



# Social Security Act 1991

No. 46, 1991

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This compilation is in 5 volumes

**Volume 1:** sections 1–660M  
Volume 2: sections 660XAA–1067L  
Volume 3: sections 1068–1260  
Schedule  
Volume 4: Endnotes 1–5  
Volume 5: Endnote 6

Each volume has its own contents

**This compilation includes commenced amendments made by Act No. 74, 2019. Amendments made by Act No. 116, 2019 have not commenced but are noted in the endnotes.**

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Social Security Act 1991* that shows the text of the law as amended and in force on 20 December 2019 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

**Chapter 1—Introductory**

**Part 1.1—Formal matters**

**1 Short title**

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

**2 Commencement**

This Act commences on 1 July 1991.

**3 Application of the *Criminal Code***

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

**3AA Norfolk Island**

This Act extends to Norfolk Island.

Section 3A

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## Part 1.2—Definitions

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

If:

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

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

### 3B Definitions—simplified outline

Sections 4 to 23 contain definitions of terms that are used in the social security law.

Subsection 23(1) contains an entry for each expression that is defined for the purposes of this Act. That subsection is like a Dictionary.

The entry is either an actual definition of the expression or a signpost definition that identifies the provision that defines the expression.

Many other sections in this Part contain the actual definitions relating to a particular topic. For example, sections 4 and 5 contain family relationship definitions and section 8 contains income test definitions.

## 4 *Family relationships definitions—couples*

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

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

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

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

immediately before the death of the person.

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

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

immediately before the death of the person.

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

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

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

***partnered*** has the meaning given by subsection (11).

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

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

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

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

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

***prohibited relationship*** has the meaning given by subsections (12) and (13).

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

*Member of a couple—general*

- (2) Subject to subsection (3), a person is a ***member of a couple*** for the purposes of this Act if:
- (a) the person is legally married to another person and is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis; or
  - (aa) both of the following conditions are met:
    - (i) a relationship between the person and another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;
    - (ii) the person is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis; or
  - (b) all of the following conditions are met:



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- (i) the person has a relationship with another person, whether of the same sex or a different sex (in this paragraph called the *partner*);
- (ii) the person is not legally married to the partner;
- (iii) the relationship between the person and the partner is, in the Secretary's opinion (formed as mentioned in subsections (3) and (3A)), a de facto relationship;
- (iv) both the person and the partner are over the age of consent applicable in the State or Territory in which they live;
- (v) the person and the partner are not within a prohibited relationship.

*Member of a couple—criteria for forming opinion about relationship*

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

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

### *Member of a couple—special excluding determination*

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

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

- (6A) A person who:
- (a) has claimed youth allowance and is not independent within the meaning of Part 3.5; or
  - (b) is receiving a youth allowance and is not independent within the meaning of Part 3.5; or
  - (c) is a member of a couple of which a person referred to in paragraph (b) is the other member;

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is not a ***member of a couple*** for the purposes of:

- (d) the provisions of this Act referred to in the table at the end of this subsection; and
- (e) any provision of this Act that applies for the purposes of a provision mentioned in paragraph (d); and
- (f) any provision of this Act that applies for the purposes of Module E (Ordinary income test) of the Pension PP (Single) Rate Calculator in section 1068A.

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

Affected provisions		
Item	Provisions of this Act	Subject matter
1	Subdivision AB of Division 2 of Part 2.11	Youth allowance assets test
1A	section 500Q	Parenting payment assets test
2	sections 549A to 549C	Youth allowance liquid assets test
3	Subdivision B of Division 2 of Part 2.11A	Austudy payment assets test
4	sections 575A to 575C	Austudy payment liquid assets test
5	section 598	Newstart allowance liquid assets test
6	sections 611 and 612	Newstart allowance assets test
7	sections 660YCJ and 660YCK	Mature age allowance assets test
8	section 676	Sickness allowance liquid assets test
9	sections 680 and 681	Sickness allowance assets test
10	sections 733 and 734	Special benefit assets test
11	section 771HF	Partner allowance assets test

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Affected provisions		
Item	Provisions of this Act	Subject matter
11A	Part 2.26	Fares allowance
12	Module E of Pension Rate Calculator A	Ordinary income test
13	Module G of Pension Rate Calculator A	Assets test
14	Module F of Pension Rate Calculator D	Ordinary income test
15	Module H of Pension Rate Calculator D	Assets test
16	Module H of Youth Allowance Rate Calculator	Income test
17	Module D of the Austudy Payment Rate Calculator	Income test
18	Module G of Benefit Rate Calculator B	Income test
19	Part 3.14	Compensation recovery

*Illness separated couple*

- (7) Where 2 people are members of a couple, they are members of an ***illness separated couple*** if:
- (a) they are unable to live together in their home as a result of the illness or infirmity of either or both of them; and
  - (b) because of that inability to live together, their living expenses are, or are likely to be, greater than they would otherwise be; and
  - (c) that inability is likely to continue indefinitely.

*Respite care couple*

- (8) Where 2 people are members of a couple, they are members of a ***respite care couple*** if:
- (a) one of the members of the couple has entered approved respite care; and

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- (b) the member who has entered the approved respite care has remained, or is likely to remain, in that care for at least 14 consecutive days.
- (9) For the purpose of this Act, a person is in ***approved respite care*** on a particular day if the person is eligible for:
  - (a) a respite supplement in respect of that day under the Subsidy Principles made for the purposes of subparagraph 44-5(1)(a)(i) of the *Aged Care Act 1997*; or
  - (b) a respite care supplement in respect of that day under section 44-12 of the *Aged Care (Transitional Provisions) Act 1997*.

*Temporarily separated couple*

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

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

*Standard family situation categories*

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

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- (c) a person is ***partnered (partner getting pension or benefit)*** if the person is a member of a couple and the person's partner is receiving:
  - (i) a social security pension; or
  - (ii) a social security benefit; or
  - (iii) a service pension, income support supplement or a veteran payment; and
- (d) a person is ***partnered (partner getting pension)*** if the person is a member of a couple and the person's partner is receiving:
  - (i) a social security pension; or
  - (ii) a service pension, income support supplement or a veteran payment; and
- (e) a person is ***partnered (partner getting benefit)*** if the person is a member of a couple and the person's partner is receiving a social security benefit; and
- (f) a person is ***partnered (partner in gaol)*** if the person is a member of a couple and the person's partner is:
  - (i) in gaol; or
  - (ii) undergoing psychiatric confinement because the partner has been charged with committing an offence.

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

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

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

### *Prohibited relationship*

- (12) For the purposes of this Act, a person and his or her partner are within a ***prohibited relationship*** if the person is:
  - (a) an ancestor or a descendant of the partner; or
  - (b) a brother, sister, half-brother or half-sister of the partner.
- (13) For the purposes of subsection (12), a child who is, or has ever been, an adopted child of a person is taken to be the natural child of that person and the person is taken to be the natural parent of the child.

## **5 Family relationships definitions—children**

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

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

***child***: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

***dependent child*** has the meaning given by subsections (2) to (8A).

***independent***, in Parts 2.11, 2.11B, 3.4A, 3.4B, 3.5 and 3.7, has the meaning given in section 1067A.

***main supporter*** of a secondary pupil child has the meaning given by section 5G.

***parent*** means:

- (a) (except in Part 2.11, section 592L, subsection 1067A(10L) and the Youth Allowance Rate Calculator in section 1067G):
  - (i) in relation to a person (the ***relevant person***), other than an adopted child—a natural parent or relationship parent of the relevant person; or
  - (ii) in relation to an adopted child—an adoptive parent of the child; or
- (b) in Part 2.11, section 592L, subsection 1067A(10L) and the Youth Allowance Rate Calculator in section 1067G, in relation to a person (***relevant person***):
  - (i) a natural parent, adoptive parent or relationship parent of the relevant person with whom the relevant person normally lives; or
  - (ii) if a parent referred to in subparagraph (b)(i) is a member of a couple and normally lives with the other member of the couple—the other member of the couple; or

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

***prescribed educational scheme*** means:

- (b) the ABSTUDY Scheme; or
- (ca) a Student Financial Supplement Scheme; or
- (e) the Veterans' Children Education Scheme; or
- (ea) the scheme to provide education and training under section 258 of the Military Rehabilitation and Compensation Act; or
- (f) the Post-Graduate Awards Scheme.

Note: For paragraph (ca), an application under the Student Financial Supplement Scheme cannot be made in respect of a year, or a part of a year, that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent (see subsection 1061ZY(2)).

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

***principal carer***, of a child, has the meaning given by subsections (15) to (24).

***relationship child*** has the meaning given by subsection (25).

***relationship parent*** has the meaning given by subsection (25).

***secondary pupil child*** has the meaning given by section 5F.

***step-child***: without limiting who is a step-child of a person for the purposes of this Act, someone who is a child of a partner of the person is the ***step-child*** of the person, if he or she would be the person's step-child except that the person is not legally married to the partner.



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**step-parent:** without limiting who is a step-parent of a person for the purposes of this Act, someone who is a partner of a parent of the person is the **step-parent** of the person, if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

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

**young person:**

- (a) except in Part 2.20—has the meaning given by subsection (1B) of this section; and
  - (b) in Part 2.20—means a person who is under 20 years of age.
- (1A) A person is a **student child** at a particular time if:
- (a) at the time, the person:
    - (i) has reached 16, but is under 22, years of age; and
    - (ii) is receiving full-time education at a school, college or university; and
  - (b) the person's income in the financial year in which that time occurs will not be more than \$6,403.
- (1B) A person is a **young person** at a particular time if at that time the person:
- (a) is under 16 years of age; or
  - (b) is a student child.

*Dependent child—under 16*

- (2) Subject to subsections (3) and (6) to (8), a young person who has not turned 16 is a **dependent child** of another person (in this subsection called the **adult**) if:
- (a) the adult is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the young person, and the young person is in the adult's care; or
  - (b) the young person:
    - (i) is not a dependent child of someone else under paragraph (a) or (aa); and

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- (ii) is wholly or substantially in the adult's care.

Note: For paragraph (a), see also subsection (16).

- (3) A young person who has not turned 16 cannot be a ***dependent child*** if:
  - (a) the young person is not in full-time education; and
  - (b) the young person is in receipt of income; and
  - (c) the rate of that income exceeds \$107.70 per week.

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

### *Dependent child—16 to 21 years of age*

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

### *Dependent child—pension, benefit and Labour Market Program recipients*

- (6) A young person cannot be a ***dependent child*** for the purposes of this Act if:
  - (a) the young person is receiving a social security pension; or
  - (b) the young person is receiving a social security benefit; or
  - (c) the young person is receiving payments under a program included in the programs known as Labour Market Programs.

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*Dependent child—residence requirements*

- (7) For the purposes of this Act (other than the provisions dealing with special benefit), a young person is not to be treated as a ***dependent child*** of another person (in this subsection called the ***adult***) unless:
- (a) if the adult is an Australian resident:
    - (i) the young person is an Australian resident; or
    - (ii) the young person is living with the adult; or
  - (b) if the adult is not an Australian resident:
    - (i) the young person is an Australian resident; or
    - (ii) the young person has been an Australian resident and is living with the adult outside Australia; or
    - (iii) the young person had been living with the adult in Australia and is living with the adult outside Australia.

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

- (8) For the purposes of working out the maximum rate of special benefit under subsection 746(2), a young person is not to be treated as a ***dependent child*** of another person (in this subsection called the ***adult***) unless:
- (a) if the adult is an Australian resident:
    - (i) the young person is an Australian resident or a resident of Australia; or
    - (ii) the young person is living with the adult; or
  - (b) if the adult is not an Australian resident—the young person is an Australian resident or a resident of Australia.

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

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

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### *Prescribed student child*

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

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- (b) the **social security rate** is the Part A rate of family tax benefit for which a person would be eligible (in respect of the young person) if the young person were not a prescribed student child.

*Principal carer*

- (15) A person is the **principal carer** of a child if:
- (a) the child is a dependent child of the person; and
  - (b) the child has not turned 16.

Note: The definition of **dependent child** in subsection (2) requires:

- (a) the adult to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the child: subsection (16) deals with the circumstances in which a step-parent is taken to have such legal responsibility; and
- (b) a child to be in an adult's care: subsection (17) deals with the circumstances in which a child is taken to remain in an adult's care.

- (16) For the purpose of determining whether a person is the **principal carer** of a child, the person is taken to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the child if:
- (a) the person is the step-parent of the child; and
  - (b) the person is living with the child and a parent of the child; and
  - (c) the person and the parent are members of the same couple.

This subsection does not, by implication, affect the determination of whether a person is taken to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of a child in cases to which this subsection does not apply.

- (17) For the purpose of determining whether a person is the **principal carer** of a child, the child is taken to remain in the person's care if:
- (a) at the start of a period not exceeding 8 weeks, the child leaves the person's care; and
  - (b) throughout the period, the child is the dependent child of another person; and

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(c) the child returns, or the Secretary is satisfied that the child will return, to the first person's care at the end of the period. This subsection does not, by implication, affect the determination of whether a child is in the care of a person in cases to which this subsection does not apply (for example, if the period exceeds 8 weeks).

*Principal carer—a child can only have one principal carer*

- (18) Only one person at a time can be the principal carer of a particular child.
- (19) If the Secretary is satisfied that, but for subsection (18), 2 or more persons (**adults**) would be principal carers of the same child, the Secretary must:
- (a) make a written determination specifying one of the adults as the principal carer of the child; and
  - (b) give a copy of the determination to each adult.
- (20) The Secretary may make the determination even if all the adults have not claimed a social security payment that is based on, or would be affected by, the adult being the principal carer of the child.

*Principal carer—which member of a couple can be a principal carer*

- (20A) Subject to subsection (20B), a person is not the principal carer of any child if:
- (a) the person is a member of a couple; and
  - (b) the other member of the couple is, or apart from this subsection would be, the principal carer of one or more children; and
  - (c) the other member of the couple is receiving parenting payment, youth allowance, newstart allowance or special benefit; and

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- (d) the payment, allowance or benefit is based on or affected by the other member of the couple being the principal carer of a child.
- (20B) If:
- (a) a member of a couple is receiving, or has made a claim for, a social security payment that is or would be based on or affected by the person being the principal carer of a child; and
  - (b) the other member of the couple is receiving, or has made a claim for, a social security payment that is or would be based on or affected by the person being the principal carer of a child; and
  - (c) apart from subsection (20C), the application of subsection (20A) would, or would if the claim or claims were granted, prevent each member of the couple from being the principal carer of any child;
- the Secretary must determine in writing that one of them can be a principal carer of a child.
- (20C) The determination has effect accordingly, despite subsection (20A).
- (20D) The Secretary must give a copy of the determination to each member of the couple.

*Principal carer—child absent from Australia*

- (21) If a child:
- (a) leaves Australia temporarily; and
  - (b) continues to be absent from Australia for more than 6 weeks;
- a person cannot be the principal carer of the child at any time after the 6 weeks while the child remains absent from Australia unless, at that time:
- (c) the child is in the company of a person to whom Division 2 of Part 4.2 applies; and
  - (d) but for this subsection, the person would be the principal carer of the child; and

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- (e) the person's portability period (within the meaning of that Division) for a social security payment:
    - (i) that the person was receiving immediately before the person's absence from Australia; or
    - (ii) the person's claim for which was granted during the absence;has not ended.
- (22) For the purposes of subsection (21), in determining if an absence is temporary, regard must be had to the following factors:
  - (a) the purpose of the absence;
  - (b) the intended duration of the absence;
  - (c) the frequency of such absences.
- (23) If a child:
  - (a) is born outside Australia; and
  - (b) continues to be absent from Australia for a period of more than 6 weeks immediately following the child's birth;a person cannot be the principal carer of the child at any time after the 6 weeks while the child remains absent from Australia unless, at that time:
  - (c) the child is in the company of a person to whom Division 2 of Part 4.2 applies; and
  - (d) but for this subsection, the person would be the principal carer of the child; and
  - (e) the person's portability period (within the meaning of that Division) for a social security payment:
    - (i) that the person was receiving immediately before the person's absence from Australia; or
    - (ii) the person's claim for which was granted during the absence;has not ended.
- (24) If:
  - (a) a person is not the principal carer of a child because of subsection (21) (absence from Australia) or (23) (birth



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outside Australia), or because of a previous application of this subsection; and

(b) the child comes to Australia; and

(c) the child leaves Australia less than 6 weeks later;

a person cannot be the principal carer of the child when the child leaves Australia as mentioned in paragraph (c).

*Relationship child and relationship parent*

(25) If:

(a) someone is a child of a person because of:

(i) the definition of **child** in subsection (1); or

(ii) paragraph (b) of the definition of **child** in section 1207A; or

(iii) paragraph (b) of the definition of **child** in subsection 1209R(5); and

(b) he or she is not a biological or adopted child of the person; the child is the **relationship child** of the person and the person is the **relationship parent** of the child.

**5A Single person sharing accommodation**

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

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

(b) has no dependent children; and

(c) has, in common with one or more other people, the right to use at least one major area of accommodation.

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

(a) pays, or is liable to pay, amounts for the person's board and lodging; or

(ab) is residing in exempt accommodation (see subsections (5A), (5B) and (5C)); or

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- (b) is the recipient of a disability support pension or a carer pension; or
  - (c) is residing in a nursing home.
- (3) A person who has the exclusive right to use a bathroom, a kitchen and a bedroom is not to be treated as a single person sharing accommodation solely because the person has the right, in common with one or more other people, to use other major areas of accommodation.
- (4) A person is not to be treated as a single person sharing accommodation solely because the person shares accommodation with one or more recipient children of the person.
- (5) If:
  - (a) a person lives alone in a caravan or mobile home, or on board a vessel; or
  - (b) a person shares accommodation in a caravan, mobile home or vessel solely with one or more recipient children of the person;the person is not to be treated as a single person sharing accommodation solely because the person has the right, in common with one or more other people, to use one or more major areas of accommodation in a caravan park or marina.
- (5A) A person's accommodation is **exempt accommodation** if it is in premises that are, in the Secretary's opinion, a boarding house, guest house, hostel, hotel, private hotel, rooming house, lodging house or similar premises.
- (5B) In forming an opinion about a person's accommodation for the purposes of subsection (5A), the Secretary is to have regard to the characteristics of the accommodation including, in particular, whether or not the following are characteristics of the accommodation:
  - (a) the premises are known as a boarding house, guest house, hostel, hotel, private hotel, rooming house, lodging house or similar premises;

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- (b) a manager or administrator (other than a real estate agent) is retained to manage the premises or administer the accommodation on a daily or other frequent regular basis;
  - (c) staff are retained by the proprietor or manager of the premises to work in the premises on a daily or other frequent regular basis;
  - (d) the residents lack control over the day-to-day management of the premises;
  - (e) there are house rules, imposed by the proprietor or manager, that result in residents having rights that are more limited than those normally enjoyed by a lessee of private residential accommodation (for example, rules limiting the hours of residents' access to their accommodation or limiting residents' access to cooking facilities in the premises);
  - (f) the person does not have obligations to pay for his or her costs of gas, water or electricity separately from the cost of the accommodation;
  - (g) the accommodation is not private residential accommodation, having regard to:
    - (i) the number and nature of bedrooms in the premises; or
    - (ii) the number of people who are not related to one another living at the premises; or
    - (iii) the number and nature of bathrooms in the premises;
  - (h) the person's accommodation has not been offered to the person on a leasehold basis;
  - (j) there is no requirement that the person pay a bond as security for either the payment of rent or the cost of any damage caused by the person, or for both;
  - (k) the person's accommodation is available on a daily or other short-term basis.
- (5C) Each of the characteristics set out in subsection (5B) points towards the accommodation in question being exempt accommodation.

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(6) In this section:

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

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

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

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

### 5B Registered and active foster carers

- (1) A person is a **registered and active foster carer** if the Secretary is satisfied that:
  - (a) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to provide foster care in that State or Territory; and
  - (b) the person is taken, in accordance with guidelines made under subsection (2), to be actively involved in providing foster care in that State or Territory.
- (2) The Secretary may, by legislative instrument, make guidelines setting out the circumstances in which persons are taken, for the purposes of the social security law, to be actively involved in providing foster care in that State or Territory.

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**5C Home educators**

A person is a *home educator* of a child if the Secretary is satisfied that:

- (a) the child is receiving, in the person's home, education that wholly or substantially replaces the education that the child would otherwise receive by attending a school; and
- (b) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to provide that education to the child; and
- (c) the person is suitably involved in providing and supervising that education.

**5D Distance educators**

A person is a *distance educator* of a child if the Secretary is satisfied that:

- (a) the child is enrolled to receive education by undertaking a distance education curriculum; and
- (b) the child is undertaking that curriculum; and
- (c) the person is suitably involved in assisting and supervising the child in relation to that curriculum.

**5E Relatives (other than parents)**

- (1) A person is a *relative (other than a parent)* of a child if:
  - (a) the person is not the child's parent or step-parent; and
  - (b) any of the following apply to the person:
    - (i) the person is related to the child by blood, adoption or marriage;
    - (ii) if the child is an Aboriginal or Torres Strait Islander child who has traditional Aboriginal or Torres Strait Islander kinship ties—the person is related to the child under Aboriginal or Torres Strait Islander kinship rules;
    - (iii) if the child is a member of a community that accepts relationships other than those referred to in

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subparagraphs (i) and (ii) as kinship ties—the person is accepted by the community to be related to the child.

- (2) For the purposes of subparagraph (1)(b)(i), if one person is a relationship child, or a step-child, of another person, relationships traced to or through the person are to be determined on the basis that the person is related by blood to the other person.

### 5F Secondary pupil child

A person is a **secondary pupil child** of another person at a time in a financial year if:

- (a) at the time, the person:
  - (i) has turned 16 but has not turned 19; and
  - (ii) has not completed the final year of secondary school or an equivalent level of education; and
  - (iii) is undertaking secondary education or a course of study or instruction that is determined under section 5D of the *Student Assistance Act 1973* to be a secondary course; and
- (b) the person's income in the financial year will not be more than \$6,403; and
- (c) at the time, the person:
  - (i) lives with the other person; and
  - (ii) is wholly or substantially dependent on the other person; and
- (d) if the person is a member of a couple, the other person is not the person's partner; and
- (e) the other person is claiming or receiving any of the following at the time:
  - (i) parenting payment;
  - (ii) youth allowance;
  - (iii) newstart allowance;
  - (iv) special benefit.

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

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**5G Main supporter of secondary pupil child**

- (1) If someone is a secondary pupil child of a person, the person is the **main supporter** of the secondary pupil child, subject to subsection (2).
- (2) Subsections 5(18) to (22) (inclusive) and subsection 5(24) apply for the purposes of determining whether a person is the main supporter of a secondary pupil child in the same way as they apply for the purposes of determining whether a person is the principal carer of a child.

Note: Subsections 5(18) to (20D) (inclusive) are about identifying the one person who is the principal carer of a child. Subsections 5(21), (22) and (24) prevent a person from being the principal carer of a child who has left Australia and has been absent from Australia for more than 6 weeks.

**6 Double orphan pension definitions**

In this Act, unless the contrary intention appears:

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

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

**6A Concession card definitions**

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

**automatic issue card** means:

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

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

**concession card** means:

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- (a) a pensioner concession card; or
- (b) a health care card; or
- (c) a seniors health card.

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

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

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

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

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

- (a) the partner; or
  - (b) an FTB child; or
  - (c) a regular care child;
- of the claimant.

***income-tested***: a health care card is ***income-tested*** for a person if the person is required by paragraph 1061ZO(2)(d), (3)(e) or (4)(d) to satisfy the health care card income test in order to qualify for the health care card.

- (2) For the purposes of the operation of a definition of ***dependant*** in subsection (1) in relation to a provision of Part 2A.1, a person (the



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**child**) is an FTB child, or a regular care child, of another person (the **adult**) if:

- (a) the child is an FTB child, or a regular care child, (as the case requires) of the adult within the meaning of the Family Assistance Act; and
- (b) either:
  - (i) the child is under 16 years of age; or
  - (ii) the child is 16, but not yet 19, years of age and is undertaking secondary studies.

## **7 Australian residence definitions**

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

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

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

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

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

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

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

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

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

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

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

Note: For ***holder*** and ***permanent visa*** see subsection (1).

- (2A) A person is a ***protected SCV holder*** if:
- (a) the person was in Australia on 26 February 2001, and was a special category visa holder on that day; or
  - (b) the person had been in Australia for a period of, or for periods totalling, 12 months during the period of 2 years immediately before 26 February 2001, and returned to Australia after that day.
- (2B) A person is a ***protected SCV holder*** if the person:
- (a) was residing in Australia on 26 February 2001; and
  - (b) was temporarily absent from Australia on 26 February 2001; and
  - (c) was a special category visa holder immediately before the beginning of the temporary absence; and
  - (d) was receiving a social security payment on 26 February 2001; and
  - (e) returned to Australia before the later of the following:
    - (i) the end of the period of 26 weeks beginning on 26 February 2001;
    - (ii) if the Secretary extended the person's portability period for the payment under section 1218C—the end of the extended period.

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- (2C) A person who commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001 is a ***protected SCV holder*** at a particular time if:
- (a) the time is during the period of 3 years beginning on 26 February 2001; or
  - (b) the time is after the end of that period, and either:
    - (i) a determination under subsection (2E) is in force in respect of the person; or
    - (ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.
- (2D) A person who, on 26 February 2001:
- (a) was residing in Australia; and
  - (b) was temporarily absent from Australia; and
  - (c) was not receiving a social security payment;
- is a ***protected SCV holder*** at a particular time if:
- (d) the time is during the period of 12 months beginning on 26 February 2001; or
  - (e) the time is after the end of that period, and either:
    - (i) at that time, a determination under subsection (2E) is in force in respect of the person; or
    - (ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.
- (2E) A person who is residing in Australia and is in Australia may apply to the Secretary for a determination under this subsection stating that:
- (a) the person was residing in Australia on 26 February 2001, but was temporarily absent from Australia on that day; or
  - (b) the person commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001.
- (2F) If a person makes an application under subsection (2E), the Secretary must make the determination if:
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- (a) the Secretary is satisfied that paragraph (2E)(a) or (2E)(b) applies to the person; and
  - (b) the application was made within whichever of the following periods is applicable:
    - (i) if paragraph (2E)(a) applies to the person—the period of 12 months beginning on 26 February 2001;
    - (ii) if paragraph (2E)(b) applies to the person—the period of 3 years beginning on 26 February 2001.
- The Secretary must give a copy of the determination to the person.
- (2G) The Secretary must make a determination under this subsection in respect of a person if the person is a protected SCV holder because of subsection (2B). If the Secretary is required to make such a determination:
- (a) the determination must state that the person was residing in Australia on 26 February 2001, but was temporarily absent from Australia on that day; and
  - (b) the determination must be made within the period of 6 months of the person's return to Australia; and
  - (c) a copy of the determination must be given to the person.
- (3) In deciding for the purposes of this Act whether or not a person is residing in Australia, regard must be had to:
- (a) the nature of the accommodation used by the person in Australia; and
  - (b) the nature and extent of the family relationships the person has in Australia; and
  - (c) the nature and extent of the person's employment, business or financial ties with Australia; and
  - (d) the nature and extent of the person's assets located in Australia; and
  - (e) the frequency and duration of the person's travel outside Australia; and
  - (f) any other matter relevant to determining whether the person intends to remain permanently in Australia.

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- (3A) For the purposes of determining, under subsections (2A) to (2D), whether a person is a protected SCV holder, Australia is taken, at all relevant times, to have included Norfolk Island.
- (4) For the purposes of:
- (a) Part 2.2 (age pension); and
  - (b) Part 2.3 (disability support pension); and
  - (d) Part 2.7 (bereavement allowance); and
  - (e) Part 2.8 (widow B pension);
- residence of a claimant in an external Territory is taken to be residence in Australia.
- (4AA) Whether residence in a particular place is residence in an external territory for the purposes of subsection (4) is to be determined as at the time of residence.
- (4B) For the purposes of a newly arrived resident's waiting period, the day on which a permanent visa is granted to a person or a person becomes the holder of a permanent visa is:
- (a) if an initial decision maker decides to grant a visa to the person—that day; or
  - (b) if:
    - (i) an initial decision maker decides not to grant a visa to the person; and
    - (ii) on a review of the decision referred to in subparagraph (i), that decision is set aside (however described) and a visa is granted to the person;the day on which the initial decision maker decided not to grant the visa to the person.
- (5) A person has 10 years *qualifying Australian residence* if and only if:
- (a) the person has, at any time, been an Australian resident for a continuous period of not less than 10 years; or
  - (b) the person has been an Australian resident during more than one period and:
    - (i) at least one of those periods is 5 years or more; and

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- (ii) the aggregate of those periods exceeds 10 years.
- (6) A person has a ***qualifying residence exemption*** for a social security pension (other than carer payment) or a social security benefit (other than youth allowance, austudy payment, newstart allowance, sickness allowance, special benefit or partner allowance) if, and only if, the person:
  - (a) resides in Australia; and
  - (b) is either:
    - (i) a refugee; or
    - (ii) a former refugee.
- (6AA) A person also has a ***qualifying residence exemption*** for a social security benefit (other than a special benefit), a pension PP (single), carer payment, carer allowance, a mobility allowance, a seniors health card or a health care card if, and only if, the person:
  - (b) except in relation to pension PP (single), benefit PP (partnered), youth allowance, austudy payment, newstart allowance, sickness allowance, partner allowance, carer payment, carer allowance, mobility allowance, a seniors health card or a health care card—was a family member of a refugee, or former refugee, at the time the refugee or former refugee arrived in Australia; or
  - (f) in any case—holds or was the former holder of a visa that is in a class of visas determined, by legislative instrument, by the Minister for the purposes of this paragraph.
- (6B) A person is a ***refugee*** for the purposes of this section if the person:
  - (a) is taken, under the Migration Reform (Transitional Provisions) Regulations, to be the holder of a transitional (permanent) visa because the person was, immediately before 1 September 1994, the holder of:
    - (i) a visa or entry permit that fell within Division 1.3—Group 1.3 (Permanent resident (refugee and humanitarian) (offshore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or

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

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

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

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

Item No.	Class description	Relevant item in Schedule 1 to Migration Regulations
8.	Refugee and Humanitarian (Migrant) (Class BA)	1127
8A	Sri Lankan (Special Assistance) (Class BF)	1129A
9.	Sudanese (Special Assistance) (Class BD)	1130
10.	Territorial Asylum (Residence) (Class BE)	1131

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

***family member***, in relation to a person, means:

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

(6E) The Minister may, by legislative instrument:

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

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

- (a) throughout the period, the person was the holder of a special category visa; and
- (b) immediately before the period commenced, the person had been residing in Australia for a continuous period of at least



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10 years, being a period commencing on or after 26 February 2001;

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

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

## **8 Income test definitions**

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

***approved exchange trading system*** has the meaning given by subsection (10).

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

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

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

***dad and partner pay*** means dad and partner pay under the *Paid Parental Leave Act 2010*.

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

***disposes of ordinary income*** has the meaning given by sections 1106 to 1111.

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

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

***employment income***, in relation to a person, means ordinary income of the person that comprises employment income under subsection (1A) and includes ordinary income that is characterised as employment income of the person because of the operation of subsection (1B).

***exchange trading system*** has the meaning given by subsection (9).

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

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

Note: See also subsection (7).

***income***, in relation to a person, means:

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

but does not include an amount that is excluded under subsection (4), (5) or (8).

Note 1: See also sections 1074 and 1075 (business income), Division 1B of Part 3.10 (income from financial assets (including income streams (short term) and certain income streams (long term))), Division 1C of Part 3.10 (income from income streams not covered by Division 1B of Part 3.10), section 1099F (exempt bond amount does not count as income) and section 1099K (refunded amount does not count as income).

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

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

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**income amount** means:

- (a) valuable consideration; or
  - (b) personal earnings; or
  - (c) moneys; or
  - (d) profits;
- (whether of a capital nature or not).

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

**instalment of parental leave pay** means an instalment of parental leave pay under the *Paid Parental Leave Act 2010*.

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

Note 1: For **maintenance income** see section 10.

Note 2: Amounts received as a series of periodic compensation payments may result in reduction of the person's rate of social security pension or benefit under Part 3.14: if this happens the amounts are not counted as ordinary income (see section 1176).

Note 3: For provisions affecting the amount of a person's ordinary income see sections 1072 and 1073 (ordinary income concept), section 1073K (seasonal horticultural work income exemption), sections 1074 and 1075 (business income), Division 1B of Part 3.10 (income from financial assets (including income streams (short term) and certain income streams (long term)) and Division 1C of Part 3.10 (income from income streams not covered by Division 1B of Part 3.10).

**student income bank** means the student income bank set out:

- (a) in Module J of the Youth Allowance Rate Calculator; or
- (b) in Module E of the Austudy Payment Rate Calculator.

**working credit participant** means a person who is a working credit participant within the meaning of section 1073D.

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- (1A) A reference in this Act to ***employment income***, in relation to a person, is a reference to ordinary income of the person:
- (a) that is earned, derived or received, or that is taken to have been earned, derived or received, by the person from remunerative work undertaken by the person as an employee in an employer/employee relationship; and
  - (b) that includes, but is not limited to:
    - (i) salary, wages, commissions and employment-related fringe benefits that are so earned, derived or received or taken to have been so earned, derived or received; and
    - (ii) if the person is engaged on a continuing basis in that employer/employee relationship—a leave payment to the person;but does not include:
    - (c) a superannuation payment to the person; or
    - (d) a payment of compensation, or a payment to the person under an insurance scheme, in relation to the person's inability to earn, derive or receive income from that remunerative work; or
    - (e) if the person is not engaged on a continuing basis in that employer/employee relationship—a leave payment to the person; or
    - (f) a payment to the person by a former employer of the person in relation to the termination of the person's employment; or
    - (g) a comparable foreign payment; or
    - (h) an instalment of parental leave pay; or
    - (i) dad and partner pay.
- (1B) For the avoidance of doubt, if:
- (a) a person is treated, for the purposes of working out the person's ordinary income, as having earned, derived or received any ordinary income that was in fact earned, derived or received, or taken to have been earned, derived or received, by the partner of the person; and

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- (b) that ordinary income would be characterised as employment income in the hands of the partner if the partner were not a member of a couple;  
then, for the purposes of this Act, that ordinary income is to be similarly characterised in the hands of the person.
- (1C) For the purposes of subsection (1A), a leave payment:
  - (a) includes a payment in respect of personal/carer's leave, annual leave, maternity leave or long service leave; and
  - (b) may be made as a lump sum payment, a payment that is one of a series of regular payments or otherwise; and
  - (c) is taken to be made to the person if it is made to another person:
    - (i) at the direction of the first-mentioned person or of a court; or
    - (ii) on behalf of the first-mentioned person; or
    - (iii) for the benefit of the first-mentioned person; or
    - (iv) if the first-mentioned person waives or assigns his or her right to the payment.

*Earned, derived or received*

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

*Domestic payments*

- (3) A payment received by a person is a ***domestic payment*** for the purposes of this Act if:
  - (a) the person receives the payment on the disposal of an asset of the person; and

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- (b) the asset was used, immediately before the disposal, by the person or the person's partner for private or domestic purposes; and
- (c) the asset was used by the person or the person's partner for those purposes for:
  - (i) a period of 12 months before the disposal; or
  - (ii) if the Secretary considers it appropriate—a period of less than 12 months before the disposal.

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

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

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

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

*Home equity conversion (amount owed)*

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

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*Home equity conversion (principal home)*

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

*Excluded amounts—general*

- (8) The following amounts are not income for the purposes of this Act:
- (a) a payment under this Act;
  - (b) any return on a person's investment in:
    - (i) a superannuation fund; or
    - (ii) an approved deposit fund; or
    - (iv) an ATO small superannuation account;until the person:
    - (v) reaches pension age; or
    - (vi) starts to receive a pension or annuity out of the fund;
  - (c) the value of emergency relief or like assistance;
  - (e) a payment under the *Handicapped Persons Assistance Act 1974*;
  - (f) a payment under Part III of the *Disability Services Act 1986* or the value of any rehabilitation program (including any follow-up program) provided under that Part;
  - (g) a payment of domiciliary nursing care benefit under Part VB of the *National Health Act 1953* as in force immediately before 1 July 1999;
  - (h) a payment under a law of the Commonwealth, being a law having an object of assisting persons to purchase or build their own homes;
  - (ha) a payment made by a State or Territory for the purpose of assisting the person to purchase or build his or her own home;
  - (j) a payment made to the person for or in respect of a dependent child of the person;

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- (jaa) a payment of family assistance, or of one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance or ETR payment, under the Family Assistance Act;
- (jab) a payment under the scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*;
- (jaba) a payment under the scheme determined under Part 2 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012*;
- (jac) a payment under the scheme determined under Schedule 2 to the *Social Security Legislation Amendment (One-off Payments for Carers) Act 2005*;
- (jad) a payment under the scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;
- (jae) a payment under the scheme determined under Schedule 4 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;
- (jaf) a payment under the scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*;
- (jag) an NDIS amount;
- (jah) any return on a person's NDIS amounts that the person earns, derives or receives;
- (jai) a payment of a bursary under the program established by the Commonwealth and known as the Young Carer Bursary Programme;
- (ja) disability expenses maintenance;
- (jb) a payment under the *Business Services Wage Assessment Tool Payment Scheme Act 2015*;



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- (jc) a payment under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*;
- (k) insurance or compensation payments made by reason of the loss of, or damage to, buildings, plant or personal effects;
- (ka) where:
  - (i) the person owes money under a mortgage or other arrangement; and
  - (ii) the person has insurance which requires the insurer to make payments to the creditor when the person is unemployed or ill or in other specified circumstances; and
  - (iii) payments are made to the creditor under the insurance; a payment so made;
- (m) money from an investment that is:
  - (i) an investment of payments of the kind referred to in paragraph (k); and
  - (ii) an investment for:
    - (A) a period of not more than 12 months after the person receives the payments; or
    - (B) if the Secretary thinks it appropriate—of 12 months or more after the person receives those payments;
- (ma) money from an exempt funeral investment;
  - Note: For *exempt funeral investment* see section 19E.
- (n) an amount paid, under a law of, or applying in, a country or part of a country, by way of compensation for a victim of National Socialist persecution;
- (q) in the case of a person who pays or who is liable to pay rent, a payment by way of rent subsidy made by the Commonwealth, by a State or Territory or by an authority of the Commonwealth or of a State or Territory to or on behalf of the person who pays or who is liable to pay rent;
- (r) a payment received by a trainee in full-time training under a program included in the programs known as Labour Market

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Programs, to the extent that the payment includes one or more of the following amounts:

- (i) an amount calculated by reference to a rate of newstart allowance;
- (ii) an amount known as the training component;
- (iii) an amount by way of a living away from home allowance;
- (s) in the case of a person who is receiving a social security pension, a social security benefit, a service pension, income support supplement or a veteran payment and is in part-time training, or engaged in part-time work experience, under a program included in the programs known as Labour Market Programs—a payment received by the person under that program in respect of the person’s expenses associated with his or her participation in the training or work experience;
- (sa) a payment made by, or on behalf of, the Commonwealth and known as the seasonal work living away and travel allowance;
- (t) a payment received by the person under the scheme known as the New Enterprise Incentive Scheme;
- (ta) a payment made by the Commonwealth known as the Apprenticeship Wage Top-Up to the person;
- (tb) a payment to the person made by the Commonwealth under the program known as Skills for Sustainability for Australian Apprentices;
- (tc) a payment to the person made by the Commonwealth under the program known as Tools for Your Trade (within the program known as the Australian Apprenticeships Incentives Program);
- (td) a payment made by the Commonwealth, under the program established by the Commonwealth and known as “Youth Jobs PaTH”, to an individual placed in an internship under that program;
- (u) a benefit under a law of the Commonwealth that relates to the provision of:
  - (i) pharmaceutical, sickness or hospital benefits; or

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- (ii) medical or dental services;
- (v) a payment (other than a periodical payment or a payment representing an accumulation of instalments) made for or in respect of expenses incurred by a person for hospital, medical, dental or similar treatment;
- (va) a payment made by the Mark Fitzpatrick Trust to a person by way of assistance with expenses incurred in relation to a person who has medically acquired HIV infection;
- (vb) a payment made by the New South Wales Medically-Acquired HIV Trust to a person by way of financial assistance with expenses incurred in relation to a person who has medically acquired HIV infection;
- (vc) a payment by the Thalidomide Australia Fixed Trust:
  - (i) made to, or applied for the benefit of, a beneficiary of the Trust; or
  - (ii) made to a person in respect of a beneficiary of the Trust;
- (w) in the case of a member of:
  - (i) the Naval Reserve; or
  - (ii) the Army Reserve; or
  - (iii) the Air Force Reserve;the pay and allowances paid to the person as such a member (other than pay and allowances in respect of continuous full-time service);
- (y) a payment by way of:
  - (i) service pension, income support supplement or veteran payment; or
  - (ii) attendant allowance under section 98 of the Veterans' Entitlements Act; or
  - (iii) recreation allowance under section 104 of that Act; or
  - (iv) an allowance for the running and maintenance of a motor vehicle under the Vehicle Assistance Scheme referred to in section 105 of that Act; or
  - (v) decoration allowance under section 102 of that Act; or
  - (vi) Victoria Cross allowance under section 103 of that Act; or

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- (via) a payment, by a foreign country, of an allowance or annuity that is of a similar kind to decoration allowance payable under section 102 of that Act or to Victoria Cross allowance payable under section 103 of that Act; or
- (vii) clothing allowance under section 97 of that Act; or
- (viiiaa) prisoner of war recognition supplement under Part VIB of that Act; or
- (viiiaa) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the scheme referred to in section 117 of the Veterans' Entitlements Act; or
- (viiab) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act; or
- (viia) veterans supplement under Part VIIA of the Veterans' Entitlements Act; or
- (viib) energy supplement under Part VIIAD of that Act; or
- (viii) a bereavement payment under Part IIIB, or section 98A of that Act; or
- (ix) a funeral benefit under Part VI of that Act; or
- (x) a payment under Part VIIAB (DFISA) of that Act (including a payment made under regulations made under that Part);
- (ya) a payment made by the Commonwealth and known as the one-off payment to the aged; or
- (yc) a payment under a scheme determined under Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;
- (ye) a payment under a scheme determined under Schedule 2 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;

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- (yg) a payment under a scheme determined under Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*;
- (yha) a clean energy payment under the Veterans' Entitlements Act;
- (yi) a payment under the scheme determined under Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008*;
- (yj) a payment under the scheme determined under Schedule 4 to the *Household Stimulus Package Act (No. 2) 2009*;
- (yk) a one-off energy assistance payment under Part IIIF of the Veterans' Entitlements Act;
- (yl) a one-off energy assistance payment under Part IIIG of the Veterans' Entitlements Act;
- (z) a periodical payment by way of gift or allowance, or a periodical benefit by way of gift or allowance, from a parent, child, brother or sister of the person;
- (za) the value of board or lodging received by the person;
- (zaa) an amount received under the scheme known as the Western Australian Cost of Living Rebate Scheme;
- (zab) the value of a benefit obtained by using a card known as the Western Australian Country Age Pension Fuel Card;
- (zac) a payment, known as the Cost of Living Concession, made by the Government of South Australia;
- (zb) a domestic payment;
- (zc) so much of a payment received by the person as is, in accordance with an agreement between the Commonwealth and a foreign country, applied in reduction of the amount of social security payment that would otherwise be payable to the person under this Act;
- (zd) a payment made to the person by the Government of New Zealand, being a payment known as:
  - (i) accommodation benefit; or
  - (ii) disability allowance; or
  - (iii) home help payment; or

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- (iv) special benefit; or
  - (v) training incentive allowance;
  - (ze) a payment made to the person by the Government of the United Kingdom, being a payment known as:
    - (i) clothing allowance; or
    - (ii) constant attendance allowance; or
    - (iii) decoration allowance; or
    - (iv) mobility supplement;
  - (zf) a payment under the ABSTUDY Scheme;
  - (zfa) a payment of financial supplement made to the person under a Student Financial Supplement Scheme;
  - (zg) a payment received by the person for serving, or being summoned to serve, on a jury;
  - (zh) a payment received by the person for expenses as a witness, other than an expert witness, before a court, tribunal or commission;
  - (zi) a payment towards the cost of personal care support services for the person, being a payment made under a scheme approved under section 35A;
  - (zia) the amount or value of a scholarship known as a Commonwealth Trade Learning Scholarship;
  - (zj) a payment of an approved scholarship awarded on or after 1 September 1990;
- Note: For *approved scholarship* see subsection 8(1).
- (zja) the amount or value of:
    - (ia) a scholarship provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants) and specified by the Secretary under subsection (8AAA) of this section.
    - (i) a scholarship known as a Commonwealth Education Costs Scholarship; or
    - (ii) a scholarship known as a Commonwealth Accommodation Scholarship;
  - (zjb) an amount covered by subsection (8B) (about reductions of amounts payable for enrolment or tuition in certain courses);

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(zjc) a payment covered by subsection (8C) (about payments that are made to an educational institution or the Commonwealth to reduce a person's liability to the educational institution or Commonwealth and that are made by someone other than the person);

(zjd) a payment of a scholarship to a person during a calendar year (other than an excluded payment):

(i) for the person to study, or to undertake research, at an educational institution; or

(ii) for the person's achievement in studying, or in undertaking research, at an educational institution;

to the extent that the payment does not exceed the person's threshold amount for that year;

Note: For **excluded payment** see subsection (8AA). For **educational institution** see subsection 23(1). For **threshold amount** see subsection (8AB).

