) a prescribed educational scheme other than the ABSTUDY scheme to the extent that it applies to part-time students; or
- (d) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or
- (e) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or
- (f) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note 1: for *prescribed educational scheme* see section 5.

Note 2: for *SPB homeless person* see section 739.

738(2) If:

- (a) a person may start a course of education on a full-time basis; and
- (b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (1), a special benefit is payable to the person for a period before the person starts the course.

738(3) If:

- (a) a person enrolls in a full-time course of education; and
- (b) an application is made for a payment in respect of the person under:

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- (ii) the ABSTUDY Schooling scheme; or
- (iii) the ABSTUDY Tertiary scheme; and
- (c) the person was receiving special benefit immediately before the start of the course;

the Secretary may decide that, in spite of subsection (1), special benefit is payable to the person for the period of 3 weeks commencing on the day on which the course starts.

**739 SPB homeless person**

For the purposes of subparagraphs 737(1)(b)(ii) and 738(1)(b)(ii), a person is an *SPB homeless person* if:

- (a) the person is not a member of a couple; and
- (b) the person does not have a dependent child; and
- (c) the person does not live at a home of the parents, or of a parent, of the person because:
  - (i) the parents are not, or neither parent is, prepared to allow the person to live at such a home; or
  - (ii) domestic violence, incestuous harassment or other such exceptional circumstances make it unreasonable to expect the person to live at such a home; and
- (d) the person 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
- (e) the person is not receiving, on a continuous basis, any payment in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

**739A Newly arrived resident's waiting period**

739A(1) Subject to this section, a person who, on or after the commencement of this subsection:

- (a) enters Australia; or
  - (b) becomes the holder of a permanent visa; or
  - (e) becomes the holder of a visa that is in a class of visas determined by the Minister for the purposes of this paragraph;
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is subject to a newly arrived resident's waiting period.

739A(2) Subject to this section, if, immediately before the commencement of this subsection, a person was the holder of a visa that is in a class of visas determined by the Minister for the purposes of this subsection, the person is subject to a newly arrived resident's waiting period.

739A(3) If:

- (a) a person is subject to a newly arrived resident's waiting period; and
- (b) before, on or after the commencement of this subsection, the person applies for a visa that is in a class of visas determined by the Minister for the purposes of this paragraph;

the waiting period:

- (c) starts on the day on which the person applied for that visa; and
- (d) ends when the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

739A(4) If:

- (a) a person is subject to a newly arrived resident's waiting period; and
- (b) before, on or after the commencement of this subsection, the person was the holder of a visa that is in a class of visas determined by the Minister for the purposes of this paragraph;

the period:

- (c) starts on the day on which the person applied for that visa; and
- (d) ends when the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

739A(5) If:

- (a) a person is subject to a newly arrived resident's waiting period; and
  - (b) neither subsection (3) nor (4) apply to the person;
- the waiting period starts on the day on which the person:
- (c) first entered Australia; or
  - (d) becomes the holder of a permanent visa;

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whichever occurs last, and ends on the day after the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

739A(6) Neither subsection (1) nor (2) applies to a person if the person holds, or was the former holder of, a visa in a class of visas determined by the Minister for the purposes of this subsection.

739A(7) Neither subsection (1) nor (2) apply to a person if the person, in the Secretary's opinion, has suffered a substantial change in circumstances beyond the person's control.

Note: For *permanent visa* see subsection 7(1).

739A(8) A determination under paragraph (1)(e), subsection (2), paragraph (3)(b), paragraph (4)(b) or subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**739B Secretary to act in accordance with guidelines**

The Secretary must exercise the powers under subsection 739A(7), in accordance with guidelines from time to time in force under subsection 739C(1).

**739C Guidelines for exercise of Secretary's powers under subsection 739A(7)**

739C(1) The Minister, by determination in writing:

- (a) is to set guidelines for the exercise of the Secretary's powers under subsection 739A(7); and
- (b) may revoke or vary those guidelines.

739C(2) A determination made under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Division 4—Rate of special benefit**

### **746 Rate of special benefit**

746(1) The rate of a person's special benefit is the fortnightly rate determined by the Secretary in his or her discretion.

746(2) Subject to Part 2.24 (major disaster), the rate of a person's special benefit is not to exceed the rate at which youth allowance, austudy payment or newstart allowance would be payable to the person if:

- (a) the person were qualified for youth allowance, austudy payment or newstart allowance; and
- (b) youth allowance, austudy payment or newstart allowance were payable to the person.

Note: for double payments in the case of a major disaster see Part 2.24.

## Division 9—Bereavement payments

### Subdivision AA—Death of partner

#### 768A Qualification for payments under this Subdivision

768A(1) If:

- (a) a person is receiving a special benefit; and
- (b) the person is a long-term social security recipient; and
- (c) the person is a member of a couple; and
- (d) the person's partner dies; and
- (e) 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
- (f) 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 768D (person's continued rate) on that payday; and
  - (ii) the amount (if any) that would otherwise be payable to the person, under section 768B (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 768B 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 768C 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.