(zk) an amount paid by a buyer under a sale leaseback agreement;

(zl) if a person is a member of an approved exchange trading system—an amount credited to the person's account for the purposes of the scheme in respect of any goods or services provided by the person to another member.

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

(zm) if a person:

(i) is a member of a couple; and

(ii) is receiving a social security benefit;

a payment received by the person either directly or indirectly from his or her partner.

(zn) while a person is accruing a liability to pay an accommodation charge—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

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

Note 2: Under subsections 11A(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

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Note 3: See subsections (10A) and (10B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

(zna) while a person is liable to pay all or some of an accommodation bond by periodic payments—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

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

Note 2: Under subsections 11A(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Note 3: See subsections (10A) and (10B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

(znaa) while a person is liable to pay all or some of a daily accommodation payment or a daily accommodation contribution—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

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

Note 2: Under subsections 11A(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Note 3: See subsections (10A) and (10B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

(znb) a clean energy payment under the Military Rehabilitation and Compensation Act;

(zo) a payment under section 47, 56, 81, 205, 214, 217, 226, 239 or 266 of the Military Rehabilitation and Compensation Act to reimburse costs incurred in respect of the provision of goods or services (other than a payment to the person who provided the goods or service);

(zp) if subsection 204(5) of the Military Rehabilitation and Compensation Act applies to a person—an amount per fortnight, worked out under subsection (12) of this section,



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that would, apart from this paragraph, be income of the person;

Note: Subsection 204(5) of the Military Rehabilitation and Compensation Act reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.

- (zq) a payment under the Motor Vehicle Compensation Scheme under section 212 of the Military Rehabilitation and Compensation Act;
  - (zr) a payment under section 242 of the Military Rehabilitation and Compensation Act (continuing permanent impairment and incapacity etc. payments);
  - (zs) the value of the benefit provided under the initiative known as the Tools for Your Trade initiative.
- (8AAA) The Secretary may, by legislative instrument, specify a scholarship for the purposes of subparagraph (8)(zja)(ia).
- (8AA) For the purposes of paragraph (8)(zjd), each of the following is an **excluded payment**:
- (a) a payment of a scholarship referred to in paragraph (8)(zia), (zj) or (zja);
  - (b) a scholarship payment under Part 2.11B;
  - (c) a scholarship payment under the ABSTUDY Scheme;
  - (d) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the scheme referred to in section 117 of the Veterans' Entitlements Act;
  - (e) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act.
- (8AB) For the purposes of paragraph (8)(zjd), a person's **threshold amount**, for a calendar year, means \$6,762 less the amount of any payment made to that person during that year that is not income for the purposes of this Act because of that paragraph.

Note: The dollar amount mentioned in this subsection is indexed annually in line with CPI increases (see sections 1190 to 1194).

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Example: On 15 April 2010 a person is paid a scholarship of \$3,000 to study at an educational institution. The threshold amount is \$6,762 (as no other payment has been excluded under paragraph (8)(zjd) for 2010). The \$3,000 is not income under that paragraph and the threshold amount is reduced to \$3,762.

On 1 May 2010 the person is paid a scholarship of \$5,000 to study at an educational institution. Of the \$5,000, \$3,762 is not income under that paragraph. The threshold amount is reduced to zero.

There can be no further payments excluded under that paragraph for that person for 2010.

- (8A) For the purposes of the operation of section 5 in determining whether a person is:
- (a) a student child; or
  - (b) a dependent child of another person;
- this section has effect as if paragraph (8)(zf) were not included.
- (8B) This subsection covers the amount of a reduction (by discount, remission or waiver) of an amount that would otherwise be payable by a person:
- (a) to an educational institution for enrolment or tuition of the person by the institution in a course that:
    - (i) is determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act; or
    - (ii) is a Masters or Doctoral degree course accredited as a higher education course by the authority responsible for accrediting higher education courses in the State or Territory in which the course is conducted or by the institution, if it is permitted by a law of the Commonwealth, a State or a Territory to accredit higher education courses that it conducts; or
    - (iii) is a course of vocational training; or
  - (b) to the Commonwealth as a result of the person's enrolment in, or undertaking of, such a course at an educational institution.
- (8C) This subsection covers a payment:

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- (a) that is made to discharge, or to prevent from arising, to any extent:
    - (i) a person's actual or anticipated liability to an educational institution for enrolment or tuition of the person by the institution in a course described in paragraph (8B)(a); or
    - (ii) a person's actual or anticipated liability to the Commonwealth resulting from the person's enrolment in, or undertaking of, such a course at an educational institution; and
  - (b) that is made by someone other than the person; and
  - (c) that is made to the institution or the Commonwealth; and
  - (d) that is not made at the direction of the person.
- (9) An **exchange trading system** is an arrangement between a number of persons (**members**) under which each member may obtain goods or services from another member for consideration that is wholly or partly in kind rather than in cash. Each member has, for the purposes of the arrangement, an account:
- (a) to which is credited:
    - (i) the amount representing the value of any goods or services provided by the member to another member; or
    - (ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash; and
  - (b) to which is debited:
    - (i) the amount representing the value of any goods or services supplied to the member by another member; or
    - (ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash.
- (10) An exchange trading system is an **approved exchange trading system** if the Secretary is satisfied that:
- (a) it is a local community-based system; and
  - (b) its primary purpose is to help persons maintain their labour skills and keep them in touch with the labour market; and

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- (c) it is not a system run by a person or organisation for profit.
- (10A) Paragraphs (8)(zn), (zna) and (znaa) do not apply in relation to a person who first enters a residential care service or a flexible care service on or after the commencement of this subsection.
- (10B) Paragraphs (8)(zn), (zna) and (znaa) do not apply, and never again apply, in relation to a person if:
- (a) the person enters a residential care service or a flexible care service on or after the commencement of this subsection; and
  - (b) that entry occurs more than 28 days after the day the person last ceased being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the person was on leave).
- (10C) An expression used in subsection (10A) or (10B) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.
- (11) An amount received by a person is an ***exempt lump sum*** if:
- (a) the amount is not a periodic amount (within the meaning of subsection (11A)); and
  - (b) the amount is not a leave payment within the meaning of points 1067G-H20, 1067L-D16 and 1068-G7AR; and
  - (c) the amount is not income from remunerative work undertaken by the person; and
  - (d) the amount is an amount, or class of amounts, determined by the Secretary to be an exempt lump sum.
- Note: Some examples of the kinds of lump sums that the Secretary may determine to be exempt lump sums include a lottery win or other windfall, a legacy or bequest, or a gift—if it is a one-off gift.
- (11A) An amount is a ***periodic amount*** if it is:
- (a) the amount of one payment in a series of related payments, even if the payments are irregular in time and amount; or
  - (b) the amount of a payment making up for arrears in such a series.

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- (12) For the purposes of paragraph 8(8)(zp), the amount per fortnight that is not income for the purposes of this Act is:

$$\frac{\text{Special Rate Disability Pension}}{\text{reduction amount}} \times \frac{10}{6}$$

where:

***Special Rate Disability Pension reduction amount*** means the amount by which the Special Rate Disability Pension (as reduced under subsection 204(3)) is reduced under subsection 204(6) of the Military Rehabilitation and Compensation Act (but not below zero).

## 9 Financial assets and income streams definitions

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

***approved deposit fund*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***asset-tested income stream (lifetime)*** has the meaning given by section 9E.

***asset-tested income stream (long term)*** means an income stream that is an asset-tested income stream (long term) under section 9D or an income stream that:

- (a) is not an asset-test exempt income stream; and
- (b) has, on its commencement day:
  - (i) a specified term of more than 5 years; or
  - (ii) if the person who has acquired the income stream has a life expectancy of 5 years or less—a specified term equal to or greater than the person's life expectancy.

Note: Since the income stream must be for a specified term, an asset-tested income stream (long term) cannot be an asset-tested income stream (lifetime).

***asset-tested income stream (short term)*** means an income stream that is an asset-tested income stream (short term) under section 9D or an income stream that is none of the following:

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- (a) an asset-test exempt income stream;
- (b) an asset-tested income stream (long term);
- (c) an asset-tested income stream (lifetime).

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

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

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

**deductible amount**, in relation to a defined benefit income stream for a year, means the sum of the amounts that are the tax free components (worked out under Subdivision 307-C of the *Income Tax Assessment Act 1997* or, if applicable, section 307-125 of the *Income Tax (Transitional Provisions) Act 1997*) of the payments received from the defined benefit income stream during the year.

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

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

**designated NDIS amount** means:

- (a) an NDIS amount that is deposited in an account with a financial institution; and
- (b) any return on the NDIS amount that a person earns, derives or receives.

**family law affected income stream** has the meaning given by section 9C.

**financial asset** means:

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

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

***financial investment*** means:

- (a) available money; or
- (b) deposit money; or
- (c) a managed investment; or
- (d) a listed security; or
- (e) a loan that has not been repaid in full; or
- (f) an unlisted public security; or
- (g) gold, silver or platinum bullion; or
- (h) an asset-tested income stream (short term); or
- (i) an asset-tested income stream (long term) that is an account-based pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or
- (j) an asset-tested income stream (long term) that is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the requirements determined in an instrument under subsection (1EA);

but does not include a designated NDIS amount.

***friendly society*** means:

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

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

***income stream*** means:

- (a) an income stream arising under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*; or
  - (b) an income stream arising under a public sector superannuation scheme (within the meaning of that Act); or
  - (c) an income stream arising under a retirement savings account; or
  - (d) an income stream provided as life insurance business by a life company registered under section 21 of the *Life Insurance Act 1995*; or
  - (f) an income stream designated in writing by the Secretary for the purposes of this definition, having regard to the guidelines determined under subsection (1E); or
  - (fa) a family law affected income stream;
- but does not include any of the following:
- (g) available money;
  - (h) deposit money;
  - (i) a managed investment;
  - (j) a listed security;
  - (k) a loan that has not been repaid in full;
  - (l) an unlisted public security;
  - (m) gold, silver or platinum bullion;
  - (n) a payment of compensation to a person, or a payment to a person under an insurance scheme, in relation to:
    - (i) the person's inability to earn, derive or receive income from remunerative work; or
    - (ii) the person's total and permanent disability or incapacity.



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**investment:**

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

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

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

**listed security** means:

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

listed on a stock exchange.

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

**military defined benefit income stream** means a defined benefit income stream provided under:

- (a) the scheme provided for by the *Defence Forces Retirement Benefits Act 1948*; or
- (b) the scheme provided for by the *Defence Force Retirement and Death Benefits Act 1973*; or
- (c) the superannuation scheme referred to in section 4 of the *Military Superannuation and Benefits Act 1991*; or
- (d) a superannuation scheme specified in an instrument under subsection (2).

**original family law affected income stream** has the meaning given by section 9C.

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

**primary FLA income stream** has the meaning given by section 9C.

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**public unit trust** means a unit trust that:

- (a) except where paragraph (b) applies—was, in relation to the unit trust's last year of income, a public unit trust for the purposes of Division 6B of Part III of the Income Tax Assessment Act; or
- (b) where the first year of income of the unit trust has not yet finished—has, at some time since the trust was established, satisfied at least one of the paragraphs of subsection 102G(1) of the Income Tax Assessment Act.

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

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

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

**residual capital value**, in relation to an income stream, means the capital amount payable on the termination of the income stream.

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Note: An account-based income stream does not have a residual capital value (see subsection (10) of this section).

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

**return:**

- (a) in relation to an ATO small superannuation account—means so much of the balance of the account as is attributable to interest; or
- (b) in relation to any other investment in the nature of superannuation—means any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment.

**secondary FLA income stream** has the meaning given by section 9C.

**superannuation benefit**, in relation to a person, means:

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

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

**superannuation fund** means:

- (a) a fund that is or has been a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993* in relation to any tax year; or
- (b) an Australian superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*) that is not a complying superannuation fund mentioned in paragraph (a) in relation to any tax year; or

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- (c) a scheme for the payment of benefits upon retirement or death that is constituted by or under a law of the Commonwealth or of a State or Territory; or
- (d) an RSA within the meaning of the *Retirement Savings Accounts Act 1997*; or
- (e) any of the following funds (unless the fund is a foreign superannuation fund within the meaning of the *Income Tax Assessment Act 1997*):
  - (i) a fund to which paragraph 23(jaa), or section 23FC, 121CC or 121DAB, of the *Income Tax Assessment Act 1936* (as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 2) 1989*) has applied in relation to any tax year;
  - (ii) a fund to which paragraph 23(ja), or section 23F or 23FB, of the *Income Tax Assessment Act 1936* (as in force at any time before the commencement of paragraph (a) of the definition of **superannuation fund** in former subsection 27A(1) of the *Income Tax Assessment Act 1936*) has applied in relation to the tax year that started on 1 July 1985 or an earlier tax year;
  - (iii) a fund to which section 79 of the *Income Tax Assessment Act 1936* (as in force at any time before 25 June 1984) has applied in relation to the tax year that started on 1 July 1983 or an earlier tax year.

**unlisted public security** means:

- (a) a share in a public company; or
  - (b) another security;
- that is not listed on a stock exchange.

- (1A) Subject to subsections (1B) and (1C), an investment is a **managed investment** for the purposes of this Act if:
- (a) the money or property invested is paid by the investor directly or indirectly to a body corporate or into a trust fund; and
  - (b) the assets that represent the money or property invested (the **invested assets**) are not held in the names of investors; and

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- (c) the investor does not have effective control over the management of the invested assets; and
  - (d) the investor has a legally enforceable right to share in any distribution of income or profits derived from the invested assets.
- (1B) Without limiting the generality of subsection (1A) but subject to subsection (1C), the following are **managed investments** for the purposes of this Act:
- (a) an investment in a public unit trust;
  - (b) an investment in an insurance bond;
  - (c) an investment with a friendly society;
  - (d) an investment in a superannuation fund;
  - (e) an investment in an approved deposit fund;
  - (g) an investment in an ATO small superannuation account;
  - (h) an asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*.
- Note 1: For paragraph (d), see paragraph (1C)(a) for superannuation investments held before pension age is reached.
- Note 2: For paragraph (e), see paragraph (1C)(b) for investments in approved deposit funds held before pension age is reached.
- Note 4: For paragraph (g), see paragraph (1C)(ca) for investments in ATO small superannuation accounts held before pension age is reached.
- Note 5: For paragraph (h), see paragraph (1C)(j) for a person's asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993* if the person's assessment day (within the meaning of section 1120AB) for the income stream has occurred.
- (1C) The following are not managed investments for the purposes of this Act:
- (a) an investment in a superannuation fund if the investor has not yet reached pension age;
  - (b) an investment in an approved deposit fund if the investor has not yet reached pension age;

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- (ca) an investment in an ATO small superannuation account if the investor has not yet reached pension age;
- (d) deposit money;
- (e) a loan;
- (f) an asset-test exempt income stream;
- (g) an asset-tested income stream (long term);
- (h) an asset-tested income stream (short term);
- (i) a person's asset-tested income stream (lifetime) that arises under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*;
- (j) a person's asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993* if the person's assessment day (within the meaning of section 1120AB) for the income stream has occurred.

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

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

(1D) To avoid doubt, none of the following is a financial investment for the purposes of this Act:

- (a) an accommodation bond;
- (b) an accommodation bond balance;
- (c) a refundable deposit;
- (d) a refundable deposit balance.

(1E) The Secretary may, by legislative instrument, determine guidelines to be complied with when designating an income stream for the purposes of the definition of **income stream** in subsection (1).

(1EA) The Minister may, by legislative instrument, determine requirements for the purposes of paragraph (j) of the definition of **financial investment** in subsection (1).

(1F) An income stream is a **defined benefit income stream** if:

- (a) under the *Superannuation Industry (Supervision) Regulations 1994*, the income stream is taken to be a pension

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- for the purposes of the *Superannuation Industry (Supervision) Act 1993*; and
- (b) except in the case of an income stream arising under a superannuation fund established before 20 September 1998—the income stream is provided under rules that meet the standards of subregulation 1.06(2) of the *Superannuation Industry (Supervision) Regulations 1994*; and
  - (ba) in the case of an income stream arising under a superannuation fund established before 20 September 1998—the income stream is provided under rules that meet the standards determined, by legislative instrument, by the Minister; and
  - (c) in any case—the income stream is attributable to a defined benefit interest within the meaning of the *Superannuation Industry (Supervision) Regulations 1994* (for this purpose, disregard subparagraph 1.03AA(1)(b)(ii) of those regulations).
- (2) The Secretary may, by legislative instrument, specify superannuation schemes for the purposes of paragraph (d) of the definition of ***military defined benefit income stream*** in subsection (1).
- (4) For the purposes of this Act, an asset is a ***deprived asset*** if:
- (a) a person has disposed of the asset; and
  - (b) the value of the asset is included in the value of the person's assets by section 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC or 1126AD or an amount is included in the value of the person's assets in respect of the disposal by section 1126E (so far as that section relates to section 1126AA, 1126AB, 1126AC or 1126AD).
- (9) For the purposes of this Act, a person has an ***investment*** in a superannuation fund or approved deposit fund if the person has benefits in the fund (whether the benefits are attributable to amounts paid by the person or someone else).
- (9A) For the purposes of this Act:
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- (a) a person has an **investment** in an ATO small superannuation account if:
    - (i) the account is kept in the name of the person; and
    - (ii) the balance of the account exceeds nil; and
  - (b) the amount or value of that investment equals the balance of the account.
- (10) To avoid doubt, for the purposes of this Act, an account-based income stream does not have a **residual capital value**.

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

#### *General requirements*

- (1) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if:
- (aa) subject to subsection (1AA), the income stream's commencement day happens before 20 September 2007; and
  - (a) it is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Secretary has not made a determination under subsection (4) in respect of the income stream; and
  - (b) subject to subsections (1B), (1C) and (1D), the Secretary is satisfied that in relation to an income stream, provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that the actuary is of the opinion that, for the financial year in which the certificate is given, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and
  - (c) the Secretary is satisfied that the requirements of subsection (2) are being given effect to from the day the income stream commences to be paid.

Note: For paragraph (b), **financial year** means a period of 12 months commencing on 1 July: see the *Acts Interpretation Act 1901*.



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*Determination under subsection (5)*

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

*Defined benefit income streams*

- (1AA) Paragraph (1)(aa) does not apply if the income stream is a defined benefit income stream.

*Guidelines relating to actuarial certificates*

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

*Exception to paragraph (1)(b)*

- (1C) If, on 30 June in a financial year, an actuarial certificate referred to in paragraph (1)(b) is in force in relation to an income stream, then paragraph (1)(b) does not apply in relation to the next financial year (the *later year*) for the period:
- (a) beginning on 1 July of the later year; and
  - (b) ending at the earlier of the following:
    - (i) the start of the first day in the later year on which any actuarial certificate is given to the Secretary in relation to that income stream;
    - (ii) the end of the period of 26 weeks beginning on 1 July of the later year.

*One certificate a financial year*

- (1D) For the purposes of paragraph (1)(b), if an actuarial certificate is given to the Secretary in a financial year in relation to an income

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stream, then any actuarial certificate given to the Secretary later in that financial year in relation to that income stream has no effect.

### *Requirements of contract/governing rules for provision of income stream*

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

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number—by more than such percentage of the previous total as is worked out under the formula:

$$100 \times \left[ \frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right] + 1$$

- (d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
- (e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and
- (f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and
- (g) that the income stream has no residual capital value; and
- (h) that the income stream cannot be commuted except:
  - (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or
  - (ii) if the commutation is made to the benefit of a reversionary beneficiary or of the person's estate, on the death of the person within the life expectancy period for the income stream; or
  - (iii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or
  - (iv) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or
  - (iva) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB of the *Family Law Act 1975*; or

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- (ivb) to the extent necessary to give effect to an order under Part VIIIAA of the *Family Law Act 1975*; or
  - (v) to the extent necessary to pay a hardship amount; and
  - (i) that the income stream cannot be transferred to a person except:
    - (i) on the death of the primary beneficiary, to a reversionary beneficiary; or
    - (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary; and
  - (j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and
  - (k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and
  - (l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.
- (2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:
- (a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
  - (b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

*Matters not required of income stream*

- (3) For the purpose of determining whether an income stream meets the requirements of subsection (2), it is immaterial that:

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- (a) if the primary beneficiary dies within the life expectancy period for the income stream, a surviving reversionary beneficiary may be paid an amount equal to the total of the payments that the primary beneficiary would (if he or she had not died) have received from the day of the death until the end of that period; and
- (b) if:
  - (i) the primary beneficiary dies within the life expectancy period for the income stream; and
  - (ii) there is no surviving reversionary beneficiary;an amount, not exceeding the difference between:
  - (iii) the sum of the amounts that would have been so payable to the primary beneficiary in that period; and
  - (iv) the sum of the amounts paid to the primary beneficiary; is payable to the primary beneficiary's estate, and
- (c) if:
  - (i) the primary beneficiary dies within the life expectancy period for the income stream; and
  - (ii) there is a surviving reversionary beneficiary who also dies within that period;there is payable to the reversionary beneficiary's estate an amount determined as described in paragraph (b) as if that paragraph applied to the reversionary beneficiary.

*Determination that income stream not asset-test exempt*

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

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### *Determination that income stream is asset-test exempt*

- (5) The Secretary may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary is to have regard to the guidelines (if any) determined under subsection (6).
- (5A) To avoid doubt, a determination under subsection (5) may be made in respect of an income stream regardless of the income stream's commencement day.
- (5B) A determination under subsection (5) is not a legislative instrument.

### *Guidelines to be complied with in making determination*

- (6) The Secretary may, by legislative instrument, determine guidelines to be complied with when making a determination under subsection (5).
- (7) In this section:

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

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

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***life expectancy period***, for an income stream, means:

- (a) in a case where:
  - (i) there was only one primary beneficiary on the commencement day; and
  - (ii) the primary beneficiary has decided not to round up his or her life expectancy for the purposes of this definition; the period starting on the income stream's commencement day, and equal to the shorter of:
  - (iii) the primary beneficiary's life expectancy on the commencement day; and
  - (iv) 20 years; or
- (b) in a case where:
  - (i) there was only one primary beneficiary on the commencement day; and
  - (ii) paragraph (a) does not apply; the period starting on the income stream's commencement day, and equal to the shorter of:
  - (iii) the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
  - (iv) 20 years; or
- (c) in a case where:
  - (i) there were 2 primary beneficiaries on the commencement day; and
  - (ii) those primary beneficiaries have decided not to round up their life expectancies for the purposes of this definition; the period starting on the income stream's commencement day, and equal to the shorter of:
  - (iii) the greater of the life expectancies, on the commencement day, of the primary beneficiaries; and
  - (iv) 20 years; or
- (d) in a case where:
  - (i) there were 2 primary beneficiaries on the commencement day; and

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- (ii) paragraph (c) does not apply;  
the period starting on the income stream's commencement day, and equal to the shorter of:
- (iii) the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of the primary beneficiaries; and
- (iv) 20 years.

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

- (a) the person's shares and debentures in a public company within the meaning of the *Corporations Act 2001*; and
- (b) managed investments; and
- (c) insurance policies that can be surrendered for money; and
- (d) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and
- (e) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person; but does not include the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid.

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

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

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



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

**9B Meaning of *asset-test exempt income stream*—life expectancy income streams**

- (1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:
  - (a) the following criteria are satisfied:
    - (i) the income stream's commencement day happens before 20 September 2007;
    - (ii) subsection (1A) applies; or
  - (b) subsection (1B) applies.
- (1A) This subsection applies if:
  - (aa) the person to whom the income stream is being provided is:
    - (i) the primary beneficiary; or
    - (ii) the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death; and
  - (a) the income stream is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Secretary has not made a determination under subsection (3) in respect of the income stream; and
  - (b) subject to subsections (1C), (1D) and (1E), the Secretary is satisfied that, in relation to an income stream provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that the actuary is of the opinion that, for the financial year in which the certificate is given, there is a high probability that the provider of the income stream will

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be able to pay the income stream as required under the contract or governing rules; and

- (c) the Secretary is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid; and
- (d) in the case of an income stream acquired before 20 September 2004 that is provided to a primary beneficiary's reversionary beneficiary—the remaining term (in years) of the income stream is equal to the life expectancy (in years) of the primary beneficiary's reversionary beneficiary.

Note: For paragraph (b), *financial year* means a period of 12 months commencing on 1 July: see the *Acts Interpretation Act 1901*.

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

### *Exception to paragraph (1A)(b)*

- (1C) If, on 30 June in a financial year, an actuarial certificate referred to in paragraph (1A)(b) is in force in relation to an income stream, then paragraph (1A)(b) does not apply in relation to the next financial year (the *later year*) for the period:
  - (a) beginning on 1 July of the later year; and
  - (b) ending at the earlier of the following:
    - (i) the start of the first day in the later year on which any actuarial certificate is given to the Secretary in relation to that income stream;
    - (ii) the end of the period of 26 weeks beginning on 1 July of the later year.

### *Guidelines relating to actuarial certificates*

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

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*One certificate a financial year*

- (1E) For the purposes of paragraph (1A)(b), if an actuarial certificate is given to the Secretary in a financial year in relation to an income stream, then any actuarial certificate given to the Secretary later in that financial year in relation to that income stream has no effect.

*Requirements of contract/governing rules for provision of income stream*

- (2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:
- (a) the income stream's term, which must comply with subsection (2B), (2C) or (2E); and
  - (aa) that payments under the income stream are to be made at least annually during the income stream's term; and
  - (b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and
  - (c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the **previous total**), and may not exceed the previous total:
    - (i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or
    - (ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (**recent index number**) exceeds the index number for the same quarter in the immediately preceding year (**base index number**) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:

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$$100 \times \left[ \frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right] + 1$$

- (d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
- (e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and
- (f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and
- (g) that the income stream has no residual capital value; and
- (h) that the income stream cannot be commuted except:
  - (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or
  - (ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or
  - (iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or
  - (iiia) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or
  - (iv) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or
  - (iva) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB of the *Family Law Act 1975*; or

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- (ivb) to the extent necessary to give effect to an order under Part VIIIAA of the *Family Law Act 1975*; or
  - (v) to the extent necessary to pay a hardship amount; and
  - (i) that the income stream cannot be transferred except on death; and
  - (j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and
  - (k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and
  - (l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.
- (2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:
- (a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
  - (b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

*Term of the income stream*

- (2B) If, on an income stream's commencement day, there is only one primary beneficiary, the income stream's **term** complies with this subsection if it is a period of whole years that:
- (a) starts on the income stream's commencement day; and
  - (b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and

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- (c) is at most as long as the greater of:
  - (i) what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and
  - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).
- (2C) If, on an income stream's commencement day, there is only one primary beneficiary, the income stream's *term* complies with this subsection if it is a period of whole years that:
  - (a) starts on the income stream's commencement day; and
  - (b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
    - (i) the primary beneficiary; and
    - (ii) the primary beneficiary's reversionary partner on that day; and
  - (c) is at most as long as the period worked out under subsection (2D).
- (2D) For the purposes of paragraph (2C)(c), the period is the greater of:
  - (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
    - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
    - (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and
  - (b) the greater of:
    - (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which

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- the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and
- (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).
- (2E) If, on an income stream's commencement day, there are 2 primary beneficiaries (the ***first primary beneficiary*** and the ***second primary beneficiary***), the income stream's ***term*** complies with this subsection if it is a period of whole years that:
- (a) starts on the income stream's commencement day; and
- (b) is at least as long as the lesser of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
- (i) the first primary beneficiary; and
- (ii) the second primary beneficiary; and
- (c) is at most as long as the period worked out under subsection (2F).
- (2F) For the purposes of paragraph (2E)(c), the period is the greater of:
- (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
- (i) the first primary beneficiary, if the first primary beneficiary were 5 years younger; and
- (ii) the second primary beneficiary, if the second primary beneficiary were 5 years younger; and
- (b) the greater of:
- (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the first primary beneficiary reaches age 100 (assuming that the first primary beneficiary lives until then); and

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- (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the second primary beneficiary reaches age 100 (assuming that the second primary beneficiary lives until then).

### *Determination that income stream not asset-test exempt*

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

### *Determination that income stream is asset-test exempt*

- (4) The Secretary may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary is to have regard to the guidelines (if any) determined under subsection (5).
- (4A) To avoid doubt, a determination under subsection (4) may be made in respect of an income stream regardless of the income stream's commencement day.
- (4B) A determination under subsection (4) is not a legislative instrument.

### *Guidelines to be complied with in making determination*

- (5) The Secretary may, by legislative instrument, determine guidelines to be complied with when making a determination under subsection (4).
- (6) In this section:

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



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

***reversionary partner***, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

- (a) is a member of a couple with the primary beneficiary; and
- (b) is the person to whom the income stream will revert on the primary beneficiary's death.

**9BA Meaning of *asset-test exempt income stream*—market-linked income streams**

*General requirements*

- (1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:
  - (a) all of the following criteria are satisfied:
    - (i) the income stream's commencement day happens during the period from 20 September 2004 to 19 September 2007 (both dates inclusive);
    - (ii) the person to whom the income stream is being provided is the primary beneficiary or the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death;
    - (iii) the income stream is an income stream arising under a contract, or governing rules, that meets the requirements of subsection (2);
    - (iv) the Secretary has not made a determination under subsection (10) in respect of the income stream;
    - (v) the Secretary is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid; or
  - (b) the Secretary has made a determination under subsection (11) in respect of the income stream.

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*Requirements of contract/governing rules for provision of income stream*

- (2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:
- (a) the income stream's term, which must comply with subsection (3) or (4); and
  - (b) obligations for the making of payments under the income stream that satisfy the requirements of subsections (5) to (9); and
  - (c) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
  - (d) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and
  - (e) that the income stream has no residual capital value; and
  - (f) that the income stream cannot be commuted except:
    - (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or
    - (ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or
    - (iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or
    - (iv) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or
    - (v) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

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- (vi) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB of the *Family Law Act 1975*; or
- (vii) to the extent necessary to pay a hardship amount; and
- (g) that the income stream cannot be transferred except on death; and
- (h) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and
- (i) that, if the income stream reverts, it must not have a reversionary component greater than the account balance immediately before the reversion; and
- (j) that, if the income stream is commuted, the commuted amount must not be greater than the account balance immediately before the commutation.

*Term of the income stream*

- (3) An income stream's **term** complies with this subsection if it is a period of whole years that:
  - (a) starts on the income stream's commencement day; and
  - (b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
  - (c) is at most as long as the greater of:
    - (i) what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and
    - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).
- (4) An income stream's **term** complies with this subsection if it is a period of whole years that:

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- (a) starts on the income stream's commencement day; and
  - (b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
    - (i) the primary beneficiary; and
    - (ii) the primary beneficiary's reversionary partner on that day; and
  - (c) is at most as long as the period worked out under subsection (4A).
- (4A) For the purposes of paragraph (4)(c), the period is the greater of:
- (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
    - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
    - (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and
  - (b) the greater of:
    - (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and
    - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

*Total amount payable in each financial year—general rule*

- (5) For each financial year wholly or partly within the income stream's term, the total amount of the payments to be made under the income stream must not be less than 90%, nor greater than 110%, of the amount worked out under the formula:

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Account balance  
PF

where:

**account balance** means:

- (a) if the financial year includes the income stream's commencement day—the opening account balance for the income stream; or
- (b) otherwise—the account balance for the income stream at the start of the financial year.

**PF** means the payment factor for the income stream for the financial year, worked out under principles determined, by legislative instrument, by the Secretary.

*Other rules about payments under the income stream*

- (6) If the income stream's commencement day is not a 1 July, a total amount worked out under subsection (5) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.
- (7) If:
  - (a) the income stream's commencement day happens in June; and
  - (b) no payment is made under the income stream for the financial year in which the commencement day happens;subsections (5) and (6) do not apply to the income stream for that financial year.
- (8) If the amount (the **test amount**) of a payment to be made under the income stream on a day in a financial year:
  - (a) is worked out by reference to a total amount worked out under subsection (5) (and subsection (6), if applicable) for the financial year; and
  - (b) exceeds the income stream's account balance on that day;

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then:

- (c) the account balance (if any) must be paid instead of the test amount; and
  - (d) that total amount described in paragraph (a) must be reduced by the amount of the excess.
- (9) If the income stream has a positive account balance at the end of its term, a payment equal to that account balance must be made within 28 days after the end of the term.

*Determination that income stream not asset-test exempt*

- (10) The Secretary may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Secretary is satisfied that:
- (a) the primary beneficiary has commuted an asset-test exempt income stream on at least 3 occasions since the person first received a social security payment; and
  - (b) on at least 3 of those occasions, the commutation happened within 6 months after the commencement day of the income stream concerned.

*Determination that income stream is asset-test exempt*

- (11) The Secretary may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary must have regard to the guidelines (if any) determined under subsection (12).
- (11A) To avoid doubt, a determination under subsection (11) may be made in respect of an income stream regardless of the income stream's commencement day.
- (11B) A determination under subsection (11) is not a legislative instrument.

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*Guidelines to be complied with in making determination*

- (12) The Secretary may determine, by legislative instrument, guidelines to be complied with when making a determination under subsection (11).

*Definitions*

- (14) In this section:

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

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

**reversionary partner**, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

- (a) is a member of a couple with the primary beneficiary; and
- (b) is the person to whom the income stream will revert on the primary beneficiary's death.

**9C Family law affected income streams**

If:

- (a) an income stream is acquired or purchased (the **original family law affected income stream**) by a person (the **member**); and
- (b) the member's partner or former partner (the **non-member**) becomes entitled to be paid some or all of that income stream under:
  - (i) a payment split under Part VIIIB of the *Family Law Act 1975*; or
  - (ii) an order under Part VIIIAA of the *Family Law Act 1975*;

then so much (if any) of the income stream paid to the non-member as a series of ongoing payments (**secondary FLA income stream**)

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and the remainder (if any) of the income stream paid to the member as such a series of payments (*primary FLA income stream*) are each *family law affected income streams*.

### 9D Asset-tested status of secondary FLA income streams

*If there is a primary FLA income stream*

- (1) If a primary FLA income stream is, or would be if the income stream were assessed for the purposes of this Act:
  - (a) an asset-tested income stream (long term); or
  - (b) an asset-tested income stream (short term); or
  - (c) an asset-tested income stream (lifetime);then a secondary FLA income stream to which it is related is also to be treated as if it were assessed as an income stream of that kind.

*If there is no primary FLA income stream*

- (2) If:
  - (a) there is no primary FLA income stream in relation to a secondary FLA income stream; and
  - (b) had there been a primary FLA income stream in relation to that secondary FLA income stream it would have been assessed for the purposes of this Act as an asset-tested income stream (long term), an asset-tested income stream (short term) or an asset-tested income stream (lifetime);then the secondary FLA income stream is to be treated as if it were assessed as an income stream of that kind.

### 9E Asset-tested income stream (lifetime)

- (1) Subject to subsection (2), an income stream is an *asset-tested income stream (lifetime)* if:
  - (a) the contract, or governing rules, for the provision of the income stream ensure that, once payments of the income stream start, the income stream is to continue for the remainder of the life of one or more individuals; and



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- (b) the contract, or governing rules, for the provision of the income stream ensure that the amounts of those payments are determined by having regard to the age, life expectancy or other factors relevant to the mortality of those individuals; and
  - (c) the income stream is not an asset-test exempt income stream; and
  - (d) the income stream is not a defined benefit income stream.
- (2) If:
  - (a) paragraphs (1)(a) to (d) are satisfied in relation to an income stream; and
  - (b) the income stream is of a kind determined in an instrument under subsection (3);the income stream is an ***asset-tested income stream (lifetime)*** only to the extent determined in the instrument.
- (3) The Secretary may make a legislative instrument for the purposes of subsection (2).
- (4) An income stream is an ***asset-tested income stream (lifetime)*** if:
  - (a) the income stream satisfies the conditions determined in an instrument under subsection (5); and
  - (b) the income stream is not an asset-test exempt income stream; and
  - (c) the income stream is not a defined benefit income stream.
- (5) The Secretary may, by legislative instrument, determine conditions for the purposes of paragraph (4)(a).

## **10 Maintenance income definitions**

In this Act, unless the contrary intention appears, the expressions ***disability expenses maintenance***, ***maintenance*** and ***maintenance income*** have the same respective meanings as in the Family Assistance Act.

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### 10A Definitions for carer allowance and seniors health card provisions

- (1) Some of the definitions in this section are the same as definitions in the *Fringe Benefits Tax Assessment Act 1986*. Most of the other definitions in this section are based on definitions in that Act.
- (2) In this section and in Parts 2.19, 3.9 and 3.12A, unless the contrary intention appears:

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

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

***arrangement*** means:

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

***assessable fringe benefit*** means a fringe benefit that is:

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

but does not include a car benefit, loan benefit, housing benefit or expense benefit that is exempt.

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

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

Note: Subsection 136(1) of the Fringe Benefits Tax Assessment Act adopts the definition of ***associate*** in section 318 of the Income Tax Assessment Act. Section 159 of the Fringe Benefits Tax Assessment Act modifies the way in which the income tax definition applies and also extends that definition in other ways.

***Australian Parliament*** means:

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

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

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

***car benefit*** has the meaning given by section 1157C.

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

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

***current employee*** means:

- (a) a person who is an employee within the ordinary meaning of that word; and
- (b) a person who holds or performs the duties of an appointment, office or position under the Constitution or under a law of the Commonwealth, a State or a Territory; and

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- (c) a person who is otherwise in the service of the Commonwealth, a State or a Territory (including service as a member of the Defence Force or as a member of a police force); and
- (d) a member of an Australian Parliament.

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

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

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

**dwelling** has the meaning given by subsection (7).

**eligible urban area** means:

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

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

**employee** means:

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

**employer** means:

- (a) a current employer; or
- (b) a future employer; or

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(c) a former employer.

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

**expense benefit** has the meaning given by section 1157JA.

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

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

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

**foreign income**, in relation to a person, means:

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

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

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

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

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

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

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

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- (a) the employer of the employee; or
  - (b) an associate of the employer; or
  - (c) a person (the **arranger**) other than the employer or an associate of the employer under an arrangement between:
    - (i) the employer or an associate of the employer; and
    - (ii) the arranger or another person;
- and that is provided in respect of the employment of the employee.

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

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

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

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

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

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

**housing benefit** has the meaning given by section 1157I.

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

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

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

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

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

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***lease*** includes a sub-lease.

***loan*** includes:

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

***loan benefit*** has the meaning given by section 1157G.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***surface route*** means a route other than an air route.

***target foreign income*** means foreign income that is not:

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

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

***unit of accommodation*** includes:

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



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- (f) a caravan or other mobile home.

**urban centre** means an area that is described as an urban centre or bounded locality in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981 and that were published by the Australian Statistician in the document entitled “Persons and Dwellings in Local Government Areas and Urban Centres”.

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

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

*Metropolitan location*

- (3) The following cities are **metropolitan locations**:

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

*Non-metropolitan location*

- (4) A unit of accommodation is in a **non-metropolitan location** if the unit of accommodation:
- (a) is in Australia; and
  - (b) is not in a metropolitan location; and
  - (c) is not in a special housing location.

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*Special housing location*

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

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shortest practicable surface route, between the tested location and the location that is the principal location of those parts.

- (7) A unit of accommodation is a ***dwelling*** if:
- (a) the unit of accommodation is constituted by, or contained in, a building; and
  - (b) the unit consists, in whole or in substantial part, of residential accommodation.
- (8) A unit is a ***stratum unit*** in relation to a dwelling if:
- (a) the unit is a unit on a unit plan registered under a law of a State or Territory that provides for the registration of titles of a kind known as unit titles or strata titles; and
  - (b) the unit comprises:
    - (i) a part of a building that contains the dwelling and consists of a flat or home unit; or
    - (ii) a part of a parcel of land and the building containing the dwelling is constructed on that part.

*Housing loan*

- (9) A loan is taken to be a ***housing loan*** if:
- (a) the loan is made to, or used by, a person (whether in his or her own right or jointly with his or her partner) wholly:
    - (i) to enable the person to acquire a prescribed interest in land on which a dwelling or a building containing a dwelling was subsequently to be constructed; or
    - (ii) to enable the person to acquire a prescribed interest in land and construct, or complete the construction of, a dwelling or a building containing a dwelling on the land; or
    - (iii) to enable the person to construct, or complete the construction of, a dwelling or a building containing a dwelling on land in which the person held a prescribed interest; or

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- (iv) to enable the person to acquire a prescribed interest in land on which there was a dwelling or a building containing a dwelling; or
- (v) to enable the person to acquire a prescribed interest in a stratum unit in relation to a dwelling; or
- (vi) to enable the person to extend a building that:
  - (A) is a dwelling or contains a dwelling; and
  - (B) is constructed on land in which the person held a prescribed interest;by adding a room or part of a room to the building or the part of the building containing the dwelling, as the case may be; or
- (vii) in a case where the person held a prescribed interest in a stratum unit in relation to a dwelling—to enable the person to extend the dwelling by adding a room or part of a room to the dwelling; or
- (viii) to enable the person to repay a loan that was made to, and used by, the person wholly for a purpose mentioned in subparagraphs (i) to (vii); and
- (b) at the time the loan was made, the dwelling was used or proposed to be used as the person's usual place of residence.

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

*Freehold interest*

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

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*Leasehold interest*

(11) If:

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

*Instalment contract*

(12) If:

- (a) a person acquires, holds or held interest in land or in a stratum unit as purchaser of an estate in fee simple in the land or in the stratum unit under an agreement; and
  - (b) the agreement provides or provided for payment of the purchase price, or a part of the purchase price, to be made at a future time or by instalments;
- the person is taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

*Right to acquire leasehold*

(13) If:

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

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

(14) If:

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

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

### 11 *Assets test definitions*

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

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

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

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

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

***charge exempt resident*** has the same meaning as in the *Aged Care (Transitional Provisions) Act 1997*.

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

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

***disposes of assets*** has the meaning given by section 1123.

***exempt assets*** means assets described in subsection 1118(1).

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***fishing operations*** means:

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

but does not include:

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

***forest operations*** means:

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

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

***homeowner*** has the meaning given by subsection (4).

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

***pension year*** has the meaning given by subsections (10) and (10AAA).

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

***primary production*** means production resulting directly from:

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

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

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***principal home*** has the meaning given by section 11A.

***reasonable security of tenure*** has the meaning given by subsection 11A(10).

***refundable deposit*** has the same meaning as in the *Aged Care Act 1997*.

***refundable deposit balance*** has the same meaning as in the *Aged Care Act 1997*.

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

***value of a charge or encumbrance on an asset*** has the meaning given by subsection (3).

***value of a liability*** has the meaning given by subsection (3A).

***value of a particular asset*** has the meaning given by subsection (2).

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

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



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

*Homeowner*

- (4) For the purposes of this Act:
  - (a) a person who is not a member of a couple is a **homeowner** if:
    - (i) the person has a right or interest in the person's principal home; and
    - (ii) the person's right or interest in the home gives the person reasonable security of tenure in the home; and
  - (b) a person who is a member of a couple is a **homeowner** if:
    - (i) the person, or the person's partner, has a right or interest in one residence that is:
      - (A) the person's principal home; or
      - (B) the partner's principal home; or
      - (C) the principal home of both of them; and
    - (ii) the person's right or interest, or the partner's right or interest, in the home gives the person, or the person's partner, reasonable security of tenure in the home; and
  - (c) a person (whether a member of a couple or not) is a **homeowner** while:
    - (i) the whole or a part of the proceeds of the sale of the person's principal home are disregarded under subsection 1118(2); or

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- (ii) the value of a residence, land or a structure is disregarded under subsection 1118(2).

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

### *Pension year—disposal of assets*

- (10) A reference in sections 1123 to 1128 (disposal of assets) to a ***pension year***, in relation to a person who is receiving:
  - (a) a social security or service pension, income support supplement or a veteran payment; or
  - (b) a social security benefit;is a reference to:
  - (d) if the person is a member of a couple and, immediately before the person and the person's partner became members of that couple, the person was receiving a pension, supplement, payment or benefit referred to in paragraph (a) or (b) or a job search allowance and the person's partner was receiving such a pension, supplement, payment or benefit or a job search allowance—the period of 12 months beginning on the day on which they became members of that couple; or
  - (e) if:
    - (i) the person is a member of a couple but paragraph (d) does not apply; and
    - (ii) the person's partner is receiving a pension, supplement, payment or benefit referred to in paragraph (a) or (b) or a job search allowance;the period of 12 months beginning on the day on which:
    - (iii) the pension, supplement, payment or benefit referred to in paragraph (a) or (b) or the job search allowance first became payable to the person; or
    - (iv) the pension, supplement, payment or benefit referred to in paragraph (a) or (b) or the job search allowance first became payable to the person's partner;whichever was the earlier; or
  - (f) otherwise—the period of 12 months beginning on the day on which a pension, supplement, payment or benefit referred to

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in paragraph (a) or (b) or a job search allowance first became payable to the person;  
and to each following and each preceding period of 12 months.

*No pension year to extend beyond 30 June 2002*

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

*Pre-pension year—disposal of assets*

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

*No pre-pension year to extend beyond 30 June 2002*

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

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### *Unrealisable asset*

- (12) An asset of a person is an ***unrealisable asset*** if:
  - (a) the person cannot sell or realise the asset; and
  - (b) the person cannot use the asset as a security for borrowing.
- (13) For the purposes of the application of this Act to a social security pension (other than a pension PP (single)), an asset of a person is also an ***unrealisable asset*** if:
  - (a) the person could not reasonably be expected to sell or realise the asset; and
  - (b) the person could not reasonably be expected to use the asset as a security for borrowing.

## 11A ***Principal home*** definition for the purpose of the assets test

### *Principal home*

- (1) A reference in this Act to the ***principal home*** of a person includes a reference to:
  - (a) if the principal home is a dwelling-house—the land adjacent to the dwelling-house to the extent that:
    - (i) the land is held under the same title document as the land on which the dwelling-house is located; and
    - (ii) the private land use test in subsection (3) is satisfied in relation to the land or, if the person is one to whom the extended land use test applies in relation to the land, the extended land use test in subsection (6) is satisfied in relation to the land; or
  - (b) if the principal home is a flat or home unit—a garage or storeroom that is used primarily for private or domestic purposes in association with the flat or home unit.
- (2) The Secretary may determine that land is to be treated, for the purpose of subparagraph (1)(a)(i), as if it were held on the same title document as other land if any of the following apply:
  - (a) the dwelling-house is located on both blocks of land;

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- (b) the dwelling-house is located on one of the blocks of land but that block and the other block, taken together, are a place, or are part of a place, that is protected under a law of the Commonwealth, or of a State or Territory, because of its natural, historic or indigenous heritage;
- (c) the alienation of one of the blocks of land without the other would seriously undermine the function of the house as a dwelling.

Note: A mere loss of amenity, such as the loss of a swimming pool, garden, tennis court or view, would not seriously undermine the function of a house as a dwelling.

*Private land use test*

- (3) The **private land use test** is satisfied in relation to land if:
  - (a) the area of the land, together with the area of the ground floor of the dwelling-house, is not more than 2 hectares; and
  - (b) the land is used primarily for private or domestic purposes in association with the dwelling-house.

*To whom does the extended land use test apply?*

- (4) The extended land use test applies to a person in relation to land adjacent to the dwelling-house if:
  - (a) the person has reached pension age; and
  - (b) the person is qualified for an age pension or carer payment and that pension or payment is payable to the person; and
  - (c) the dwelling-house has been the person's principal home for 20 years or more continuously.
- (5) Where a person (the **first person**) to whom the extended land use test applies in relation to land adjacent to the dwelling-house in which the person lives is a member of a couple:
  - (a) the extended land use test applies to the first person's partner (the **second person**); and
  - (b) the extended land use test continues to apply to the second person if the first person and the second person cease to be members of a couple for any reason, provided the

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dwelling-house continues to be the second person's principal home.

*Extended land use test*

- (6) The ***extended land use test*** is satisfied in relation to land if:
- (a) the area of the land, together with the area of the ground floor of the dwelling-house, is more than 2 hectares; and
  - (b) the Secretary determines that, given the circumstances of the person to whom the test is applied in relation to the land, the person is making effective use of the land.
- (7) In determining whether a person is making effective use of the land, the Secretary is to take into account the following matters:
- (a) where the land is located;
  - (b) the size of the block of land;
  - (c) the person's family situation;
  - (d) the person's health;
  - (e) whether the land contains a dwelling-house occupied by a family member of the person, or a child of a family member of the person, receiving an income support payment;
  - (f) whether the land is being used to support:
    - (i) a family member of the person; or
    - (ii) a child of a family member of the person;
  - (g) any current commercial use of the land;
  - (h) any potential commercial use of the land;
  - (i) whether the person's capacity to make commercial use of the land is diminished because the person, or the person's partner, has responsibility for the care of another person;
  - (j) whether the block of land is an amalgamation of 2 or more blocks and, if so:
    - (i) when the amalgamation occurred; and
    - (ii) whether the amalgamation reduced the potential for the land to produce personal income or to support the person;
  - (k) environmental issues relating to the land;

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- (l) any other matter that the Secretary considers relevant.

*Effect of absences from principal home*

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

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

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

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

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

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purpose of going into a care situation—any period during which:

- (i) the person is liable to pay all or some of a daily accommodation payment or a daily accommodation contribution (or would be so liable to do so, assuming that no sanctions under Part 4.4 of the *Aged Care Act 1997* were currently being imposed on the provider of the care concerned); and
- (ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and
- (c) any period during which the residence is, because of paragraph (a), (b) or (ba), the principal home of the person's partner.

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

- (8A) Subsection (8) does not apply in relation to a person who first enters a residential care service or a flexible care service on or after the commencement of this subsection.
- (8B) Subsection (8) does not apply, and never again applies, in relation to a person if:
  - (a) the person enters a residential care service or a flexible care service on or after the commencement of this subsection; and
  - (b) that entry occurs more than 28 days after the day the person last ceased being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the person was on leave).
- (8C) An expression used in subsection (8A) or (8B) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.



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- (9) A residence of a person is to be taken to continue to be the person's ***principal home*** during:
- (a) any period (not exceeding 12 months or any longer period determined under subsection (9A)) during which the person is temporarily absent from the residence; and
  - (b) if the person is in a care situation or residential care—the period of 2 years beginning when the person started to be in a care situation or residential care; and
  - (c) any period during which:
    - (i) the person is in a care situation or residential care; and
    - (ii) the residence is, or because of paragraph (a) or (b) continues to be, the principal home of the person's partner; and
  - (d) if:
    - (i) the person is in a care situation or residential care; and
    - (ii) the person's partner dies while in a care situation or residential care; and
    - (iii) the person's partner had been in a care situation or residential care for less than 2 years;the period of 2 years beginning at the time the person's partner started to be in a care situation or residential care; and
  - (e) where:
    - (i) the person is in a care situation or residential care; and
    - (ii) the person's partner dies while not in a care situation or residential care;the period of 2 years from the partner's death; and
  - (f) any period of up to 2 years while the person is absent from the residence and is personally providing a substantial level of care in another private residence for another person who needs, or in the Secretary's opinion is likely to need, that level of care in a private residence for at least 14 consecutive days.

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

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- (9A) For the purposes of paragraph (9)(a), the Secretary may determine, in writing, a period of up to 24 months if:
- (a) a person's principal home is lost or damaged (including, for example, by a natural disaster); and
  - (b) the loss or damage was not wilfully caused by the person; and
  - (c) the person is making reasonable attempts, as a result of the loss or damage, to:
    - (i) rebuild or repair the principal home; or
    - (ii) sell the principal home in order to purchase or build another residence that is to be the person's principal home; or
    - (iii) purchase or build another residence that is to be the person's principal home; and
  - (d) the person has made those attempts within a reasonable period after the loss or damage; and
  - (e) the person has experienced delays beyond his or her control in:
    - (i) rebuilding, repairing or selling the principal home; or
    - (ii) purchasing or building the other residence.

### *Reasonable security of tenure*

- (10) If a person has a right or interest in the person's principal home, the person is to be taken to have a right or interest that gives the person ***reasonable security of tenure*** in the home unless the Secretary is satisfied that the right or interest does not give the person reasonable security of tenure in the home.

### *Definition of title document*

- (11) In this section:

***title document***, in relation to land, means:

- (a) in relation to land title which is registered under a Torrens system of registration—the certificate of title for the land; or

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- (b) in any other case—the last instrument by which title to the land was conveyed.

*Application of the Legislation Act 2003*

- (12) A determination under subsection (2) or paragraph (6)(b) is not a legislative instrument.

**12 Retirement villages definitions**

- (1) In this Act:

***member of an ordinary couple with different principal homes*** has the meaning given by subsection (2).

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

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

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

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

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

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

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

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

### 12A *Granny flat definitions*

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

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**12B Sale leaseback definitions**

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

*deferred payment amount* has the meaning given by subsections (6), (7) and (8).

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

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

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

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

- (2) An agreement is a *sale leaseback agreement*, in relation to a person, if:
- (a) under the agreement the person agrees to sell his or her principal home; and
  - (b) the residence that is the person's principal home is a private residence; and
  - (c) under the agreement the person retains a right to accommodation in the residence; and
  - (d) under the agreement the buyer is to pay an amount when the person vacates the residence or when the person dies.
- (3) An agreement is also a *sale leaseback agreement* if the Secretary is satisfied that the agreement is substantially similar in its effect to an agreement referred to in subsection (2).
- (4) The *initial payment amount*, in relation to a sale leaseback agreement, is the amount that the Secretary determines to be the initial amount that the buyer is to pay under the sale leaseback agreement.
- (5) In making the determination the Secretary is to have regard to the following:

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- (a) the consideration to be provided by the parties to the sale leaseback agreement;
  - (b) when that consideration is to be provided;
  - (c) the payments that are to be made under the sale leaseback agreement;
  - (d) when those payments are to be made;
  - (e) any other relevant matters.
- (6) The **deferred payment amount**, in relation to a sale leaseback agreement, is the total amount to be paid by the buyer under the sale leaseback agreement less the initial payment amount.
- (7) If the Secretary considers that, for any special reason in a particular case, the deferred payment amount should be another amount, the **deferred payment amount** is that other amount.

Note: Sections 1123 to 1128 (disposal of assets) may be relevant to working out the deferred payment amount.
- (8) Without limiting subsection (7), the Secretary may consider that the deferred payment amount should be another amount if:
  - (a) the parties to the sale leaseback agreement are not at arm's length; or
  - (b) the parties to the sale leaseback agreement have undervalued the sale leaseback home so as to reduce the total amount to be paid by the buyer under the agreement.
- (9) A residence is a **sale leaseback home** if the residence is subject to a sale leaseback agreement.
- (10) A person is a **sale leaseback resident** if:
  - (a) the person's principal home is subject to a sale leaseback agreement; and
  - (b) the person is a party to the sale leaseback agreement.
- (11) If a person is a member of a couple, the person is a **sale leaseback resident** if:
  - (a) the person lives in the sale leaseback home; and
  - (b) the person's partner is a sale leaseback resident.

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Note: Subsection (11) will only be used if a person is not a sale leaseback resident under subsection (10).

**12C *Special residence and residents definitions***

- (1) In this Act, unless the contrary intention appears:
- special residence* has the meaning given by subsection (2).
- special resident* has the meaning given by subsection (3).
- (2) A residence is a *special residence* if the residence is:
- (a) in a retirement village; or
  - (b) a granny flat; or
  - (c) a sale leaseback home.
- (3) A person is a *special resident* if the person is:
- (a) a retirement village resident; or
  - (b) a granny flat resident; or
  - (c) a sale leaseback resident.
- (4) In Division 5 of Part 3.12 (sections 1145A to 1157), a reference to the *actual value* of the assets of a member of a couple is a reference to the value of the assets that are actually assets of the person rather than the person's partner, that is, the value that would be the value of the person's assets apart from the couple's assets deeming provisions.
- (5) In subsection (4):
- couple's assets deeming provisions* means:
- (a) Pension Rate Calculator A (point 1064-G2); and
  - (b) Pension Rate Calculator C (point 1066-G2); and
  - (ba) subsections 500Q(4) and (5); and
  - (ca) section 660YCK; and
  - (d) section 612; and
  - (e) section 681; and
  - (f) subsection 895(2); and

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(g) section 734.

### 13 Rent definitions

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

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

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

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

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

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

**ineligible homeowner** means a homeowner other than:

- (a) a person who is a homeowner by virtue of paragraph 11(4)(c); or
- (b) a person who:



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

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

**rent** has the meaning given by this section.

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

- (2) Amounts are **rent** in relation to the person if:
  - (a) the amounts are payable by the person:
    - (i) as a condition of occupancy of premises, or of a part of premises, occupied by the person as the person's principal home; or
    - (ia) as a condition of occupancy of premises, or of a part of premises, occupied by the person to allow him or her to provide personally a substantial level of care in a private residence for another person who needs, or in the Secretary's opinion is likely to need, that level of care in a private residence for at least 14 consecutive days; or

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- (ii) for services provided in a retirement village that is the person's principal home; or
  - (iii) if the person is in a care situation and the place where the person receives the care is the person's principal home or would be the person's principal home apart from subsection 11A(8) or (9)—for accommodation in the place where the person receives care; or
  - (iv) for lodging in premises that are the person's principal home; or
  - (v) for the use of a site for:
    - (A) a caravan or other vehicle; or
    - (B) a structure;  
occupied by the person as the person's principal home;  
or
  - (vi) for the right to moor a vessel that is occupied by the person as the person's principal home; and
- (b) either:
- (i) the amounts are payable every 3 months or more frequently; or
  - (ii) the amounts are payable at regular intervals (greater than 3 months) and the Secretary is satisfied that the amounts should be treated as rent for the purposes of this Act.

Note: For **retirement village** see subsections 12(3) and (4) and for **principal home** see section 11A.

(2A) If:

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

then, for the purposes of subsection (2):

- (d) the boarding school is taken to be the person's principal home while the person is attending the school; and

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- (e) any fees charged for attending the boarding school are taken to be payable by the person.
- (3) Subparagraphs (2)(a)(ii) to (vi) (inclusive) do not limit the generality of subparagraph (2)(a)(i).
- (3AA) To avoid doubt, an amount that is paid or becomes payable by a person is not rent in relation to the person (either at the time when it is paid or becomes payable or at any later time) if the amount is, or forms part of, a special resident's entry contribution in relation to the person in respect of a retirement village under section 1147, whether the amount is paid or payable (whether wholly or partly) in a lump sum, by instalments or otherwise.
- (3AB) If the whole or any part of an amount that is not rent in relation to a person as mentioned in subsection (3AA) is, or will or may become, repayable to the person, any amount by which the amount so repayable is reduced is not rent in relation to the person (either at the time when the reduction occurs or at any later time).
- (3AC) If a person pays, or is liable to pay, rent for living in premises in respect of which someone else pays Government rent (other than Government rent paid at or above a rate that the authority receiving the rent has told the Department is the market rate), the rent paid or payable by the person for living in those premises is taken to be **Government rent**, unless the person shares the premises with the person who pays, or is liable to pay, Government rent in respect of those premises and the person's income has been taken into account in calculating the amount of Government rent payable in respect of those premises.
- (3A) If a person is in a care situation and the person's principal home is not the place where the person receives the care, the person's rent may be an amount described in any of the subparagraphs of paragraph 13(2)(a) that applies to the person but cannot include amounts described in different subparagraphs of paragraph 13(2)(a).

Note: Under subsection 11A(8) or (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

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

Note: Under subsection 11A(8) or (9), premises occupied by a person as described in subparagraph 13(2)(a)(ia) may not be the person's principal home.

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

### *Board and lodging*

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

### *Nursing homes*

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

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- (8) Unless the contrary intention appears, a reference in this Act to a person ***residing in a nursing home*** is a reference to a person who is:
- (a) residing in premises at which accommodation is provided exclusively or principally for persons who have a mental disability; or
  - (c) a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital.
- (8A) Subject to subsections (8B) and (8C), a person is an ***aged care resident*** for the purposes of this Act if:
- (a) the person is in residential care; and
  - (b) an approval for residential care or flexible care under Part 2.3 of the *Aged Care Act 1997* is in force in respect of the person.
- (8B) Without limiting subsection (8A), a person is taken not to be an aged care resident if:
- (a) the person is in approved respite care, and has been in approved respite care for a continuous period of 52 days or less; and
  - (b) immediately before the person became a person in approved respite care, the person was receiving rent assistance.
- (8C) The Secretary may determine, for the purposes of subsection (8A), that a person is taken not to be an aged care resident on a day that occurs:
- (a) after the person in fact became an aged care resident; and
  - (b) before the day occurring 15 days after the person in fact became an aged care resident;
- if the Secretary is satisfied that, immediately before the day, the person was liable to pay rent.
- (8D) In this section, ***rent assistance*** means an amount paid or payable under this Act to help cover the cost of rent.
- (9) For the purposes of this Act, unless the contrary intention appears, a person is ***in a care situation*** if:
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- (a) the person is residing in a nursing home; or
- (b) the person needs and has been receiving a substantial level of care in a private residence for at least 14 consecutive days; or
- (c) in the Secretary's opinion, the person needs and is likely to receive, a substantial level of care in a private residence for at least 14 consecutive days.

### 14 Remote area definitions

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

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

***remote area*** means:

- (a) those parts of Australia referred to in paragraphs 1 and 2 of Part I of Schedule 2 to the Income Tax Assessment Act; and
  - (aa) those parts of Australia referred to in Part II of Schedule 2 to the Income Tax Assessment Act that are more than 250 kilometres by the shortest practicable surface route from the centre point of the nearest urban centre with a census population (within the meaning of that Act) of 2,500 or more; and
  - (ab) those places in Australia that, for the purposes of the Income Tax Assessment Act, are treated by the Commissioner for Taxation as being in a part of Australia referred to in paragraph (aa); and
  - (ac) Norfolk Island; and
  - (b) the Territory of Cocos (Keeling) Islands; and
  - (c) the Territory of Christmas Island; and
  - (d) Lord Howe Island.
- (2) If:
- (a) a person's usual place of residence is in the remote area; and
  - (b) the person is absent from the remote area for a period;
- the person is to be taken to be ***physically present in the remote area*** during:

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- (c) if the period does not exceed 8 weeks—the whole of that period; or
- (d) if the period exceeds 8 weeks—the first 8 weeks of that period.

**14A Social security benefit liquid assets test definitions**

- (1) For the purposes of Parts 2.11, 2.11A, 2.12, 2.14 and 2.23A and Division 3A of Part 3 of the Administration Act:

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

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

but does not include:

- (d) a roll-over superannuation benefit (within the meaning of the *Income Tax Assessment Act 1997*); or
- (daa) a superannuation lump sum (within the meaning of that Act) that is a contributions-splitting superannuation benefit (within the meaning of that Act); or
- (dab) a directed termination payment (within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*); or
- (dac) the surrender value of a life policy (within the meaning of the *Life Insurance Act 1995*); or
- (da) an amount of an AGDRP that the person received, if the Secretary is satisfied that the length of time since receiving the payment is still reasonable in the circumstances; or
- (db) an amount of an AVTOP that the person received, if the Secretary is satisfied that the length of time since receiving the payment is still reasonable in the circumstances; or

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- (dc) the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid; or
- (e) in the case of a person who:
  - (i) has claimed or is receiving a youth allowance or an austudy payment; and
  - (ii) is undertaking a tertiary course of education in any year or part of a year;  
an amount necessary to cover the reasonable expenses incurred, or likely to be incurred, by the person in that year or that part of a year and that are directly related to his or her undertaking the course, including:
    - (iii) up front course fees; and
    - (iv) HECS payments; and
    - (v) union fees; and
    - (vi) costs of text books; and
    - (vii) costs of any tools or equipment required to undertake the course, including computer software; and
    - (viii) expenses directly related to any field trips undertaken for the purposes of the course; and
    - (ix) such other expenses as are approved by the Secretary.

***maximum reserve***, in relation to a person, means:

- (a) if the person is not a member of a couple and does not have a dependent child—\$5,000; or
  - (b) in any other case—\$10,000.
- (2) For the purposes of Parts 2.11, 2.11A, 2.12, 2.14 and 2.23A and Division 3A of Part 3 of the Administration Act, a person's ***liquid assets*** are to be taken to include:
- (a) the liquid assets of the person's partner; and
  - (b) the liquid assets of the person and the person's partner.
- (3) If:



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- (a) during the 4 weeks immediately before a person claims youth allowance, austudy payment, newstart allowance or sickness allowance, the person or the person's partner transfers liquid assets to a person of any age who is the natural child, adopted child or relationship child of the person or the partner; and
  - (b) either:
    - (i) the person transferring receives no consideration or inadequate consideration, in money or money's worth for the transfer; or
    - (ii) the Secretary is satisfied that the purpose, or the dominant purpose, of the transfer was to enable the claimant to obtain youth allowance, austudy payment, newstart allowance or sickness allowance;
- then the transfer is to be taken, for the purposes of this section, not to have occurred.
- (4) If:
- (a) a person sells the person's principal home; and
  - (b) the person is likely, within 12 months, to apply the whole or part of the proceeds of the sale in acquiring another residence that is to be the person's principal home;
- so much of the proceeds of the sale as the person is likely to apply in acquiring the other residence is to be disregarded during that period for the purposes of determining the amount of the person's liquid assets.
- (5) If:
- (a) a person has or had a debt not related to the person's principal home or to any other residential property in which the person holds or held, solely or jointly, any right or interest; and
  - (b) since becoming unemployed or incapacitated for work or study (as the case requires), the person has, in order to discharge the debt in whole or in part, made a payment that the person was not obliged to make; and

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- (c) since becoming unemployed or incapacitated for work or study (as the case requires), the person had not already made such a payment in order to discharge that debt in part; the amount of the payment referred to in paragraph (b) is to be disregarded for the purposes of determining the amount of the person's liquid assets.
- (5A) If:
- (a) a person has or had a debt not related to the person's principal home or to any other residential property in which the person holds or held, solely or jointly, any right or interest; and
  - (b) since becoming qualified for youth allowance or austudy payment (as the case requires), the person has, in order to discharge the debt in whole or in part, made a payment that the person was not obliged to make; and
  - (c) since becoming qualified for youth allowance or austudy payments (as the case requires), the person had not already made such a payment in order to discharge that debt in part; the amount of the payment referred to in paragraph (b) is to be disregarded for the purposes of determining the amount of the person's liquid assets.
- (6) For the purpose of determining whether a liquid assets test waiting period applies in relation to a claim for a social security benefit, subsection (5) can apply to a payment made after the claim if the payment is made before such a liquid assets test waiting period would end under section 549A, 575A, 598 or 676 (whichever is applicable).
- (7) For the purposes of Division 3A of Part 3 of the Administration Act, a person is ***in severe financial hardship*** if the value of the person's liquid assets does not exceed:
- (a) if the person is not a member of a couple and does not have a dependent child—\$2,500; or
  - (b) in any other case—\$5,000.

## **16 Industrial action definitions**

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

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

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

Note: See also subsection (2).

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

Note: See also subsection (3).

**unemployment**, in relation to a person, includes:

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

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### *Industrial action*

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

### *Trade unions divided into branches*

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

## 16A Seasonal work definitions

### *Definitions*

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

**relevant AWOTE**, in relation to a calendar year, means the amount that, under the heading “Trend Estimates” in the document entitled “Average Weekly Earnings, States and Australia” last published by the Australian Bureau of Statistics before 1 January in that year, is specified as being the full-time adult ordinary time earnings for Australia for the quarter to which the document relates.

**seasonal work** means:

- (a) work that, because of its nature or of factors peculiar to the industry in which it is performed, is available, at approximately the same time or times every year, for part or parts only of the year; or
- (aa) work:
  - (i) that is intermittent; and
  - (ii) that is to be performed for a period of less than 12 months; and
  - (iii) that is to be performed for a specified period or a period that can reasonably be calculated by reference to the completion of a specified task; and

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- (iv) for which the person performing the work does not accrue leave entitlements; or
- (b) work that is intermittent and is determined, under subsection (2), to be seasonal work for the purposes of this Act.

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

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

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

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

- (1A) Paragraph (aa) of the definition of ***seasonal work*** in subsection (1) does not apply to a person undertaking seasonal work if the person was receiving income support payments (whether or not the kind of payment received has changed over the period and whether any part of it occurred before or after the commencement of this section) in respect of a continuous period exceeding 12 months immediately before the person commenced the seasonal work.

*Secretary's determination—seasonal work*

- (2) The Secretary may, by legislative instrument, determine that a specified kind of work that is intermittent is seasonal work for the purposes of this Act.

*Seasonal work preclusion periods*

- (3) If:
  - (a) a person is not a member of a couple; and

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- (b) the person has made a claim for newstart allowance, widow allowance, mature age allowance under Part 2.12B, youth allowance, special benefit, parenting payment, disability support pension, sickness allowance, carer payment or austudy payment; and
- (c) the person was engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim;

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

(4) If:

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

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

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

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*Method statement*

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

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- Step 6. Work out the number of weeks in the person's relevant periods of seasonal work by dividing the total number of days included in those periods by 7. The result (including any part of a week) is called the person's ***seasonal work weeks***.
- Step 6A. If there is a period between one relevant period of seasonal work and another, or between a relevant period of seasonal work and the day on which the claim was lodged, work out the number of weeks in the period (the ***intervening period***). This is done by dividing the total number of days in the intervening period by 7.
- Step 6B. If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the person's ***intervening weeks***.
- Step 6C. Add together the number of seasonal work weeks worked out under Step 6 and the number of intervening weeks (if any) worked out under Step 6B. The result (including any part of a week) is called the person's ***self-supported weeks***.
- Step 7. Subtract the person's self-supported weeks from the person's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the ***number of weeks in the person's seasonal work preclusion period***. If the result is a negative number, the number of weeks in the period is taken to be nil.

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

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

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

(6) If:

- (a) the person is a member of a couple; and



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

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

*Method statement*

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

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- Step 5. Work out the total amount of income from personal exertion earned by the person's partner during the person's relevant periods of seasonal work. Add the amount obtained to the person's seasonal work earnings. The result is called the ***couple's combined earnings***.
- Step 6. Divide the couple's combined earnings by twice the amount of the relevant AWOTE for the calendar year in which the claim was lodged. The result is called the couple's ***AWOTE weeks*** and represents the number of weeks (including any part of a week) that 2 persons, each paid at a rate equal to the relevant AWOTE for that calendar year, would have to work to earn together an amount equal to the couple's combined earnings.
- Step 7. Work out the number of weeks in the person's relevant periods of seasonal work by dividing the total number of days included in those periods by 7. The result (including any part of a week) is called the person's ***seasonal work weeks***.
- Step 7A. If there is a period between one relevant period of seasonal work and another, or between a relevant period of seasonal work and the day on which the claim was lodged, work out the number of weeks in the period (the ***intervening period***). This is done by dividing the total number of days in the intervening period by 7.
- Step 7B. If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the person's ***intervening weeks***.

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Step 7C. Add together the number of seasonal work weeks worked out under Step 7 and the number of intervening weeks (if any) worked out under Step 7B. The result (including any part of a week) is called the person's ***self-supported weeks***.

Step 8. Subtract the person's self-supported weeks from the couple's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the ***number of weeks in the person's seasonal work preclusion period***. If the result is a negative number, the number of weeks in the period is taken to be nil.

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

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

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

(7) If:

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

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

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*Method statement*

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

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

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Step 9. Subtract the partner's self-supported weeks from the couple's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the ***number of weeks in the person's seasonal work preclusion period***. If the result is a negative number, the number of weeks in the period is taken to be nil.

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

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

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

(8) If:

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

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

*Method statement*

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

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

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

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*Subject to a seasonal work preclusion period*

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

**16B Partial capacity to work**

- (1) A person has a ***partial capacity to work*** if:
- (a) the person has a physical, intellectual or psychiatric impairment; and
  - (b) the Secretary is satisfied that:
    - (i) the impairment of itself prevents the person from doing 30 hours per week of work independently of a program of support within the next 2 years; and
    - (ii) no training activity is likely (because of the impairment) to enable the person to do 30 hours per week of work independently of a program of support within the next 2 years.
- (2) A person is treated as doing work ***independently of a program of support*** if the Secretary is satisfied that to do the work the person:
- (a) is unlikely to need a program of support that:
    - (i) is designed to assist the person to prepare for, find or maintain work; and
    - (ii) is funded (wholly or partly) by the Commonwealth or is of a type that the Secretary considers is similar to a program of support that is funded (wholly or partly) by the Commonwealth; or
  - (b) is likely to need such a program of support provided occasionally; or
  - (c) is likely to need such a program of support that is not ongoing.
- (3) In deciding whether he or she is satisfied as mentioned in paragraph (1)(b) or subsection (2), the Secretary must comply with

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the guidelines (if any) determined and in force under subsection (4).

- (4) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in deciding whether he or she is satisfied as mentioned in paragraph (1)(b).
- (5) In this section:

**30 hours per week of work** means work:

- (a) that is for at least 30 hours per week on wages that are at or above the relevant minimum wage; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

**training activity** means one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

- (a) education;
- (b) pre-vocational training;
- (c) vocational training;
- (d) vocational rehabilitation;
- (e) work-related training (including on-the-job training).

### 17 Compensation recovery definitions

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

**compensation** has the meaning given by subsection (2).

Note: See also section 1163B.

**compensation affected payment** means:

- (aa) an age pension; or
- (a) a disability support pension; or
- (b) a parenting payment; or
- (c) a social security benefit; or
- (e) a disability support wife pension; or



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- (f) a carer payment; or
- (g) a special needs disability support pension; or
- (h) a special needs disability support wife pension; or
- (i) mature age allowance; or
- (j) mature age partner allowance; or
- (k) a former payment type; or
- (l) any of the following:
  - (i) an advance pharmaceutical allowance;
  - (ii) a telephone allowance;
  - (iv) an education entry payment;
  - (v) a pensioner education supplement;where, in order to be qualified for the allowance, payment or supplement, a person must be receiving, or receiving at a particular time, another kind of payment and that other kind of payment (the ***underlying compensation affected payment***) is a compensation affected payment to which any of paragraphs (aa) to (k) applies; or
- (m) a fares allowance, where:
  - (i) if subparagraph 1061ZAAA(1)(b)(i), (ii) or (iii) applies—the allowance or payment (the ***underlying compensation affected payment***) mentioned in that subparagraph is a compensation affected payment to which any of paragraphs (aa) to (k) of this definition applies; or
  - (ii) if subparagraph 1061ZAAA(1)(b)(iv) applies—in order to be qualified for the supplement mentioned in that subparagraph, a person must be receiving another kind of payment and that other kind of payment (the ***underlying compensation affected payment***) is a compensation affected payment to which any of paragraphs (aa) to (k) of this definition applies; or
- (n) a CDEP Scheme Participant Supplement, where the pension, payment or allowance (the ***underlying compensation affected payment***) mentioned in paragraph 1188D(2)(a) is a compensation affected payment to which any of paragraphs (aa) to (k) of this definition applies.

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

***compensation payer*** means:

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

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

***event that gives rise to a person's entitlement to compensation*** has the meaning given by subsection (5A).

***former payment type*** means:

- (a) an invalid pension under the 1947 Act; or
- (b) an invalid pension under this Act as previously in force; or
- (ba) a disability wage supplement under this Act as previously in force; or
- (c) a sheltered employment allowance under the 1947 Act; or
- (d) a sheltered employment allowance under this Act as previously in force; or
- (e) an unemployment benefit under the 1947 Act; or
- (f) a sickness benefit under the 1947 Act; or
- (g) a special benefit under the 1947 Act; or
- (h) a sickness benefit under this Act as previously in force; or
- (ha) a job search allowance under this Act as previously in force; or
- (i) a rehabilitation allowance under the 1947 Act payable in place of:
  - (i) an invalid pension under the 1947 Act; or
  - (ii) a sheltered employment allowance under the 1947 Act; or
  - (iii) an unemployment benefit under the 1947 Act; or

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- (iv) a sickness benefit under the 1947 Act; or
- (v) a special benefit under the 1947 Act; or
- (j) a rehabilitation allowance under this Act as previously in force payable in place of:
  - (i) a disability support pension; or
  - (ii) an invalid pension under this Act as previously in force; or
  - (iii) a sheltered employment allowance under this Act as previously in force; or
  - (iv) a social security benefit; or
  - (v) a sickness benefit under this Act as previously in force; or
- (k) an invalid wife pension under the 1947 Act; or
- (l) an invalid wife pension under this Act as previously in force; or
- (m) a special needs invalid pension under this Act as previously in force; or
- (n) a special needs invalid wife pension under this Act as previously in force; or
- (o) a carer payment under this Act as previously in force; or
- (p) a sole parent pension under this Act as previously in force; or
- (q) a parenting allowance under this Act as previously in force; or
- (r) a parenting payment under this Act as in force immediately before 1 July 2000; or
- (s) a youth training allowance under Part 8 of the *Student Assistance Act 1973* as previously in force; or
- (t) a payment under this Act as previously in force declared by the Minister, by legislative instrument, to be a former payment type for the purposes of Part 3.14.

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

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***invalid wife pension*** means:

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

***periodic payments period*** means:

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

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

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

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

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

### *Compensation*

- (2) Subject to subsection (2B), for the purposes of this Act, ***compensation*** means:
- (a) a payment of damages; or
  - (b) a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme; or

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- (c) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme; or
  - (d) any other compensation or damages payment;  
(whether the payment is in the form of a lump sum or in the form of a series of periodic payments and whether it is made within or outside Australia) that is made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury.
- (2A) Paragraph (2)(d) does not apply to a compensation payment if:
- (a) the recipient has made contributions (for example, by way of insurance premiums) towards the payment; and
  - (b) either:
    - (i) the agreement under which the contributions are made does not provide for the amounts that would otherwise be payable under the agreement being reduced or not payable because the recipient is eligible for or receives payments under this Act that are compensation affected payments; or
    - (ii) the agreement does so provide but the compensation payment has been calculated without reference to the provision.
- (2B) A payment under a law of the Commonwealth, a State or a Territory that provides for the payment of compensation for a criminal injury does not constitute compensation for the purposes of this Act.
- (2C) The reference in subsection (2B) to a criminal injury is a reference to a personal injury suffered, or a disease or condition contracted, as a result of the commission of an offence.

*Compensation part of a lump sum*

- (3) Subject to subsection (4), for the purposes of this Act, the ***compensation part of a lump sum compensation payment*** is:
- (a) 50% of the payment if the following circumstances apply:

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- (i) the payment is made (either with or without admission of liability) in settlement of a claim that is, in whole or in part, related to a disease, injury or condition; and
    - (ii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or
  - (ab) 50% of the payment if the following circumstances apply:
    - (i) the payment represents that part of a person's entitlement to periodic compensation payments that the person has chosen to receive in the form of a lump sum; and
    - (ii) the entitlement to periodic compensation payments arose from the settlement (either with or without admission of liability) of a claim that is, in whole or in part, related to a disease, injury or condition; and
    - (iii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or
  - (b) if those circumstances do not apply—so much of the payment as is, in the Secretary's opinion, in respect of lost earnings or lost capacity to earn, or both.
- (4) Where a person:
- (a) has received periodic compensation payments; and
  - (b) after receiving those payments, receives a lump sum compensation payment (in this subsection called the **LSP**); and
  - (c) because of receiving the LSP, becomes liable to repay an amount (in this subsection called the **Repaid Periodic Compensation Payment—RPCP**) equal to the periodic compensation payments received;
- then, for the purposes of subsection (3), the amount of the lump sum compensation payment is:

LSP – RPCP

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

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*Receives compensation*

- (5) A person ***receives compensation*** whether he or she receives it directly or whether another person receives it, on behalf of, or at the direction of the first person.
- (5A) For the purposes of subsection (2B) of this section and Part 3.14, the ***event that gives rise to a person's entitlement to compensation*** for a disease, injury or condition is:
- (a) if the disease, injury or condition was caused by an accident—the accident; or
  - (b) in any other case—the disease, injury or condition first becoming apparent;
- and is not, for example, the decision or settlement under which the compensation is payable.

*Insurer*

- (6) A reference in Part 3.14 to an ***insurer who is, under a contract of insurance, liable to indemnify*** a compensation payer or a potential compensation payer against a liability arising from a claim for compensation includes a reference to:
- (a) an authority of a State or Territory that is liable to indemnify a compensation payer against such a liability, whether the authority is so liable under a contract, a law or otherwise; or
  - (b) an authority of a State or Territory that determines to make a payment to indemnify a compensation payer against such a liability, whether or not the authority is liable to do so.
- (8) For the purposes of the definition of ***income cut-out amount*** in subsection (1), the formula is as follows:

$$2 \times \left( \begin{array}{c} \text{Maximum} \\ \text{basic rate} \end{array} + \begin{array}{c} \text{Pension} \\ \text{supplement} \\ \text{component} \end{array} + \begin{array}{c} \text{Energy} \\ \text{supplement} \\ \text{component} \end{array} \right) + \begin{array}{c} \text{Ordinary} \\ \text{free area} \\ \text{limit} \end{array}$$

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where:

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**energy supplement component** means the energy supplement worked out under point 1064-C3 for a person who is not a member of a couple:

- (a) whether or not the person for whom the income cut-out amount is being worked out is a member of a couple; and
- (b) whether or not that point applies to the person for whom the income cut-out amount is being worked out.

**maximum basic rate** means the amount specified in column 3 of item 1 of the table in point 1064-B1.

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

**pension supplement component** means the pension supplement amount worked out under point 1064-BA3 for a person who is not a member of a couple:

- (a) whether or not the person for whom the income cut-out amount is being worked out is a member of a couple; and
- (b) whether or not that point applies to the person for whom the income cut-out amount is being worked out.

## 18 Parenting payment definitions

In this Act, unless the contrary intention appears:

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

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

**parenting payment** means:

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



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

### 19 Mobility allowance definitions

In this Act, unless the contrary intention appears:

***gainful employment*** means:

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

***handicapped person*** means a person who:

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

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

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

### 19A Fares allowance definitions

- (1) This section has effect for the purposes of Part 2.26.
- (2) Unless the contrary intention appears:

***activity test*** means the test set out in section 541.

***approved course*** has the meaning given by subsection 1061ZAAA(1).

***approved tertiary course*** means a course of education or study that is determined, under section 5D of the *Student Assistance Act 1973*, to be a tertiary course for the purposes of that Act.

***external student***, in relation to an approved course at a relevant educational institution, means a student enrolled for the course who

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is subject to a requirement, being a requirement that is a compulsory component of the course, to attend the institution for a period of time.

***independent*** has the same meaning as in Parts 2.11 and 3.5 (see section 1067A).

***permanent home*** has the meaning given by subsections (3) to (6).

***public transport*** does not include a taxi.

***relevant educational institution*** has the meaning given by subsection 1061ZAAA(1).

***required to live away from his or her permanent home*** has the meaning given by subsection (7).

***study year*** means the period in which one complete year of an approved tertiary course (as defined by this subsection) starts and finishes.

- (3) Subject to subsection (5), if a person is receiving youth allowance and is not independent, the person's ***permanent home*** is the home of the parent whose income components are assessed under Submodule 4 of Module F of the Youth Allowance Rate Calculator in section 1067G.
- (4) Subject to subsection (5), if subsection 1061ZAAA(5) applies to a person, the person's ***permanent home*** is the home of the parent whose income components were assessed, immediately before the person became independent, under Submodule 4 of Module F of the Youth Allowance Rate Calculator in section 1067G.
- (5) If the parent uses more than one home, the person's ***permanent home*** is:
  - (a) the home that the parent uses most frequently; or
  - (b) if the parent uses more than one home for equal periods, the home that the person nominates.
- (6) The ***permanent home*** of a person to whom none of the preceding subsections applies is the person's usual place of residence.

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- (7) A person is taken to be ***required to live away from his or her permanent home*** in order to undertake an approved tertiary course of education or study if:
- (a) the person is not independent; and
  - (b) the person does not live at the person's permanent home; and
  - (c) the Secretary determines that the person needs to live away from the person's permanent home in order to undertake the course.

**19AA Student start-up loan definitions**

For the purposes of Chapter 2AA:

***accumulated SSL debt*** has the meaning given by section 1061ZVEC.

***approved form*** has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

***Commissioner*** means the Commissioner of Taxation.

***compulsory SSL repayment amount*** means an amount that:

- (a) is required to be paid in respect of an accumulated SSL debt under section 1061ZVHA; and
- (b) is included in a notice of assessment made under section 1061ZVHC.

***enrolment test day*** has the meaning given by subsection 1061ZVDA(5).

***former accumulated SSL debt*** has the meaning given by section 1061ZVEB.

***HELP debt indexation factor*** has the same meaning as in the *Higher Education Support Act 2003*.

***HELP repayment income*** has the same meaning as ***repayment income*** has in the *Higher Education Support Act 2003*.

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**income tax** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**income tax law** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**income year** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**Medicare levy** means the Medicare levy imposed by the *Medicare Levy Act 1986*.

**minimum HELP repayment income** has the same meaning as **minimum repayment income** has in the *Higher Education Support Act 2003*.

**qualification period**, for a student start-up loan, means a period of 6 months starting on 1 January or 1 July in any year.

**qualification test day** has the meaning given by subsection 1061ZVBB(3).

**repayable SSL debt** has the meaning given by section 1061ZVHB.

**return** means an income tax return within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**SSL debt** means a debt incurred under section 1061ZVDA.

**student start-up loan** means a loan for which a person qualifies under Part 2AA.2.

**voluntary SSL repayment** means a payment made to the Commissioner in discharge of an accumulated SSL debt or an SSL debt. It does not include a payment made in discharge of a compulsory SSL repayment amount.

### 19AB Student Financial Supplement Scheme definitions

- (1) This section has effect for the purposes of Chapter 2B.
- (2) Unless the contrary intention appears:

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

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

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

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

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

**approved course of education or study** has the same meaning as in subsection 541B(5).

Note: This expression is used, with the same meaning, in sections 569B and 1061PC.

**austudy payment general rate** has the meaning given by subsection (3).

**AWE** has the meaning given by section 1061ZZFF.

**category 1 student** has the meaning given by section 1061ZZ.

**category 2 student** has the meaning given by section 1061ZZA.

**Commissioner** means Commissioner of Taxation.

**Commissioner of Taxation** includes a Second Commissioner of Taxation and a Deputy Commissioner of Taxation.

**compulsory repayment amount** means an amount that:

- (a) is required to be paid in respect of an accumulated FS debt under section 1061ZZEZ; and
- (b) is included in a notice of an assessment made under section 1061ZZFH.

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**contract period** of a financial supplement contract has the meaning given by subsection 1061ZZAX(7) or 1061ZZAY(3).