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Note 3: for *long-term social security recipient* see subsection 23(1).

768A(2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

768A(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.

768A(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which newstart allowance is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 768D.

### **768B Continued payment of partner's pension or benefit**

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, an amount equal to the amount that would have been payable to the partner on that payday if the partner had not died.

### **768C 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.

<b>LUMP SUM CALCULATOR</b>
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This is how to work out the amount of the lump sum:
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*Method statement*

*Step 1.* Add up:

- (a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and
- (b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is called the *combined rate*.

*Step 2.* Work out the amount that, but for section 768D, 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 3.* Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.

*Step 4.* Work out the number of the partner's paydays in the bereavement lump sum period.

*Step 5.* Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

**768D Adjustment of a person's special benefit rate**

If:

- (a) a person is qualified for payments under this Subdivision; and

- (b) the person does not elect under subsection 768A(2) not to receive payments under this Subdivision;  
the rate of the person's special benefit during the bereavement period is worked out as follows:
- (c) during the bereavement rate continuation period, the rate of special benefit payable to the person is the rate at which the allowance would have been payable to the person if the person's partner had not died;
- (d) during the bereavement lump sum period (if any), the rate at which special benefit is payable to the person is the rate at which the allowance would be payable to the person apart from this Subdivision.

**768E 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.* Add up:

- (a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday immediately after the day on which the person dies; and

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- (b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is called the *combined rate*.

*Step 2.* Work out the amount that, but for section 768D, 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 3.* Take the person's individual rate away from the combined pensioner couple rate: the result is called the *partner's instalment component*.

*Step 4.* 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 5.* Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

**768F Matters affecting payments under this Subdivision**

768F(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:

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- (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).

768F(2) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the 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.

## Part 2.15A—Partner allowance

### Division 1—Qualification for and payability of partner allowance

#### Subdivision A—Qualification for partner allowance

#### 771HA Qualification for partner allowance

- 771HA(1) Subject to subsections (1A) and (3), and section 771HB, a person is qualified for a partner allowance in respect of a period if:
- (a) throughout the period, the person is a member of a couple; and
  - (b) throughout the period, the person's partner is at least 21; and
  - (c) the person's partner is receiving:
    - (i) youth allowance, austudy payment, newstart allowance, sickness allowance, special benefit, rehabilitation allowance, age pension, disability support pension, mature age allowance, service pension or income support supplement; or
    - (ii) assistance under a Student Financial Supplement Scheme or an income tested living allowance under an Aboriginal study assistance scheme; and
  - (d) throughout the period, the person is an Australian resident; and
  - (e) the person was born on or before 1 July 1955; and
  - (f) the person is not qualified for parenting payment at any time during the period; and
  - (h) the person does not have recent workforce experience.

Note 1: For *member of a couple* see section 4.

Note 2: For *Australian resident* see section 7.

771HA(1A) If the Secretary determines under section 771JA that a person's claim for partner allowance is to be granted, the person's partner need not satisfy the requirements of paragraph (1)(c) in order for the person to remain qualified for the allowance.

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771HA(1B) For the purposes of paragraph (1)(c), if the person's partner would be receiving newstart allowance except for the imposition of a period of non-payment under paragraph 608(1)(j), the partner is taken to be receiving newstart allowance.

771HA(1BA) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving youth allowance if the person's partner would be receiving youth allowance except for the imposition of:

- (a) a period of non-payment under Subdivision D of Division 2 of Part 2.11; or
- (b) an employment-related exclusion under section 553A or 553B.

771HA(1BB) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving austudy payment if the person's partner would be receiving austudy payment except for the imposition of a period of non-payment under Subdivision E of Division 2 of Part 2.11A.

771HA(1C) For the purposes of paragraph (1)(h), **recent workforce experience** is employment of 20 hours or more a week for a total of 13 weeks or more at any time during the 12 months immediately before the day the person lodged the claim for the allowance.

*Person subject to waiting period or non-payment period*

771HA(3) If youth allowance, austudy payment, newstart allowance or sickness allowance is not payable to a person because:

- (a) the person is serving a waiting period; or
- (b) a period of non-payment applies to the person under paragraph 608(1)(j), Subdivision D of Division 2 of Part 2.11 or Subdivision E of Division 2 of Part 2.11A; or
- (c) the person is subject to an employment-related exclusion for a period under section 553B or 553C;

the person is not qualified for a partner allowance throughout the period.

Note 1: For **waiting period** see subsection 23(1).

Note 3: Paragraph 608(1)(j) provides for non-payment periods for newstart allowance recipients in certain circumstances.

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Note 4: Subdivision D of Division 2 of Part 2.11 and Subdivision E of Division 2 of Part 2.11A provide respectively for non-payment periods for youth allowance recipients and non-payment periods for austudy payment recipients in certain circumstances.