**cooling off period** means a period referred to in section 1061ZZBD.

**discount** has the meaning given by section 1061ZZCM.

**earlier date** has the meaning given by paragraph 1061ZZEQ(2)(b).

**eligibility period** for a person means an eligibility period under section 1061ZY and includes an eligibility period for the purposes of the Social Security Student Financial Supplement Scheme 1998.

**exempt foreign income** has the meaning given by subsection 1061ZZFA(4).

**financial corporation** means:

- (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution whose sole or principal business activities in Australia are the borrowing of money and the provision of finance; or
- (b) a financial corporation within the meaning of that paragraph; and includes a bank.

**financial supplement contract** means a contract referred to in subsection 1061ZZAX(2) or 1061ZZAY(1).

**FS assessment debt** means an amount that is required to be paid in respect of an accumulated FS debt under section 1061ZZEZ and is included in an assessment made under Division 7 of Part 2B.3 or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998.

**FS debt** has the meaning given by section 1061ZZEO.

**income tax** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

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**income tax law** has the meaning given by section 14ZAAA of the *Taxation Administration Act 1953*.

**income year** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**index number** for a quarter means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician for the quarter.

**intending to undertake a course**: see subsection (5).

**interest subsidy**, in relation to financial supplement paid to a person by a participating corporation under a financial supplement contract, means the part of any subsidy paid by the Commonwealth to the corporation, without cost to the person, in respect of the supplement under the agreement entered into with the corporation under section 1061ZZAG, that is in lieu of interest.

**later date** has the meaning given by paragraph 1061ZZEQ(1)(a) or (2)(a), as the case requires.

**maximum amount of financial supplement** has the meaning given by section 1061ZZAK or 1061ZZAO, as the case requires, as affected by section 1061ZZAQ.

**Medicare levy** means the Medicare levy imposed by the *Medicare Levy Act 1986*.

**minimum amount of financial supplement** has the meaning given by section 1061ZZAP.

**minimum repayment income** has the meaning given by section 1061ZZFB.

**office** means a branch office but does not include an agency or administrative office.

**original amount** has the meaning given by subsection 1061ZZCW(1).

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**overpayment**, for a person in relation to an eligibility period, means either of the following:

- (a) a debt or overpayment that is to be recovered under Chapter 5 from the person during the eligibility period;
- (b) an amount the person is liable to pay to the Commonwealth under section 1061ZZDE, 1061ZZDL, 1061ZZDV or 1061ZZEE that the Secretary has decided is to be recovered during the eligibility period.

**participating corporation** has the meaning given by subsection 1061ZZAG(3).

**principal sum**, at a time during the contract period of a financial supplement contract, means the total of the amounts of financial supplement paid under the contract before that time by the participating corporation to the other party to the contract.

**repayable debt**, for an income year, has the meaning given by section 1061ZZFC.

**repayment income** has the meaning given by section 1061ZZFA.

**revised amount** has the meaning given by subsection 1061ZZCW(1).

**saved amount** means an amount referred to in subsection 1061ZZBO(3).

**short course** means a tertiary course that is designed to be completed in, at most, 30 weeks (including vacations).

**Social Security Student Financial Supplement Scheme 1998** means the scheme of that name established by the Minister under Chapter 2B of this Act as in force before the commencement of this section.

**supplement entitlement notice** given to a person means a notice given to the person under subsection 1061ZZAC(3) or 1061ZZAD(4), or a notice referred to in subsection 1061ZZAE(3).



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**taxable income** has the meaning given by section 4-15 of the *Income Tax Assessment Act 1997*.

**termination date** of a financial supplement contract means the date set out in the contract under subsection 1061ZZAX(6) or as mentioned in subsection 1061ZZAY(2).

**termination notice** means a notice given under section 1061ZZCQ or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998.

**tertiary course** means a tertiary course that is an approved course of education or study.

**trade back** has the meaning given by section 1061ZZAT.

**trade in** has the meaning given by section 1061ZZAR.

**undertaking a course**: see subsection (5).

**wrongly paid supplement** has the meaning given by subsections 1061ZZDB(4), 1061ZZDI(4), 1061ZZDS(4) and 1061ZZEC(4).

**year** means a calendar year.

**year of income** has the same meaning as in the *Income Tax Assessment Act 1936*.

**youth allowance general rate** has the meaning given by subsection (4).

- (3) A person's **austudy payment general rate** is the rate of austudy payment that would be payable to the person if the rate were worked out:
- (a) using the Austudy Payment Rate Calculator; and
  - (b) not including any amount as pharmaceutical allowance or remote area allowance.

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- (4) A person's **youth allowance general rate** is the rate of youth allowance that would be payable to the person if the rate were worked out:
  - (a) using the Youth Allowance Rate Calculator; and
  - (b) not including any amount as pharmaceutical allowance, rent assistance or remote area allowance.
- (5) The question whether a person is **intending to undertake a course** or is **undertaking a course** is to be determined, so far as practicable and with any necessary changes, in the same way as the question whether a person is intending to undertake study or is undertaking study, as the case may be, is determined under section 541B.

### 19B Financial hardship (Carer payment) liquid assets test definition

In section 198N (exemption from care receiver assets test):

**liquid assets**, in relation to a person, means:

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

but does not include:

- (f) a roll-over superannuation benefit (within the meaning of the *Income Tax Assessment Act 1997*); or
- (fa) a superannuation lump sum (within the meaning of that Act) that is a contributions-splitting superannuation benefit (within the meaning of that Act); or
- (fb) a directed termination payment (within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*); or

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- (fc) the surrender value of a life policy (within the meaning of the *Life Insurance Act 1995*); or
- (g) an amount of an AGDRP that the person received, if the Secretary is satisfied that the length of time since receiving the payment is still reasonable in the circumstances; or
- (h) an amount of an AVTOP that the person received, if the Secretary is satisfied that the length of time since receiving the payment is still reasonable in the circumstances; or
- (i) the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid.

### 19C Severe financial hardship definitions

*Application of definitions in this section*

- (1) The definitions in this section relate to:
  - (a) ordinary waiting periods; and
  - (b) liquid assets test waiting periods; and
  - (c) seasonal work preclusion periods; and
  - (d) income maintenance periods.

*Meaning of **in severe financial hardship**: person who is not a member of a couple*

- (2) A person who is not a member of a couple and who makes a claim for parenting payment, austudy payment, special benefit, disability support pension, carer payment or one of the following allowances:
  - (a) newstart allowance;
  - (b) widow allowance;
  - (c) mature age allowance;
  - (d) sickness allowance;
  - (e) youth allowance;

is **in severe financial hardship** if the value of the person's liquid assets (within the meaning of subsection 14A(1)) is less than the

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fortnightly amount at the maximum payment rate of the payment, benefit, pension or allowance that would be payable to the person:

- (f) if the person's claim were granted; and
- (g) in the case of a person to whom an income maintenance period applies, if that period did not apply.

Note: For *maximum payment rate* see subsection (8).

*Meaning of in severe financial hardship: person who is a member of a couple*

- (3) A member of a couple who makes a claim for parenting payment, austudy payment, special benefit, disability support pension, carer payment or one of the following allowances:
- (a) newstart allowance;
  - (b) partner allowance;
  - (c) mature age allowance;
  - (d) sickness allowance;
  - (e) youth allowance;

is *in severe financial hardship* if the value of the couple's liquid assets (within the meaning of subsections 14A(1) and (2)) is less than twice the fortnightly amount at the maximum payment rate of the payment, benefit, pension or allowance that would be payable to the person:

- (f) if the person's claim were granted; and
- (g) in the case of a person to whom an income maintenance period applies, if that period did not apply.

Note: For *maximum payment rate* see subsection (8).

*Meaning of unavoidable or reasonable expenditure*

- (4) *Unavoidable or reasonable expenditure*, in relation to a person who is serving a liquid assets test waiting period or is subject to a seasonal work preclusion period, or a person to whom an income maintenance period applies, or in relation to working out if a person is subject to an ordinary waiting period, includes, but is not limited to, the following expenditure:

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- (a) the reasonable costs of living that the person is taken, under subsection (6) or (7), to have incurred in respect of:
  - (i) if the person is serving a liquid assets test waiting period—that part of the period that the person has served; or
  - (ii) if the person is subject to a seasonal work preclusion period—that part of the period that has expired; or
  - (iii) if an income maintenance period applies to the person—that part of the period that has already applied to the person; or
  - (iv) in relation to working out if the person is subject to an ordinary waiting period—the 4 weeks immediately before the person's start day mentioned in paragraph 500WA(1)(a), 549CA(2)(a), 620(1)(a) or 693(a);
- (b) the costs of repairs to, or replacement of, essential whitegoods situated in the person's home;
- (c) school expenses;
- (d) funeral expenses;
- (e) essential expenses arising on the birth of the person's child or the adoption of a child by the person;
- (f) expenditure to buy replacement essential household goods because of loss of those goods through theft or natural disaster when the cost of replacement is not the subject of an insurance policy;
- (g) the costs of essential repairs to the person's car or home;
- (h) premiums in respect of vehicle or home insurance;
- (i) expenses in respect of vehicle registration;
- (j) essential medical expenses;
- (k) any other costs that the Secretary determines are unavoidable or reasonable expenditure in the circumstances in relation to a person.

However, ***unavoidable or reasonable expenditure*** does not include any reasonable costs of living other than those referred to in paragraph (a).

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*Meaning of reasonable costs of living*

- (5) The ***reasonable costs of living*** of a person include, but are not limited to, the following costs:
- (a) food costs;
  - (b) rent or mortgage payments;
  - (c) regular medical expenses;
  - (d) rates, water and sewerage payments;
  - (e) gas, electricity and telephone bills;
  - (f) costs of petrol for the person's vehicle;
  - (g) public transport costs;
  - (h) any other cost that the Secretary determines is a reasonable cost of living in relation to a person.
- (6) For the purposes of paragraph (4)(a), the amount of reasonable ***costs of living*** that a person who is not a member of a couple is taken to have incurred, may not exceed:
- (a) in the case of a person who is serving a liquid assets test waiting period—the amount of allowance that would have been payable to the person during that part of the waiting period that the person has already served, if the person were not subject to the period; or
  - (b) in the case of a person who is subject to a seasonal work preclusion period—the amount of allowance that would have been payable to the person during that part of the person's preclusion period that has already expired, if the person were not subject to the period; or
  - (c) in the case of a person to whom an income maintenance period applies—the amount of allowance or parenting payment (as the case may be) that would have been payable to the person during that part of the income maintenance period that has already applied to the person, if the period did not apply to the person; or
  - (d) in relation to working out if the person is subject to an ordinary waiting period—the amount of allowance or parenting payment (as the case may be) that would have been payable to the person during the 4-week period mentioned in

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subparagraph (4)(a)(iv) if that allowance or payment were payable to the person for that period.

- (7) For the purposes of paragraph (4)(a), the amount of reasonable ***costs of living*** that a person who is a member of a couple is taken to have incurred, may not exceed:
- (a) in the case of a person who is serving a liquid assets test waiting period—twice the amount of allowance that would have been payable to the person during that part of the waiting period that the person has already served, if the person were not subject to the period; or
  - (b) in the case of a person who is subject to a seasonal work preclusion period—twice the amount of allowance or parenting payment (as the case may be) that would have been payable to the person during that part of the person's preclusion period that has already expired, if the person were not subject to the period; or
  - (c) in the case of a person to whom an income maintenance period applies—twice the amount of allowance or parenting payment (as the case may be) that would have been payable to the person during that part of the income maintenance period that has already applied to the person, if the period did not apply to the person; or
  - (d) in relation to working out if the person is subject to an ordinary waiting period—twice the amount of allowance or parenting payment (as the case may be) that would have been payable to the person during the 4-week period mentioned in subparagraph (4)(a)(iv) if that allowance or payment were payable to the person for that period.

*Meaning of **maximum payment rate***

- (8) For the purposes of subsections (2) and (3), ***maximum payment rate***:
- (aa) in relation to disability support pension—means the rate worked out at:
    - (i) Step 4 of the Method statement in Module A of Pension Rate Calculator A; or

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- (ii) Step 5 of the Method statement in Module A of Pension Rate Calculator D; or
- (ab) in relation to carer payment—means the rate worked out at Step 4 of the Method statement in Module A of Pension Rate Calculator A; or
- (a) in relation to sickness allowance—means the rate worked out at Step 4 of the Method statement in Module A of the applicable rate calculator; or
- (b) in relation to newstart allowance and, if the person has turned 22, in relation to special benefit—means the rate worked out at Step 4 of the Method statement in Module A of the applicable rate calculator; or
- (c) in relation to youth allowance and, if the person has not turned 22, in relation to special benefit—means the maximum payment rate worked out at Step 4 of the Method statement in Module A of the Youth Allowance Rate Calculator in section 1067G; or
- (ca) in relation to austudy payment—means the maximum payment rate worked out at Step 3 of the Method statement in Module A of the Austudy Payment Rate Calculator in section 1067L; or
- (d) in relation to widow allowance, partner allowance and mature age allowance under Part 2.12B—means the rate worked out at Step 4 of the method statement in Module A of Benefit Rate Calculator B; or
- (da) in relation to pension PP (single)—means the rate worked out at Step 4 of the method statement in point 1068A-A1 in Module A of the Pension PP Rate Calculator; or
- (e) in relation to benefit PP (partnered)—means the rate worked out at step 4 of whichever of the method statements in points 1068B-A2 and 1068B-A3 in Module A of the Benefit PP (Partnered) Rate Calculator is applicable to the person.

Note 1: The Sickness Benefit Rate Calculator, Benefit Rate Calculator A and Benefit Rate Calculator B apply to the calculation of sickness allowance depending on the circumstances of the person claiming the allowance.



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Note 2: Benefit Rate Calculator A (under 18) and Benefit Rate Calculator B (over 18) apply to the calculation of newstart allowance.

*Secretary to give notice of determination*

- (10) If the Secretary makes a determination in relation to a person under paragraph (4)(k) or paragraph (5)(h), the Secretary must give written notice of the determination to the person.

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

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

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

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(5) In this section:

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

- (a) for the following pensions if the recipient is not blind:
  - (i) age pension;
  - (ii) disability support pension (recipient has turned 21, or is under 21 and has one or more dependent children);
  - (iii) carer pension;
  - (iv) wife pension;the Rate Calculator at the end of section 1064; or
- (b) for age pension and disability support pension (recipient has turned 21, or is under 21 and has one or more dependent children) if the recipient is blind—the Rate Calculator at the end of section 1065; or
- (c) for widow B pension—the Rate Calculator at the end of section 1066; or
- (d) for disability support pension if the recipient is under 21, is not blind and does not have any dependent children—Step 5 of the Method statement in Module A of the Rate Calculator at the end of section 1066A; or
- (e) for disability support pension if the recipient is under 21, is blind and does not have any dependent children—Step 5 of the Method statement in Module A of the Rate Calculator at the end of section 1066B; or
- (f) for the following allowances:
  - (i) newstart allowance;
  - (ii) widow allowance;
  - (iii) sickness allowance;
  - (iv) partner allowance;
  - (v) mature age allowance granted under Part 2.12B;the Rate Calculator at the end of section 1068; or

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- (g) for mature age allowance granted under Part 2.12A—the Rate Calculator at the end of section 1064; or
- (h) for a pension PP (single)—the Rate Calculator at the end of section 1068A; or
- (i) for benefit PP (partnered)—point 1068B-A4; or
- (j) for mature age partner allowance—the Rate Calculator at the end of section 1064; or
- (k) for special benefit—section 746; or
- (l) for youth allowance—the Rate Calculator at the end of section 1067G; or
- (m) for austudy payment—Step 3 of the Method statement in Module A of the Rate Calculator at the end of section 1067L.

**19DA Experiencing a personal financial crisis definition**

- (1) A person is *experiencing a personal financial crisis* if and only if:
  - (a) the person is in severe financial hardship; and
  - (b) subsection (2), (3) or (4) applies to the person.

Note 1: This definition relates to ordinary waiting periods.

Note 2: 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).

*Domestic violence*

- (2) This subsection applies to the person if the person was subjected to domestic violence at some time in the 4 weeks immediately before the person's start day mentioned in paragraph 500WA(1)(a), 549CA(2)(a), 620(1)(a) or 693(a).

*Unavoidable or reasonable expenditure*

- (3) This subsection applies to the person if the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure in the 4 weeks immediately before the person's start day mentioned in paragraph 500WA(1)(a), 549CA(2)(a), 620(1)(a) or 693(a).

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

### *Other circumstances*

- (4) This subsection applies to the person if the person satisfies the circumstances prescribed in an instrument under subsection (5).
- (5) The Secretary may, by legislative instrument, prescribe circumstances for the purposes of subsection (4).

### *Evidence*

- (6) Without limiting subsection (2), (3) or (4), that subsection does not apply to the person unless he or she produces evidence that demonstrates a reasonable possibility that it applies to the person.

## 19E Exempt funeral investments

- (1) Work out whether a funeral investment that relates to a particular funeral is an ***exempt funeral investment*** by applying these rules:
  - (a) the expenses for the funeral must not be prepaid; and
  - (b) in relation to that funeral:
    - (i) only one investment of not more than \$10,000 can be an exempt funeral investment; or
    - (ii) only two investments that combined are not more than \$10,000 can be exempt funeral investments.

Note: The amounts in paragraph (1)(b) are indexed each year on 1 July (see Division 2 of Part 3.16).

- (2) Disregard any return on an investment in determining the amount of an investment for the purposes of this section.
- (3) For the purposes of subsection (1), a ***funeral investment*** means an investment, being an investment that cannot be realised before maturity and the return on which is not payable before maturity, that:
  - (a) matures on the death of whichever member of a couple dies first or dies last and is to be applied on maturity to the expenses of the funeral of that member of the couple; or

- (b) matures on the death of:
  - (i) the investor; or
  - (ii) if the investor is a member of a couple at the time the investment is made, the investor's partner at that time; and is to be applied on maturity to the expenses of the funeral of the person on whose death it matures.

## **20 Indexation and rate adjustment definitions**

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

**current figure**, as at a particular time and in relation to an amount that is to be indexed or adjusted under Part 3.16, means:

- (a) if the amount has not yet been indexed or adjusted under Part 3.16 before that time—the amount; and
- (b) if the amount has been indexed or adjusted under Part 3.16 before that time—the amount most recently substituted for the amount under Part 3.16 before that time.

**index number**, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

**November earnings average**, in relation to a year, means the amount called the “All Employees—Average Weekly Total Earnings—Persons” published by the Australian Statistician in respect of a period ending on or before a particular day in November in that year but does not include a preliminary estimate of that amount.

### *Publication of substituted index numbers*

- (4) Subject to subsection (5), if at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

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### *Change to CPI index reference period*

- (5) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the index reference period for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the change takes place, only to index numbers published in terms of the new index reference period.

### *Publication of substituted AWE amount*

- (6) If at any time (whether before or after the commencement of this section) the Australian Statistician publishes an amount in substitution for a November earnings average previously published by the Australian Statistician, for that year, the publication of the later amount is to be disregarded for the purposes of this section.

## **20A Pension supplement rate definitions**

- (1) The ***combined couple rate of pension supplement*** is the sum of the following:
- (a) 4 times the annual rate of utilities allowance for a person who is a member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple);
  - (b) twice the annual rate of telephone allowance for a person:
    - (i) to whom section 1061SB (increased rate for home internet) applies; and
    - (ii) who is partnered (partner getting pension or benefit, and partner getting telephone allowance at the increased rate);
  - (c) twice the annual rate of pharmaceutical allowance for a person who is partnered;
  - (d) twice the pension supplement basic amount for a person who is partnered;
  - (e) if \$525.20 exceeds twice the annual rate of utilities allowance for a person who is a member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple)—the amount of the excess;

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rounded up to the nearest multiple of \$5.20.

Note 1: This rate is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 2: This rate is an annual rate.

- (2) The ***combined couple rate of minimum pension supplement*** is the sum of the following:

- (a) 4 times the annual rate of utilities allowance for a person who is a member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple);
- (b) twice the annual rate of telephone allowance for a person:
  - (i) to whom section 1061SB (increased rate for home internet) applies; and
  - (ii) who is partnered (partner getting pension or benefit, and partner getting telephone allowance at the increased rate);

rounded up to the nearest multiple of \$5.20.

Note 1: This rate is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 2: This rate is an annual rate.

- (3) For the purposes of subsection (1) or (2), a rate mentioned in a paragraph of that subsection is that rate as at 20 September 2009.

Note: Those subsections adopt those rates as indexed on 20 September 2009.

- (4) A person's ***minimum pension supplement amount*** is the amount worked out by:

- (a) applying the applicable percentage in the following table to the combined couple rate of minimum pension supplement; and
- (b) if:
  - (i) the person is not partnered; and
  - (ii) the amount resulting from paragraph (a) is not a multiple of \$2.60;

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rounding the amount up or down to the nearest multiple of \$2.60 (rounding up if the amount is not a multiple of \$2.60 but is a multiple of \$1.30).

Item	Person's family situation	Use this %
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%
4	Member of respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: A person's minimum pension supplement amount is an annual rate.

- (5) A person's *pension supplement basic amount* depends on which family situation in the following table applies to the person. The person's *pension supplement basic amount* immediately before 20 September 2009 is the corresponding amount set out in the table.

Item	Person's family situation	Amount as at 19 September 2009
1	Not member of couple	\$507
2	Partnered	\$423.80
3	Member of illness separated couple	\$507
4	Member of respite care couple	\$507
5	Partnered (partner in gaol)	\$507

Note 2: For the purposes of provisions other than subsection (1), the amount in each item of the table will be indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 3: A person's pension supplement basic amount is an annual rate.

- (6) The daily rate of *tax-exempt pension supplement*, for a person who is receiving a social security payment calculated for that day using a pension supplement amount, is the amount worked out as follows:



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- (a) subtract the person's pension supplement basic amount from:
  - (i) if the Rate Calculator produces an annual rate—the person's pension supplement amount; or
  - (ii) if the Rate Calculator produces a fortnightly rate—26 times the person's pension supplement amount;
- (b) divide the result of paragraph (a) by 364.

Note: The portion of the person's social security payment equal to the tax-exempt pension supplement is exempt from income tax (see sections 52-10 and 52-15 of the *Income Tax Assessment Act 1997*).

## 21 *Bereavement definitions*

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

***partner bereavement payment*** means a payment under section 83, 146G, 189, 238, 514B, 660YKD, 771NW or 823.

- (2) For the purposes of this Act, if a person dies:

- (a) the ***bereavement period*** in relation to the person's death is the period of 14 weeks that starts on the day on which the person dies; and
- (b) the ***bereavement notification day*** in relation to the person's death is the day on which the Secretary becomes aware of the death; and
- (c) the ***first available bereavement adjustment payday*** in relation to the person's death is the first payday of the person after the bereavement notification day for which it is practicable to terminate or adjust payments under this Act to take account of the person's death; and
- (d) the ***bereavement rate continuation period*** in relation to the person's death is the period:
  - (i) that begins on the day on which the bereavement period begins; and
  - (ii) that ends:
    - (A) if the first available bereavement adjustment payday is before the end of the bereavement

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- period—on the day before the first available bereavement adjustment payday; or
- (B) if the first available bereavement adjustment payday occurs on or after the day on which the bereavement period ends—the day on which the bereavement period ends; and
- (e) there is a ***bereavement lump sum period*** in relation to the person's death if the first available bereavement adjustment payday occurs before the end of the bereavement period and the bereavement lump sum period is the period that begins on the first available bereavement adjustment payday and ends on the day on which the bereavement period ends.

## 23 Dictionary

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

***1947 Act*** means the *Social Security Act 1947*.

***AAT*** means the Administrative Appeals Tribunal.

***AAT Act*** means the *Administrative Appeals Tribunal Act 1975*.

***AAT first review*** has the same meaning as in the Administration Act.

***AAT second review*** has the same meaning as in the Administration Act.

***Aboriginal or Torres Strait Islander child*** means a child who is a descendant of:

- (a) an Indigenous inhabitant of Australia; or
- (b) an Indigenous inhabitant of the Torres Strait Islands.

***Aboriginal study assistance scheme*** means:

- (a) the ABSTUDY Scheme; or
- (b) the Aboriginal Overseas Study Assistance Scheme; or
- (c) a scheme prescribed for the purposes of this definition.

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**ABSTUDY** means the ABSTUDY scheme to the extent that it provides means-test allowances.

**ABSTUDY Schooling scheme** means the ABSTUDY Schooling part of the ABSTUDY scheme.

**ABSTUDY Tertiary scheme** means the ABSTUDY Tertiary part of the ABSTUDY scheme.

**accommodation bond**: see subsection 11(1).

**accommodation bond balance**: see subsection 11(1).

**accommodation charge**: see subsection 11(1).

**account**, in relation to a financial institution, means an account maintained by a person with the institution to which is accredited money received on deposit by the institution from that person.

**accumulated SSL debt** has the meaning given by section 1061ZVEC.

**ACNC type of entity** means an entity that meets the description of a type of entity in column 1 of the table in subsection 25-5(5) of the *Australian Charities and Not-for-profits Commission Act 2012*.

**Administration Act** means the *Social Security (Administration) Act 1999*.

**adopted child**: see subsection 5(1).

**Adult Disability Assessment Tool**: see subsection 38C(3).

**advance payment qualifying amount**, for a person, means:

- (a) if the person is receiving a social security pension worked out under Pension Rate Calculator A—the sum of the following amounts:
  - (i) the person's maximum basic rate;
  - (ii) the amount (if any) by which the person's pension supplement amount exceeds the person's minimum pension supplement amount; or

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- (b) otherwise—the result of paragraph (a) worked out as if the person were receiving a social security pension worked out under Pension Rate Calculator A.

***advance qualification day*** means:

- (a) for a person qualifying for a clean energy advance because of a determination made under subsection 914(1) or 914A(1)—the day that determination is made; or
- (b) for a person qualifying for a clean energy advance because of a determination made under subsection 914(2)—the day specified in that determination because of subsection 914(3); or
- (c) for a person qualifying for a clean energy advance because of a determination made under subsection 914A(2) or (3)—the day specified in that determination because of subsection 914A(4).

Note: The day specified in the determination because of subsection 914(3) or 914A(4) is the first day during the clean energy advance period for which the person satisfies the qualification requirements, disregarding any short temporary absence from Australia.

***adversely affected***, in relation to a major disaster, has the meaning given by section 1061L.

***AGDRP***: see Australian Government Disaster Recovery Payment.

***aged care resident***: see subsections 13(8A), (8B) and (8C).

***amount of rent paid or payable***: see subsections 13(6) and (7).

***applicable statutory conditions***, in relation to particular work, means the minimum terms and conditions of employment (including wages) applicable under law in relation to that work.

***approved care organisation***: see section 6.

***approved deposit fund***: see subsection 9(1).

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***approved friendly society*** means a society, person or body in relation to whom or in relation to which a determination under section 29 is in force.

***approved program of work for income support payment*** means a program of work that is declared by the Secretary, under section 28, to be an approved program of work for income support payment.

***approved program of work supplement*** means:

- (aa) an amount under section 118 to a person receiving disability support pension; or
- (a) an amount payable under section 503A to a person receiving parenting payment; or
- (b) an amount payable under section 556A to a person receiving youth allowance; or
- (c) an amount payable under section 644AAA to a person receiving newstart allowance.

***approved respite care***: see subsection 4(9).

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

***approved scholarship course*** has the meaning given by section 592M.

***approved training course for training supplement***, for a person, means a training course that is approved by the Secretary under section 28B for training supplement for the person.

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

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

***asset***: see subsections 11(1), (3AA), (3B), (3C) and (3D).

***asset-tested income stream (long term)***: see subsection 9(1).

***asset-tested income stream (short term)***: see subsection 9(1).

***asset-test exempt income stream***: see sections 9A, 9B and 9BA.

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***assurance of support*** means an assurance of support within the meaning of:

- (a) the Migration (1989) Regulations; or
- (b) the Migration (1993) Regulations; or
- (c) Subdivision 2.7.1 or 2.7.2 of the *Migration Regulations 1994* as in force on or after 1 September 1994; or
- (d) Chapter 2C.

***assurance of support debt*** has the meaning given by subsection 1227(2).

***ATO small superannuation account***: see subsection 9(1).

***Australia*** includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Note 1: In Part 5.5 of Chapter 5 (about departure prohibition orders), ***Australia*** has an extended meaning.

Note 2: See also subsections 7(4), (6) and (7) for special residence rules for external Territories.

***Australian Government Disaster Recovery Payment*** or ***AGDRP*** means a payment under Part 2.24.

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

***Australian travel document*** has the same meaning as in the *Australian Passports Act 2005*.

***Australian Victim of Terrorism Overseas Payment*** or ***AVTOP*** means a payment under Part 2.24AA.

***AUSTUDY allowance*** means a benefit paid under the AUSTUDY scheme, being the scheme under Part 2 of the *Student Assistance Act 1973* as previously in force.

***austudy participation failure*** has the meaning given by section 576.

***automatic issue card***: see subsection 6A(1).

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***automatic issue health care card***: see subsection 6A(1).

***available money***: see subsection 8(1).

***AVTOP***: see *Australian Victim of Terrorism Overseas Payment*.

***AVTOP Principles*** means the AVTOP Principles made by the Minister under section 1061PAF.

***bank*** includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

***benefit parenting allowance*** means benefit parenting allowance under this Act as previously in force.

***benefit PP (partnered)***: see section 18.

***bereavement lump sum period***: see paragraph 21(2)(e).

***bereavement notification day***: see paragraph 21(2)(b).

***bereavement period***: see paragraph 21(2)(a).

***bereavement rate continuation period***: see paragraph 21(2)(d).

***board*** when used in the expression ***board and lodging***: see subsection 13(1).

***carer supplement*** means carer supplement under Part 2.19B.

***CDEPManager*** means the computer system known as CDEPManager.

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

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

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

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**CDEP Scheme provider** means a person or organisation that is a party to a Programme Funding Agreement with the Commonwealth under which the person or organisation receives Commonwealth funding to deliver the CDEP Scheme.

**CDEP Scheme quarter** means:

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

**centrelink program** has the same meaning as in the *Human Services (Centrelink) Act 1997*.

**charge exempt resident**: see subsection 11(1).

**Chief Executive Centrelink** has the same meaning as in the *Human Services (Centrelink) Act 1997*.

**child**: see subsection 5(1).

**child disability allowance** means child disability allowance under Part 2.19 of this Act as in force at any time before 1 July 1999.

**child disability assistance** means child disability assistance under Part 2.19AA.

**clean energy advance** means an advance described in Subdivision A or C of Division 1 of Part 2.18A.

**clean energy advance daily rate** has the meaning given by section 914E.

**clean energy advance period** means:

- (a) for a person qualifying under section 914 for a clean energy advance—the period starting on 1 July 2012 and ending on 19 March 2013; or



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- (b) for a person qualifying under subsection 914A(1) or (2) for a clean energy advance—the period starting on 1 July 2012 and ending on 30 June 2013; or
- (c) for a person qualifying under subsection 914A(3) for a clean energy advance—the period starting on 1 July 2013 and ending on 31 December 2013.

***clean energy bonus*** under an Act or scheme means any of the following that is provided for by the Act or scheme:

- (a) a payment known as a clean energy advance;
- (b) a payment known as an energy supplement or a quarterly energy supplement;
- (c) an increase that is described using the phrase “energy supplement” and affects the rate of another payment that is provided for by the Act or scheme.

***clean energy payment*** means:

- (a) clean energy advance; or
- (b) quarterly energy supplement; or
- (d) an essential medical equipment payment.

***clean energy qualifying payment***, for a person, means:

- (a) for a person qualifying under section 914 for a clean energy advance—the social security payment set out in subsection 914(4) that the person is receiving on the advance qualification day; or
- (b) for a person qualifying under section 914A for a clean energy advance—the social security payment set out in subsection 914A(5) that the person is receiving on the advance qualification day.

***close family member*** has the meaning given by subsection 1061PAA(4).

***combined couple rate of minimum pension supplement*** has the meaning given by subsection 20A(2).

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***combined couple rate of pension supplement*** has the meaning given by subsection 20A(1).

***commencement day*** in relation to an income stream: see subsection 9(1).

***Commonwealth Accommodation Scholarship*** means a scholarship of that name provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*.

***Commonwealth Education Costs Scholarship*** means any scholarship provided to assist with education costs under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*.

***comparable foreign payment*** means a payment-type that is:

- (a) available from a foreign country; and
- (b) similar to a social security pension.

***compensation***: see section 17.

***compensation affected payment***: see subsection 17(1).

***compensation part*** in relation to a lump sum compensation payment: see subsection 17(1).

***compensation payer***: see subsection 17(1).

***compliance penalty period***, in relation to a person, means:

- (aa) for a person other than a declared program participant—any of the following periods during which a participation payment (within the meaning of the Administration Act) is not payable to the person:
  - (i) a payment suspension period (within the meaning of that Act);
  - (ii) an unemployment preclusion period (within the meaning of that Act);
  - (iii) a post-cancellation non-payment period (within the meaning of that Act); or

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- (a) for a declared program participant—a period during which a participation payment (within the meaning of the Administration Act) is not payable because of subsection 42P(1) (serious failures) or 42S(1) (unemployment non-payment periods) of that Act; or
- (b) in any case—a period during which youth allowance is not payable to the person because of section 550B or 551 of this Act; or
- (c) in any case—a period during which austudy payment is not payable to the person because of section 576A or 577 of this Act.

**computer** means a device that is used by the Department for storing or processing information.

**concession card**: see subsection 6A(1).

**current figure**: see subsection 20(1).

**current period as an Australian resident**, of a person in relation to parenting payment, youth allowance or newstart allowance, is a period that satisfies both the following conditions:

- (a) the person has been an Australian resident for the entire period;
- (b) the person lodged the claim for the payment or allowance during the period.

**dad and partner pay**: see subsection 8(1).

**daily accommodation contribution**: see subsection 11(1).

**daily accommodation payment**: see subsection 11(1).

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Note: Subsection 3(3) of the *Administrative Appeals Tribunal Act 1975* defines **decision** as including:

- making, suspending, revoking or refusing to make an order or determination;

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- giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
- imposing a condition or restriction;
- making a declaration, demand or requirement;
- retaining, or refusing to deliver up, an article;
- doing or refusing to do any other act or thing.

***declared overseas terrorist act*** means a terrorist act in respect of which there is a declaration under subsection 35B(1).

***declared program participant*** means a person who is a participant, in accordance with the applicable provisions (if any) of a determination made under section 28C, in an employment services program specified in that determination.

***deductible amount*** in relation to a defined benefit income stream for a year: see subsection 9(1).

***Defence Force Income Support Allowance*** or ***DFISA*** means Defence Force Income Support Allowance under Part VIIAB of the Veterans' Entitlements Act.

***deferred payment amount*** in relation to a sale leaseback agreement: see subsections 12B(6), (7) and (8).

***defined benefit income stream***: see subsection 9(1F).

***departure authorisation certificate*** means a certificate under Division 4 of Part 5.5.

***departure prohibition order*** means an order under Division 1 of Part 5.5 (including such an order varied under Division 3 of that Part).

***dependant***:

- (a) in relation to a person who is the holder of a pensioner concession card or an automatic issue health care card (other

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than a health care card for which the person is qualified under subsection 1061ZK(4)—see section 6A; or

- (b) in relation to a person who is the holder of a health care card for which the person is qualified under subsection 1061ZK(4) or Subdivision B of Division 3 of Part 2A.1—see section 6A; or
- (c) in relation to a person, other than a child in foster care, who has made a claim for a health care card—see section 6A.

***dependent child***: see subsections 5(2) to (8A).

***deposit money***: see subsection 8(1).

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

***designated NDIS amount***: see subsection 9(1).

***disability expenses maintenance***: see section 10.

***disability support wife pension***: see subsection 17(1).

***Disaster Recovery Allowance*** means Disaster Recovery Allowance under Part 2.23B.

***disposes of assets***: see section 1123.

***disposes of ordinary income***: see sections 1106 to 1111.

***disqualifying accommodation scholarship*** means:

- (a) a scholarship:
  - (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  - (ii) specified by the Secretary under subsection (24) of this section for the purposes of this subparagraph; or
- (b) a Commonwealth Accommodation Scholarship.

***disqualifying education costs scholarship*** means:

- (a) a scholarship:

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- (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  - (ii) specified by the Secretary under subsection (24) of this section for the purposes of this subparagraph; or
- (b) a Commonwealth Education Costs Scholarship.

***distance educator*** has the meaning given by section 5D.

***domestic payment***: see subsection 8(3).

***double orphan***: see sections 993 and 994.

***early school leaver*** means a person who:

- (a) is less than 22 years old; and
- (b) has not completed the final year of secondary school, or an equivalent level of education; and
- (c) is not undertaking full-time study.

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

***educational institution*** means an education institution within the meaning of subsection 3(1) of the *Student Assistance Act 1973*.

***EMEP residence*** has the meaning given by section 917A.

***Employment Department*** means the Department administered by the Minister administering the *Fair Entitlements Guarantee Act 2012*.

***employment income***: see subsections 8(1), (1A) and (1B).

***employment pathway plan*** means:

- (a) a Parenting Payment Employment Pathway Plan; or
- (b) a Youth Allowance Employment Pathway Plan; or
- (c) a Newstart Employment Pathway Plan; or
- (d) a Special Benefit Employment Pathway Plan.

***Employment Secretary*** means the Secretary of the Employment Department.

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**energy supplement**, for a person, means the addition under the energy supplement Module (if any) of the relevant Rate Calculator when working out the rate of the person's social security payment.

**enrolment test day** has the meaning given by subsection 1061ZVDA(5).

**essential medical equipment payment** has the meaning given by section 917A.

**event that gives rise to a person's entitlement to compensation**: see subsection 17(5A).

**exempt assets**: see subsection 11(1).

**exempt funeral investment** has the meaning given by section 19E.

**exempt lump sum**: see subsection 8(11).

**experiencing a personal financial crisis**: see section 19DA.

**external Territory** does not include Norfolk Island, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island.

**Family Assistance Act** means the *A New Tax System (Family Assistance) Act 1999*.

**Family Assistance Administration Act** means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

**family assistance law** has the meaning given by subsection 3(1) of the Family Assistance Administration Act.

**family law affected income stream**: see section 9C.

**family law order** means:

- (a) a parenting order; or
- (b) a family violence order within the meaning of section 4 of the *Family Law Act 1975*; or
- (c) a State child order registered under Subdivision B of Division 13 of Part VII of that Act; or

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(d) an overseas child order registered under Subdivision C of Division 13 of Part VII of that Act.

**family member** has the meaning given by subsections (14) and (15).

**family tax benefit** has the meaning given by the Family Assistance Act.

**fares allowance** means fares allowance under Part 2.26 or under the Social Security (Fares Allowance) Rules 1998, as the case may be.

**financial asset**: see subsection 9(1).

**financial institution** means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

**financial investment**: see subsections 9(1) and (1D).

**financial supplement** means a loan that has been or may be made under a financial supplement contract as defined by section 19AB.

**first available bereavement adjustment payday**: see paragraph 21(2)(c).

**fishing operations**: see subsection 11(1).

**Foreign Affairs Minister** means the Minister administering the *Australian Passports Act 2005*.

**forest operations**: see subsection 11(1).

**former payment type**: see subsection 17(1).

**former refugee**: see subsection 7(1).

**friendly society**: see subsection 9(1).

**FTB child** has the meaning given by section 3 of the Family Assistance Act.

**full-time student load** for a course of study: see subsection (20).



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**full year course** has the meaning given by subsection (10C).

**funeral investment**: see subsection 19E(3).

**gainful employment**: see section 19.

**governing rules** in relation to an income stream: see subsection 9(1).

**Government rent**: see subsections 13(1), (3AC) and (5).

**granny flat interest**: see subsection 12A(2).

**granny flat resident**: see subsection 12A(3).

**green army allowance** means green army allowance paid under the Green Army Programme.

**Green Army Programme** means the program administered by the Commonwealth and known as the Green Army Programme.

**handicapped person**: see section 19.

**health care card** means a card under Division 3 of Part 2A.1.

**higher education institution** means an institution that is a higher education institution for the purposes of the *Student Assistance Act 1973*.

**holder** in relation to a visa: see subsection 7(1).

**Home Affairs Minister** means the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

**home educator** has the meaning given by section 5C.

**home equity conversion agreement**: see subsections 8(1) and (7).

**homeowner**: see subsection 11(4).

**Human Services Department** means the Department administered by the Human Services Minister.

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***Human Services Minister*** means the Minister administering the *Human Services (Centrelink) Act 1997*.

***Human Services Secretary*** means the Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

***illness separated couple***: see subsection 4(7).

***immediate family member***, of a person, means an individual:

- (a) who is a parent or step-parent of the person; or
- (b) who is, or was when the person was under 18 years of age, a legal guardian of the person; or
- (c) who is a grandparent of the person; or
- (d) who is a sibling of the person.

***Impairment Tables*** means the tables determined by an instrument under subsection 26(1).

***in a care situation***: see subsection 13(9).

***income***: see subsection 8(1).

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

***income cut-out amount*** in relation to a person who has received a compensation payment: see subsections 17(1) and (8).

***income from personal exertion***: see subsection 8(1).

***income maintenance period*** has the meaning given in points 1064-F4 and 1064-F5, 1066A-G4 and 1066A-G5, 1067G-H11 and 1067G-H12, 1067L-D5 and 1067L-D6, 1068-G7AG and 1068-G7AH, 1068A-E3 and 1068A-E4 and 1068B-D9 and 1068B-D10.

***income stream***: see subsections 9(1) and (1E).

***income support payment*** means a payment of:

- (a) a social security benefit; or
- (aa) a job search allowance; or

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- (b) a social security pension; or
- (c) a youth training allowance; or
- (d) a service pension; or
- (e) income support supplement; or
- (f) a veteran payment.

***income support supplement*** means income support supplement under Part IIIA of the Veterans' Entitlements Act.

***Income Tax Assessment Act*** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

***income-tested*** in relation to a health care card: see subsection 6A(1).

***income year***: see subsection 11(1).

***independent***:

- (a) in Parts 2.11, 2.11B, 3.4A, 3.4B, 3.5 and 3.7—see section 1067A; and
- (b) in Part 2.24A—see section 1061PL.

***independently of a program of support***: see subsection 16B(2).

***index number***: see subsections 20(1), (4) and (5).

***in disability accommodation***: see subsection (4C).

***industrial action***: see subsections 16(1) and (2).

***ineligible homeowner***: see subsection 13(1).

***in gaol***: see subsection (5).

***initial payment amount*** in relation to a sale leaseback agreement: see subsection 12B(4).

***in residential care***: see subsection (4CA).

***in severe financial hardship***: see subsections 19C(2) and (3) and section 19D.

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***instalment of parental leave pay***: see subsection 8(1).

***instalment period***, in relation to a person, means a period that is determined by the Secretary under section 43 of the *Social Security (Administration) Act 1999* to be an instalment period of the person.

***invalid wife pension***: see subsection 17(1).

***investment***:

- (a) in relation to a superannuation fund or approved deposit fund—see subsection 9(9); or
- (b) in relation to an ATO small superannuation account—see subsection 9(9A).

***investor*** in relation to an ATO small superannuation account: see subsection 9(1).

***involved*** in the commission of a declared overseas terrorist act has the meaning given by subsection 1061PAA(5).

***job search allowance*** means job search allowance under this Act as previously in force.

***joint ownership*** includes ownership as joint tenants or as tenants in common.

***late starting course*** has the meaning given by subsection (10D).

***life expectancy***: see subsection 9(1).

***liquid assets test waiting period***: see sections 549A to 549C, 575A to 575C, 598 and 676.

***listed security***: see subsection 9(1).

***living away from the person's parental home***: see subsection (4D).

***lone parent***: a person is a lone parent on a particular day if, on that day:

- (a) the person is not a member of a couple; and

(b) the person has a dependent child.

**long-term social security recipient**, as at a particular time, means:

- (a) a person who, at that time, has had social security recipient status continuously for the previous 52 weeks; or
- (b) a person:
  - (i) who has not, at that time, had social security recipient status continuously for the previous 52 weeks; and
  - (ii) who had social security recipient status at the beginning of the previous 52 weeks; and
  - (iii) who did not lose social security recipient status for more than 6 weeks of the previous 52 weeks.

Note: See also the definition of **social security recipient status** in this subsection.

**main supporter** of a secondary pupil child: see section 5G.

**maintenance**: see section 10.

**maintenance income**: see section 10.

**major disaster** means a disaster in respect of which a declaration is in force under section 36.

**managed investment**: see subsections 9(1A), (1B) and (1C).

**mature age allowance** means:

- (a) in Part 2.12A—mature age allowance under that Part; or
- (b) in Part 2.12B—mature age allowance under that Part; or
- (c) otherwise—mature age allowance under either of those Parts.

**maximum Part A rate of family tax benefit** is the maximum rate worked out in step 1 of the method statement in clause 3 or 28A of Schedule 1 to the Family Assistance Act.

**medical equipment** has the meaning given by section 917A.

**medical practitioner** means a person registered and licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

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**medicare program** has the same meaning as in the *Human Services (Medicare) Act 1973*.

**member of a couple**: see subsections 4(2), (3), (3A), (6) and (6A).

**member of an ordinary couple with different principal homes**: see subsection 12(2).

**members** of a trade union: see subsection 16(3).

**mental hospital** means premises in relation to which a declaration by the Secretary under section 30 is in force.

**mental hospital patient** means:

- (a) a person who:
  - (i) has been admitted to a mental hospital as a patient of the hospital; and
  - (ii) is shown on the records of the hospital as a patient (other than an outpatient) of the hospital; or
- (b) a person who:
  - (i) is being transferred to a mental hospital; and
  - (ii) will become a mental hospital patient within the meaning of paragraph (a) at that hospital; and
  - (iii) immediately before being transferred, was a mental hospital patient within the meaning of paragraph (a) at another mental hospital.

**military defined benefit income stream**: see subsection 9(1).

**Military Rehabilitation and Compensation Act** or **MRCA** means the *Military Rehabilitation and Compensation Act 2004*.

**Military Rehabilitation and Compensation Act Education and Training Scheme** has the meaning given by the Family Assistance Act.

**minimum pension supplement amount** has the meaning given by subsection 20A(4).

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**National Green Jobs Corps program** means the program administered by the Commonwealth known as the National Green Jobs Corps Program.

**National Green Jobs Corps supplement** means:

- (a) an amount payable under subsection 503C(2) to a person receiving a parenting payment; or
- (b) an amount payable under subsection 556B(2) to a person receiving youth allowance; or
- (c) an amount payable under subsection 645(2) to a person receiving newstart allowance.

**NDIS amount** has the same meaning as in the *National Disability Insurance Scheme Act 2013*.

**NDIS participant** means a participant within the meaning of the *National Disability Insurance Scheme Act 2013*.

**NDIS plan** means a plan, for an NDIS participant, within the meaning of the *National Disability Insurance Scheme Act 2013*.

**NEIS payment** means a payment under the scheme known as the New Enterprise Incentive Scheme.

**new apprentice** means a person who satisfies the requirements determined in an instrument under subsection (7).

**newly arrived resident's waiting period** means:

- (a) a carer payment newly arrived resident's waiting period under sections 201AA and 201AB; or
- (b) a bereavement allowance newly arrived resident's waiting period under sections 322 and 323; or
- (bb) a parenting payment newly arrived resident's waiting period under sections 500X and 500Y; or
- (c) a youth allowance newly arrived resident's waiting period under section 549D; or
- (ca) an austudy payment newly arrived resident's waiting period under section 575D; or

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- (cb) a pensioner education supplement newly arrived resident's waiting period under section 1061PU; or
- (d) a mature age allowance newly arrived resident's waiting period under sections 660YCFA and 660YCFB; or
- (e) a newstart allowance newly arrived resident's waiting period under sections 623A and 623B; or
- (f) a sickness allowance newly arrived resident's waiting period under sections 696B and 696C; or
- (g) a special benefit newly arrived resident's waiting period under sections 732 and 739A; or
- (h) a partner allowance newly arrived resident's waiting period under sections 771HC and 771HNA; or
- (i) a carer allowance newly arrived resident's waiting period under sections 966 and 967; or
- (j) a mobility allowance newly arrived resident's waiting period under sections 1039AA and 1039AB; or
- (k) a seniors health card newly arrived resident's waiting period under section 1061ZH; or
- (ka) a health care card newly arrived resident's waiting period under section 1061ZQ.

**new PRC (temporary) entry permit:** see subsection 7(1).

**nominated visa holder** means a person to whom, in accordance with section 731, Subdivision AA of Division 1 of Part 2.15 applies.

**non-benefit parenting allowance** means non-benefit parenting allowance under this Act as previously in force.

**non-benefit PP (partnered):** see section 18.

**Northern Territory CDEP transition payment** means a Northern Territory CDEP transition payment under Part 2.27.

**not payable** in relation to a social security payment: see subsection (16).

**November earnings average:** see subsections 20(1) and (6).



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***number of advance days*** has the meaning given by section 914F.

***officer*** means a person performing duties, or exercising powers or functions, under or in relation to the social security law.

***old PRC (temporary) entry permit***: see subsection 7(1).

***ordinary income***: see subsection 8(1) and section 1072.

***ordinary waiting period*** means:

- (aa) a parenting payment ordinary waiting period under sections 500WA and 500WB; or
- (ab) a youth allowance ordinary waiting period under sections 549CA and 549CB; or
- (a) a newstart allowance ordinary waiting period under sections 620 and 621; or
- (c) a sickness allowance ordinary waiting period under sections 693 and 694.

***original family law affected income stream***: see section 9C.

***parent***: see subsection 5(1).

***parenting allowance*** means parenting allowance under this Act as previously in force.

***parenting order*** has the meaning given by section 64B of the *Family Law Act 1975*.

***parenting payment***: see section 18.

***parenting plan*** has the meaning given by the *Family Law Act 1975*.

***Part 2.23B major disaster*** means a disaster in respect of which a determination is in force under section 36A.

***Part A rate of family tax benefit*** is the Part A rate of family tax benefit worked out under Part 2 or 3 of Schedule 1 to the Family Assistance Act.

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***partial capacity to work*** has the meaning given by section 16B.

***participating in the pension loans scheme***: see subsection (11).

***participation failure instalment period***:

- (a) in relation to the payability of youth allowance—has the meaning given by subsection 550B(3); and
- (b) in relation to the payability of austudy payment—has the meaning given by subsection 576A(3).

***partner***: see subsection 4(1).

***partner bereavement payment***: see subsection 21(1).

***partnered***: see paragraph 4(11)(a).

***partnered (partner getting benefit)***: see paragraph 4(11)(e).

***partnered (partner getting neither pension nor benefit)***: see paragraph 4(11)(b).

***partnered (partner getting pension)***: see paragraph 4(11)(d).

***partnered (partner getting pension or benefit)***: see paragraph 4(11)(c).

***partnered (partner in gaol)***: see paragraph 4(11)(f).

***partner of a non-independent YA recipient*** means a person who is a member of a couple the other member of which is receiving a youth allowance and is not independent within the meaning of Part 3.5.

***payday***, in relation to a person, means:

- (a) if the person is receiving a social security pension, a social security benefit, a carer allowance, a double orphan pension or a pensioner education supplement—a day on which an instalment of the pension, benefit, supplement or allowance is, or would normally be, paid to the person; or

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- (b) if the person is receiving a service pension, income support supplement or a veteran payment—a day on which an instalment of the service pension, income support supplement or veteran payment is, or would normally be, paid to the person under the Veterans' Entitlements Act.

Note: Subsection 43(3E) of the Administration Act affects when an instalment is, or would normally be, paid to a person if the Secretary has determined under subsection 43(3A) of that Act that the person is to be paid the total amount of a social security periodic payment relating to an instalment period in 2 payments.

**PBBP employment income** (short for pension bonus bereavement payment employment income) has the meaning given by section 93WC.

**pension age** has the meaning given by subsections (5A), (5B), (5C) and (5D).

**pension bonus** means pension bonus under Part 2.2A (and does not include a pension bonus bereavement payment under Division 12 of that Part).

**pension bonus bereavement payment** means a pension bonus bereavement payment under Division 12 of Part 2.2A.

**pensioner concession card** means a card under Division 1 of Part 2A.1.

**pensioner couple**: see subsection 9(1).

**pension payday** means:

- (a) the Thursday that falls on 4 July 1991; and
- (b) each succeeding alternate Thursday up to, and including, Thursday 24 June 1999.

**pension period** means the instalment period of an instalment of a social security pension.

**pension PP (single)**: see section 18.

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***pension supplement amount***, for a person, means the amount added under the pension supplement Module (if any) of the Rate Calculator when working out the rate of the person's social security payment.

***pension supplement basic amount*** has the meaning given by subsection 20A(5).

***pension year***: see subsections 11(10) and (10AAA).

***periodic payments period***: see subsection 17(1).

***permanent visa***: see subsection 7(1).

***person with medical needs*** has the meaning given by section 917A.

***physical impairment*** includes sensory impairment.

***physically present in a remote area***: see subsection 14(2).

***potential compensation payer***: see subsection 17(1).

***prescribed educational scheme***: see subsection 5(1).

***prescribed student child***: see subsection 5(11).

***primary FLA income stream***: see section 9C.

***primary producer***: see subsection 11(1).

***primary production***: see subsection 11(1).

***primary victim*** of a declared overseas terrorist act has the meaning given by subsection 1061PAA(2).

***principal beneficiary***, of a special disability trust, has the meaning given by subsection 1209M(1).

***principal carer*** of a child: see subsections 5(15) to (24).

***principal home***: see section 11A.

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***program of assistance*** means:

- (a) a program approved under section 28A; or
- (b) a program offered as part of the competitive employment training and placement services as defined by section 7 of the *Disability Services Act 1986*.

***prohibited relationship*** has the meaning given by subsections 4(12) and (13).

***proprietary company*** has the same meaning as in the *Corporations Act 2001*.

***protected information*** means:

- (a) information about a person that:
  - (i) was obtained by an officer under the social security law; and
  - (ii) is or was held in the records of the Department or the Human Services Department; or
- (b) information about a person obtained by an officer under the family assistance law that is or was held in the records of the Australian Taxation Office; or
- (baa) information about a person that was held in the records of the Commonwealth Services Delivery Agency (within the meaning of the *Commonwealth Services Delivery Agency Act 1997* as in force before 1 July 2011); or
- (bab) information about a person that:
  - (i) was obtained by an officer under the family assistance law; and
  - (ii) was held in the records of Medicare Australia (within the meaning of the *Medicare Australia Act 1973* as in force before 1 July 2011); or
- (ba) information about a person obtained by an officer under the family assistance law that was held in the records of the Health Insurance Commission; or
- (c) information to the effect that there is no information about a person held in the records of one or more of the following:
  - (i) the Department;

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- (ii) the Human Services Department;
- (iii) the Australian Taxation Office.

***protected SCV holder***: see subsections 7(2A), (2B), (2C) and (2D).

***psychiatric confinement***: see subsections (8) and (9).

***public unit trust***: see subsection 9(1).

***purchase price*** in relation to an income stream: see subsection 9(1).

***qualification period***, for a student start-up loan, has the meaning given by section 19AA.

***qualifying Australian residence***: see subsection 7(5).

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

***quarterly energy supplement*** means the separate social security payment described in Division 2 of Part 2.18A.

***quarterly pension supplement*** means the separate social security payment described in subsection 1061VA(1).

***reasonable security of tenure***: see subsection 11A(10).

***receive*** has the meaning given by subsections (2), (4), (4A) and (4AA).

***receives compensation***: see subsection 17(5).

***refundable deposit***: see subsection 11(1).

***refundable deposit balance***: see subsection 11(1).

***registered and active foster carer*** has the meaning given by section 5B.

***registered charity*** means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as

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the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

**registered parenting plan** has the meaning given by the *Family Law Act 1975*.

**registered public benevolent institution** means an institution that is:

- (a) a registered charity; and
- (b) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 14 of the table in subsection 25-5(5) of that Act.

**registered religious institution** means an institution that is:

- (a) a registered charity; and
- (b) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 4 of the table in subsection 25-5(5) of that Act.

**regular care child** has the meaning given by subsection 3(1) of the Family Assistance Act.

**rehabilitation program** means:

- (a) a rehabilitation program under Part III of the *Disability Services Act 1986*; or
- (b) a follow-up program in relation to which a determination by the Secretary under section 31 is in force.

**relationship child** has the meaning given by subsection 5(25).

**relationship parent** has the meaning given by subsection 5(25).

**relative (other than a parent)**: see section 5E.

**relevant AWOTE**: see subsection 16A(1).

**relevant minimum wage**, for an employee, means the minimum wage payable to the employee under law.

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**relevant number** in relation to an income stream: see subsection 9(1).

**remote area**: see subsection 14(1).

**rent**: see section 13.

**rent assistance child** has the meaning given by subsection 3(1) of the Family Assistance Act.

**Reserves** means:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

**residing in a nursing home**: see subsection 13(8).

**residual capital value** in relation to an income stream: see subsections 9(1) and (10).

**respite care couple**: see subsection 4(8).

**retirement savings account**: see subsection 9(1).

**retirement village**: see subsections 12(3) and (4).

**retirement village resident**: see subsection 12(5).

**return**:

- (a) in relation to an ATO small superannuation account—see subsection 9(1); or
- (b) in relation to any other investment in the nature of superannuation—see subsection 9(1).

**sale leaseback agreement**: see subsections 12B(2) and (3).

**sale leaseback home**: see subsection 12B(9).

**sale leaseback resident**: see subsections 12B(10) and (11).

**seasonal work**: see subsections 16A(1), (1A) and (2).



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

**seasonal work preclusion period:** see subsections 16A(3) and (4).

**secondary FLA income stream:** see sections 9C and 9D.

**secondary pupil child:** see section 5F.

**secondary victim** of a declared overseas terrorist act has the meaning given by subsection 1061PAA(3).

**Secretary** means:

- (a) except in relation to Subdivision D of Division 2 of Part 4A of the Administration Act—the Secretary of the Department; or
- (b) in relation to Subdivision D of Division 2 of Part 4A of the Administration Act:
  - (i) in the review of a decision made by the Chief Executive Centrelink or a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*) as a delegate of the Secretary of the Department or of the Secretary of the Employment Department—the Chief Executive Centrelink; or
  - (iii) in the review of any other decision—the Secretary of the Department.

**security notice** means a notice under section 38N.

**seniors health card** means a card under Division 2 of Part 2A.1.

**served the waiting period:** see subsections (10) and (10A).

**service payday** means a pension payday within the meaning of the Veterans' Entitlements Act.

**service pension** means:

- (a) an age service pension under Part III of the Veterans' Entitlements Act; or
- (b) an invalidity service pension under Part III of the Veterans' Entitlements Act; or

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- (c) a partner service pension under Part III of the Veterans' Entitlements Act; or
- (d) a carer service pension under Part III of the Veterans' Entitlements Act.

***severely disabled***: see subsection (4B).

***sheltered employment***: see section 19.

***short course*** means a course of education that lasts for 30 weeks or less including vacations.

***sibling***, of a person, includes a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother or stepsister of the person, but does not include a foster-brother or foster-sister of the person.

***single person sharing accommodation***: see section 5A.

***social security benefit*** means:

- (aa) widow allowance; or
- (aab) youth allowance; or
- (aac) austudy payment; or
  - (a) newstart allowance; or
  - (c) sickness allowance; or
  - (d) special benefit; or
  - (e) partner allowance; or
- (ea) a mature age allowance under Part 2.12B; or
- (f) benefit PP (partnered); or
- (g) parenting allowance (other than non-benefit allowance).

***social security entitlement*** means:

- (a) an age pension; or
- (b) a disability support pension; or
- (c) a wife pension; or
- (d) a carer payment; or
- (e) a parenting payment; or
- (f) a widow B pension; or

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- (g) a widow allowance; or
- (ha) a youth allowance; or
- (hb) an austudy payment; or
- (i) a job search allowance; or
- (j) a newstart allowance; or
- (k) a mature age allowance; or
- (l) a mature age partner allowance.

***Social Security (Fares Allowance) Rules 1998***, in relation to a time after the commencement of Schedule 1 to the *Youth Allowance Consolidation Act 2000*, means those Rules as they continue in force under clause 126 of Schedule 1A.

***social security law***: see subsections (17) and (18).

***social security payment*** means:

- (a) a social security pension; or
- (b) a social security benefit; or
- (c) an allowance under this Act; or
- (e) any other kind of payment under Chapter 2 of this Act; or
- (ea) a payment under Chapter 2AA of this Act (Student start-up loans); or
- (f) a pension, benefit or allowance under the 1947 Act.

***social security pension*** means:

- (a) an age pension; or
- (b) a disability support pension; or
- (c) a wife pension; or
- (d) a carer payment; or
- (e) a pension PP (single); or
- (ea) a sole parent pension; or
- (f) a bereavement allowance; or
- (g) a widow B pension; or
- (i) a mature age partner allowance; or
- (k) a special needs pension.

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***social security recipient status***, for the purposes of the definition of ***long-term social security recipient***, means:

- (a) in the case of a person who is receiving a youth allowance, an austudy payment or newstart allowance—status as a recipient of a social security pension, a social security benefit, a youth training allowance, an ABSTUDY allowance, an AUSTUDY allowance, a service pension or income support supplement; or
- (b) in any other case—status as a recipient of a social security pension, a social security benefit, a youth training allowance, a service pension, income support supplement or a veteran payment;

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

***sole parent pension*** means sole parent pension under this Act as previously in force.

***special category visa***: see subsection 7(1).

***special disability trust*** has the meaning given by section 1209L.

***special employment advance qualifying entitlement*** means:

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

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***special needs disability support wife pension***: see subsection 17(1).

***special needs invalid wife pension***: see subsection 17(1).

***special residence***: see subsection 12C(2).

***special resident***: see subsection 12C(3).

***step-child***: see subsection 5(1).

***step-parent***: see subsection 5(1).

***student child***: see subsection 5(1A).

***Student Financial Supplement Scheme*** means:

- (a) the scheme constituted by Part 4A of the *Student Assistance Act 1973*; or
- (b) the scheme established under Chapter 2B of this Act.

***student income bank***: see subsection 8(1).

***student start-up loan*** has the meaning given by section 19AA.

***study*** includes vocational training.

***subject to a seasonal work preclusion period***: see subsection 16A(11).

***subject to participation requirements***: a person is subject to participation requirements if, because of paragraph 500(1)(c) or (1)(ca), the person cannot be qualified for parenting payment unless the person meets any participation requirements that apply to the person under section 500A.

***superannuation benefit***: see subsection 9(1).

***superannuation contributions surcharge***: see subsection 9(1).

***superannuation fund***: see subsection 9(1).

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**TAFE institution** means an institution that is a technical and further education institution for the purposes of the *Student Assistance Act 1973*.

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

**tax-exempt pension supplement** has the meaning given by subsection 20A(6).

**tax file number** has the same meaning as in Part VA of the Income Tax Assessment Act.

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

Note: Section 6 of the Income Tax Assessment Act defines **year of income** as the financial year (1 July to 30 June) or, if another accounting period has been adopted under section 18 of that Act instead of the financial year, that accounting period.

**temporarily separated couple**: see subsection 4(9A).

**terrorist act** has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

**TFN declaration** has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.

**this Act** means this Act as originally enacted or as amended and in force at any time.

**trade union**: see subsection 16(1).

**training supplement** means:

- (a) an amount payable under subsection 503B(2) to a person receiving a parenting payment; or
- (b) an amount payable under subsection 644AAC(2) to a person receiving newstart allowance.

**transfer day**, in relation to a transferee to a social security pension or benefit, has the same meaning as in the Administration Act.

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**transferee**, in relation to a social security pension or benefit, has the same meaning as in the Administration Act.

**transitional DSP applicant** means a person:

- (a) who made a claim for a disability support pension on or after 11 May 2005 and before 1 July 2006; and
- (b) to whom, on or after 1 July 2006, a notice under subsection 63(2) or (4) of the Administration Act is given; and
- (c) who is required under the notice to undertake a specified activity for the purpose of reviewing his or her capacity to perform work.

**transition day**, for a person affected by Part 2.27 (Northern Territory CDEP transition payment), has the meaning given by section 1061ZAAM.

**treating health professional**: see section 38F.

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

**undertaking full-time study** has the meaning given in section 541B.

**unemployment**: see subsection 16(1).

**unlisted public security**: see subsection 9(1).

**unrealisable asset**: see subsections 11(12) and (13).

**utilities allowance** means utilities allowance under Part 2.25A.

**value of a charge or encumbrance on an asset**: see subsection 11(3).

**value of a liability**: see subsection 11(3A).

**value of a particular asset**: see subsection 11(2).

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**veteran payment** means a veteran payment made under an instrument made under section 45SB of the *Veterans' Entitlements Act 1986*.

**Veterans' Children Education Scheme** has the meaning given by the Family Assistance Act.

**Veterans' Entitlements Act** or **VEA** means the *Veterans' Entitlements Act 1986*.

**VET provider** means a registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011*) that provides vocational education and training.

**visa**: see subsection 7(1).

**vocational training**: see section 19.

**waiting period** means:

- (aa) a carer payment newly arrived resident's waiting period under sections 201AA and 201AB; or
- (ab) a bereavement allowance newly arrived resident's waiting period under sections 322 and 323; or
- (ac) a parenting payment ordinary waiting period under sections 500WA and 500WB; or
- (aca) a parenting payment newly arrived resident's waiting period under sections 500X and 500Y; or
- (ad) a youth allowance ordinary waiting period under sections 549CA and 549CB; or
- (ae) a youth allowance newly arrived resident's waiting period under sections 549D and 549E; or
- (b) newstart allowance ordinary waiting period under sections 620 and 621; or
- (ca) a newstart allowance newly arrived resident's waiting period under sections 623A and 623B; or
- (ff) a mature age allowance newly arrived resident's waiting period under sections 660YCFA and 660YCFB; or



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- (g) a sickness allowance ordinary waiting period under sections 693 and 694; or
- (k) a sickness allowance newly arrived resident's waiting period under sections 696B and 696C; or
- (ka) a special benefit newly arrived resident's waiting period under sections 732 and 739A; or
- (kb) a partner allowance newly arrived resident's waiting period under sections 771HC and 771HNA; or
- (l) a carer allowance newly arrived resident's waiting period under sections 966 and 967; or
- (n) a mobility allowance newly arrived resident's waiting period under sections 1039AA and 1039AB; or
- (o) a seniors health card newly arrived resident's waiting period under section 1061ZA.

***working credit participant***: see subsection 8(1).

***young person***: see subsection 5(1B).

***youth allowance participation failure*** has the meaning given by section 550.

***youth allowance payment period*** means a period under section 43 of the Administration Act for which youth allowance is or may be payable.

***youth training allowance*** means a youth training allowance under Part 8 of the *Student Assistance Act 1973* as previously in force.

(1A) Where:

- (a) a provision of this Act refers to:
    - (i) the greater or greatest, or the higher or highest; or
    - (ii) the lesser or least, or the lower or lowest;of 2 or more amounts; and
  - (b) the amounts are equal;
- the provision is taken to refer to one only of the amounts.

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(1B) Where:

- (a) a provision of this Act refers to the greatest or highest of 3 or more amounts; and
- (b) 2 or more (but not all) of the amounts are equal and exceed the other amount or other amounts;

the provision is taken to refer to one only of those equal amounts.

(1C) Where:

- (a) a provision of this Act refers to the least or lowest of 3 or more amounts; and
- (b) 2 or more (but not all) of the amounts are equal and are less than the other amount or other amounts;

the provision is taken to refer to one only of those equal amounts.

(1D) If, on a day that is on or after 20 September 2004:

- (a) adjusted disability pension (within the meaning of section 118NA of the Veterans' Entitlements Act) is payable to a person or a person's partner; and
- (b) apart from this subsection, a social security pension or social security benefit is not payable to the person, but only because the rate of the pension or benefit would be nil; and
- (c) the rate of the social security pension or social security benefit would not be nil if the 2 assumptions (that relate to the adjusted disability pension) referred to in step 2 of method statement 1 in subsection 118NC(1) of the Veterans' Entitlements Act were made;

then, despite any other provision of this Act:

- (e) the social security pension or social security benefit is taken to be payable to the person on that day; and
- (f) the person is taken to be receiving the social security pension or social security benefit on that day.

**Note:** This subsection overrides provisions of this Act (for example, sections 44 and 98) that provide that a social security pension or social security benefit is not payable where the rate of the pension or benefit would be nil, but only where the rate would not be nil if the 2 assumptions referred to in paragraph (c) were made.

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- (2) For the purposes of this Act (other than section 735), a person is taken to be **receiving** a payment under this Act from the earliest day on which the payment is payable to the person even if the first instalment of the payment is not paid until a later day.
- (4) For the purposes of this Act, a person is taken to be **receiving** a social security payment until the latest day on which the payment is payable to the person even if the last instalment of the payment is not paid until a later day.
- (4A) Despite subsection (4), if:
  - (a) a person is receiving a social security pension or social security benefit; and
  - (b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in Chapter 3; and
  - (d) the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and
  - (e) the person would, but for this subsection, cease to be receiving the pension or benefit on and from a day (the **cessation day**):
    - (i) if paragraph (d) applies to the person—because of the employment income of the person (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person); or
    - (ii) if paragraph (d) applies to the partner—because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner); and
  - (f) but for the employment income, or the combined income, referred to in paragraph (e), the pension or benefit would continue to be payable to the person on and from the cessation day; and
  - (g) the person:

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- (i) in the case of a woman who would, but for this subsection, cease to be receiving wife pension because of the employment income, or the combined income, referred to in subparagraph (e)(ii)—continues, but for that employment income or combined income, to be qualified for wife pension on and from the cessation day; and
- (ii) in any other case—continues to be qualified for the pension or benefit on and from the cessation day;

then, for the purposes only of the provisions of this Act that are specified in subsection (4AA), the person is taken to be **receiving** the pension or benefit until:

- (h) 12 weeks after the end of the instalment period in which the cessation day occurs; or
- (j) the day the pension or benefit would cease to be payable to the person for a reason other than the employment income, or the combined income, referred to in paragraph (e); or
- (k) the day the person ceases to be qualified as mentioned in paragraph (g);

whichever happens first.

(4AA) For the purposes of subsection (4A), the following are the specified provisions of this Act:

- (a) provisions in Chapter 2 that provide for an increase in a person's rate of payment by an amount to be known as the approved program of work supplement;
- (aa) provisions in Chapter 2 that provide for an increase in a person's rate of payment by an amount to be known as the training supplement;
- (ab) provisions in Chapter 2 that provide for an increase in a person's rate of payment by a National Green Jobs Corps supplement;
- (b) section 1048;
- (c) section 1061PJ;
- (d) section 1061Q;
- (e) subsection 1061ZK(5);

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- (f) 1070W;
  - (g) 1070X;
  - (h) provisions within the income test module of a rate calculator in Chapter 3 prescribing the partner income free area or the partner income excess for a person.
- (4B) For the purposes of this Act, a person is ***severely disabled*** if:
- (a) a physical impairment, a psychiatric impairment, an intellectual impairment, or 2 or all of such impairments, of the person make the person, without taking into account any other factor, totally unable:
    - (i) to work for at least the next 2 years; and
    - (ii) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or
  - (b) the person is permanently blind.
- (4C) For the purposes of this Act, a person is ***in disability accommodation*** if:
- (a) the person:
    - (i) is in accommodation for people with disabilities; or
    - (ii) is:
      - (A) in accommodation that is not the principal home of the parents or a parent of the person; and
      - (B) receiving accommodation support services for people with disabilities; and
  - (b) the accommodation, or services, for people with disabilities are funded wholly or partly by the Commonwealth, a State or a Territory.
- (4CA) For the purposes of this Act, a person is ***in residential care*** if the person is being provided with residential care through an aged care service conducted by an approved provider.
- (4CB) In subsection (4CA), the following terms have the same meanings as in the *Aged Care Act 1997*:
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*aged care service*

*approved provider*

*provide*

*residential care*

- (4D) For the purposes of this Act, a person is ***living away from the person's parental home*** if the person is living away from:
- (a) where the person's parents have the same principal home—that home; or
  - (b) where the person has only one parent—the principal home of that parent; or
  - (c) where the person's parents have different principal homes—all of those homes.
- (5) For the purposes of this Act, a person is ***in gaol*** if:
- (a) the person is being lawfully detained (in prison or elsewhere) while under sentence for conviction of an offence and not on release on parole or licence; or
  - (b) the person is undergoing a period of custody pending trial or sentencing for an offence.

*Pension age*

- (5A) A man born during the period specified in column 2 of an item in the following table reaches ***pension age*** when he turns the age specified in column 3 of that item.

Table—Pension age for men		
Column 1 Item	Column 2 Period during which man was born	Column 3 Pension age
1	On or before 30 June 1952	65 years
2	1 July 1952 to 31 December 1953	65 years and 6 months
3	1 January 1954 to 30 June 1955	66 years
4	1 July 1955 to 31 December 1956	66 years and 6 months

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**Table—Pension age for men**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Period during which man was born</b>	<b>Pension age</b>
5	On or after 1 January 1957	67 years

(5B) A woman born before 1 July 1935 reaches *pension age* when she turns 60.

(5C) A woman born within the period specified in column 2 of an item in the following Table reaches *pension age* when she turns the age specified in column 3 of that item.

**Table—Pension age for women**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item no.</b>	<b>Period within which woman was born (both dates inclusive)</b>	<b>Pension age</b>
1.	From 1 July 1935 to 31 December 1936	60 years and 6 months
2.	From 1 January 1937 to 30 June 1938	61 years
3.	From 1 July 1938 to 31 December 1939	61 years and 6 months
4.	From 1 January 1940 to 30 June 1941	62 years
5.	From 1 July 1941 to 31 December 1942	62 years and 6 months
6.	From 1 January 1943 to 30 June 1944	63 years
7.	From 1 July 1944 to 31 December 1945	63 years and 6 months
8.	From 1 January 1946 to 30 June 1947	64 years
9.	From 1 July 1947 to 31 December 1948	64 years and 6 months

(5D) A woman born during the period specified in column 2 of an item in the following table reaches *pension age* when she turns the age specified in column 3 of that item.

**Table—Pension age for women**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Period during which woman was born</b>	<b>Pension age</b>

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Table—Pension age for women		
Column 1	Column 2	Column 3
Item	Period during which woman was born	Pension age
1	1 January 1949 to 30 June 1952	65 years
2	1 July 1952 to 31 December 1953	65 years and 6 months
3	1 January 1954 to 30 June 1955	66 years
4	1 July 1955 to 31 December 1956	66 years and 6 months
5	On or after 1 January 1957	67 years

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*New apprentice*

- (7) The Minister may, by legislative instrument, determine requirements for the purposes of the definition of ***new apprentice*** in subsection (1).

*Psychiatric confinement*

- (8) Subject to subsection (9), ***psychiatric confinement*** in relation to a person includes confinement in:
- (a) a psychiatric section of a hospital; and
  - (b) any other place where persons with psychiatric disabilities are, from time to time, confined.
- (9) The confinement of a person in a psychiatric institution during a period when the person is undertaking a course of rehabilitation is not to be taken to be ***psychiatric confinement***.

*Served the waiting period*

- (10) If a person is subject to an ordinary waiting period for a social security benefit or social security pension, the person is to be taken to have ***served the waiting period*** if, and only if:
- (a) the waiting period has ended; and
  - (b) the person was, throughout the waiting period, qualified for the social security benefit.

Note: For ***ordinary waiting period*** see subsection (1).



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(10A) If a person is subject to a liquid assets test waiting period for a social security benefit, the person is to be taken to have ***served the waiting period*** if, and only if:

- (a) the waiting period has ended; and
- (b) the person was, apart from the liquid assets test provision concerned, qualified for the benefit throughout so much of the waiting period as occurs after the claim for the benefit was made.

(10B) For the purposes of subsection (10A), the liquid assets test provisions are sections 549A to 549C, 575A to 575C, 598 and 676.

(10C) For the purposes of this Act:

***full year course*** means:

- (a) a course of education that starts:
  - (i) on 1 January; or
  - (ii) after 1 January and before 1 April; or
  - (iii) on 1 July; or
  - (iv) after 1 July and before 1 August;and lasts for more than 30 weeks (including vacations); or
- (b) an articulated short course sequence whose first course starts:
  - (i) on 1 January; or
  - (ii) after 1 January and before 1 April; or
  - (iii) on 1 July; or
  - (iv) after 1 July and before 1 August;and the length of whose courses (including vacations) add up to more than 30 weeks.

(10D) For the purposes of this Act:

***late starting course*** means:

- (a) a course of education that starts:
  - (i) on 1 April; or
  - (ii) after 1 April and before 1 July; or
  - (iii) after 31 July;

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- and lasts for more than 30 weeks (including vacations); or
- (b) an articulated short course sequence whose first course starts:
  - (i) on 1 April; or
  - (ii) after 1 April and before 1 July; or
  - (iii) after 31 July;and the length of whose courses (including vacations) add up to more than 30 weeks.

(10E) In subsections (10C) and (10D):

***articulated short course sequence*** means a sequence of 2 or more articulated short courses that:

- (a) is undertaken by a person during a 12 month period; and
- (b) begins on the first day of the first course in the sequence; and
- (c) ends at the end of the last day of the last course in the sequence.

(10F) For the purposes of subsection (10E), if:

- (a) a person undertakes at least 2 short courses of education; and
- (b) the person starts the second short course and (if applicable) each subsequent short course:
  - (i) within 28 days after completing the immediately preceding short course; or
  - (ii) within such longer period after completing the immediately preceding short course as the Secretary approves on being satisfied that this was due to circumstances beyond the person's control; and
- (c) each of the short courses is an approved course of education or study within the meaning of paragraph 1061PB(1)(b); and
- (d) the person may, as a result of undertaking each of the short courses, receive an accreditation or an award from an educational institution for another approved course of education or study within the meaning of paragraph 1061PB(1)(b);

each of the short courses is an ***articulated short course***.

*Participation in pension loans scheme*

- (11) For the purposes of this Act, a person is ***participating in the pension loans scheme*** if:
- (a) the person has made a request to participate in the scheme under section 1136; and
  - (b) because of the request, the rate of the pension or allowance payable to the person is the rate covered by paragraph 1134(1)(e); and
  - (c) the person owes a debt to the Commonwealth under section 1135.
- (12) If:
- (a) section 237 of the Administration Act applies to a notice of a decision under this Act; or
  - (b) sections 28A and 29 of the *Acts Interpretation Act 1901* (the ***Interpretation Act***) apply to a notice under this Act;
- section 237 of the Administration Act, or sections 28A and 29 of the Interpretation Act, as the case may be, apply to the notice even if the Secretary is satisfied that the person did not actually receive the notice.
- (14) For the purposes of this Act other than Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a ***family member*** in relation to a person (the ***relevant person***):
- (a) the partner or a parent of the relevant person;
  - (b) a sister, brother or child of the relevant person;
  - (c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as one of the relevant person's relations described in paragraph (a) or (b).
- Note: For parent see subsection 5(1), paragraph (a) of the definition of ***parent***.
- (15) For the purposes of Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a ***family member*** in relation to a person (the ***relevant person***):
- (a) a parent of the relevant person;

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- (b) a child of a parent of the relevant person who is wholly or substantially dependent on the parent, being either a child under 16 or a child who:
  - (i) is at least 16 years of age but has not yet attained the maximum age for youth allowance under section 543B (disregarding subsection 543B(2)); and
  - (ii) is not independent (see section 1067A); and
  - (iii) is not receiving a pension, benefit or allowance referred to in Module L of the Rate Calculator.

Note: For parent see subsection 5(1), paragraph (b) of the definition of *parent*.

- (16) A reference in this Act to a social security payment being not payable includes a reference to its being not payable under the Administration Act.
- (17) A reference in this Act to the social security law is a reference to this Act, the Administration Act and any other Act that is expressed to form part of the social security law.
- (18) A reference in this Act to a provision of the social security law is a reference to a provision of this Act, the Administration Act or any other Act that is expressed to form part of the social security law.
- (20) For the purposes of this Act, a **full-time student load**, for a course of study, is the study load represented by units of study, forming part of the course, that have a total EFTSL value of one EFTSL.
- (21) Expressions used in subsection (20) that are defined in the *Higher Education Support Act 2003* have in that subsection, unless the contrary intention appears, the same meaning as in that Act.

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- (22) For the purposes of this Act, if one person is the relationship child of another person, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.
- (23) Subsection (22) does not apply for the purposes of determining when a person and his or her partner are within a prohibited relationship under subsection 4(12).

*Indigenous student assistance scholarships*

- (24) The Secretary may, by legislative instrument, specify a scholarship for the purposes of:
- (a) subparagraph (a)(ii) of the definition of ***disqualifying accommodation scholarship*** in subsection (1); or
  - (b) subparagraph (a)(ii) of the definition of ***disqualifying education costs scholarship*** in subsection (1).

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## Part 1.3—Determinations having interpretative effect

### 24 Person may be treated as not being a member of a couple (subsection 4(2))

(1) Where:

- (a) a person is legally married to another person; and
- (b) the person is not living separately and apart from the other person on a permanent or indefinite basis; and
- (c) the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

(1A) If:

- (a) a relationship between a person and another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- (b) the person is not living separately and apart from the other person on a permanent or indefinite basis; and
- (c) the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

(2) Where:

- (a) a person has a relationship with another person, whether of the same sex or a different sex (the *partner*); and
- (b) the person is not legally married to the partner; and

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- (c) the relationship between the person and the partner is a de facto relationship; and
  - (d) the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;
- the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.
- (3) A determination made under subsection (1), (1A) or (2) is not a legislative instrument.

**24A Approved scholarship**

- (1) The Minister may determine in writing that a scholarship, or a class of scholarships:
  - (a) awarded outside Australia; and
  - (b) not intended to be used wholly or partly to assist recipients to meet living expenses;is an approved scholarship, or a class of approved scholarships, as the case may be, for the purposes of this Act.
- (2) The Minister must cause a copy of a determination to be laid before each House of the Parliament within 15 sitting days of that House after the determination is made.

**25 Refugee visas**

If:

- (a) after the commencement of this section, a class of permanent visas (other than a class referred to in the Table in subsection 7(6B)) is prescribed by regulations made for the purposes of section 31 of the *Migration Act 1958*; and
- (b) the Minister is of the view that a person holding a visa of that class should be regarded as a refugee for the purposes of section 7;

the Minister may, by legislative instrument, declare that class of visas to be a class of visas for the purposes of subparagraph 7(6B)(c)(iii).

## Section 26

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### 26 Impairment Tables and rules for applying them

#### *Impairment Tables*

- (1) The Minister may, by legislative instrument, determine tables relating to the assessment of work-related impairment for disability support pension.
- (2) An instrument under subsection (1) may contain such ancillary or incidental provisions relating to those tables as the Minister considers appropriate.

#### *Rules for applying Impairment Tables*

- (3) The Minister may, in an instrument under subsection (1), determine rules that are to be complied with in applying the tables referred to in subsection (1) and the provisions referred to in subsection (2).
- (4) An instrument under subsection (1) may contain such ancillary or incidental provisions relating to those rules as the Minister considers appropriate.

### 27 Application of Impairment Tables

#### *Claims for disability support pension*

- (1) If a person makes a claim, or is taken to have made a claim, for disability support pension, the Secretary, in determining the claim, must apply the instrument in force under section 26 on the day the claim was made or taken to have been made.

Note: Sections 12, 13 and 15 of the Administration Act and clause 4 of Schedule 2 to that Act deal with claims for disability support pension that are taken to have been made.

- (2) If:
  - (a) the Secretary makes a decision (the ***original decision***) relating to a claim referred to in subsection (1); and



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(b) the Secretary or the AAT is reviewing the original decision or a later decision arising out of the original decision;  
the Secretary or the AAT, in making a decision on the review, must apply the instrument in force under section 26 on the day the claim was made or taken to have been made.

Note: The effect of this subsection is that any change to the instrument under section 26 from the making of the claim to the making of a decision on the review must be disregarded.

*Review of qualification for disability support pension*

(3) If:  
(a) a person is receiving disability support pension; and  
(b) the Secretary gives the person a notice (the **assessment notice**) under subsection 63(2) or (4) of the Administration Act in relation to assessing the person's qualification for that pension;  
the Secretary, in assessing the person's qualification for that pension, must apply the instrument in force under section 26 of this Act on the day the assessment notice was given.

(4) If:  
(a) after assessing the person's qualification for that pension, the Secretary makes a determination under section 80 of the Administration Act in relation to that pension; and  
(b) the Secretary or the AAT is reviewing that determination or a later decision arising out of that determination;  
the Secretary or the AAT, in making a decision on the review, must apply the instrument in force under section 26 of this Act on the day the assessment notice was given.

Note: The effect of this subsection is that any change to the instrument under section 26 from the giving of the assessment notice to the making of a decision on the review must be disregarded.

## Section 28

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### **28 Approved programs of work for income support payment**

- (1) The Secretary may declare, in writing, particular programs of work to be approved programs of work for income support payment.
- (2) The Secretary must not declare a particular program of work to be an approved program of work for income support payment if persons participating in the program would be required to work:
  - (a) if the persons are under 21 and subsection (4) does not apply to them—more than 24 hours in each fortnight of their respective participation in the program; and
  - (b) if the persons are not under 21 and subsection (4) does not apply to them—more than 30 hours for each fortnight of their respective participation in the program; and
  - (c) if subsection (4) applies to the persons—more than 50 hours for each fortnight of their respective participation in the program.
- (3) For the purposes of subsection (2), each fortnight of participation in the program is a fortnight in respect of which the person receives a social security payment.
- (4) This subsection applies to a person if:
  - (a) the person is under 60; and
  - (b) the Secretary determines that the person is a person to whom this subsection applies.
- (5) The Secretary may determine either one or both of the following by legislative instrument:
  - (a) matters that the Secretary is to take into account in making a determination under paragraph (4)(b);
  - (b) matters that the Secretary is not to take into account in making a determination under paragraph (4)(b).
- (6) A determination under subsection (5) does not, to the extent that it is a determination under paragraph (5)(a), limit the matters that the Secretary may take into account in making a determination under paragraph (4)(b).

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Section 28A

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**28A Approval of programs of assistance**

The Secretary may, by writing, approve:

- (a) a course of vocational training; or
  - (b) a labour market program; or
  - (c) another course or program;
- (other than a rehabilitation program) as a program of assistance for the purposes of this Act.

**28B Approved training courses for training supplement**

- (1) The Secretary may approve a training course for training supplement for a person if:
  - (a) subsection (2) applies in relation to the person; and
  - (b) subsection (3) applies in relation to the course; and
  - (c) the Secretary is satisfied that the person will meet the requirements set out in paragraph (4)(a) or (b).
- (2) This subsection applies in relation to the person if:
  - (a) the person has not completed the final year of secondary school or an equivalent level of education; or
  - (b) the person:
    - (i) has been awarded a VET qualification accredited at Certificate I, Certificate II, Certificate III or Certificate IV level in the Australian Qualifications Framework; and
    - (ii) is not studying for, and has not been awarded, a qualification accredited at diploma level or higher in the Australian Qualifications Framework.
- (3) This subsection applies in relation to the course if:
  - (a) the course lasts not more than 12 months; and
  - (b) the course:
    - (i) is accredited at Certificate I, Certificate II, Certificate III or Certificate IV level in the Australian Qualifications Framework; or

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- (ii) in the Secretary's opinion, is equivalent to a course accredited at any of those levels; and
- (c) in a case where paragraph (2)(b) applies in relation to the person, the course:
  - (i) leads to a qualification that, in the Australian Qualifications Framework, is directly related to, and at a higher level than, the person's VET qualification; or
  - (ii) would, in the Secretary's opinion, enhance the person's prospects of employment by allowing the person to acquire skills in a trade or field other than the trade or field covered by the person's VET qualification.
- (4) The requirements referred to in paragraph (1)(c) are that:
  - (a) the person will be a full-time student in respect of the course within the meaning given by section 569C; or
  - (b) if the person has a partial capacity to work or is the principal carer of at least one child—the person will undertake a number of hours of study per week in respect of the course as is reasonable in the person's circumstances.
- (5) In this section:

*Australian Qualifications Framework* has the meaning given by the *Higher Education Support Act 2003*.