*Person subject to an activity test breach rate reduction period*

771HA(3A) If an activity test breach rate reduction period applies to a person under Subdivision B of Division 5 of Part 2.11, Subdivision B of Division 5 of Part 2.11A or Subdivision AA of Division 4 of Part 2.12, the person is not qualified for partner allowance throughout the period.

*Person subject to an administrative breach rate reduction period*

771HA(3B) If an administrative breach rate reduction period applies to a person under Subdivision C of Division 5 of Part 2.11, Subdivision C of Division 5 of Part 2.11A or Subdivision B of Division 4 of Part 2.12, the person is not qualified for partner allowance throughout the period.

**771HB Unemployment due to industrial action**

771HB(1) If a person is unemployed during a period, the person is not qualified for a partner allowance in respect of the period unless the Secretary is satisfied that the person's unemployment during the period was not due to the person being, or having been, engaged in industrial action or a series of industrial actions.

771HB(2) For the purposes of subsection (1) and without limiting that subsection, a person is to be taken not to be, or to have been, engaged in industrial action or in a series of industrial actions if the Secretary is satisfied:

- (a) the person's unemployment was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and
- (b) the people, or some of the people, were members of a trade union which was involved in the industrial action; and
- (c) the person was not a member of the trade union during the period.

771HB(3) Subject to subsection (4), subsection (1) does not prevent a person from being qualified for a partner allowance in respect of a period



that occurs after the relevant industrial action or series of industrial actions has stopped.

Note: For *industrial action, trade union* and *unemployment* see section 16.

771HB(4) Where the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by a State industrial authority, the Australian Industrial Relations Commission or the Federal Court, a person is not qualified for a partner allowance in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

Note: For *State industrial authority* see section 4 of the Workplace Relations Act.

### **Subdivision B—Payability of partner allowance**

#### **771HC Partner allowance not payable if allowance rate nil**

771HC(1) Subject to subsection (2), a partner allowance is not payable to a person if the person's partner allowance rate would be nil.

771HC(2) Subsection (1) does not apply to a person if the person's partner allowance rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

- (a) Part 2.23 of this Act; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

#### **771HF Assets test—allowance not payable if assets value limit exceeded** [see Appendix for CPI adjusted figures]

771HF(1) A partner allowance is not payable to a person if the value of the person's assets exceeds the person's assets value limit.

Note: The value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection (3)).

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771HF(2) A person's assets value limit is worked out using the following Table:

<b>Assets value limit table</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's situation</b>	<b>Assets value limit</b>
1.	Person or partner a homeowner	\$80,250.00
2.	Neither person nor partner a homeowner	\$120,500.00

Note 1: For *homeowner* see section 11.

Note 2: The assets value limits in column 3 are indexed annually in line with CPI increases (see sections 1191 to 1194).

771HF(3) The value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner.

771HF(4) The amounts in column 3 of the Assets Value Limit Table are to be indexed on 1 July 1994 as if this section and items 79A and 79B of Schedule 2 had commenced on 30 June 1993.

**771HI Multiple entitlement exclusion** [*see* Note 5]

771HI(1) A partner allowance is not payable to a person if the person is already receiving a service pension.

771HI(2) If:

- (a) a person is receiving a partner allowance; and
- (b) a social security pension, another social security benefit, a youth training allowance or a service pension becomes payable to the person;

a partner allowance 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 the day on which the partner allowance ceases to be payable see section 771NA.

771HI(3) A partner allowance is not payable to a person if the person 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.

### **771HJ Educational schemes exclusion**

A partner allowance is not payable to a person for a period if the person is receiving a payment for that period under:

- (b) the ABSTUDY Scheme; or
- (c) a Student Financial Supplement Scheme.

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

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

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

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

### **771HNA Newly arrived resident's waiting period**

771HNA(1) Subject to this section, a person who:

- (a) has entered Australia on or after 1 January 1993; and
- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

is subject to a newly arrived resident's waiting period.

771HNA(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a partner allowance.

Note: For *qualifying residence exemption* see subsection 7(6).

771HNA(4) Subsection (1) does not apply to a person if:

- (a) the person is already subject to a newly arrived resident's waiting period; or
- (b) the person has already served a newly arrived resident's waiting period; or
- (c) the person:

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- (i) has previously entered Australia before 1 January 1993; and
- (ii) held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.

771HNA(5) Subsection (1) does not apply to a person if:

- (a) the person is a New Zealand citizen; and
- (b) the person was an Australian resident on 1 February 2000.

**771HNB Duration of newly arrived resident's waiting period**

771HNB(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

771HNB(3) The newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

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

**771HNC Seasonal workers**

771HNC(1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for partner allowance, the person, or the person's partner, has been engaged in seasonal work.

Note: For *seasonal work* see subsection 16A(1).