## 28C Declared program participants

- (1) The Secretary may, by legislative instrument, make a determination for the purposes of the definition of ***declared program participant*** in subsection 23(1).
- (2) The determination may provide for the operation of the social security law in relation to a person who becomes, or stops being, a declared program participant at a particular time (including in relation to things that happened before that time).

## 29 Approval of friendly societies

The Secretary may determine that:

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- (a) a friendly society; or
  - (b) a person or body that, in the Secretary's opinion:
    - (i) is similar in character to a friendly society; and
    - (ii) provides benefits similar to the benefits provided by a friendly society;
- is an *approved friendly society* for the purposes of this Act.

### **30 Approval of mental hospitals**

If the Secretary is satisfied that accommodation for persons with a mental disability is provided at particular premises, he or she may declare the premises to be a mental hospital for the purposes of this Act.

### **31 Approval of follow-up rehabilitation programs**

The Secretary may determine that:

- (a) a follow-up program under Part III of the *Disability Services Act 1986*; or
  - (b) each of the programs included in a class of follow-up programs under that Part;
- are follow-up programs for the purposes of this Act.

### **32 Approval of sheltered employment—non-profit organisation**

- (1) If the Secretary is satisfied that:
  - (a) one of the following provides paid employment for disabled persons at certain premises:
    - (i) an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012*;
    - (ii) a not-for-profit entity that is not an ACNC type of entity; and
  - (b) at least 50% of the persons employed at the premises are disabled persons;

the Secretary may determine that the paid employment provided at the premises by the organisation is sheltered employment.

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Note: *Sheltered employment* is relevant to the definition of *gainful employment* in section 19.

- (2) For the purposes of subsection (1), a **disabled person** is a person:
- (a) who is:
    - (i) permanently incapacitated for work; and
    - (ii) the degree of the incapacity for work is 85% or more; and
    - (iii) 50% or more of the incapacity for work is directly caused by a physical or mental impairment; or
  - (b) who, in the Secretary's opinion, would satisfy paragraph (a) if the person were no longer engaged in paid employment.

### 33 Approval of sheltered employment—supported employment

- (1) If:
- (a) the Minister administering the *Disability Services Act 1986* has approved a grant of financial assistance to a non-profit organisation under subsection 10(1) of that Act; and
  - (b) the financial assistance relates to the provision by the organisation of supported employment services within the meaning of section 7 of that Act;
- the Secretary may determine that the paid employment to which those supported employment services relates is sheltered employment.

Note: *Sheltered employment* is relevant to the definition of *gainful employment* in section 19.

- (2) Subject to subsection (3), a determination under subsection (1) may relate to employment provided before or after the day of determination.
- (3) A determination under subsection (1) may not relate to employment provided before 5 June 1987.

### 35 Approval of care organisation

- (1) The Secretary may approve:
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- (a) an organisation registered under the *Australian Charities and Not-for-profits Commission Act 2012*; and
  - (b) an organisation that is not an ACNC type of entity; that co-ordinates or provides residential care services to young people in Australia, as an approved care organisation, for the purposes of this Act.
- (2) The Secretary may approve, under subsection (1), a registered charity which is wholly or partly funded by contributions from:
- (a) the Consolidated Revenue Fund of the Commonwealth; or
  - (b) the consolidated revenue of a State or of the Australian Capital Territory or the Northern Territory.

### **35A Personal Care Support**

The Minister may, in writing, determine that a scheme for the provision of personal care support is an approved scheme for the purposes of this Act.

### **35B Declared overseas terrorist act**

- (1) The Prime Minister may, by legislative instrument, declare that a terrorist act that occurs outside Australia is a declared overseas terrorist act.
- (2) If the Prime Minister makes a declaration under subsection (1), then the Minister is taken to have made a determination under subsection 36(1) that the terrorist act is a major disaster.

### **36 Major disaster**

- (1) The Minister may determine in writing that an event is a major disaster if the Minister is satisfied that the event is a disaster that has such a significant impact on individuals that a government response is required.

Note: If the Prime Minister makes a declaration under subsection 35B(1) that a terrorist act is a declared overseas terrorist act, the Minister is taken to have made a determination under subsection (1) of this

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section that the terrorist act is a major disaster (see subsection 35B(2)).

- (2) Without limiting the matters to which the Minister may have regard in considering the impact of the event on individuals, the Minister must have regard to:
  - (a) the number of individuals affected; and
  - (b) the extent to which the nature or extent of the disaster is unusual.
- (3) The event:
  - (a) may be one that occurs naturally or otherwise; and
  - (b) may be one that occurs in Australia or outside Australia.
- (4) If the same event has an impact in 2 or more locations, the Minister may:
  - (a) make a single declaration under this section relating to some or all of the locations; or
  - (b) make 2 or more declarations under this section, each relating to one or more of the locations (whether or not the declarations cover all of the locations).

However, the Minister must not make a determination that relates both to a location in Australia and a location outside Australia.
- (5) A determination made under this section is not a legislative instrument.

### **36A Part 2.23B major disaster**

- (1) The Minister may determine in writing that an event is a Part 2.23B major disaster if the Minister is satisfied that:
  - (a) the event is a disaster that has such a significant impact on one or more industries and/or one or more areas that a government response in the form of income support is required; and
  - (b) the event is of national significance.



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- (2) Without limiting the matters to which the Minister may have regard for the purposes of subsection (1), the Minister must have regard to:
  - (a) the extent to which the nature or extent of the disaster is unusual; and
  - (b) the number of workplaces that are disrupted.
- (3) The event may be one that occurs naturally or otherwise.
- (4) The event must be one that occurs in Australia.
- (5) In a determination made under this section, the Minister must do one of the following:
  - (a) specify one or more industries affected by the event and one or more areas affected by the event;
  - (b) specify one or more areas affected by the event.
- (6) A determination made under this section is not a legislative instrument.

### **37 Dependent child—inmate of a mental hospital**

A young person is taken to be a *dependent child* of a member of a couple (the *adult*) for the purposes of Part 2.10 (parenting payment) if:

- (a) the young person is an inmate of a mental hospital; and
- (b) the mental hospital is either:
  - (i) maintained by the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or
  - (ii) mainly dependent upon financial assistance from the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; and
- (c) the adult is making a reasonable contribution towards the expenses of maintaining the young person; and
- (d) the Secretary determines that the young person is to be taken to be a dependent child of the adult.

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**38B Notional continuous period of receipt of income support payments**

- (1) The object of this section is to treat a person in certain circumstances as having received an income support payment in respect of a continuous period even though the person did not actually receive such a payment during a part or parts of the period.
- (2) A continuous period in respect of which a person has received income support payments can only start on a day on which the person is receiving such a payment and can only end on a day when the person is receiving such a payment, and the following provisions of this section have effect subject to this section.
- (3) Subject to subsection (4), in determining the continuous period in respect of which a person has received income support payments, any period of not longer than 6 weeks in respect of which the person did not receive an income support payment is taken to have been a period in respect of which the person received such a payment.
- (4) If a person is taken, because of subsection (3), to have received income support payments in respect of a continuous period of at least 12 months, then, in determining, as at a time after the end of that period of 12 months, the continuous period in respect of which the person has received income support payments, any period of not longer than 13 weeks in respect of which the person did not receive an income support payment is taken to have been a period in respect of which the person received such a payment.
- (5) In determining for the purposes of subsection (4) the length of a period in respect of which a person did not receive an income support payment, any part of the period that occurred immediately before the end of the period of 12 months referred to in that subsection is to be taken into account.

EXAMPLE OF APPLICATION OF SUBSECTION (5)

*Facts:*

John receives an income support payment for 48 weeks. He is then employed for 14 weeks. After the 14 weeks he again begins to receive an income support

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payment. How does his break in payments affect the calculation of his continuous period of receipt of income support payments?

*Application:*

At the end of the first 4 weeks of John's employment he may be taken, under subsection 38B(3), to have received income support payments for a continuous period of 12 months because no longer than 6 weeks have elapsed since he actually received such a payment.

Therefore, as John may be taken to have accrued 12 months continuous receipt of income support payments, he may have a period, under subsection 38B(4), of not longer than 13 weeks without income support payments and still be taken to be in continuous receipt.

However, under subsection 38B(5), the period of not longer than 13 weeks allowed under subsection 38B(4) must include the period of 4 weeks that occurred immediately before, as well as the 10 weeks immediately after, John was taken to have accrued 12 months duration.

As his total period in which he did not receive income support payments was 14 weeks, it exceeds the 13 weeks allowed under subsection 38B(4). His continuous period in receipt of income support ceased, under subsection 38B(2), on the last day he received payment before he started employment.

A new period of continuous receipt of income support payments will begin when John resumes income support payments after his 14 week break.

- (6) For the purposes of this section, a person who was receiving an income support payment is taken to have continued to receive the payment in respect of a period if:
- (a) for the duration of the period, the person remained qualified to receive the income support payment by the operation of the exercise of the discretion under:
    - (i) section 516 of this Act as in force at a time before 20 September 1996; or
    - (ii) section 595 of this Act (disregard a period of employment);but the person's rate of payment was reduced to nil because of the operation of:
    - (iii) section 1067G, 1067L or 1068 of this Act; or
  - (b) the period was a compliance penalty period that applied to the person in respect of the income support payment; or

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- (c) subsection 547AA(1), 615(1) or 771HF(1) applied to the person in respect of the income support payment for the duration of the period.

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

### 38C Adult Disability Assessment Tool

- (1) The Secretary may, by legislative instrument (the *determination*):
  - (a) devise a test for assessing the disability, emotional state, behaviour and special care needs of a person aged 16 or more; and
  - (b) provide a method for rating the person by giving him or her, on the basis of the results of the test, a score in accordance with a scale of the kind described in subsection (2).
- (2) The scale referred to in subsection (1) is a scale that provides for a range of scores that indicate the different levels of physical, intellectual or psychiatric disability of persons.
- (3) The determination is, in this Act, referred to as the *Adult Disability Assessment Tool*.

### 38E Disability Care Load Assessment (Child) Determination

- (1) The Secretary may, by legislative instrument (the *Disability Care Load Assessment (Child) Determination*):
  - (a) devise a test for assessing the functional ability, behaviour and special care needs of a person aged under 16 (the *child*), that includes an assessment that must be completed only by a treating health professional; and
  - (b) provide a method for rating the care needs of the child; and
  - (c) provide a method for giving a qualifying rating to a person (the *carer*) who is caring for the child that takes into account:
    - (i) the care provided for the child by the carer; and
    - (ii) the assessment completed by the treating health professional.

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- (2) If a carer who is caring for a child also cares for one or more other persons (whether or not aged under 16), the Disability Care Load Assessment (Child) Determination may provide a method for giving a qualifying rating to the carer that takes into account:
  - (a) both:
    - (i) the care provided for the child by the carer; and
    - (ii) the assessment completed by the treating health professional; and
  - (b) the care provided by the carer for each other person.
- (3) The Disability Care Load Assessment (Child) Determination may, in addition, declare that a physical, intellectual or psychiatric disability specified in the determination is a recognised disability for the purposes of section 953.

**38F Treating health professional**

The Secretary may, by legislative instrument, determine that a person, or any person included in a class of persons, is a treating health professional for the purposes of this Act (other than for the purposes of the Adult Disability Assessment Tool).

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## Part 1.3A—Green Army Programme

### 38G Simplified outline of this Part

If a person is receiving green army allowance under the Green Army Programme, a social security benefit or social security pension is not payable to the person.

Certain persons participating in the Green Army Programme will not be workers or employees for the purposes of various Commonwealth laws (for example, the *Fair Work Act 2009*).

If a person is receiving a social security pension and the person's partner is receiving green army allowance, some or all of that allowance may not be counted as ordinary income in working out the person's rate of social security pension.

### 38H Non-payment of security benefit or social security pension if person receiving green army allowance

Despite any other provision of the social security law, a social security benefit or social security pension is not payable to a person if the person is receiving green army allowance.

Note: For *green army allowance* see subsection 23(1).

### 38J Certain participants in Green Army Programme are not workers or employees under Commonwealth laws

- (1) A person:
- (a) who participates in the Green Army Programme on a full-time or a part-time basis and who is receiving green army allowance; or

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- (b) who participates in the Green Army Programme on a part-time basis and who is not receiving green army allowance;
- is not taken to be:
- (c) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*; or
  - (d) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or
  - (e) an employee for the purposes of the *Fair Work Act 2009*;
- merely because of that participation.

Note: For *Green Army Programme* and *green army allowance* see subsection 23(1).

- (2) Paragraph (1)(b) does not apply to a person included in a class of persons prescribed in an instrument under subsection (3).
- (3) The Secretary may, by legislative instrument, prescribe a class of persons for the purposes of subsection (2).

**38K Income test for person's social security pension if green army allowance payable to person's partner**

- (1) If:
    - (a) an instalment of a social security pension relating to an instalment period is payable to a person; and
    - (b) green army allowance is payable to the person's partner in respect of some or all of that period;
- then:
- (c) if the amount of the green army allowance does not exceed the threshold applicable under subsection (2)—the green army allowance is not ordinary income of the person's partner; or
  - (d) if the amount of the green army allowance exceeds the threshold applicable under subsection (2):

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- (i) the part of the green army allowance that does not exceed that threshold is not ordinary income of the person's partner; and
- (ii) the part of the green army allowance that exceeds that threshold is ordinary income of the person's partner.

Note 1: For *green army allowance* see subsection 23(1).

Note 2: Any part of green army allowance that is ordinary income of the person's partner will be taken into account in applying the ordinary income test in working out the person's rate of social security pension.

(2) The threshold is:

- (a) if the person's partner is aged under 22:
  - (i) if the person's partner has a dependent child—the amount under column 3 of item 7 of Table BB in point 1067G-B3; or
  - (ii) otherwise—the amount under column 3 of item 8 of Table BB in point 1067G-B3; or
- (b) if the person's partner is aged 22 or over—the amount under column 3B of item 7 of Table B in point 1068-B1.



## **Part 1.3B—Loss of social security payments and concessions for persons on security grounds**

### **38L Simplified outline of this Part**

Persons who might prejudice the security of Australia or a foreign country may lose social security payments or concession cards.
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### **38M Loss of social security payments and concessions for persons on security grounds**

- (1) If a security notice is given to the Minister in relation to a person, then while the notice is in force:
  - (a) no social security payment is to be paid to the person; and
  - (b) the person is not qualified for a social security payment; and
  - (c) a social security payment is not payable to the person; and
  - (d) the person is not qualified for a concession card.

Note: A security notice is a notice under section 38N.

- (2) If a security notice is given to the Minister in relation to a person, then any social security payment of the person is cancelled on the day the notice comes into force.
- (3) If a security notice is given to the Minister in relation to a person, then any concession card the person holds is cancelled on the day the notice comes into force.
- (4) If a security notice given to the Minister in relation to a person ceases to be in force, then for any day while the notice was in force:
  - (a) the person is not qualified for a social security payment; and
  - (b) a social security payment is not payable to the person; and

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- (c) the person is not qualified for a concession card.
- (5) Subsections (1) to (4) have effect despite any other provision of the social security law.
- (6) If a person's social security payment is cancelled by subsection (2), or a person's concession card is cancelled by subsection (3), the Secretary must cause reasonable steps to be taken to notify the person of the cancellation.

**38N Security notice from Home Affairs Minister**

- (1) The Home Affairs Minister may give the Minister a written notice requiring that this Part apply in relation to a specified person if:
  - (a) the Foreign Affairs Minister gives the Home Affairs Minister a notice under section 38P in relation to the person; or
  - (b) the person's visa is cancelled under section 116 or 128 of the *Migration Act 1958* because of an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or
  - (c) the person's visa is cancelled under section 134B of the *Migration Act 1958* (emergency cancellation on security grounds) and the cancellation has not been revoked because of subsection 134C(3) of that Act; or
  - (d) the person's visa is cancelled under section 501 of the *Migration Act 1958* and there is an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*).
- (2) Before giving a notice under this section, the Home Affairs Minister must have regard to the following:
  - (a) the extent (if any) that any social security payments of the person are being, or may be, used for a purpose that might

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- prejudice the security of Australia or a foreign country, if the Home Affairs Minister is aware of that extent;
- (b) the likely effect of the operation of section 38M on the person's dependants, if the Home Affairs Minister is aware of those dependants.
- (3) The Secretary of the Department administered by the Home Affairs Minister must:
- (a) seek the advice of the Human Services Secretary in relation to paragraph (2)(b); and
- (b) inform the Home Affairs Minister of that advice.
- (4) Subsection (2) does not limit the matters to which regard may be had.

**38P Notice from Foreign Affairs Minister**

If:

- (a) either:
- (i) under subsection 14(2) of the *Australian Passports Act 2005*, the Foreign Affairs Minister refuses to issue a person an Australian travel document; or
- (ii) under section 22 of that Act, the Foreign Affairs Minister cancels a person's Australian travel document; and
- (b) the refusal or cancellation was because of a refusal/cancellation request made in relation to the person under subsection 14(1) of that Act; and
- (c) the request was made on the basis of the circumstance mentioned in subparagraph 14(1)(a)(i) of that Act;
- the Foreign Affairs Minister may give the Home Affairs Minister a written notice setting out those matters.

**38R Copy of security notice to be given to Secretaries**

The Minister must give a copy of a security notice to:

- (a) the Secretary of the Department; and

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- (b) the Secretary of the Human Services Department.

**38S Period security notice is in force**

A security notice comes into force on the day it is given to the Minister, and remains in force until it is revoked.

**38SA Annual review of security notice**

Before the end of the following periods, the Home Affairs Minister must consider whether to revoke a security notice (if it has not already been revoked):

- (a) 12 months after it came into force;
- (b) 12 months after the Home Affairs Minister last considered whether to revoke it.

**38T Revoking a security notice**

- (1) The Home Affairs Minister may, by written notice given to the Minister, revoke a security notice.
- (2) The revocation takes effect on the day it is made.
- (3) The Minister must give a copy of a notice under subsection (1) to:
  - (a) the Secretary of the Department; and
  - (b) the Secretary of the Human Services Department.
- (4) If:
  - (a) a person's social security payment is cancelled by subsection 38M(2) or a person's concession card is cancelled by subsection 38M(3); and
  - (b) the Home Affairs Minister revokes the security notice concerned;the Secretary of the Department must cause reasonable steps to be taken to notify the person of the revocation.

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**38U Notices may contain personal information**

A notice under this Part in relation to a person may contain personal information (within the meaning of the *Privacy Act 1988*) about the person.

**38V Decisions under Part not decisions of officers**

For the purposes of Part 4 of the Administration Act, a decision under this Part is taken not to be a decision of an officer under the social security law.

**38W Notices not legislative instruments**

A notice under this Part is not a legislative instrument.

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## Part 1.4—Miscellaneous

### 39 Tables, calculators etc. form part of section

- (1) For the purposes of this Act, a Table and a Key to a Table are to be taken to be part of:
  - (a) if the Table occurs in a section containing subsections—the subsection immediately preceding the Table; and
  - (b) if the Table occurs in a section that does not contain subsections—the section.
- (1A) For the purposes of this Act, a Note is to be taken to be part of:
  - (a) if the Note immediately follows a section that does not contain subsections—the section; or
  - (b) if the Note immediately follows a subsection—the subsection; or
  - (c) if the Note immediately follows a point in a Rate Calculator—the point; or
  - (d) if the Note immediately follows a Step in a Method Statement and is aligned with the text of the Step—the Step; or
  - (e) if the Note immediately follows a Table—the Table; or
  - (f) if the Note immediately follows a paragraph and is aligned with the text of the paragraph—the paragraph; or
  - (g) if the Note immediately follows a clause in a Schedule—the clause in the Schedule; or
  - (h) if the Note immediately follows a subclause in a Schedule—the subclause in the Schedule.
- (2) For the purposes of this Act, a Calculator (whether a Rate Calculator, a Lump Sum Calculator or any other Calculator) is to be taken to be part of the section immediately preceding the Calculator.

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- (3) Rate Calculators are divided into Modules (for example, Module A).
- (4) A Module of a Rate Calculator is divided into points and some points are divided into subpoints.
- (5) The points in a Module are numbered as follows:
  - (a) the initial number (followed by a dash) identifies the section that immediately precedes the Rate Calculator;
  - (b) the letter following the dash is the letter allocated to the Module in which the point occurs;
  - (c) the final number identifies the order of the point within the Module.

Example: Point 1068-E8 is the eighth point in Module E of the Rate Calculator at the end of section 1068.

Note: Paragraph (5)(a) has been adopted so that if a reader is looking for a particular section of the Act and opens a page that happens to be in the middle of a Rate Calculator, the reader will know whether the section the reader is looking for is before or after that page.

## Chapter 2—Pensions, benefits and allowances

### Part 2.2—Age pension

#### Division 1—Qualification for and payability of age pension

##### Subdivision A—Qualification

#### 43 Qualification for age pension

- (1) A person is qualified for an age pension if the person has reached pension age and any of the following applies:
- (a) the person has 10 years qualifying Australian residence;
  - (b) the person has a qualifying residence exemption for an age pension;
  - (c) the person was receiving a widow B pension, a widow allowance, a mature age allowance or a partner allowance, immediately before reaching that age;
  - (d) if the person reached pension age before 20 March 1997—the person was receiving a widow B pension, a widow allowance or a partner allowance, immediately before 20 March 1997.

Note 1: For *qualifying Australian residence* see section 7.

Note 2: For *pension age* see subsections 23(5A), (5B) (5C) and (5D).

- (1A) A woman is qualified for an age pension if:
- (a) the woman has reached pension age; and
  - (b) the woman's partner has died; and
  - (c) both the woman and her partner were Australian residents when her partner died; and
  - (d) the woman was an Australian resident for a continuous period of at least 104 weeks immediately before the day she lodged the claim for the age pension.
- (3) Subsection (1) has effect subject to subsection 6(3) of the *Social Security (International Agreements) Act 1999*.



## **Subdivision B—Payability**

### **44 Age pension not payable if pension rate nil**

- (1) Subject to subsection (2), an age pension is not payable to a person if the person's age pension rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

### **47 Multiple entitlement exclusion**

- (1) An age pension is not payable to a person if the person is already receiving a service pension or a veteran payment.
- (2) If:
  - (a) a person is receiving an age pension; and
  - (b) another social security pension, a service pension or a veteran payment becomes payable to the person;the age pension is not payable to the person.

Note 1: Another payment type will generally not become payable to the person until the person claims it.

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

- (3) An age pension is not payable to a person who:
  - (a) is an armed services widow or an armed services widower; and
  - (b) is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
  - (c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.
- (4) Subsection (3) does not apply if:

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- (a) the person:
    - (i) was on 20 March 1995 receiving; and
    - (ii) has from that day continuously received; and
    - (iii) is receiving;  
the age pension; and
  - (b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the age pension.
- (5) Subsection (3) does not apply if:
- (a) before 20 March 1995, the person had made a claim for age pension; and
  - (b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and
  - (c) on or after 20 March 1995, the person was granted age pension; and
  - (d) the person has since that time continued to receive, and is receiving, the pension.
- (6) Subsection (3) does not apply if:
- (a) before 20 March 1995:
    - (i) the person had made a claim for age pension; and
    - (ii) the claim had been rejected; and
    - (iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and
  - (b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and
  - (c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted age pension; and
  - (d) the person has since that time continued to receive, and is receiving, the pension.

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- (7) An age pension is not payable to a person who:
- (a) is an armed services widow or an armed services widower;  
and
  - (b) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and
  - (c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

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

Note 2: For *MRCA* and *VEA* see subsection 23(1).

**47A Exclusion of certain participants in ABSTUDY Scheme**

- (1) If:
- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
  - (b) the payment is made on the basis that the person is a full-time student; and
  - (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
  - (d) the payment relates to a period;
- age pension is not payable to the person in respect of any part of the period.
- (2) If:
- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
  - (b) the payment for which the person is qualified is a payment that:
    - (i) is made on the basis that the person is a full-time student; and

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- (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
  - (iii) relates to a period;
- age pension is not payable to the person in respect of any part of the period.
- (3) If:
  - (a) a person may enrol in a full-time course of education; and
  - (b) a payment referred to in subsection (2) may be made in respect of the person;
- the Secretary may decide that, in spite of subsection (2), age pension is payable to the person before the person starts the course.

## **Division 4—Rate of age pension**

### **55 How to work out a person's age pension rate**

A person's age pension rate is worked out:

- (a) if the person is not permanently blind—using Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or
- (b) if the person is permanently blind—using Pension Rate Calculator B at the end of section 1065 (see Part 3.3).

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## Division 9—Bereavement payments

### Subdivision A—Death of partner

#### 82 Qualification for payments under this Subdivision

(1) If:

- (a) a person is receiving an age pension; and
- (b) the person is a member of a couple; and
- (c) the person's partner dies; and
- (d) immediately before the partner died, the partner:
  - (i) was receiving a social security pension; or
  - (ii) was receiving a service pension, income support supplement or a veteran payment; or
  - (iii) was a long-term social security recipient; and
- (e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
  - (i) the amount that would otherwise be payable to the person under section 85 (person's continued rate) on that payday; and
  - (ii) the amount that would otherwise be payable to the person under section 83 (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

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

Note 1: Section 83 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 84 provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first

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available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

(1A) If:

- (a) a person is receiving an age pension; and
- (b) immediately before starting to receive the age pension the person was receiving partner bereavement payments; and
- (c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;

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

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

(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.

(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which age pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 85.

(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
  - (ia) was receiving a youth training allowance; or
  - (iii) was receiving a service pension, income support supplement or a veteran payment.

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- (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.

**83 Continued payment of deceased partner's previous entitlement**

- (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 or social security benefit—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, income support supplement or a veteran payment—the amount that would have been payable to the partner under Part III, IIIA or IIIAA 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.
- (2) For the purposes of subsection (1), if the couple were, immediately before the partner's death, an illness separated couple or a respite care couple, the amounts are to be worked out as if they were not such a couple.

**84 Lump sum payable in some circumstances**

If:



- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
  - (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;
- there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

**LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

*Method statement*

- Step 1. Work out the amount that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if:
- (a) the person's partner had not died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2. Work out the amount that would have been payable to the person's partner on the partner's payday or service payday immediately before the first available bereavement adjustment payday if:
- (a) the partner had not died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

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- Step 4. Work out the amount that, but for section 85, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the *person's individual rate*.
- Step 5. Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.
- Step 6. Work out the number of paydays of the partner in the bereavement lump sum period.
- Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

**85 Adjustment of person's age pension rate**

If:

- (a) a person is qualified for payments under this Subdivision;  
and
- (b) the person does not elect under subsection 82(2) not to receive payments under this Subdivision;

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

- (c) during the bereavement rate continuation period, the rate of age pension payable to the person is the rate at which the pension would have been payable to the person if:
  - (i) the person's partner had not died; and
  - (ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;
- (d) during the bereavement lump sum period (if any), the rate at which age pension is payable to the person is the rate at

which the age pension would be payable to the person apart from this Subdivision.

### **86 Effect of death of person entitled to payments under this Subdivision**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the person's partner before the person dies;

there is payable, to such person as the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

#### **LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

##### *Method statement*

Step 1. Work out the amount that would have been payable to the person on the person's payday immediately after the day on which the person died if:

- (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:

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	(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 <b><i>combined rate</i></b> .
Step 4.	Work out the amount that, but for section 85, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the <b><i>person's individual rate</i></b> .
Step 5.	Take the person's individual rate away from the combined rate: the result is called the <b><i>partner's instalment component</i></b> .
Step 6.	Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.
Step 7.	Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

**87 Matters affecting payment of benefits under this Subdivision**

(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 or IIIA of the Veterans' Entitlements Act; and

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- (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).

(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 or IIIA 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 C—Death of recipient**

### **91 Death of recipient**

(1) If:

- (a) a person is receiving age pension; and
- (b) either:
  - (i) the person is not a member of a couple; or
  - (ii) the person is a member of a couple and the person's partner:

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- (A) is not receiving a social security pension; and  
(C) is not receiving a service pension, income support supplement or a veteran payment; 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.
- (2) If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.
- Note 1: For amounts owing to the recipient before the recipient's death see section 65.
- Note 2: For death of a person qualified for bereavement payments under Subdivision A see section 86.

## Part 2.2A—Pension bonus

### Division 1—Introduction

#### 92A Simplified outline

The following is a simplified outline of this Part:

- A person who qualifies for an age pension but defers claiming that pension may be able to get a single lump-sum ***pension bonus***.
- A person who wants to get a pension bonus must ***register*** as a ***member of the pension bonus scheme***. An application for registration cannot be made on or after 1 July 2014.
- To get a pension bonus, a person must accrue between 1 and 5 ***bonus periods*** while deferring age pension.
- Generally, a bonus period runs for 1 year.
- To accrue a bonus period, the person must ***pass the work test*** for that period.
- To pass the work test for a year, either the person, or the person's partner, must ***gainfully work*** for at least 960 hours during that year.
- The amount of a person's pension bonus depends on the number of accrued bonus periods and the person's annual rate of age pension. A person may get a bigger bonus by accruing more bonus periods.

## Section 92B

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### 92B Definitions

In this Part:

*accruing member of the pension bonus scheme* has the meaning given by section 92N.

*bonus period* has the meaning given by section 92T.

*carer preclusion period* has the meaning given by section 93W.

*compensation preclusion period* has the meaning given by section 93V.

*disposal preclusion period* has the meaning given by section 93U or 93UA.

*full-year period* means a continuous period of 365 days.

*gainful work* has the meaning given by sections 92X to 93A (inclusive).

*non-accruing member of the pension bonus scheme* has the meaning given by sections 92P and 92Q.

*part-year period* means a continuous period of less than 365 days.

*passing the work test* has the meaning given by sections 92U and 92V.

*post-75 member of the pension bonus scheme* has the meaning given by section 92S.

*registration as a member of the pension bonus scheme* means registration under section 92J.



**Division 2—Qualification for pension bonus****92C Qualification for pension bonus**

A person is qualified for a pension bonus if:

- (a) both:
  - (i) the person starts to receive an age pension at or after the time when the person makes a claim for the pension bonus; and
  - (ii) that age pension is received otherwise than because of a scheduled international social security agreement (see section 5 of the *Social Security (International Agreements) Act 1999*); and
- (b) the person has not received an age pension at any time before making a claim for the pension bonus; and
- (c) the person is registered as a member of the pension bonus scheme; and
- (d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and
- (e) the person has not received:
  - (i) a social security pension (other than an age pension or a carer payment); or
  - (ii) a social security benefit; or
  - (iii) a service pension (other than a carer service pension); or
  - (iv) an income support supplement (other than an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the *Veterans' Entitlements Act*); or
  - (v) a veteran payment;at any time after the person qualified for an age pension; and

**Note:** Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted

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disability pension (within the meaning of section 118NA of the Veterans' Entitlements Act) was payable to the person or the person's partner: see subsection 23(1D) of this Act.

- (f) the person has not already received:
- (i) another pension bonus; or
  - (ii) a bonus under Part IIIAB of the Veterans' Entitlements Act; or
  - (iii) DFISA bonus under Part VIIAB of the Veterans' Entitlements Act.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

## **Division 3—Registration as a member of the pension bonus scheme**

### **Subdivision A—Membership of the pension bonus scheme**

#### **92D Application for registration**

- (1) A person may apply for registration as a member of the pension bonus scheme.
- (2) However, a person cannot make an application on or after 1 July 2014.

#### **92E Form of application**

An application must be in writing and must be in accordance with a form approved by the Secretary.

#### **92F Relevant information**

- (1) An approved form may require the applicant to provide relevant information (see subsection (4)).
- (2) The Secretary may, by written notice given to the applicant, require the applicant to give the Secretary, within a specified period, further relevant information. The Secretary may refuse to register the applicant until the applicant gives the Secretary the information.
- (3) A period specified for the purposes of subsection (2) must run for at least 14 days after the notice was given.
- (4) For the purposes of this section, **relevant information** includes (but is not limited to):
  - (a) information that would be likely to assist the Secretary in advising the applicant about the operation of this Part; and
  - (b) information that is relevant to determining whether a disposal preclusion period, compensation preclusion period or carer

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preclusion period has arisen, or is likely to arise, in relation to the applicant; and

- (c) a statement of the applicant's present expectations in relation to any or all of the following matters:
  - (i) the number of bonus periods that the person is likely to accrue while registered as a member of the pension bonus scheme;
  - (ii) the likely nature and extent of the person's participation in the workforce during those periods;
  - (iii) if the person has a partner—the likely nature and extent of the partner's participation in the workforce during those periods.

**92G Lodgment of application**

- (1) An application must be lodged:
  - (a) at an office of the Department; or
  - (b) at a place approved by the Secretary; or
  - (c) with a person approved by the Secretary.
- (2) A place or person approved under subsection (1) may be a place or person within or outside Australia.

**92H Timing of application and registration**

*Age pension qualification date on or after 1 July 1998*

- (1) If a person's date of qualification for the age pension occurs on or after 1 July 1998:
  - (a) the person must lodge an application during the period that begins 13 weeks before the person's date of qualification for the age pension and ends 13 weeks after that date; and
  - (b) if registration occurs as a result of an application lodged within that period—the registration takes effect on the person's date of qualification for the age pension.

*Age pension qualification date before 1 July 1998*

- (2) If a person's date of qualification for the age pension occurs before 1 July 1998:
- (a) the person must lodge an application during the period that begins on the commencement of this section and ends 13 weeks after 1 July 1998; and
  - (b) if registration occurs as a result of an application lodged within that period—the registration takes effect on 1 July 1998.

*Date of qualification for the age pension*

- (8) For the purposes of this section, a person's ***date of qualification for the age pension*** is to be worked out on the assumption that being an Australian resident were an additional qualification for an age pension.
- (9) For the purposes of this section, if a person would otherwise have 2 or more dates of qualification for the age pension, only the first date is to be counted.

**92J Registration**

- (1) If an application is made in accordance with this Subdivision, the Secretary must register the applicant as a member of the pension bonus scheme.
- (1A) However, the Secretary must not register a person as a member of the pension bonus scheme if the person's date of qualification for the age pension occurs on or after 20 September 2009.
- (1B) For the purposes of subsection (1A), subsections 92H(8) and (9) apply in a way corresponding to the way in which they apply for the purposes of section 92H.
- (2) This section has effect subject to subsection 92F(2).

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**92K Duration of membership**

A person's membership of the pension bonus scheme begins on the date on which the registration of that membership takes effect and continues until the membership is cancelled under this Act.

**92L Cancellation of membership**

A person's membership of the pension bonus scheme is cancelled if:

- (a) the person's claim for pension bonus is determined; or
- (b) the person starts to receive:
  - (i) a social security pension (other than an age pension or a carer payment); or
  - (ii) a social security benefit; or
  - (iii) a service pension (other than a carer service pension); or
  - (iv) an income support supplement (other than an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act); or
  - (v) a veteran payment;at any time after the person qualified for an age pension; or
- (c) the person does not make a proper claim for a pension bonus when the person claims age pension; or
- (d) the person requests the Secretary, in writing, to cancel the person's membership.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

**92M Application for registration is not to be treated as a claim**

To avoid doubt, an application for registration as a member of the pension bonus scheme is not to be treated as a claim for the purposes of any law of the Commonwealth.

## **Subdivision B—Classification of membership of the pension bonus scheme**

### **92N Accruing membership**

For the purposes of this Part, a person's membership of the pension bonus scheme at a particular time is **accruing** unless the person's membership is non-accruing or post-75 at that time.

### **92P Non-accruing membership—preclusion periods**

#### *Disposal preclusion period*

- (1) For the purposes of this Part, if a person is subject to a disposal preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is **non-accruing** at that time.

Note: **Disposal preclusion period** is defined by section 93U.

#### *Compensation preclusion period*

- (2) For the purposes of this Part, if a person is subject to a compensation preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is **non-accruing** at that time.

Note: **Compensation preclusion period** is defined by section 93V.

#### *Carer preclusion period*

- (3) For the purposes of this Part, if a person is subject to a carer preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is **non-accruing** at that time.

Note: **Carer preclusion period** is defined by section 93W.

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**92Q Non-accruing membership—Secretary’s discretion**

- (1) The Secretary may, by legislative instrument, declare that, for the purposes of this Part, a specified kind of member of the pension bonus scheme is a ***non-accruing*** member throughout a period ascertained in accordance with the declaration.
- (1A) A period ascertained in accordance with a declaration made under subsection (1) may begin before the date on which the declaration is registered under that Act.
- (1B) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to a declaration made under subsection (1).
- (2) The kinds of members that may be specified under subsection (1) include (but are not limited to):
  - (a) a member who is a participant in the Community Development Employment Program; and
  - (b) a member who is in gaol (see subsection 23(5)); and
  - (c) a member who is undergoing psychiatric confinement (see subsections 23(8) and (9)) because the member has been charged with committing an offence; and
  - (d) a member who is not a participant in the workforce, but whose partner:
    - (i) is a participant in the workforce; and
    - (ii) is not a registered member of the pension bonus scheme or of the corresponding scheme under Part IIIAB of the Veterans’ Entitlements Act; and
    - (iii) intends to become a registered member of the pension bonus scheme or of the corresponding scheme under Part IIIAB of the Veterans’ Entitlements Act; and
  - (e) a member who is on sick leave for a continuous period of at least 4 weeks and not more than 26 weeks.



**92R Continuity of accruing membership is not broken by a period of non-accruing membership**

If:

- (a) a person has been an accruing member of the pension bonus scheme for a continuous period (the ***first accruing membership period***) (including a period that is applicable because of one or more applications of this section); and
- (b) the first accruing membership period is followed by a continuous period of non-accruing membership of the scheme; and
- (c) the period of non-accruing membership is followed by a further continuous period of accruing membership of the scheme (the ***second accruing membership period***);

the first accruing membership period and the second accruing membership period are together taken to constitute a continuous period of accruing membership of the scheme.

**92S Post-75 membership**

A person's membership of the pension bonus scheme is ***post-75*** at all times after the person reaches age 75.

## Division 4—Accrual of bonus periods

### 92T Accrual of bonus periods

#### *Full-year bonus period*

- (1) The first **bonus period** that accrues to a person is the full-year period of the person's accruing membership of the pension bonus scheme:
  - (a) that began on whichever of the following dates is applicable:
    - (i) if the person was an accruing member of the pension bonus scheme on the date the person's registration as a member took effect—the date the registration took effect;
    - (ii) in any other case—the date on which the person first became an accruing member of the pension bonus scheme; and
  - (b) for which the person passes the work test.

Note: *Accruing membership* is defined by section 92N.

- (2) Each succeeding full-year period of the person's accruing membership of the pension bonus scheme:
  - (a) that is specified in the person's claim for pension bonus; and
  - (b) for which the person passes the work test;is a **bonus period** that accrues to the person.

#### *Part-year bonus period*

- (3) A part-year period of the person's accruing membership of the pension bonus scheme is a **bonus period** that accrues to the person if:
  - (a) the person passes the work test for that period; and
  - (b) the person specifies the period in the person's claim for pension bonus; and
  - (c) the period begins immediately after the end of a full-year bonus period that accrues to the person; and

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- (d) the period is the last bonus period that accrues to the person.

Note: *Accruing membership* is defined by section 92N.

*Bonus periods must be consecutive*

- (4) A person cannot accrue more than one bonus period unless:
- (a) the bonus periods are consecutive; or
  - (b) the bonus periods are separated only by a period of non-accruing membership.

## Division 5—Passing the work test

### Subdivision A—The work test

#### 92U Work test—full-year period

For the purposes of this Part, a person *passes the work test* for a full-year period of the person's accruing membership of the pension bonus scheme if:

- (a) in any case—the person satisfies the Secretary that the total number of hours gainfully worked by the person during that period was at least 960 and that at least 640 of that total number of hours were worked in Australia; or
- (b) if the person had only one partner during that period—the person satisfies the Secretary that the total number of hours gainfully worked by the person's partner during that period while the partner was a partner of the person and was:
  - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
  - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;was at least 960 and that at least 640 of that total number of hours were worked in Australia; or
- (c) if the person had 2 or more partners during that period—the person satisfies the Secretary that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:
  - (i) accruing members, or post-75 members, of the pension bonus scheme; or
  - (ii) accruing members, or post-70/75 members, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;was at least 960 and that at least 640 of that total number of hours were worked in Australia;

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and either:

- (d) the person satisfies the Secretary that the applicable record-keeping requirements (see section 93C) have been complied with in relation to that period; or
- (e) the Secretary decides to waive compliance with the applicable record-keeping requirements in relation to that period.

**92V Work test—part-year period**

- (1) For the purposes of this Part, a person *passes the work test* for a part-year period of the person's accruing membership of the pension bonus scheme if:
  - (a) in any case—the person satisfies the Secretary that the total number of hours gainfully worked by the person during that period was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or
  - (b) if the person had only one partner during that period—the person satisfies the Secretary that the total number of hours gainfully worked by the person's partner during that period while the partner was a partner of the person and was:
    - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
    - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or
  - (c) if the person had 2 or more partners during that period—the person satisfies the Secretary that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:
    - (i) accruing members, or post-75 members, of the pension bonus scheme; or

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- (ii) accruing members, or post-70/75 members, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;  
was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia;  
and either:
    - (d) the person satisfies the Secretary that the applicable record-keeping requirements (see section 93C) have been complied with in relation to that period; or
    - (e) the Secretary decides to waive compliance with the applicable record-keeping requirements in relation to that period.
- (2) For the purposes of this section, the *pro-rated number of hours* applicable to a period is worked out using the formula:

$$960 \times \frac{\text{Number of days in the period}}{365}$$

**92W Secretary's discretion to treat gainful work outside Australia as gainful work in Australia**

- (1) If a person satisfies the Secretary that:
- (a) the person, or the person's partner, has carried on gainful work outside Australia; and
  - (b) because of special circumstances, the gainful work should be treated as gainful work carried on in Australia;
- the Secretary may determine that this Part has effect as if the gainful work were carried on in Australia.
- (2) The determination has effect accordingly.

**Subdivision B—Gainful work****92X Gainful work—basic rule**

- (1) For the purposes of this Part, *gainful work* is work for financial gain or reward, whether as an employee, a self-employed person or otherwise, where:
  - (a) the work involves a substantial degree of personal exertion on the part of the person concerned; and
  - (b) the work is carried on within or outside Australia.
- (2) Subsection (1) is to be ignored in determining the meaning of an expression used in a provision of this Act other than this Part.

**92Y Secretary's discretion to treat activity as gainful work**

- (1) If a person satisfies the Secretary that:
  - (a) the person, or the person's partner, has engaged in a particular activity; and
  - (b) the activity involves a substantial degree of personal exertion on the part of the person or the person's partner, as the case may be; and
  - (c) the activity does not consist of voluntary work for a charitable, welfare or community organisation; and
  - (d) because of special circumstances, the activity should be treated as gainful work;the Secretary may determine that this Part has effect as if the activity were *gainful work*.

- (2) The determination has effect accordingly.

**92Z Irregular, infrequent and minor absences from a workplace count as gainful work**

For the purposes of this Part, if a person is engaged in gainful work, the total hours gainfully worked by the person during a period are to be determined as if the person had been engaged in

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**gainful work** during any absences from the workplace that are irregular, infrequent and minor.

### 93 Management of family financial investments does not count as gainful work

- (1) Unless the Secretary otherwise determines, work undertaken by a person is taken not to be **gainful work** for the purposes of this Part to the extent to which the work consists of the management or administration of one or more financial investments in which any of the following has a legal or equitable interest:
- (a) a member of the person's family group (see subsection (2));
  - (b) a company that is a family company in relation to the person (see subsection (2));
  - (c) the trustee or trustees of a trust that is a family trust in relation to the person (see subsection (2)).

Note: **Financial investment** is defined by section 9.

- (2) In this section:

**family company**, in relation to a person, means a company where:

- (a) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of any or all of the members of the person's family group; or
- (b) any or all of the members of the person's family group are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting of the company; or
- (c) both:
  - (i) the company has one or more shareholders; and
  - (ii) each shareholder is a member of the person's family group.

**family group**, in relation to a person, means the group consisting of the person and the family members of the person. If the person has



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no family members, the person is taken to be a family group in his or her own right.

Note: *Family member* is defined by subsection 23(1).

*family trust*, in relation to a person, means a trust where a member of the person's family group benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

### **93A Domestic duties in relation to a person's place of residence do not count as gainful work**

- (1) Unless the Secretary otherwise determines, work undertaken by a person is taken not to be *gainful work* for the purposes of this Part if the work consists of carrying out:
- (a) domestic tasks; or
  - (b) household maintenance tasks; or
  - (c) gardening tasks; or
  - (d) similar tasks;
- in relation to:
- (e) the person's place of residence; or
  - (f) if the person has 2 or more places of residence—any of those places of residence.
- (2) For the purposes of this section, a *place of residence* includes:
- (a) if the place is a dwelling-house—any land or building that is adjacent to the dwelling-house and that is used primarily for private or domestic purposes in association with that dwelling-house; or
  - (b) if the place is a flat or home unit—a garage or storeroom that is used for private or domestic purposes in association with the flat or home unit.

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**93B Evidentiary certificate**

*Hours worked during full-year period*

- (1) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that:
  - (a) the member was an accruing member of the scheme throughout a specified full-year period; and
  - (b) the total number of hours gainfully worked by the member during that period was at least a specified number of hours; and
  - (c) the total number of hours gainfully worked in Australia by the member during that period was at least a specified number of hours.
- (2) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that:
  - (a) the member was an accruing member of the scheme throughout a specified full-year period; and
  - (b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:
    - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
    - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;was at least a specified number of hours; and
  - (c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:
    - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
    - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;was at least a specified number of hours.

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*Hours worked during part-year period*

- (3) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:
- (a) that the member was an accruing member of the scheme throughout a specified part-year period; and
  - (b) the total number of hours gainfully worked by the member during that period; and
  - (c) the total number of hours gainfully worked in Australia by the member during that period.
- (4) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:
- (a) that the member was an accruing member of the scheme throughout a specified part-year period; and
  - (b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:
    - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
    - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act; and
  - (c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:
    - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
    - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act.

*Record-keeping requirements*

- (5) If:

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- (a) a person makes a request for a certificate under subsection (1), (2), (3) or (4) relating to a particular period; and
  - (b) the applicable record-keeping requirements have not been complied with in relation to that period (see section 93C);
- the Secretary may refuse to issue the certificate.

*Non-accruing membership*

- (6) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that the member was a non-accruing member of the scheme throughout a specified period.

*Evidence*

- (7) In any proceedings relating to this Part, a certificate under this section is prima facie evidence of the matters in the certificate.

**Subdivision C—Record-keeping requirements**

**93C Record-keeping requirements**

*Record-keeping requirements for person*

- (1) For the purposes of the application of paragraph 92U(a) or 92V(1)(a) or subsection 93B(1) or (3) to a person, the applicable record-keeping requirements have been complied with in relation to a period of the person's accruing membership of the pension bonus scheme if:
  - (a) in a case where the person has:
    - (i) been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the person during that period; or
    - (ii) lodged an income tax return that relates to any gainful work carried on by the person during that period;

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the person would be in a position to produce a copy of the certificate or of the return, as the case may be, to the Secretary if the Secretary were to require the person to produce that copy; and

(b) both:

- (i) the person has kept a recognised work record (see subsection (3)) in relation to gainful work carried on by the person during that period; and
- (ii) the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

*Record-keeping requirements for partner of person*

(2) For the purposes of the application of paragraph 92U(b) or (c) or 92V(1)(b) or (c) or subsection 93B(2) or (4) to a partner of a person, the applicable record-keeping requirements have been complied with in relation to a period of the person's accruing membership of the pension bonus scheme if:

(a) in a case where the partner has been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

- (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
- (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

the person would be in a position to produce a copy of the certificate to the Secretary if the Secretary were to require the person to produce that copy; and

(b) in a case where the partner has lodged an income tax return that relates to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

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- (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
  - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;
- the person would be in a position to produce a copy of the return to the Secretary if the Secretary were to require the person to produce that copy; and
- (c) in any case—the partner has kept a recognised work record (see subsection (3)) in relation to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:
    - (i) an accruing member, or a post-75 member, of the pension bonus scheme; or
    - (ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;and the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

*Recognised work record*

- (3) For the purposes of this section, a ***recognised work record***, in relation to a person, is a written statement signed by the person that sets out, in relation to gainful work carried on by the person during a particular period:
  - (a) the nature of the gainful work; and
  - (b) the dates on which the gainful work was carried on; and
  - (c) the total number of hours gainfully worked; and
  - (d) the total number of hours gainfully worked in Australia; and
  - (e) in a case where any of the gainful work was carried on in the capacity of employee—the name or names of the employer or employers concerned; and
  - (f) such other particulars as the Secretary requires.

## Division 6—Amount of pension bonus

### 93D How to calculate the amount of pension bonus

- (1) To calculate the amount of a person's pension bonus:
  - (a) work out which of the person's bonus periods count as qualifying bonus periods (see section 93E);
  - (b) work out the person's overall qualifying period (see section 93F);
  - (c) work out the person's pension multiple (see section 93G);
  - (d) work out the person's annual pension rate (see section 93H);
  - (e) apply the appropriate formula in section 93J.

Note: **Bonus period** is defined by section 92T.

- (2) For the purposes of this Division, a number of years is to be calculated to 3 decimal places. However, if a number worked out in accordance with this subsection would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the number is to be increased by 0.001.

### 93E Qualifying bonus periods

- (1) For the purposes of this Division, if a person has accrued only one bonus period, that bonus period is the person's **qualifying bonus period**.
- (2) For the purposes of this Division, if a person has accrued only 2 bonus periods, each of those bonus periods is a **qualifying bonus period**.
- (3) For the purposes of this Division, if a person has accrued only 3 bonus periods, each of those bonus periods is a **qualifying bonus period**.
- (4) For the purposes of this Division, if a person has accrued only 4 bonus periods, each of those bonus periods is a **qualifying bonus period**.

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- (5) For the purposes of this Division, if a person has accrued only 5 bonus periods, each of those bonus periods is a ***qualifying bonus period***.
- (6) For the purposes of this Division, if:
  - (a) a person has accrued more than 5 bonus periods; and
  - (b) the last bonus period is a full-year period;each of the 5 most recent bonus periods are ***qualifying bonus periods***.
- (7) For the purposes of this Division, if:
  - (a) a person has accrued more than 5 bonus periods; and
  - (b) the last bonus period is a part-year period;each of the 5 most recent full-year bonus periods are ***qualifying bonus periods***.

### 93F Overall qualifying period

- (1) For the purposes of this Division, if a person has only one qualifying bonus period, that period is the person's ***overall qualifying period***.
- (2) For the purposes of this Division, if a person has 2 or more qualifying bonus periods, the person's ***overall qualifying period*** is the period:
  - (a) beginning at the start of the first qualifying bonus period; and
  - (b) ending at the end of the last qualifying bonus period.However, any period of non-accruing membership of the pension bonus scheme is taken not to form part of the person's overall qualifying period.

### 93G Pension multiple

For the purposes of this Division, a person's ***pension multiple*** is worked out using the formula:

$$0.094 \times \text{No. of years in the person's overall qualifying period}$$



**93H Annual pension rate***Application*

- (1) This section sets a person's annual pension rate for the purposes of this Division if the start day for the age pension is on or after 20 September 2009.

Note: See clause 144 of Schedule 1A if the start day is before 20 September 2009.

*If person is not permanently blind*

- (2) If the person is not permanently blind, the person's **annual pension rate** is the rate that would be the person's provisional annual payment rate under step 11 of the method statement in point 1064-A1, worked out as at the start day for the age pension, if the maximum payment rate under step 4 of the method statement were the total of:
- (a) the person's maximum basic rate under point 1064-B1; and
  - (b) the amount worked out for the person using the table in subsection (4).

*If person is permanently blind*

- (3) If the person is permanently blind, the person's **annual pension rate** is the sum of the following, worked out as at the start day for the age pension:
- (a) the person's maximum basic rate in the table in point 1065-B1;
  - (b) the amount worked out for the person using the table in subsection (4).

*Amount for paragraphs (2)(b) and (3)(b)*

- (4) For the purposes of paragraphs (2)(b) and (3)(b), the table is as follows:

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Amount for paragraphs (2)(b) and (3)(b)		
Column 1 Item	Column 2 Person's family situation	Column 3 Amount
1	Not member of a couple	\$507.00
2	Partnered	\$423.80
3	Member of illness separated couple	\$507.00
4	Member of respite care couple	\$507.00
5	Partnered (partner in gaol)	\$507.00

Note 1: For *member of a couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

**93J Amount of pension bonus**

*No change in couple status during overall qualifying period*

(1) If:

- (a) a person was a member of a couple throughout the person's overall qualifying period; or
- (b) a person was not a member of a couple at any time during the person's overall qualifying period;

the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (7)):

$$\text{Annual pension rate} \times \text{Pension multiple} \times \frac{\text{No. of years in the person's overall qualifying period}}{\text{overall qualifying period}}$$

*Change in couple status during overall qualifying period*

- (2) If subsection (1) does not apply to a person, the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (7)):

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$$\left[ \begin{array}{c} \text{Annual} \\ \text{notional} \\ \text{single} \\ \text{pension} \\ \text{rate} \end{array} \times \begin{array}{c} \text{Pension} \\ \text{multiple} \end{array} \times \begin{array}{c} \text{No. of} \\ \text{single} \\ \text{years} \\ \text{during} \\ \text{overall} \\ \text{qualifying} \\ \text{period} \end{array} \right] + \left[ \begin{array}{c} \text{Annual} \\ \text{notional} \\ \text{partnered} \\ \text{pension} \\ \text{rate} \end{array} \times \begin{array}{c} \text{Pension} \\ \text{multiple} \end{array} \times \begin{array}{c} \text{No. of} \\ \text{partnered} \\ \text{years} \\ \text{during} \\ \text{overall} \\ \text{qualifying} \\ \text{period} \end{array} \right]$$

(3) For the purposes of this section, a person's ***annual notional single pension rate*** is equal to:

- (a) if the person is not permanently blind—the adjusted percentage of the sum of:
  - (i) the person's maximum basic rate under Table B in point 1064-B1; and
  - (ii) the amount worked out for the person using the table in subsection 93H(4);
 calculated in each case as at the start day for the age pension and assuming that the person was not a member of a couple at that day; or
- (b) if the person is permanently blind—the sum of:
  - (i) the person's maximum basic rate under Table B in point 1065-B1; and
  - (ii) the amount worked out for the person using the table in subsection 93H(4);
 calculated in each case as at the start day for the age pension and assuming that the person was not a member of a couple at that day.

(4) For the purposes of this section, a person's ***annual notional partnered pension rate*** is equal to:

- (a) if the person is not permanently blind—the adjusted percentage of the sum of:
  - (i) the person's maximum basic rate under Table B in point 1064-B1; and
  - (ii) the amount worked out for the person using the table in subsection 93H(4);

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calculated in each case as at the start day for the age pension and assuming that the person was a member of a couple at that day; or

(b) if the person is permanently blind—the sum of:

(i) the person's maximum basic rate under Table B in point 1065-B1; and

(ii) the amount worked out for the person using the table in subsection 93H(4);

calculated in each case as at the start day for the age pension and assuming that the person was a member of a couple at that day.

(5) For the purposes of this section, a person's *adjusted percentage* is the percentage worked out using the following formula (for rounding up, see subsection (8)):

$$\frac{\text{Annual pension rate}}{\text{Maximum basic rate}} \times 100$$

where:

**maximum basic rate** is the sum of the person's maximum basic rate worked out using Module B of Pension Rate Calculator A in section 1064 and the amount worked out for the person using the table in subsection 93H(4).

(6) For the purposes of this section:

(a) the number of **single years** during the overall qualifying period is the number of years during the overall qualifying period when the person was not a member of a couple; and

(b) the number of **partnered years** during the overall qualifying period is the number of years during the overall qualifying period when the person was a member of a couple.

*Rounding up*

(7) An amount calculated under subsection (1) or (2) is to be rounded to the nearest 10 cents (with 5 cents being rounded up).

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- (8) A percentage worked out under subsection (5) is to be calculated to 3 decimal places. However, if a percentage worked out under subsection (5) would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the percentage is to be increased by 0.001.

**93K Top up of pension bonus for increased rate of age pension**

- (1) The Secretary may determine (a *top up determination*) that a person's pension bonus is to be increased if:
- (a) the Secretary makes a determination (a *rate determination*) increasing the person's rate of age pension; and
  - (b) the rate determination takes effect on a day that is not more than 13 weeks after the start day for the person's pension bonus; and
  - (c) the rate determination is made because of a reduction since the start day in either or both of the following:
    - (i) the value of the person's assets;
    - (ii) the person's ordinary income.

Note: Any reduction in the value of a person's assets or the person's income will be determined by applying the assets test and the ordinary income test in Pension Rate Calculator A in Part 3.2 (including because of the operation of Pension Rate Calculator B in Part 3.3).

- (2) The person's pension bonus is increased by the difference between:
- (a) the person's amount of pension bonus on the start day; and
  - (b) the amount that would have been the person's amount of pension bonus on the start day if the person's rate of age pension on that day had been the highest rate at which age pension was payable to the person during the 13 weeks after the start day.
- (3) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.
- (4) A top up determination is not a legislative instrument.

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**93L Top up of pension bonus in specified circumstances**

- (1) The Secretary may determine (a *top up determination*) that a person's pension bonus is to be increased if:
  - (a) the Secretary makes a determination (a *rate determination*) increasing the person's rate of age pension; and
  - (b) the rate of age pension is increased in circumstances specified in an instrument made under subsection (6).
- (2) The person's pension bonus is increased by the amount specified by the Secretary in the top up determination.
- (3) The Secretary must not specify an increase that would be greater than the difference between:
  - (a) the person's amount of pension bonus on the start day for the bonus; and
  - (b) the amount that would have been the person's amount of pension bonus on the start day if the person's rate of age pension on that day had been the rate specified in the rate determination.
- (4) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.
- (5) A top up determination is not a legislative instrument.
- (6) The Secretary may, by legislative instrument, specify circumstances (other than circumstances specified in subsection 93K(1)) for the purposes of paragraph (1)(b).

**Division 11—Preclusion periods****93U Disposal preclusion period—disposals before 1 July 2002**

(1A) This section applies only to disposals of assets that took place before 1 July 2002.

(1) For the purposes of this Part, if:

(a) either:

(i) a person has, during a designated year of the person, disposed of an asset of the person; or

(ii) the partner of a person has, during a designated year of the person, disposed of an asset of the partner; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person and/or the person's partner during that designated year, exceeds \$10,000;

the person is subject to a **disposal preclusion period** throughout the period of 5 years that starts on the day on which the disposition referred to in paragraph (a) took place.

Note: **Designated year** is defined by subsection (3).

(2) For the purposes of this Part, if:

(a) a person ceases to be a member of a couple (whether because of the death of the person's partner or for any other reason); and

(b) immediately before the cessation, the person was subject to a particular disposal preclusion period that arose wholly because the person's partner disposed of a particular asset; and

(c) if that disposition had been disregarded, the person would not have been subject to that disposal preclusion period;

then, despite subsection (1), that disposal preclusion period ends at the cessation.

(3) For the purposes of this section, a **designated year** of a person is:

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- (a) the 12-month period ending on the day the person qualified for age pension; and
  - (b) each preceding 12-month period; and
  - (c) each succeeding 12-month period.
- (4) This section applies to a disposal even if the disposal took place before the commencement of this section.

### 93UA Disposal preclusion period—disposals on or after 1 July 2002

A person is subject to a *disposal preclusion period* throughout any period for which an amount is included in the value of the person's assets under section 1126AA, 1126AB, 1126AC, 1126AD or 1126E (so far as section 1126E relates to section 1126AA, 1126AB, 1126AC or 1126AD).

### 93V Compensation preclusion period

- (1) For the purposes of this Part, if a person receives a lump sum compensation payment, the person is subject to a *compensation preclusion period* throughout the lump sum preclusion period.
- (2) For the purposes of this Part, if a person receives a series of periodic compensation payments, the person is subject to a *compensation preclusion period* throughout the periodic payments period.
- (3) This section applies to a payment even if it was received before the commencement of this section.

### 93W Carer preclusion period

- (1) For the purposes of this Part, if a person receives:
  - (a) a carer payment; or
  - (b) a carer service pension; or
  - (c) an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act;



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during a particular period, the person is subject to a ***carer preclusion period*** throughout that period.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

- (2) This section applies to a carer payment, a carer service pension or an income support supplement even if it was received before the commencement of this section.

## Division 12—Pension bonus bereavement payment

### 93WA Qualification for pension bonus bereavement payment

A person is qualified for a pension bonus bereavement payment if:

- (a) the person stopped being a member of a couple because the person's partner died; and
- (b) immediately before the partner died, the partner was a registered member of the pension bonus scheme; and
- (c) the partner had not made a claim for age pension or pension bonus before the partner died.

### 93WB Amount of pension bonus bereavement payment

- (1) The amount of a person's pension bonus bereavement payment is worked out:
  - (a) by working out the amount of pension bonus that would have been payable to the legal personal representative of the partner had the partner made claims for age pension and pension bonus just before the partner died (see subsections 59(3) and (4) of the Administration Act); and
  - (b) by disregarding, in working out the amount referred to in paragraph (a):
    - (i) any PBBP employment income of the person (see section 93WC); and
    - (ii) any income of a kind specified in an instrument made under subsection (2).
- (2) The Secretary may, by legislative instrument, specify kinds of income for the purposes of subparagraph (1)(b)(ii).

### 93WC Definition of *PBBP employment income*

- (1) *PBBP employment income*, of a person:

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- (a) means ordinary income that is, or is taken to be, earned, derived or received by the person or the person's partner from gainful work; and
  - (b) includes (without limitation) any of the following that is, or is taken to be, earned, derived or received by the person or the person's partner:
    - (i) salary, wages, commissions and employment-related fringe benefits;
    - (ii) leave payments;
    - (iii) payments to the person or the person's partner by a former employer of the person or partner in relation to the termination of the person's or partner's employment.
- (2) For the purposes of subparagraph (1)(b)(ii), a ***leave payment***:
- (a) includes a payment in respect of sick leave, personal leave, carer's leave, annual leave, maternity leave, long service leave or special leave; and
  - (aa) includes an instalment of parental leave pay; and
  - (ab) includes dad and partner pay; and
  - (b) may be made as a lump sum payment, a series of regular payments or otherwise; and
  - (c) is taken to be made to a person if it is made to another person:
    - (i) at the direction of the person or of a court; or
    - (ii) on behalf of the person; or
    - (iii) for the benefit of the person; or
    - (iv) if the person waives or assigns his or her right to the payment.

## **Part 2.2B—One-off payments to the aged and older Australians**

### **Division 1—One-off payment to the aged**

#### **93X One-off payment to the aged**

- (1) A person is qualified for one-off payment to the aged if:
  - (a) the person has reached pension age on or before 22 May 2001; and
  - (b) a social security pension or a social security benefit is payable to the person on 22 May 2001; and
  - (c) the person is not:
    - (i) a veteran of pension age who is eligible to be paid an age service pension, or an invalidity service pension, under the Veterans' Entitlements Act on 22 May 2001; or
    - (ii) a person (other than a veteran of pension age) who is eligible to be paid a partner service pension, or income support supplement, under the Veterans' Entitlements Act on 22 May 2001; or
    - (iii) a person of pension age who is in receipt of a pension described in subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*; or
    - (iv) a person who, under the ABSTUDY Scheme, has received a one-off payment to the aged.
- (2) The amount of the one-off payment to the aged is a one-off payment of \$300.

## **Division 2—2006 one-off payment to older Australians**

### **93Y 2006 one-off payment to older Australians**

*Qualified if this section applies*

- (1) A person is qualified for a 2006 one-off payment to older Australians if subsection (2), (3) or (4) applies to the person.

*Qualified because of income support payments*

- (2) This subsection applies to a person if:
- (a) the person has reached pension age on or before 9 May 2006; and
  - (b) the person was receiving an income support payment, other than service pension or income support supplement, in respect of a period that includes 9 May 2006; and
  - (c) the person was receiving that payment because of a claim the person made on or before 9 May 2006; and
  - (d) on 9 May 2006, the person:
    - (i) was in Australia; or
    - (ii) was temporarily absent from Australia and had been so for a continuous period not exceeding 13 weeks.

*Qualified because qualified for seniors concession allowance*

- (3) This subsection applies to a person if:
- (a) on 9 May 2006, the person was qualified for seniors concession allowance under section 1061U; or
  - (b) both:
    - (i) on or before 9 May 2006, the person made a claim for a seniors health card under Division 1 of Part 3 of the Administration Act and had not withdrawn that claim on or before 9 May 2006; and
    - (ii) on 9 May 2006, the person either was qualified for the card or would have been so qualified but for being

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temporarily absent from Australia for a continuous period not exceeding 13 weeks.

### *Qualified because receiving certain allowances*

- (4) This subsection applies to a person if:
- (a) the person was receiving a widow allowance, mature age allowance or partner allowance in respect of a period that includes 9 May 2006; and
  - (b) the person was receiving that allowance because of a claim the person made on or before 9 May 2006; and
  - (c) on 9 May 2006, the person:
    - (i) was in Australia; or
    - (ii) was temporarily absent from Australia and had been so for a continuous period not exceeding 13 weeks.

### *One one-off payment only*

- (5) A person is entitled to one payment only under this section, regardless of how many times the person qualifies under this section.
- (6) Despite anything else in this section, a person is not qualified for a payment under this section if the person is eligible for a payment under section 118ZZB of the Veterans' Entitlements Act.

## **93Z Amount of the one-off payment**

- (1) The amount of the one-off payment under section 93Y to a person who qualifies for the payment because of subsection 93Y(2) or (4) is worked out using this table, having regard to the person's situation on 9 May 2006:

<b>Amount of the 2006 one-off payment to older Australians</b>		
<b>Item</b>	<b>Person's situation on 9 May 2006</b>	<b>Amount of payment</b>
1	not a member of a couple	\$102.80
2	member of an illness separated couple	\$102.80

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<b>Amount of the 2006 one-off payment to older Australians</b>		
<b>Item</b>	<b>Person's situation on 9 May 2006</b>	<b>Amount of payment</b>
3	member of a respite care couple	\$102.80
4	member of a temporarily separated couple	\$102.80
5	member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple) the other member of which does not qualify for the one-off payment	\$102.80
6	member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple) the other member of which also qualifies for the one-off payment	\$51.40

- (2) The amount of the one-off payment under section 93Y to a person who qualifies for the payment because of subsection 93Y(3) is \$102.80.

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**Division 3—2007 one-off payment to older Australians**

**93ZA 2007 one-off payment to older Australians**

*Qualified if this section applies*

- (1) A person is qualified for a 2007 one-off payment to older Australians if subsection (2), (3) or (4) applies to the person.

*Qualified because of income support payments*

- (2) This subsection applies to a person if:
- (a) the person has reached pension age on or before 8 May 2007; and
  - (b) the person was receiving an income support payment, other than service pension or income support supplement, in respect of a period that includes 8 May 2007; and
  - (c) the person was receiving that payment because of a claim the person made on or before 8 May 2007; and
  - (d) on 8 May 2007, the person:
    - (i) was in Australia; or
    - (ii) was temporarily absent from Australia and had been so for a continuous period not exceeding 13 weeks.

*Qualified because qualified for seniors concession allowance*

- (3) This subsection applies to a person if:
- (a) on 8 May 2007, the person was qualified for seniors concession allowance under section 1061U; or
  - (b) both:
    - (i) on or before 8 May 2007, the person made a claim for a seniors health card under Division 1 of Part 3 of the Administration Act and had not withdrawn that claim on or before 8 May 2007; and
    - (ii) on 8 May 2007, the person either was qualified for the card or would have been so qualified but for being



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temporarily absent from Australia for a continuous period not exceeding 13 weeks.

*Qualified because receiving certain allowances*

- (4) This subsection applies to a person if:
- (a) the person was receiving a widow allowance, mature age allowance or partner allowance in respect of a period that includes 8 May 2007; and
  - (b) the person was receiving that allowance because of a claim the person made on or before 8 May 2007; and
  - (c) on 8 May 2007, the person:
    - (i) was in Australia; or
    - (ii) was temporarily absent from Australia and had been so for a continuous period not exceeding 13 weeks.

*One one-off payment only*

- (5) A person is entitled to one payment only under this section, regardless of how many times the person qualifies under this section.
- (6) Despite anything else in this section, a person is not qualified for a payment under this section if the person is eligible for a payment under section 118ZZG of the Veterans' Entitlements Act.

**93ZB Amount of the one-off payment**

The amount of the one-off payment under section 93ZA is \$500.

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**Division 4—2008 one-off payment to older Australians**

**93ZC 2008 one-off payment to older Australians**

*Qualified if this section applies*

- (1) A person is qualified for a 2008 one-off payment to older Australians if subsection (2), (3) or (4) applies to the person.

*Qualified because of income support payments*

- (2) This subsection applies to a person if:
- (a) the person has reached pension age on or before 13 May 2008; and
  - (b) the person was receiving an income support payment, other than service pension or income support supplement, in respect of an instalment period that includes 13 May 2008; and
  - (c) the person was receiving that payment because of a claim the person made on or before 13 May 2008; and
  - (d) on 13 May 2008, the person:
    - (i) was in Australia; or
    - (ii) was temporarily absent from Australia and had been so for a continuous period not exceeding 13 weeks.

*Qualified because qualified for seniors concession allowance*

- (3) This subsection applies to a person if:
- (a) on 13 May 2008, the person was qualified for seniors concession allowance under section 1061U; or
  - (b) both:
    - (i) on or before 13 May 2008, the person made a claim for a seniors health card under Division 1 of Part 3 of the Administration Act and had not withdrawn that claim on or before 13 May 2008; and

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- (ii) on 13 May 2008, the person either was qualified for the card or would have been so qualified but for being temporarily absent from Australia for a continuous period not exceeding 13 weeks.

*Qualified because receiving certain allowances*

- (4) This subsection applies to a person if:
  - (a) the person was receiving a widow allowance, mature age allowance, partner allowance, wife pension or widow B pension in respect of an instalment period that includes 13 May 2008; and
  - (b) the person was receiving that allowance or pension because of a claim the person made on or before 13 May 2008; and
  - (c) on 13 May 2008, the person:
    - (i) was in Australia; or
    - (ii) was temporarily absent from Australia and had been so for a continuous period not exceeding 13 weeks.

*One one-off payment only*

- (5) A person may receive one payment only under this section, regardless of how many times the person qualifies under this section.
- (6) Despite anything else in this section, a person is not qualified for a payment under this section if the person is eligible for a payment under section 118ZZL of the Veterans' Entitlements Act.

**93ZD Amount of the one-off payment**

The amount of the one-off payment under section 93ZC is \$500.

## **Part 2.3—Disability support pension**

### **Division 1—Qualification for and payability of disability support pension**

#### **Subdivision A—Qualification**

#### **94 Qualification for disability support pension**

- (1) A person is qualified for disability support pension if:
  - (a) the person has a physical, intellectual or psychiatric impairment; and
  - (b) the person's impairment is of 20 points or more under the Impairment Tables; and
  - (c) one of the following applies:
    - (i) the person has a continuing inability to work;
    - (ii) the Secretary is satisfied that the person is participating in the program administered by the Commonwealth known as the supported wage system; and
  - (d) the person has turned 16; and
  - (da) in a case where the following apply:
    - (i) the person is under 35 years of age or is a reviewed 2008-2011 DSP starter;
    - (ii) the Secretary is satisfied that the person is able to do work that is for at least 8 hours per week on wages at or above the relevant minimum wage and that exists in Australia, even if not within the person's locally accessible labour market;
    - (iii) if the person has one or more dependent children—the youngest dependent child is 6 years of age or over;the person meets any participation requirements that apply to the person under section 94A; and
  - (e) the person either:

- (i) is an Australian resident at the time when the person first satisfies paragraph (c); or
- (ii) has 10 years qualifying Australian residence, or has a qualifying residence exemption for a disability support pension; or
- (iii) is born outside Australia and, at the time when the person first satisfies paragraph (c) the person:
  - (A) is not an Australian resident; and
  - (B) is a dependent child of an Australian resident; and the person becomes an Australian resident while a dependent child of an Australian resident; and
- (ea) one of the following applies:
  - (i) the person is an Australian resident;
  - (ia) the person is absent from Australia and the Secretary has made a determination in relation to the person under subsection 1218AAA(1);
  - (ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

Note 1: For *Australian resident*, *qualifying Australian residence* and *qualifying residence exemption* see section 7.

Note 2: For *Impairment Tables* see subsection 23(1) and sections 26 and 27.

*Continuing inability to work*

- (2) A person has a ***continuing inability to work*** because of an impairment if the Secretary is satisfied that:
  - (aa) in a case where the person's impairment is not a severe impairment within the meaning of subsection (3B) or the person is a reviewed 2008-2011 DSP starter who has had an opportunity to participate in a program of support—the person has actively participated in a program of support within the meaning of subsection (3C), and the program of support was wholly or partly funded by the Commonwealth; and

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- (a) in all cases—the impairment is of itself sufficient to prevent the person from doing any work independently of a program of support within the next 2 years; and
- (b) in all cases—either:
  - (i) the impairment is of itself sufficient to prevent the person from undertaking a training activity during the next 2 years; or
  - (ii) if the impairment does not prevent the person from undertaking a training activity—such activity is unlikely (because of the impairment) to enable the person to do any work independently of a program of support within the next 2 years.

Note: For *work* see subsection (5).

- (3) In deciding whether or not a person has a ***continuing inability to work*** because of an impairment, the Secretary is not to have regard to:
  - (a) the availability to the person of a training activity; or
  - (b) the availability to the person of work in the person's locally accessible labour market.

(3A) If:

- (a) a person is receiving disability support pension; and
  - (b) the Secretary gives the person a notice under subsection 63(2) or (4) of the Administration Act in relation to assessing the person's qualification for that pension; and
  - (c) the person is not a reviewed 2008-2011 DSP starter;
- then paragraph (2)(aa) of this section does not apply in relation to that assessment.

*Severe impairment*

- (3B) A person's impairment is a ***severe impairment*** if the person's impairment is of 20 points or more under the Impairment Tables, of which 20 points or more are under a single Impairment Table.

Example 1: A person's impairment is of 30 points under the Impairment Tables, made up of 20 points under one Impairment Table and 10 points under another Impairment Table. The person has a severe impairment.

Example 2: A person's impairment is of 40 points under the Impairment Tables, made up of 20 points under one Impairment Table and 20 points under another Impairment Table. The person has a severe impairment.

Example 3: A person's impairment is of 20 points under the Impairment Tables, made up of 10 points each under 2 separate Impairment Tables. The person does not have a severe impairment.

*Active participation in a program of support*

- (3C) A person has **actively participated** in a program of support if the person has satisfied the requirements specified in a legislative instrument made by the Minister for the purposes of this subsection.
- (3D) The Secretary must comply with any guidelines in force under subsection (3E) in deciding whether the Secretary is satisfied as mentioned in paragraph (2)(aa).
- (3E) The Minister may, by legislative instrument, make guidelines for the purposes of subsection (3D).

*Doing work independently of a program of support*

- (4) A person is treated as doing work **independently of a program of support** if the Secretary is satisfied that to do the work the person:
  - (a) is unlikely to need a program of support; or
  - (b) is likely to need a program of support provided occasionally;  
or
  - (c) is likely to need a program of support that is not ongoing.

*Other definitions*

- (5) In this section:

**program of support** means a program that:

- (a) is designed to assist persons to prepare for, find or maintain work; and

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- (b) either:
  - (i) is funded (wholly or partly) by the Commonwealth; or
  - (ii) is of a type that the Secretary considers is similar to a program that is designed to assist persons to prepare for, find or maintain work and that is funded (wholly or partly) by the Commonwealth.

***reviewed 2008-2011 DSP starter*** means a person for whom all the following conditions are met:

- (a) the person made (or is taken to have made) a claim for disability support pension before 3 September 2011;
- (b) a determination granting the claim took effect after 2007;
- (c) on or after 1 July 2014 the person was given a notice under subsection 63(2) or (4) of the Administration Act in relation to assessing the person's qualification for that pension;
- (d) when the notice was given, the person was under 35 years of age;
- (e) before the notice was given, either:
  - (i) there was a record that the Secretary was satisfied that the person was able to do work that was for at least 8 hours per week on wages at or above the relevant minimum wage and that existed in Australia, even if not within the person's locally accessible labour market; or
  - (ii) there was no record that the Secretary had considered whether the person was able to do work described in subparagraph (i);
- (f) after the notice was given, the Secretary decided not to determine under section 80 of the Administration Act that the disability support pension for the person is to be cancelled;
- (g) as a result of the assessment involving the notice, the Secretary is satisfied that the person:
  - (i) does not have a severe impairment within the meaning of subsection (3B); and
  - (ii) is able to do work that is for at least 8 hours per week on wages at or above the relevant minimum wage and that



exists in Australia, even if not within the person's locally accessible labour market;

- (h) the person does not have a dependent child under 6 years of age.

Note 1: Section 63 of the Administration Act lets the Secretary notify a person that the person must give information to the Secretary or undergo a medical, psychiatric or psychological examination and give the Secretary a report on the examination.

Note 2: Section 80 of the Administration Act lets the Secretary determine that disability support pension paid to a person is to be cancelled if the person is not or was not qualified for the pension, or if the pension is not or was not payable to the person (which may apply because the person did not comply with the notice under section 63 of that Act).

**training activity** means one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

- (a) education;
- (b) pre-vocational training;
- (c) vocational training;
- (d) vocational rehabilitation;
- (e) work-related training (including on-the-job training).

**work** means work:

- (a) that is for at least 15 hours per week on wages that are at or above the relevant minimum wage; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

*Person not qualified in certain circumstances*

- (6) A person is not qualified for a disability support pension on the basis of a continuing inability to work if the person brought about the inability with a view to obtaining a disability support pension or a sickness allowance or with a view to obtaining an exemption, because of the person's incapacity, from the requirement to satisfy the activity test for the purposes of job search allowance, newstart

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allowance, youth training allowance, youth allowance or austudy payment.

### 94A Participation requirements

- (1) The participation requirements are as follows:
  - (a) the person must enter into a participation plan when the person is required by the Secretary under section 94B to do so;
  - (b) if a participation plan is in force in relation to the person—the person must enter into another participation plan (instead of the existing one) if required by the Secretary under section 94B to do so;
  - (c) while a participation plan is in force in relation to the person, the person must comply with the requirements in the plan.
- (2) However, this section does not apply to the person during a period when the person is covered by a participation exemption under section 94C, 94D, 94E or 94F.

### 94B Participation plans

- (1) If a participation plan is not in force in relation to the person, the Secretary may require the person to enter into a participation plan under this section.
- (2) If a participation plan is in force in relation to the person, the Secretary may require the person to enter into another participation plan instead of the existing one.

#### *Notice of requirement*

- (3) The Secretary is to give the person notice of:
  - (a) the requirement; and
  - (b) the place and time at which the participation plan is to be entered into.

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*Suitable requirements*

- (4) A participation plan that is in force in relation to a person must contain one or more terms (the **requirements**) that:
- (a) the person is required to comply with; and
  - (b) the Secretary regards as suitable for the person.

*Approval of requirements*

- (5) The requirements in a plan are to be approved by the Secretary.

*Optional terms*

- (6) A participation plan may also contain one or more terms that the person may, but is not required to, comply with.

*Form of plan*

- (7) A participation plan must be in a form approved by the Secretary.

**94C Illness or accident**

- (1) A person is covered by a participation exemption if the Secretary is satisfied that the person is temporarily unable to meet the participation requirements because of illness or an accident.
- (1A) Subsection (1) does not apply to illness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.
- (2) The person is covered by the participation exemption for a period determined by the Secretary.
- (3) In deciding whether he or she is satisfied as mentioned in subsection (1), the Secretary may request the person to give the Secretary a certificate from a medical practitioner.
- (4) Subsection (3) does not limit subsection (1).

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- (5) A determination under subsection (2) is not a legislative instrument.

### 94D Pre-natal and post-natal relief

- (1) A pregnant woman is covered by a participation exemption for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).
- (2) If a woman gives birth to a child (whether or not the child is born alive), the woman is covered by a participation exemption for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

### 94E Supported employment

- (1) A person is covered by a participation exemption for a period if:
- (a) the person is employed throughout the period; and
  - (b) the work undertaken by the person in the course of that employment is for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.
- (2) A person is covered by a participation exemption for a period if the person is, throughout the period, in employment that is supported by supported employment services within the meaning of section 7 of the *Disability Services Act 1986*.

### 94F Special circumstances

- (1) A person is covered by a participation exemption for a period determined by the Secretary if:
- (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
  - (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet the participation requirements for that period.

- (1A) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.
- (2) The period determined under subsection (1) must not exceed 13 weeks.
- (3) A determination under subsection (1) is not a legislative instrument.

## **95 Qualification for disability support pension—permanent blindness**

- (1) A person is qualified for a disability support pension if:
  - (a) the person is permanently blind; and
  - (b) the person has turned 16; and
  - (c) the person:
    - (i) is an Australian resident at the time when the person first satisfies paragraph (a); or
    - (ii) has 10 years qualifying Australian residence; or
    - (ia) has a qualifying residence exemption for a disability support pension; or
    - (iii) is born outside Australia and, at the time when the person first satisfies paragraph (a), the person:
      - (A) is not an Australian resident; and
      - (B) is a dependent child of an Australian resident; and the person becomes an Australian resident while a dependent child of an Australian resident; and
  - (d) one of the following applies:
    - (i) the person is an Australian resident;
    - (ia) the person is absent from Australia and the Secretary has made a determination in relation to the person under subsection 1218AAA(1);
    - (ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

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

*Person not qualified in certain circumstances*

- (2) A person is not qualified for a disability support pension on the basis of blindness if the person brought about the blindness with a view to obtaining a disability support pension or a sickness allowance or with a view to obtaining an exemption, because of the person's blindness, from the requirement to satisfy the activity test for the purposes of job search allowance, newstart allowance, youth training allowance, youth allowance or austudy payment.

**96 Continuation of disability support pension**

- (1) This section applies to a person if:
- (a) the person is receiving disability support pension; and
  - (b) the person would, apart from this section, cease to be qualified for disability support pension because the person obtains paid work that is for:
    - (i) at least 15 hours per week; but
    - (ii) less than 30 hours per week.
- (2) A person to whom this section applies continues to be qualified for disability support pension.
- (3) However, subsection (2) does not apply if, apart from that subsection, the person would cease to be qualified for disability support pension for the reason described in paragraph (1)(b) in the period:
- (a) starting when the person becomes a reviewed 2008-2011 DSP starter as defined in subsection 94(5); and
  - (b) ending at the first time, after the person becomes a reviewed 2008-2011 DSP starter, at which the Secretary reviews the determination granting disability support pension to the person.

## **Subdivision B—Payability**

### **98 Disability support pension not payable if pension rate nil**

- (1) Subject to subsection (2), a disability support pension is not payable to a person if the person's disability support pension rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

### **103 Multiple entitlement exclusion**

- (1) A disability support pension is not payable to a person if the person is already receiving a service pension or a veteran payment.
- (2) If:
  - (a) a person is receiving a disability support pension; and
  - (b) another social security pension, a social security benefit, a service pension or a veteran payment becomes payable to the person;the disability support pension is not payable to the person.

Note 1: Another payment type will generally not become payable to the person until the person claims it.

Note 2: ***Social security benefit*** includes newstart allowance.
- (3) A disability support pension is not payable to a person who:
  - (a) is an armed services widow or an armed services widower; and
  - (b) is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
  - (c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.

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- (4) Subsection (3) does not apply if:
  - (a) the person:
    - (i) was on 20 March 1995 receiving; and
    - (ii) has from that day continuously received; and
    - (iii) is receiving;  
the disability support pension; and
  - (b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the disability support pension.
- (5) Subsection (3) does not apply if:
  - (a) before 20 March 1995, the person had made a claim for disability support pension; and
  - (b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and
  - (c) on or after 20 March 1995, the person was granted disability support pension; and
  - (d) the person has since that time continued to receive, and is receiving, the pension.
- (6) Subsection (3) does not apply if:
  - (a) before 20 March 1995:
    - (i) the person had made a claim for disability support pension; and
    - (ii) the claim had been rejected; and
    - (iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and
  - (b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and



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- (c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted disability support pension; and
  - (d) the person has since that time continued to receive, and is receiving, the pension.
- (7) A disability support pension is not payable to a person who:
- (a) is an armed services widow or an armed services widower; and
  - (b) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and
  - (c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

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

Note 2: For *MRCA* and *VEA* see subsection 23(1).

**103A Exclusion of certain participants in ABSTUDY Scheme**

- (1) If:
- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
  - (b) the payment is made on the basis that the person is a full-time student; and
  - (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
  - (d) the payment relates to a period;
- disability support pension is not payable to the person in respect of any part of the period.
- (2) If:
- (a) a person is qualified for a payment under the ABSTUDY Scheme; and

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(b) the payment for which the person is qualified is a payment that:

- (i) is made on the basis that the person is a full-time student; and
- (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
- (iii) relates to a period;

disability support pension is not payable to the person in respect of any part of the period.

(3) If:

- (a) a person may enrol in a full-time course of education; and
- (b) a payment referred to in subsection (2) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (2), disability support pension is payable to the person before the person starts the course.

**104 Seasonal workers—preclusion period**

(1) This section applies if:

- (a) a person has lodged a claim for disability support pension; and
- (b) the person qualifies, under section 94, for disability support pension; and
- (c) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

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

(2) Disability support pension 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).

- (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) or subsection 19C(3) (person who is a member of a couple).

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

## Division 5—Rate of disability support pension

### 117 How to work out a person's disability support pension rate

A person's disability support pension rate is worked out:

- (a) if the person is not permanently blind and paragraph (b) does not apply to the person—using Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or
- (b) if the person is not permanently blind, has not turned 21 and does not have any dependent children—using Pension Rate Calculator D at the end of section 1066A (see Part 3.4A); or
- (c) if the person is permanently blind and paragraph (d) does not apply to the person—using Pension Rate Calculator B at the end of section 1065 (see Part 3.3); or
- (d) if the person is permanently blind, has not turned 21 and does not have any dependent children—using Pension Rate Calculator E at the end of section 1066B (see Part 3.4B).

Note: For *dependent child* see section 5.

### 118 Approved program of work supplement

If a person:

- (a) is receiving a disability support pension; and
- (b) is participating in an approved program of work for income support payment;

the rate of the person's disability support pension is increased by an amount of \$20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program.

### 119 Approved program of work supplement not payable in certain circumstances

An approved program of work supplement is not payable to a person in respect of a fortnight if pensioner education supplement

under Part 2.24A or under ABSTUDY is payable to the person in respect of a day in the fortnight.

**120 Effect of participation in an approved program of work for income support payment**

A person is not taken to be:

- (a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*; or
- (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or
- (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*; or
- (d) an employee for the purposes of the *Fair Work Act 2009*;

merely by participating in an approved program of work for income support payment in accordance with the terms of an agreement with the Secretary for the purposes of this Part.

## **Division 10—Bereavement payments**

### **Subdivision A—Death of partner**

#### **146F Qualification for payments under this Subdivision**

- (1) If:
- (a) a person is receiving disability support 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, income support supplement or a veteran payment; 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 146J (person's continued rate) on that payday; and
    - (ii) the amount that would otherwise be payable to the person under section 146G (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 146G 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 146H provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first

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available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

(1A) If:

- (a) a person is receiving a disability support pension; and
- (b) immediately before starting to receive the disability support 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.