771HNC(2) Partner allowance is not payable to the person:

- (a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or
- (b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any)

of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

Note: For *seasonal work preclusion period* see subsection 16A(1).

771HNC(3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):

- (a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and
- (b) the determination has effect accordingly.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

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## **Division 4—Rate of partner allowance**

### **771KA Rate of partner allowance if partner is not receiving special benefit**

If section 771KE does not apply to a person, the person's rate of partner allowance is worked out using the Benefit Rate Calculator B at the end of section 1068.

### **771KE Rate of partner allowance if partner receiving special benefit**

771KE(1) If a person's partner is receiving a special benefit, the person's rate of partner allowance is the fortnightly rate determined by the Secretary in his or her discretion.

771KE(2) Subject to Part 2.24 (major disaster), the rate of a person's partner allowance is not to exceed the rate at which youth allowance, austudy payment or newstart allowance would be payable to the person if:

- (a) the person were qualified for youth allowance, austudy payment or newstart allowance; and
- (b) youth allowance, austudy payment or newstart allowance were payable to the person.

Note: For double payments in the case of a major disaster see Part 2.24.

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

771KN(1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any partner allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.

771KN(2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to

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the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:

- (a) unless paragraph (b) applies, the last day of the quarter; or
- (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.

771KN(3) In this section:

**quarter** means a CDEP Scheme quarter.

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

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

## **Division 9—Bereavement payments**

### **Subdivision A—Surviving partner and deceased partner defined**

#### **771NT Surviving partner and deceased partner**

If:

- (a) a person is receiving partner allowance; and
- (b) the person's partner dies;

then, for the purposes of this Division:

- (c) the person is the surviving partner; and
- (d) the person's partner is the deceased partner.

### **Subdivision B—Person to continue to receive partner allowance where person's partner dies**

#### **771NU Continuation of partner allowance for bereavement period**

771NU(1) If:

- (a) a person is receiving partner allowance; and
- (b) the person's partner dies; and
- (c) immediately before the deceased partner died:
  - (i) if the deceased partner was receiving a social security pension, a service pension or income support supplement—the surviving partner was a long-term social security recipient; or
  - (ii) if the deceased partner was receiving a social security benefit or a job search allowance—each partner was a long-term social security recipient;

the surviving partner remains qualified for partner allowance during the bereavement period as if:

- (d) the deceased partner had not died; and
- (e) the deceased partner had continued to receive newstart allowance, sickness allowance, special benefit, rehabilitation allowance, age pension, disability support pension, mature



age allowance, service pension or income support supplement; and

- (f) the surviving partner and the deceased partner had continued to be members of a couple.

*Rate of partner allowance during bereavement rate continuation period*

- 771NU(2) The surviving partner's partner allowance rate during the bereavement rate continuation period is the rate of the partner allowance that would have been payable to the surviving partner if:
- (a) the deceased partner had not died; and
  - (b) if the couple had been an illness separated couple or a respite care couple—they had not been such a couple.

*Rate of partner allowance during the bereavement lump sum period*

- 771NU(3) The surviving partner's partner allowance rate during the bereavement lump sum period (if any) is worked out as follows:
- (aa) if the deceased partner was receiving a youth allowance or an austudy payment immediately before he or she died, the rate of partner allowance is the rate at which a partner allowance would have been payable to the surviving partner if:
    - (i) the surviving partner had been qualified for youth allowance or austudy payment (as the case may be); and
    - (ii) the surviving partner was not a member of a couple;
  - (b) if the deceased partner was receiving newstart allowance immediately before he or she died, the rate of partner allowance is the rate at which newstart allowance would have been payable to the surviving partner if:
    - (i) the surviving partner had been qualified for newstart allowance; and
    - (ii) the surviving partner was not a member of a couple;
  - (c) if the deceased partner was receiving sickness allowance immediately before he or she died, the rate of partner

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allowance is the rate at which sickness allowance would have been payable to the surviving partner if:

- (i) the surviving partner had been qualified for sickness allowance; and
  - (ii) the surviving partner was not a member of a couple;
- (d) if the deceased partner was receiving special benefit immediately before he or she died, the rate of partner allowance is the rate at which special benefit would have been payable to the surviving partner if:
- (i) the surviving partner had been qualified for special benefit; and
  - (ii) the surviving partner was not a member of a couple;
- (e) if the deceased partner was receiving rehabilitation allowance, age pension, disability support pension or mature age allowance immediately before he or she died, the rate of partner allowance is the rate at which newstart allowance would have been payable to the surviving partner if:
- (i) the surviving partner had been qualified for newstart allowance; and
  - (ii) the surviving partner was not a member of a couple.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: For *bereavement period, bereavement rate continuation period* and *bereavement lump sum period* see section 21.

**Subdivision C—Bereavement payments for person receiving partner allowance following death of the person’s partner**

**771NV Qualification for payments under this Subdivision**

771NV(1) If:

- (a) a person is receiving partner allowance; and
  - (b) the person’s partner dies; and
  - (c) immediately before the deceased partner died, the deceased partner was a long term social security recipient;
- the surviving partner is qualified for payments under this Subdivision to cover the bereavement period.

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Note 1: Section 771NW provides for the payment to the surviving partner, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the deceased partner during that period if the partner had not died.

Note 2: Section 771NX provides for a lump sum that represents the instalments that would have been paid to the surviving partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the deceased partner had not died.

771NV(2) A surviving partner who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

771NV(3) An election under subsection (2):

- (a) must be made by written notice to the Secretary; and
- (b) may be made after the surviving partner 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.

**771NW Continued payment of deceased partner's benefit**

If a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner, there is payable to the surviving partner, on each of the deceased partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the deceased partner on that payday if he or she had not died.

**771NX Lump sum payable in some circumstances**

771NX(1) If:

- (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the surviving partner as a lump sum an amount worked out using the following Lump Sum Calculator:

<b>LUMP SUM CALCULATOR</b>
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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 surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) the deceased partner had not died; and
- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

*Step 2.* Work out the amount that would have been payable to the deceased partner on the deceased partner's payday immediately before the first available bereavement adjustment payday if:

- (a) the deceased partner had not died; and
- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

*Step 3.* Add the results of Step 1 and Step 2: the result is called the *combined rate*.

*Step 4.* Work out the *surviving partner's notional rate* using subsection (2), (2A), (3), (4), (5) or (6) (whichever applies).

Note: The subsection that you use depends on whether the deceased partner was receiving a job search allowance, newstart allowance, sickness allowance, special benefit, rehabilitation allowance, age pension, disability support pension or mature age allowance before he or she died.

- Step 5.* Take the surviving partner's notional rate away from the combined rate; the result is called the ***deceased partner's instalment component***.
- Step 6.* Work out the number of the deceased partner's paydays in the bereavement lump sum period.
- Step 7.* Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the surviving partner under this section.

*Deceased partner receiving youth allowance or austudy payment*

771NX(2A) If, immediately before the deceased partner died, he or she was receiving youth allowance or austudy payment, the surviving partner's notional rate is the amount of youth allowance or austudy payment that would have been payable to the surviving partner on the surviving partner's pay day immediately before the first available bereavement adjustment pay day if:

- (a) a youth allowance or an austudy payment had been payable to the surviving partner on that pay day; and
- (b) the surviving partner was not a member of a couple on that pay day.

*Deceased partner receiving newstart allowance*

771NX(3) If, immediately before the deceased partner died, he or she was receiving newstart allowance, the surviving partner's notional rate is the amount of newstart allowance that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) a newstart allowance had been payable to the surviving partner on that payday; and
- (b) the surviving partner was not a member of a couple on that payday.

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*Deceased partner receiving sickness allowance*

771NX(4) If, immediately before the deceased partner died, he or she was receiving sickness allowance, the surviving partner's notional rate is the amount of sickness allowance that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) a sickness allowance had been payable to the surviving partner on that payday; and
- (b) the surviving partner was not a member of a couple on that payday.

*Deceased partner receiving special benefit*

771NX(5) If, immediately before the deceased partner died, he or she was receiving special benefit, the surviving partner's notional rate is the amount of special benefit that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) a special benefit had been payable to the surviving partner on that payday; and
- (b) the surviving partner was not a member of a couple on that payday.

*Deceased partner receiving other social security payment*

771NX(6) If, immediately before the deceased partner died, he or she was receiving rehabilitation allowance, age pension, disability support pension or mature age allowance, the surviving partner's notional rate is the amount of newstart allowance that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) newstart allowance had been payable to the surviving partner on that payday; and
- (b) the surviving partner was not a member of a couple on that payday.

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**771NY Effect of death of surviving partner**

If:

- (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
- (b) the surviving partner dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the deceased partner before the surviving partner dies;

there is payable as a lump sum, to any person that the Secretary thinks appropriate, an amount worked out using the following Lump Sum Calculator:

**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 surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if:

- (a) neither the surviving partner nor the deceased partner had died; and
- (b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

*Step 2.* Work out the amount that would have been payable to the deceased partner on the surviving partner's payday immediately after the day on which the surviving partner died if:

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- (a) neither the surviving partner nor the deceased partner had died; and
- (b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4 (7) and 4 (8) respectively.

*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 771NU, would have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if he or she had not died: the result is called the ***surviving partner's individual rate***.

*Step 5.* Take the surviving partner's individual rate away from the combined rate: the result is called the ***deceased partner's instalment component***.

*Step 6.* Work out the number of the surviving partner's paydays in the period that commences on the day on which the surviving partner dies and ends on the day on which the bereavement period ends.

*Step 7.* Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

**771NZ Matters affecting payments under this Subdivision**

771NZ(1) If:

- (a) the surviving partner is qualified for payments under this Subdivision; and
- (b) after the deceased partner died, an amount to which the deceased partner would have been entitled if he or she 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 surviving partner had 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 surviving partner or from the personal representative of the deceased partner, except to the extent (if any) that the amount exceeds the amount payable to the surviving partner under this Subdivision;
- (e) the amount payable to the surviving partner under this Subdivision is to be reduced by the amount referred to in paragraph (b).

771NZ(2) If:

- (a) the surviving partner is qualified for payments under this Subdivision; and
- (b) an amount to which the deceased partner would have been entitled if the deceased 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 surviving partner, out of that 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 deceased partner or anyone else in respect of the payment of that money to the surviving partner.

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

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

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

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to be the amount that would have been the amount of the benefit if section 771HK had not been enacted.

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

## **Part 2.16—Special needs pensions**

### **Division 1A—Time limit on grant of special needs wife pension**

#### **771P Special needs wife pension not to be granted after 30 June 1995**

771P(1) In spite of any other provision of this Part, other than section 819, a woman is not to be granted a special needs wife pension unless:

- (a) her claim for the pension is lodged on or before 30 June 1995; and
- (b) she qualifies for the pension on or before 30 June 1995.

771P(2) For the purposes of paragraph (1)(a), if subsection 784(2) applies, the woman is taken to have lodged her claim on the day on which she makes her initial claim.

771P(3) In subsection (2):

*initial claim* has the same meaning as in subsection 784(2).

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**Division 1B—Time limit on grant of other special needs pensions**

**771PA Special needs pensions not to be granted after 20 September 2000**

771PA(1) In spite of any other provision of this Part, a person is not to be granted a special needs age pension, a special needs disability pension or a special needs widow B pension unless:

- (a) the person's claim for the pension is lodged, or is taken to have been lodged, on or before 20 September 2000; and
- (b) the person qualifies for the pension on or before 20 September 2000.

## **Division 1—Qualifications for and payability of special needs pensions**

### **Subdivision A—Qualification**

#### **772 Qualification for special needs age pension**

A person is qualified for a special needs age pension if:

- (a) the person has not resided in Australia at any time after 7 May 1973; and
- (b) the person has turned:
  - (i) if the person is a woman—60; or
  - (ii) if the person is a man—65; and
- (c) the person ceased to reside in Australia after the person had turned:
  - (i) if the person is a woman—55; or
  - (ii) if the person is a man—60; and
- (d) the person had resided in Australia for a period that was, or for periods that in the aggregate were, not less than 30 years; and
- (e) the person would:
  - (i) if the person had lodged a claim immediately before the person ceased to reside in Australia—have been qualified under section 25 of the 1947 Act to receive an age pension; or
  - (ii) if the person had not ceased to reside in Australia, were physically present in Australia and lodged a claim for an age pension—be qualified under section 25 of the 1947 Act to receive an age pension; and
- (f) the person is, in the opinion of the Secretary, in special need of financial assistance.

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**773 Qualification for special needs disability support pension**

*Inability to work*

A person is qualified for a special needs disability support pension if:

- (a) the person has not resided in Australia at any time after 7 May 1973; and
- (b) the person is severely disabled; and
- (c) the person has turned 16; and
- (d) at the time when the person first satisfied paragraph (b), the person was in Australia or temporarily absent from Australia; and
- (e) the person is, in the opinion of the Secretary, in special need of financial assistance.

Note: a person who is receiving a special needs disability support pension may be automatically transferred to the special needs age pension if the person becomes qualified for the special needs age pension (see subsection 789(3)).

**774 Qualification for special needs wife pension**

A person is qualified for a special needs wife pension if the person:

- (a) is a woman who is a member of a couple; and
- (b) has a partner who is receiving a special needs age pension or a special needs disability support pension.

Note 1: for *member of a couple* see subsections 4(2), (3) and (6).

Note 2: a person who is receiving a special needs wife pension may be automatically transferred to the special needs age pension if the person becomes qualified for the special needs age pension (see subsection 789(3)).

**778A Special needs widow B pension not to be granted in certain cases**

778A(1) In spite of anything else in this Part, a special needs widow B pension must not be granted to a woman unless:

- (a) the woman's claim for the pension is lodged before 20 March 1997; and

(b) the woman is qualified for the pension before that day.

778A(2) If subsection 784(2) applies to a woman, the woman is taken, for the purposes of subsection (1) of this section, to have lodged a claim on the day on which the initial claim was made.

778A(3) This section does not apply in relation to a determination by the Secretary under section 819.

778A(4) In this section:

*initial claim* has the same meaning as in subsection 784(2).

### **778 Qualification for special needs widow B pension**

A woman is qualified for a special needs widow B pension if:

- (aa) the woman has not reached pension age; and
- (a) the woman has not resided in Australia at any time after 7 May 1973; and
- (b) the woman:
  - (i) was, immediately before 1 July 1987, receiving a widow's pension as a class B widow under the 1947 Act; or
  - (ii) on 1 July 1987 had turned 45 years old and:
    - (A) was receiving a supporting parent's benefit or a widow's pension as a class A widow on or after that day; or
    - (B) was receiving a sole parent pension after 1 March 1989; or
  - (iii) on 1 July 1987 had turned 50 years old; and

Note: For *sole parent pension* see subsection 23(1).

- (d) the woman:
  - (i) was legally married and her husband has died; or
  - (ii) was a dependent female, that is:
    - (A) she was a member of a couple and her partner has died; and
    - (B) she was a member of the couple for 3 years immediately before her partner died; and
    - (C) she was wholly or mainly financially maintained by him; and

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- (e) both the woman and the man were residing permanently in Australia when the man died; and
- (f) the woman is not a member of another couple; and
- (g) the woman is, in the Secretary's opinion, in special need of financial assistance.

Note 1: for *member of a couple* see subsections 4(2), (3) and (6).

Note 2: a person who is receiving a special needs widow B pension may be automatically transferred to the special needs age pension if the person becomes qualified for the special needs age pension (see subsection 789(3)).

### Subdivision B—Payability

#### 779 Special needs pension not payable if pension rate nil

A special needs pension is not payable to a person if the person's special needs pension rate would be nil.

#### 783 Second special needs pension generally not payable after cancellation of initial pension

If:

- (a) a special needs pension is payable to a person; and
- (b) the special needs pension is cancelled;

another special needs pension is not payable to the person unless the person is qualified to receive another special needs pension at the time the initial pension is cancelled.

#### 787 Multiple entitlement exclusion

787(1) A special needs pension is not payable to a person if the person is already receiving a service pension.

787(2) If:

- (a) a person is receiving a special needs pension; and
- (b) another social security pension or a social security benefit or service pension becomes payable to the person;

the special needs 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* and *social security benefit* see subsection 23(1).

Note 3: for the day on which the special needs pension ceases to be payable see section 811A.

- 787(3) A special needs pension is not payable to a woman if:
- (a) the woman is an armed services widow; and
  - (b) the woman 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.

Note: for *armed services widow* see subsection 4(1).

- 787(4) A special needs pension is not payable to a man if:
- (a) the man is an armed services widower; and
  - (b) the man 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.

Note: for *armed services widower* see subsection 4(1).

## Division 5—Rate of special needs pension

### 796 How to work out a person's special needs pension rate

796(1) Subject to subsection (2), the rate of a person's special needs pension is:

- (a) if the pension is a special needs age pension—the rate at which an age pension would be payable to the person if the person were qualified for an age pension; or
- (b) if the pension is a special needs disability support pension—the rate at which a disability support pension would be payable to the person if the person were qualified for a disability support pension; or
- (c) if the pension is a special needs wife pension—the rate at which a wife pension would be payable to the person if the person were qualified for a wife pension; or
- (e) if the pension is a special needs widow B pension—the rate at which a widow B pension would be payable to the person if the person were qualified for a widow B pension.

796(2) If:

- (a) the person was absent from Australia on 1 July 1986; and
- (b) the person commences after 1 July 1986 to receive a special needs pension; and
- (c) the person is absent from Australia;

the rate of the person's special needs pension is, subject to subsections (3) and (4), the person's special needs proportional rate worked out using the Special Needs Proportional Rate Calculator at the end of this section.

796(3) Subsection (2) does not apply to a person's special needs disability support pension if the person became qualified for the pension because the person became permanently incapacitated for work or permanently blind while the person was an Australian resident.

796(4) Subsection (2) does not apply to a person's special needs sole parent or widow B pension if:

- (a) the person became qualified for the pension because of the death of the person's former partner; and

- (b) at the time when the former partner died the former partner was an Australian resident; and
- (c) the person would, apart from subsections 249(2) and 362(2) of this Act, and section 46 of the 1947 Act as in force at any time before 1 March 1989, have become so qualified for that pension.

## Special Needs Proportional Rate Calculator

### Module A—Overall rate calculation process

#### *Overall rate calculation process*

796-A1 This is how to work out a person's special needs proportional rate:

#### *Method statement*

- Step 1.* Work out the period of the person's Australian working life residence using Module B: the result is called the ***residence period***.
- Step 2.* Use the person's residence period to work out the person's ***residence factor*** using Module C below.
- Step 3.* Work out the rate that would be the person's pension or allowance rate if this Rate Calculator did not apply to the person: the result is called the person's ***notional domestic rate***.
- Step 4.* Multiply the person's notional domestic rate by the person's residence factor: the result is the person's special needs proportional rate.

## Module B—Australian working life residence

### *Working life*

- 796-B1 For the purposes of this Module, a person's **working life** is the period commencing when the person turns 16 and ending:
- (a) if the person is a woman—when she turns 60; or
  - (b) if the person is a man—when he turns 65.

### *Australian working life residence (general)*

- 796-B2 Subject to points 796-B3 to 796-B9, a person's **period of Australian working life residence** as at a particular time is the number of months in the period, or the aggregate of the periods, during the person's working life during which the person has, up to that time, been an Australian resident.

### *Calculation of number of months*

- 796-B3 If a person's period of Australian working life residence would, apart from this subsection, be a number of whole months, the period is to be increased by one month.
- 796-B4 If a person's period of Australian working life residence would, apart from this subsection, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

### *Australian working life residence (special needs age or disability support pensioner couples)*

- 796-B5 If:
- (a) a person is receiving a special needs age pension or a special needs disability support pension; and
  - (b) the person is a member of a couple; and
  - (c) the person's partner is receiving an age or disability support pension or a special needs age or disability support pension; and

- (d) the partner's period of Australian working life residence is longer than the period that would be the person's period of Australian working life residence under point 796-B2;  
the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence.

*Australian working life residence (member of former special needs age or disability support pensioner couple)*

796-B6

If:

- (a) a person is receiving a special needs age pension or a special needs disability support pension; and
- (b) the person is a member of a couple; and
- (c) the person ceases to be a member of a couple; and
- (d) immediately before the person ceases to be a member of a couple:
  - (i) the person was receiving an age or disability support pension or a special needs age or disability support pension; and
  - (ii) the partner was receiving an age or disability support pension or a special needs age or disability support pension; and
- (e) the partner's period of Australian working life residence (immediately before the person ceases to be a member of a couple) is longer than the period that would be the person's period of Australian working life residence under point 796-B2;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence (immediately before the person ceases to be a member of a couple).

*Australian working life residence (special needs wife pensioner)*

796-B7

If a person is receiving a special needs wife pension, the person's period of Australian working life residence is equal to the period of Australian working life residence of the person's partner.

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*Australian working life residence (recipient of special needs sole parent pension or widow B pension)*

796-B8

If:

- (a) a person is receiving a special needs widow B pension; and
- (b) the person became qualified for the pension because the person's former partner died; and
- (c) the partner's period of Australian working life residence (immediately before the partner's death) is longer than the period that would be the person's period of Australian working life residence under point 796-B2;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence (immediately before the partner's death).

*Australian working life residence—second special needs pension*

796-B9

If:

- (a) a special needs pension is payable to a person (in this point called the *initial pension*); and
- (b) the special needs pension is cancelled or ceases to be payable automatically; and
- (c) another special needs pension is payable to the person (in this point called the *second pension*); and
- (d) the person's period of Australian working life residence in respect of the second pension is shorter than the period that was the person's period of Australian working life residence for the purposes of calculating the person's initial special needs pension;

the person's period of Australian working life residence for the second pension is to be equal to the period of Australian working life residence used in calculating the person's initial pension.

### **Module C—Residence factor**

*Residence factor (period of Australian working life residence 25 years or more)*

796-C1 If a person's period of Australian working life residence is 300 months (25 years) or more, the person's residence factor is 1.

Note: if a person's residence factor is 1, the person's overseas pension will be payable overseas at the full domestic rate (less any rent assistance and any and remote area allowance).

*Residence factor (period of Australian working life residence under 25 years)*

796-C2 If a person's period of Australian working life residence is less than 300 months (25 years), the person's residence factor is:

$$\frac{\text{Person's Australian working life residence}}{300}$$

## Division 10—Bereavement payments

### Subdivision A—Death of partner

#### 822 Qualification for payments under this Subdivision

822(1) If:

- (a) a person is receiving a special needs age, disability support or wife 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 825 (person's continued rate) on that payday; and
  - (ii) the amount that would otherwise be payable to the person under section 823 (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 823 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 824 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.



822(1A) If:

- (a) a person is receiving a special needs pension; and
- (b) immediately before starting to receive the special needs 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.

822(2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

822(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.

822(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which special needs pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 825.

822(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.

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822(6) A person is taken to satisfy the requirements of paragraph (5)(b) if:

- (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.

**823 Continued payment of partner's pension or allowance**

823(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:

- (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.

823(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.

**824 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 subsection 825, 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***.

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- 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 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.

**825 Adjustment of rate of person's special needs pension**

If:

- (a) a person is qualified for payments under this Subdivision; and
- (b) the person does not elect under subsection 822(2) not to receive payments under this Subdivision;

the rate of the person's special needs pension during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of special needs 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 special needs pension is payable to the person is the rate at which the special needs pension would be payable to the person apart from this Subdivision.

**826 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*

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- 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:
- (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 partner'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 825, 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 starts 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.

**827 Matters affecting payment of benefits under this Subdivision**

827(1) If:

- (a) a person is qualified for payments under this Subdivision and 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).

827(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.

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**Subdivision C—Death of recipient**

**830 Death of recipient**

830(1) If:

- (a) a person is receiving a special needs 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.

830(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 805.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 826.