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

Note: If a person makes an election, the date of effect of any determination to increase the person's rate of age pension may, in some circumstances, be the day on which the person's partner died (see subsection 146D(5A)).

(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.

(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which disability support pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 146J.

(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

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- (ii) was receiving a social security benefit; or
  - (iia) was receiving a youth training allowance; or
  - (iii) was receiving a service pension, income support supplement or a veteran payment.
- (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.

**146G Continued payment of deceased partner's previous entitlement**

- (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 or social security benefit—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, income support supplement or a veteran payment—the amount that would have been payable to the partner under Part III, IIIA or IIIAA 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.
- (2) For the purposes of subsection (1), if the couple were, immediately before the partner's death, an illness separated couple or a respite



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care couple, the amounts are to be worked out as if they were not such a couple.

**146H 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 partner'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

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	(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 <b><i>combined rate</i></b> .
Step 4.	Work out the amount that, but for section 146J, 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 <b><i>person's individual rate</i></b> .
Step 5.	Take the person's individual rate away from the combined rate: the result is called the <b><i>partner's instalment component</i></b> .
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.

**146J Adjustment of person's disability support pension rate**

If:

- (a) a person is qualified for payments under this Subdivision; and
- (b) the person does not elect under subsection 146F(2) not to receive payments under this Subdivision;

the rate of the person's disability support pension during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of disability support 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

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- (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 disability support pension is payable to the person is the rate at which the disability support pension would be payable to the person apart from this Subdivision.

**146K 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.

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- 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 97 of the Administration Act, 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.

**146L Matters affecting payment of benefits under this Subdivision**

(1) If:

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

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- (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 or IIIA 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).

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

### **Subdivision C—Death of recipient**

#### **146Q Death of recipient**

(1) If:

- (a) a person is receiving disability support pension; and

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(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, income support supplement or a veteran payment; 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.

- (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: For the death of a person qualified for bereavement payments under Subdivision A, see section 146K.

## Part 2.4—Wife pension

### Division 1A—Time limit on grant of wife pension

#### 146V Wife pension not to be granted after 30 June 1995

- (1) In spite of any other provision of the social security law, other than sections 85 and 85AA of the Administration Act, a woman is not to be granted a wife pension unless:
  - (a) her claim for the pension was lodged on or before 30 June 1995 and she qualified for the pension on or before that date; or
  - (b) all the following subparagraphs apply:
    - (i) she began to receive mature age partner allowance on or before 30 June 1995;
    - (ii) her partner was receiving a mature age allowance under Part 2.12A but has, after 30 June 1995, become qualified for an age pension and been automatically transferred to the age pension;
    - (iii) she received mature age partner allowance for a continuous period from the time when she began to receive the allowance until her partner was automatically transferred to the age pension as mentioned in subparagraph (ii).
- (2) For the purposes of paragraph (1)(a), if a provision of section 15 of the Administration Act applies, the woman is taken to have lodged her claim for a wife pension on the day on which she lodged her incorrect claim or her initial claim, as the case may be.
- (3) For the purposes of subsection (2):

*incorrect claim* or *initial claim* has the same meaning as in the provision of section 15 of the Administration Act that applies as referred to in subsection (2).

## **Division 1—Qualification for and payability of wife pension**

### **Subdivision A—Qualification**

#### **147 Qualification for wife pension**

A woman is qualified for a wife pension if the woman:

- (a) is a member of a couple; and
- (b) has a partner who is receiving an age pension or disability support pension.

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

### **Subdivision B—Payability**

#### **148 Wife pension not payable if pension rate nil**

- (1) Subject to subsection (2), a wife pension is not payable to a person if the person's wife pension rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

#### **151 Multiple entitlement exclusion**

- (1) A wife pension is not payable to a woman if the woman is already receiving a service pension or a veteran payment.
- (2) If:
  - (a) a woman is receiving a wife pension; and
  - (b) another social security pension, a social security benefit, a service pension or a veteran payment becomes payable to the woman;the wife pension is not payable to the woman.



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Note 1: Another payment type will generally not become payable to the woman until the woman claims it.

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

- (3) A wife pension is not payable to a person who:
- (a) is an armed services widow or an armed services widower; and
  - (b) is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
  - (c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.
- (4) Subsection (3) does not apply if:
- (a) the person:
    - (i) was on 20 March 1995 receiving; and
    - (ii) has from that day continuously received; and
    - (iii) is receiving; the wife pension; and
  - (b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the wife pension.
- (5) Subsection (3) does not apply if:
- (a) before 20 March 1995, the person had made a claim for wife pension; and
  - (b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and
  - (c) on or after 20 March 1995, the person was granted wife pension; and
  - (d) the person has since that time continued to receive, and is receiving, the pension.

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- (6) Subsection (3) does not apply if:
- (a) before 20 March 1995:
    - (i) the person had made a claim for wife pension; and
    - (ii) the claim had been rejected; and
    - (iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and
  - (b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and
  - (c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted wife pension; and
  - (d) the person has since that time continued to receive, and is receiving, the pension.
- (7) A wife pension is not payable to a woman who:
- (a) is an armed services widow; and
  - (b) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and
  - (c) is receiving income support supplement or would be eligible for income support supplement if she made a claim under section 45I of the VEA.

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

Note 2: For *MRCA* and *VEA* see subsection 23(1).

**151A Exclusion of certain participants in ABSTUDY Scheme**

- (1) If:
- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
  - (b) the payment is made on the basis that the person is a full-time student; and

- (c) in the calculation of the payment, an amount identified as living allowance (the **basic payment**) is included; and
  - (d) the payment relates to a period;
- wife pension is not payable to the person in respect of any part of the period.

(2) If:

- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
  - (b) the payment for which the person is qualified is a payment that:
    - (i) is made on the basis that the person is a full-time student; and
    - (ii) is calculated on the basis that an amount identified as living allowance (the **basic payment**) is included; and
    - (iii) relates to a period;
- wife pension is not payable to the person in respect of any part of the period.

(3) If:

- (a) a person may enrol in a full-time course of education; and
  - (b) a payment referred to in subsection (2) may be made in respect of the person;
- the Secretary may decide that, in spite of subsection (2), wife pension is payable to the person before the person starts the course.

## **Division 4—Rate of wife pension**

### **159 How to work out the rate of wife pension**

A woman's wife pension rate is worked out using Pension Rate Calculator A at the end of section 1064 (see Part 3.2).

**Division 9—Bereavement payments****Subdivision A—Continuation of wife pension where partner dies****186 Continuation of wife pension for bereavement period**

If:

- (a) a woman is receiving a wife pension; and
- (b) the woman's partner dies;

the woman remains qualified for the wife pension during the bereavement period as if:

- (c) the partner had not died; and
- (d) the partner had continued to receive age or disability support pension; and
- (e) the woman and the partner had continued to be members of a couple.

**Note:** A woman who remains qualified for a wife pension for the bereavement period may, in some circumstances, be automatically transferred to a parenting payment after the end of the bereavement period without making a claim for that payment (see subsection 501(3)).

**187 Continued wife pension rate**

Where a woman is qualified for a wife pension because of section 186, the woman's wife pension rate is worked out as follows:

- (a) during the bereavement rate continuation period, the rate of wife pension is the rate that would have been payable to the woman if:
  - (i) her 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;

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- (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 woman if she had been qualified for a widow B pension.

**Subdivision B—Death of pensioner partner**

**188 Qualification for payments under this Subdivision**

- (1) If:

- (a) a woman is receiving a wife pension; and
- (b) the woman's partner dies;

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

Note 1: Section 189 provides for the payment to the woman, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the woman's partner during that period if the partner had not died.

Note 2: Section 190 provides for a lump sum that represents the instalments that would have been paid to the woman's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

- (2) A woman who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
- (3) An election under subsection (2):
  - (a) must be made by written notice to the Secretary; and
  - (b) may be made after the woman 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.

**189 Continued payment of partner's pension or allowance**

If a woman is qualified for payments under this Subdivision in relation to the death of the woman's partner, there is payable to the woman, on each day that would have been a payday of the partner

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

**190 Lump sum payable in some circumstances**

If:

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

there is payable to the woman 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 woman on the woman's payday immediately before the first available bereavement adjustment payday if:

- (a) the woman'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 woman'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

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- (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 pensioner couple rate*.

Step 4. Work out the amount of widow B pension that would have been payable to the woman on her payday immediately before the first available bereavement adjustment payday if a widow B pension had been payable to the woman on that payday: the result is called the *woman's individual rate*.

Step 5. Take the woman's individual rate away from the combined pensioner couple rate: the result is called the *partner's instalment component*.

Step 6. Work out the number of the partner's paydays 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 woman under this section.

**191 Effect of death of person entitled to payments under this Subdivision**

If:

- (a) a woman is qualified for payments under this Subdivision in relation to the death of the woman's partner; and
- (b) the woman dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the woman's partner before the woman 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 woman on the woman's payday immediately after the day on which the woman died if:
- (a) neither the woman nor the woman'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 first day that would have been a payday of the partner on or after the woman's payday referred to in Step 1 if:
- (a) neither the woman 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 pensioner couple rate***.
- Step 4. Work out the amount that, but for sections 186 and 187, would have been payable to the woman on the woman's payday immediately after the day on which the woman died if the woman had not died: the result is called the ***woman's individual rate***.

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- Step 5. Take the woman's individual rate away from the combined pensioner couple rate: the result is called the *partner's instalment component*.
- Step 6. Work out the number of the partner's paydays in the period that commences on the day on which the woman 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 4: the result is the amount of the lump sum payable under this section.

**192 Matters affecting payment of benefits under this Subdivision**

(1) If:

- (a) a woman is qualified for payments under this Subdivision in relation to the death of the woman's partner; and
- (b) after the woman'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 woman 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 woman or from the personal representative of the woman's partner, except to the extent (if any) that the amount exceeds the amount payable to the woman under this Subdivision;
- (e) the amount payable to the woman under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

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

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- (b) an amount to which the woman's partner would have been entitled if the woman'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 woman, 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 woman's partner or anyone else in respect of the payment of that money to the woman.

## Part 2.5—Carer payment

### Division 1A—Interpretation

#### 197 Definitions

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

***Adult Disability Assessment Tool*** has the meaning given by subsection 38C(3).

***care*** includes attention and supervision.

***care child*** means:

- (a) a sole care child; or
- (b) a combined care child; or
- (c) a multiple care child.

***care receiver*** has the meaning given by subsection 197B(1), 197C(1), 197D(1), 197E(1), 197G(1), 197H(1) or 198(2).

***combined care child*** has the meaning given by subsection (4).

***Disability Care Load Assessment (Child) Determination*** has the meaning given by subsection 38E(1).

***disabled adult*** means a person aged 16 or more who:

- (a) has a physical, intellectual or psychiatric disability; and
- (b) is likely to suffer from that disability permanently or for an extended period.

***higher ADAT score adult*** means a disabled adult who is a care receiver because paragraph 198(2)(a) applies.

***lower ADAT score adult*** means a disabled adult who is a care receiver because subparagraph 197D(1)(a)(i), or paragraph 198(2)(d) applies.

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**multiple care child** has the meaning given by subsection (5).

**parent** of:

- (a) a child with a severe disability or severe medical condition;  
or
- (b) a child with a disability or medical condition; or
- (c) a child who has a terminal condition;

includes a person who has been granted guardianship of the child under a law of the Commonwealth, a State or a Territory.

**sole care child** has the meaning given by subsections (2) and (3).

**treating health professional** means a person who is determined under section 38F to be a treating health professional.

*Sole care child*

- (2) Subject to subsections (6) and (7), a person with a severe disability or severe medical condition is a **sole care child** if the provisions listed in one of the following paragraphs apply in relation to him or her as a care receiver:
  - (a) paragraphs 197B(1)(a), (b) and (c);
  - (b) subparagraph 197G(1)(a)(i) and paragraphs 197G(1)(b) and (c);
  - (c) paragraphs 197H(1)(a) and (b).
- (3) Subject to subsection (7), a person who has a terminal condition is a **sole care child** if paragraphs 197E(1)(a) and (b) apply in relation to the person as a care receiver. For the purposes of this subsection, assume that paragraph 197E(1)(a) continues to apply in relation to the person if:
  - (a) the person has turned 16; and
  - (b) subsection 197E(2) applies in relation to him or her as a care receiver.

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*Combined care child*

- (4) Subject to subsections (6) and (7), a person with a disability or medical condition is a **combined care child** if the provisions listed in one of the following paragraphs apply in relation to him or her as a care receiver or as one of 2 or more care receivers:
- (a) paragraphs 197C(1)(a), (b) and (c);
  - (b) subparagraph 197G(1)(a)(ii) and paragraphs 197G(1)(b) and (c);
  - (c) paragraphs 197H(1)(a) and (b).

*Multiple care child*

- (5) Subject to subsections (6) and (7), a person with a disability or medical condition is a **multiple care child** if the provisions listed in one of the following paragraphs apply in relation to him or her as a care receiver or as one of 2 or more care receivers:
- (a) subparagraph 197D(1)(a)(ii) and paragraphs 197D(1)(b) and (c);
  - (b) subparagraph 197G(1)(a)(ii) and paragraphs 197G(1)(b) and (c);
  - (c) paragraphs 197H(1)(a) and (b).

*Person may be over 16*

- (6) For the purposes of subsections (2), (4) and (5), assume that paragraph 197B(1)(a) or 197C(1)(a), subparagraph 197D(1)(a)(ii) or paragraph 197G(1)(b) or 197H(1)(b) (as the case requires) continues to apply in relation to the person if:
- (a) the person has turned 16; and
  - (b) the person has not been assessed and rated and given a score under the Adult Disability Assessment Tool.

*Constant care*

- (7) If section 197F applies in relation to the person as a care receiver or as one of 2 or more care receivers, it does not matter that the care provided for the person is not constant care.

## **Division 1—Qualification for and payability of carer payment**

### **Subdivision A—Qualification**

#### **197A Overview—circumstances in which person is qualified for carer payment**

- (1) The following sections set out the circumstances in which a person is qualified for a carer payment:
  - (a) section 197B (child with a severe disability or severe medical condition);
  - (b) section 197C (2 or more children each with a disability or medical condition);
  - (c) section 197D (disabled adult and one or more children each with a disability or medical condition);
  - (d) section 197E (child who has a terminal condition);
  - (e) section 197F (exchanged care of children);
  - (f) section 197G (short term or episodic care of children);
  - (g) section 197H (extension of short term or episodic care of children);
  - (h) section 198 (disabled adult, or disabled adult and dependent child);
  - (i) section 198AA (hospitalisation).
- (2) In addition, sections 198AB and 198AC allow a person to continue to qualify for a carer payment in certain short-term circumstances.

#### **197B Qualification—child with a severe disability or severe medical condition**

*Child with a severe disability or severe medical condition*

- (1) A person is qualified for a carer payment if:

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- (a) the person personally provides constant care for a person (the ***care receiver***) aged under 16 with a severe disability or severe medical condition; and
- (b) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receiver; and
- (c) a treating health professional has certified in writing that, because of that disability or condition:
  - (i) the care receiver will need personal care for 6 months or more; and
  - (ii) the personal care is required to be provided by a specified number of persons; and
- (d) the provision of constant care by the person severely restricts the person's capacity to undertake paid employment; and
- (e) the requirements of subsections (2), (3) and (4) are met.

*Constant care in home*

- (2) The constant care must be provided in a private residence that is the home of the care receiver.

*Person must be Australian resident*

- (3) The person must be an Australian resident.

Note: For ***Australian resident*** see section 7.

*Care receiver: residence and income and assets tests etc.*

- (4) The care receiver must:
  - (a) require constant care; and
  - (b) be an Australian resident; and
  - (c) pass the income test under section 198A; and
  - (d) either:
    - (i) pass the assets test under section 198D; or
    - (ii) be the subject of a decision in force under subsection 198N(2), (3) or (4) that subparagraph (i)



does not disqualify the person providing the constant care from carer payment.

**197C Qualification—2 or more children each with a disability or medical condition**

*Children each with a disability or medical condition*

- (1) A person is qualified for a carer payment if:
- (a) the person personally provides constant care for 2 or more persons (the **care receivers**) aged under 16 each with a disability or medical condition; and
  - (b) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receivers; and
  - (c) in relation to each care receiver—a treating health professional has certified in writing that, because of that disability or condition:
    - (i) the care receiver will need personal care for 6 months or more; and
    - (ii) the personal care is required to be provided by a specified number of persons; and
  - (d) the provision of constant care by the person severely restricts the person's capacity to undertake paid employment; and
  - (e) the requirements of subsections (2), (3) and (4) are met.

*Constant care in home*

- (2) The constant care must be provided in a private residence that is the home of the care receivers.

*Person must be Australian resident*

- (3) The person must be an Australian resident.

Note: For **Australian resident** see section 7.

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*Care receivers: residence and income and assets tests etc.*

- (4) The care receivers must:
- (a) require constant care; and
  - (b) be Australian residents; and
  - (c) pass the income test under section 198A; and
  - (d) either:
    - (i) pass the assets test under section 198D; or
    - (ii) be the subject of a decision in force under subsection 198N(2), (3) or (4) that subparagraph (i) does not disqualify the person providing the constant care from carer payment.

**197D Qualification—disabled adult and one or more children each with a disability or medical condition**

*Disabled adult and one or more children each with a disability or medical condition*

- (1) A person is qualified for a carer payment if:
- (a) the person personally provides constant care for both or all of the following persons (the *care receivers*):
    - (i) a disabled adult who has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 20, being a score calculated on the basis of a total professional questionnaire score of at least 8;
    - (ii) one or more persons aged under 16 each with a disability or medical condition; and
  - (b) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receivers; and
  - (c) in relation to each care receiver who is aged under 16—a treating health professional has certified in writing that, because of that disability or condition:

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- (i) the care receiver will need personal care for 6 months or more; and
- (ii) the personal care is required to be provided by a specified number of persons; and
- (d) the provision of constant care by the person severely restricts the person's capacity to undertake paid employment; and
- (e) the person is not qualified for a carer payment under section 198 because of paragraph 198(2)(a) for caring for the care receiver who is the disabled adult; and
- (f) the requirements of subsections (2), (3) and (4) are met.

*Constant care in home*

- (2) The constant care must be provided in a private residence that is the home of the care receivers.

*Person must be Australian resident*

- (3) The person must be an Australian resident.

Note: For **Australian resident** see section 7.

*Care receivers: residence and income and assets tests etc.*

- (4) The care receivers must:
  - (a) require constant care; and
  - (b) be Australian residents; and
  - (c) pass the income test under section 198A; and
  - (d) either:
    - (i) pass the assets test under section 198D; or
    - (ii) be the subject of a decision in force under subsection 198N(2), (3) or (4) that subparagraph (i) does not disqualify the person providing the constant care from carer payment.

**197E Qualification—child who has a terminal condition**

- (1) A person is qualified for a carer payment if:

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- (a) the person personally provides constant care for a person (the *care receiver*) aged under 16; and
  - (b) a medical practitioner certifies in relation to the care receiver that:
    - (i) the care receiver has a terminal condition; and
    - (ii) the average life expectancy for a child with the same or a similar condition is not substantially longer than 24 months; and
    - (iii) because of the condition the care receiver will need personal care for the remainder of his or her life; and
    - (iv) the personal care is required to be provided by a specified number of persons; and
  - (c) the provision of constant care by the person severely restricts the person's capacity to undertake paid employment; and
  - (d) the requirements of subsections (3), (4) and (5) are met.
- (2) Despite paragraph (1)(a), the person remains qualified for a carer payment under this section after the care receiver turns 16 until the earlier of the following:
- (a) the person no longer otherwise qualifies for a carer payment under this section for caring for the care receiver;
  - (b) the care receiver turns 18.

*Constant care in home*

- (3) The constant care must be provided in a private residence that is the home of the care receiver.

*Person must be Australian resident*

- (4) The person must be an Australian resident.

Note: For *Australian resident* see section 7.

*Care receiver: residence and income and assets tests etc.*

- (5) The care receiver must:
- (a) require constant care; and

- (b) be an Australian resident; and
- (c) pass the income test under section 198A; and
- (d) either:
  - (i) pass the assets test under section 198D; or
  - (ii) be the subject of a decision in force under subsection 198N(2), (3) or (4) that subparagraph (i) does not disqualify the person providing the constant care from carer payment.

### **197F Qualification—exchanged care of children**

#### *Purpose of section*

- (1) The purpose of this section is to allow a person to qualify under section 197B, 197C, 197D, 197E, 197G or 197H, or a combination of them, for a carer payment for caring for persons who are or include 2 or more persons aged under 16 despite the fact that the person is not personally providing constant care for the same persons.

#### *When section applies*

- (2) This section applies if:
  - (a) the person is a parent of 2 or more persons aged under 16; and
  - (b) the person (the **carer**) is personally providing care for at least 2 of those persons (the **care receivers**); and
  - (c) the care receivers would qualify the carer for a carer payment under section 197B, 197C, 197D, 197E, 197G or 197H, apart from:
    - (i) the fact that the carer is not personally providing constant care for the care receivers; and
    - (ii) the fact that each care receiver has or may have more than one home; and
  - (d) the circumstances in subsection (3) apply in relation to each of the care receivers.

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*Circumstances—family law arrangements*

- (3) The circumstances are:
- (a) under one or more registered parenting plans, parenting plans or parenting orders that are in force, the care receiver is to live with, or spend time with the carer and the care receiver's other parent (whether or not the care receiver is to live with, or spend time with, someone else); and
  - (b) the length or percentage of time (however described) that the care receiver is to live with, or spend time with, the carer and the other parent is specified in, or worked out in accordance with, the plans or orders; and
  - (c) the carer personally provides constant care for the care receiver when the care receiver is living with, or spending time with, the carer; and
  - (d) the carer does not personally provide constant care for the care receiver only because the terms of the plans or orders require the care receiver to live with, or spend time with, the other parent or someone else; and
  - (e) when the carer is not personally providing care for the care receiver, the carer is personally providing care for one or more other care receivers in relation to whom this subsection also applies.

*Qualification for a carer payment*

- (4) If this section applies, the carer is taken to be qualified for a carer payment under section 197B, 197C, 197D, 197E, 197G or 197H, or a combination of them, for caring for the care receivers or for persons who include the care receivers, as the case requires.

Example: The parents of 3 children each with a disability or medical condition are divorced. Under a registered parenting plan covering all 3 children, one parent (the **first parent**) personally provides care in week 1 to:

- (a) one of the children covered by the plan; and
- (b) another child who is similarly disabled but who is not covered by the plan.

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The other parent personally provides care for the other 2 children covered by the plan. In week 2, the parents swap care arrangements for the children covered by the plan.

The first parent would not qualify for a carer payment under section 197C because he or she is not providing constant care for the same children. However, this section allows the first parent to qualify for a carer payment for providing care for different children.

*Application of income and assets tests*

- (5) In applying the income and assets tests under section 198A or 198D in working out whether a parent qualifies under section 197B, 197C, 197D, 197E, 197G or 197H because of this section, disregard the other parent for the purposes of the following:
- (a) subsections 198B(1B) and 198D(1A), (1C) and (1DA);
  - (b) subparagraph 198N(5)(aa)(ii);
  - (c) paragraphs (b), (d) and (e) of the definition of **FPC** in subsection 198N(6).

**197G Qualification—short term or episodic care of children**

*Secretary's determination*

- (1) The Secretary may determine that a person is qualified for a carer payment for a period if:
- (a) the person is personally providing constant care for one or more persons (the **care receiver** or **care receivers**) each with:
    - (i) a severe disability or severe medical condition; or
    - (ii) a disability or medical condition; and
  - (b) each care receiver is aged under 16 at the start of the period; and
  - (c) in relation to each care receiver—a treating health professional has certified in writing that, because of the severe disability or severe medical condition, or because of the disability or medical condition:
    - (i) the care receiver will need personal care for at least 3 months but less than 6 months; and

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- (ii) the care is required to be provided by a specified number of persons; and
- (d) apart from the fact that the care receiver, or care receivers, will need personal care for less than 6 months, the person would qualify for a carer payment:
  - (i) under section 197B or 197C (whether or not because of section 197F) for caring for the care receiver or care receivers; or
  - (ii) under section 197D (whether or not because of section 197F) for caring for the care receiver and another person.

*Limits on period determined*

- (2) The period determined by the Secretary:
  - (a) must be 3 months or more and less than 6 months; and
  - (b) must not begin before the person's start day.

*Person may remain qualified until end of period even if care receiver turns 16*

- (3) A person does not cease to be qualified for a carer payment under this section only because the care receiver (or any of them) turns 16 before the end of the period determined by the Secretary.

**197H Qualification—extension of short term or episodic care**

*Extension of qualification under section 197G*

- (1) This section applies if:
  - (a) a person is qualified for a carer payment for caring for one or more persons (the **care receiver** or **care receivers**) aged under 16 for a period (the **preceding period**):
    - (i) under section 197G; or
    - (ii) if this section has previously applied to the person and the care receiver or care receivers—under the most recent application of this section; and



- (b) in relation to each care receiver—before the end of the preceding period, and before the care receiver (or any of them) turns 16, the person gives the Secretary a certificate from a treating health professional certifying that:
  - (i) because of a severe disability or severe medical condition, or a disability or medical condition, the care receiver will need personal care for a further period of less than 3 months starting immediately after the end of the preceding period; and
  - (ii) the severe disability or severe medical condition, or disability or medical condition, is the same as, or related to, the severe disability or severe medical condition, or disability or medical condition, that necessitated the care for the preceding period; and
  - (iii) the care is required to be provided by a specified number of persons.

*Person qualified for further period determined by Secretary*

- (2) The person is qualified for a carer payment for a further period if:
  - (a) apart from the fact that the care receiver or care receivers will need personal care for less than 6 months, the person would qualify for a carer payment:
    - (i) under section 197B or 197C (whether or not because of section 197F) for caring for the care receiver or care receivers; or
    - (ii) under section 197D (whether or not because of section 197F) for caring for the care receiver and another person; and
  - (b) the Secretary determines that a carer payment should be granted to the person for the period.
- (3) The period determined must end not later than 6 months after the first day on which the person started to receive a carer payment under section 197G.

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*Person may remain qualified until end of period even if care receiver turns 16*

- (4) A person does not cease to be qualified for a carer payment under this section only because the care receiver (or any of them) turns 16 before the end of the period determined by the Secretary.

**197J Qualification following qualification for short term or episodic care**

*Purpose of section*

- (1) The purpose of this section is to treat a person as qualified for a carer payment under section 197B, 197C or 197D, or because of 197F, for caring for:
- (a) one or more persons aged under 16; or
  - (b) persons who include one or more persons aged under 16;
- if, immediately beforehand, the carer was qualified for a carer payment under section 197G or 197H (whether or not because of section 197F) for caring for the person or persons aged under 16.

*Person taken to be qualified*

- (2) If:
- (a) a person is qualified for a carer payment for caring for one or more care receivers aged under 16 for a period (the ***preceding period***):
    - (i) under section 197G; or
    - (ii) if section 197H has applied to the person and the care receiver or care receivers—under the most recent application of that section; and
  - (b) before the end of the preceding period, and before the care receiver (or any of them) turns 16, the person gives the Secretary a certificate in relation to each of them as required by whichever of subsection (3) or (4) applies; and
  - (c) apart from paragraph 197B(1)(c), 197C(1)(c) or 197D(1)(c), the person would be qualified (whether or not because of

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section 197F) for a carer payment for caring for the care receiver or care receivers or for persons who include at least one of them;

the person is taken to qualify under section 197B, 197C or 197D (as the case requires) for caring for the care receiver or care receivers or for persons who include at least one of them.

Note: Paragraphs 197B(1)(c), 197C(1)(c) and 197D(1)(c) require that a treating health professional has certified that the care receiver, or each of them, will need personal care for 6 months or more.

- (3) If the person was qualified for a carer payment under section 197G or 197H for caring for a care receiver with a severe disability or severe medical condition, there must be a certificate from a treating health professional certifying that:
- (a) because of a severe disability or severe medical condition the duration of the personal care needed by the care receiver is 6 months or more; and
  - (b) the severe disability or severe medical condition is the same as, or related to, the severe disability or severe medical condition that necessitated the care for the preceding period; and
  - (c) the care is required to be provided by a specified number of persons.
- (4) If the person was qualified for a carer payment under section 197G or 197H for caring for one or more care receivers aged under 16 each with a disability or medical condition, there must be a certificate in relation to each care receiver from a treating health professional certifying that:
- (a) because of a disability or medical condition, the duration of the personal care needed by the care receiver is 6 months or more; and
  - (b) the disability or condition is the same as, or related to, the disability or condition that necessitated the care for the preceding period; and
  - (c) the care is required to be provided by a specified number of persons.

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- (5) For the purposes of paragraphs (3)(a) and (4)(a):
  - (a) the 6 months includes any preceding periods under section 197G or under an application of section 197H; and
  - (b) it does not matter if the treating health professional who certified under those sections is the same treating health professional referred to in subsection (3) or (4) or not.

**197K Remaining qualified for up to 3 months after child turns 16**

- (1) This section applies if:
  - (a) a person is qualified for a carer payment for caring for a care receiver aged under 16 under one of the following provisions:
    - (i) section 197B, 197C or 197D (whether or not because of section 197F);
    - (ii) paragraph 198(2)(d); and
  - (b) the care receiver turns 16; and
  - (c) the care receiver has not been assessed and rated and given a score under the Adult Disability Assessment Tool.
- (2) If, apart from the care receiver turning 16, the person would remain qualified for a carer payment under that provision, the person remains qualified under that provision for 3 months after the care receiver turns 16.

**198 Qualification—disabled adult or disabled adult and dependent child**

- (1) A person is qualified for a carer payment if the requirements of this section are met.

Note: Sections 198AA, 198AB and 198AC allow the person to qualify in certain short-term circumstances where the requirements would not be met.

*Constant care for disabled adult or disabled adult and a dependent child*

- (2) The person must personally provide constant care for:
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- (a) either:
- (i) if the person is the only person providing the constant care—a disabled adult (the *care receiver*) who has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 25, being a score calculated on the basis of a total professional questionnaire score of at least 10; or
  - (ii) if not—a disabled adult (the *care receiver*) who has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 80, being a score calculated on the basis of a total professional questionnaire score of at least 32; or
- (d) a disabled adult and a dependent child of the adult (the *care receivers*), where:
- (i) the disabled adult has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 20, being a score calculated on the basis of a total professional questionnaire score of at least 8; and
  - (ii) the child is aged under 16; and
  - (iii) if the child is aged 6 or more—carer allowance is payable for the child; and
  - (iv) section 197D does not apply in respect of the care receivers.

Note: In a paragraph (d) case, subsection (9) deems certain supervision to constitute care.

*Care in home*

- (3) The care must be provided in a private residence that is the home of the care receiver or care receivers.

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*Carer in Australia*

- (4) The person must be an Australian resident, unless:
- (a) the person is in a country in which carer payment may be granted to the person under a scheduled international social security agreement; and
  - (b) the scheduled international social security agreement entered into force on or before 24 December 1992.

*Income and assets tests etc.*

- (5) The care receiver or care receivers must:
- (b) subject to subsection (6), be Australian residents; and
- Note: For **Australian resident** see section 7.
- (c) subject to subsection (7), pass the income test under section 198A; and
  - (d) subject to subsection (7), either:
    - (i) pass the assets test under section 198D; or
    - (ii) be the subject of a decision in force under subsection 198N(2), (3) or (4) that subparagraph (i) does not disqualify the person providing the constant care from carer payment.

*Alternative to Australian residence test for higher ADAT score adults*

- (6) Paragraph (5)(b) does not apply if:
- (a) the care receiver is the higher ADAT score adult mentioned in paragraph (2)(a); and
  - (b) the adult is receiving a social security pension; and
  - (c) carer payment may be granted to another person for the adult under a scheduled international social security agreement.

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*Alternative to income/assets test for higher ADAT score adults*

- (7) Paragraphs (5)(c) and (d) do not apply if the care receiver is the higher ADAT score adult mentioned in paragraph (2)(a) and the adult:
- (a) is receiving a social security pension or benefit, a service pension, income support supplement or a veteran payment; or
  - (b) would be receiving a social security or service pension or income support supplement if he or she had been an Australian resident for a long enough period.

*Deemed personal care of disabled adult and dependent child*

- (9) For the purposes of paragraph (2)(d) and other references in this Part that relate to that paragraph, if a disabled adult is providing care of a dependent child of the adult at a particular time and another person is supervising the provision of that care at that time, the other person is taken personally to provide care of the adult and child at that time.

**198AAA Continuation of qualification when person receiving care admitted to institution**

- (1) This section applies if:
- (a) carer payment is payable:
    - (i) to a person who has ordinarily been providing constant care for a care receiver or care receivers; or
    - (ii) because of section 197F, to a person who has ordinarily been providing care for a care receiver or care receivers; and
  - (b) the person would, apart from this section, cease to be qualified for the payment because he or she ceases to provide constant care (or, if section 197F applies to the person, care) for the care receiver or any of the care receivers as a result of the care receiver being admitted permanently to an institution where care is provided for the care receiver.

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- (2) The person remains qualified for the carer payment during the 14 weeks after the care receiver is admitted permanently to an institution.

**198AA Qualification for carer payment—hospitalisation**

*Participating in care of person in hospital (not qualified under section 197G or 197H)*

- (1) A person (the **carer**) is qualified for a carer payment if:
- (a) the carer is participating in the care, in hospital, of one of the following persons (the **hospitalised person**):
    - (i) a disabled adult;
    - (ii) a child with a severe disability or medical condition;
    - (iii) a child with a disability or medical condition;
    - (iv) a child who has a terminal condition;
    - (v) a dependent child of a disabled adult; and
  - (b) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would qualify, except under section 197G or 197H (whether or not because of section 197F), for a carer payment for:
    - (i) the hospitalised person; or
    - (ii) the hospitalised person and another person or persons; and
  - (c) a requirement in subsection (2) is met.
- (2) For the purposes of paragraph (1)(c), the requirements are that either:
- (a) the hospitalised person is terminally ill; or
  - (b) it is reasonable to expect that, upon leaving hospital, the hospitalised person:
    - (i) will reside in a private residence that is the home of the hospitalised person; or
    - (ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside



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in a private residence that is a home of the hospitalised person.

*Limit on qualification under subsection (1)*

- (3) However, the period, or the sum of the periods, for which the carer can be qualified under subsection (1) for a hospitalised person who is a disabled adult is 63 days in any calendar year.

Note: There is no limit under subsection (1) for a hospitalised person who is a child.

*Short term or episodic care of child (qualified under section 197G or 197H)*

- (4) A person (the **carer**) qualifies for a carer payment if:
- (a) the carer is participating in the care, in hospital, of one of the following persons (the **hospitalised person**):
    - (i) a child with a severe disability or medical condition;
    - (ii) a child with a disability or medical condition; and
  - (b) the Secretary determines in writing that, if the hospitalised person were not in hospital, the carer would qualify under section 197G or 197H (whether or not because of section 197F) for a carer payment for a period or periods for:
    - (i) the hospitalised person; or
    - (ii) the hospitalised person and another person or persons; and
  - (c) it is reasonable to expect that, upon leaving hospital, the hospitalised person:
    - (i) will reside in a private residence that is the home of the hospitalised person; or
    - (ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.

However, the period, or the sum of the periods, for which the carer can be qualified under this subsection for the hospitalised person

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must not exceed the period, or the sum of the periods, determined under paragraph (b).

- (5) A person (the *carer*) qualifies for a carer payment if:
- (a) the carer is participating in the care, in hospital, of one of the following persons (the *hospitalised person*):
    - (i) a child with a severe disability or medical condition;
    - (ii) a child with a disability or medical condition; and
  - (b) immediately before the carer began participating in that care, the carer was qualified under section 197G or 197H (whether or not because of section 197F) for a carer payment for a period for:
    - (i) the hospitalised person; or
    - (ii) the hospitalised person and another person or persons; and
  - (c) the person would cease to be qualified under section 197G or 197H for a carer payment for the balance of the period only because the person is participating in the care of the hospitalised person in hospital; and
  - (d) it is reasonable to expect that, upon leaving hospital, the hospitalised person:
    - (i) will reside in a private residence that is the home of the hospitalised person; or
    - (ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.

However, the period, or the sum of the periods, for which the carer can be qualified under this subsection for the hospitalised person must not exceed the balance of the period referred to in paragraph (c).

**198AB Care not required to be in private residence during portability period**

- (1) This section applies if a person:

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- (a) is qualified for a carer payment; and
  - (b) is absent from Australia for a period:
    - (i) throughout which Division 2 of Part 4.2 applies to the person; and
    - (ii) that is before the end of the person's portability period for carer payment (within the meaning of that Division).
- (2) The person does not cease to be qualified for a carer payment:
- (a) merely because the constant care for the care receiver or care receivers is not provided in a private residence that is the home of the care receiver or care receivers; or
  - (b) if the person is qualified because of section 197F—merely because the care for the care receiver or care receivers is not provided in a private residence that is a home of the care receiver or care receivers.

**198AC Effect of cessation of care etc. on carer payment**

*Continuation of payment where temporary cessation of care*

- (1) Subject to subsection (3), if:
- (a) a person is qualified (except under section 197G or 197H) for a carer payment:
    - (i) because the person is personally providing constant care for a care receiver or care receivers; or
    - (ii) if the person is qualified because of section 197F—because the person is personally providing care for care receivers; and
  - (b) the person temporarily ceases to provide that care for the care receiver or care receivers;
- the person does not cease to be qualified for the carer payment merely because of that cessation.

- (1A) Subject to subsections (3) and (3A), if:
- (a) a person is qualified for a carer payment:

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- (i) under section 197G or 197H because the person is personally providing constant care for a care receiver or care receivers; or
  - (ii) under section 197G or 197H because of section 197F because the person is personally providing care for care receivers; and
- (b) the person temporarily ceases to provide that care for the care receiver or care receivers;
- the person does not cease to be qualified for the carer payment merely because of that cessation.

*Continuation of payment after hospitalisation—section 198AA ceases to apply*

- (2) Subject to subsections (3) and (3A), if:
- (a) a person is qualified for a carer payment under section 198AA because the person is participating in the care of an adult or child in hospital; and
  - (b) apart from this subsection, the person would later cease to be qualified for carer payment under that section; and
  - (c) either:
    - (i) the person would not cease to be qualified for a carer payment if the person were providing constant care for the adult or child, or the adult or child and another person; or
    - (ii) if the person qualified under section 198AA because of section 197F—the person would not cease to be qualified for a carer payment if the person were providing care for the adult or child, or the adult or child and another person;
- the person does not cease to be qualified for carer payment merely because of the lack of provision of that care.

*Limit on subsections (1) and (2)*

- (3) Subject to subsection (3B), the period, or the sum of the periods, for which subsection (1) or (2), or a combination of those subsections, can apply is:
- (a) 63 days in any calendar year; or
  - (b) another period that the Secretary, for any special reason in the particular case, decides to be appropriate.
- (3A) The period (or the sum of the periods) for which subsection (1A) or (2) (or a combination of those subsections) can apply to the person in a calendar year is the number of whole days worked out in accordance with the formula:

$$\frac{\text{Carer payment period}}{\text{Number of days in calendar year}} \times \text{Limit}$$

where:

***carer payment period***, in relation to a calendar year, means:

- (a) if only 197G applied to the person to any extent in the calendar year—the number of days in the period determined under that section that fall in the calendar year; or
- (b) if sections 197G and 197H applied to the person to any extent in the calendar year—the number of days worked out by adding the days in each period determined under those sections to the extent that those days fall in the calendar year.

It does not matter whether section 197G or 197H (or both of them) apply because of section 197F or not.

***limit***, in relation to a calendar year, means:

- (a) 63 days; or
- (b) another number of days in the calendar year that the Secretary, for any special reason in the particular case, decides to be appropriate.

(3B) If:

- (a) because of subsection (1A), the person does not cease to be qualified in a calendar year for a carer payment under

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section 197G or 197H for a care receiver or care receivers;  
and

- (b) the number of days (the *qualifying days*) for which the person does not cease to be qualified (whether under subsection (1A) or (2), or a combination of them) in the calendar year is not more than the number of days worked out under subsection (3A) in relation to the person; and
- (c) subsequently in the calendar year, the person begins to qualify for a carer payment because of section 197J for the care receiver or care receivers;

subsection (3) applies as if the periods referred to in whichever of paragraphs (a) and (b) of that subsection apply were reduced by the number of qualifying days.

*Cessation of constant personal care in order to undertake training etc.*

(4) If:

- (a) a person is qualified for carer payment because the person is personally providing constant care for a care receiver or care receivers; and
- (b) the person temporarily ceases to provide that care in order to undertake training, education, unpaid voluntary work or paid employment; and
- (c) the cessation does not exceed 25 hours per week;

the person does not cease to be qualified for the carer payment merely because of the cessation.

*Cessation of participation in hospital care in order to undertake training etc.*

(5) If:

- (a) a person is qualified for carer payment because the person is participating in the care of another person in hospital; and
- (b) the person temporarily ceases to participate in the care in order to undertake training, education, unpaid voluntary work or paid employment; and

(c) the cessation does not exceed 25 hours per week;  
the person does not cease to be qualified for the carer payment  
merely because of the cessation.

### **198A Income test**

#### *Passing the income test*

- (1) A care receiver or care receivers pass the income test if the taxable income of the care receiver, or the sum of the taxable incomes of the care receivers, worked out under section 198B for the appropriate tax year determined under section 198C is not more than \$66,403 (the **income ceiling**).

#### *Income test failed where no taxable income for appropriate tax year*

- (2) A care receiver or care receivers do not pass the income test if any person (whether or not a care receiver) whose taxable income is required to be taken into account in applying section 198B does not have an assessed taxable income or an accepted estimated taxable income for the appropriate tax year.

### **198B Taxable income**

#### *Rules that apply for the purposes of this Subdivision*

- (1) For the purposes of this Subdivision, the rules set out in subsections (1A), (1B), (1BA), (1C) and (6) apply.

#### *Taxable income of higher ADAT score adult*

- (1A) If a care receiver who is a higher ADAT score adult is a member of a couple, the care receiver's taxable income includes the taxable income of the care receiver's partner.

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*Taxable income of sole care child, combined care child or multiple care child*

- (1B) If a care receiver is a sole care child, combined care child or multiple care child who lives with his or her parent, the taxable income of the care receiver includes the taxable income of the following people:

- (a) the parent;
- (b) if the parent is a member of a couple—the parent's partner;
- (c) if the parent or the partner has one or more FTB children—the FTB children (other than any who are care receivers).

However, if the care receiver is a combined care child or a multiple care child who is one of 2 or more care receivers, the taxable income of the same person is not to be included in the taxable income of any of the other care receivers.

Note: See also subsection 197F(5).

*Taxable income of lower ADAT score adult*

- (1BA) If a care receiver is a lower ADAT score adult, the care receiver's taxable income includes the taxable income of the following people:

- (a) if the adult is a member of a couple—the adult's partner and any FTB child (except the other care receiver or other care receivers) of the adult or of the partner;
- (b) in any other case—any FTB child (except the other care receiver) of the adult.

*Taxable income*

- (1C) A person's **taxable income** for a tax year is:
- (a) the person's assessed taxable income for the tax year; or
  - (b) if the Commissioner of Taxation has not made an assessment of the person's taxable income for the tax year—the person's accepted estimated taxable income for the tax year.

Note: For **accepted estimated taxable income** see subsection (5).



*Assessed taxable income*

- (2) At a particular time, a person's ***assessed taxable income*** for a tax year is the taxable income according to whichever of the following was made most recently:
- (a) an assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;
  - (b) an amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;
  - (c) an amendment made by a tribunal of an assessment or amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;
  - (d) an amendment made by a court of:
    - (i) an assessment or amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation; or
    - (ii) an amended assessment of the person's taxable income for the tax year made by a tribunal.

*Estimating taxable income*

- (3) A person, or, if the person is a child—the child's parent or carer, may give the Secretary a written estimate of the person's taxable income for a tax year.
- (3A) If the care receivers are a lower ADAT score adult and one or more multiple care children, the lower ADAT score adult may give the Secretary a written estimate of each child's taxable income for a tax year.

*Accepting estimate of taxable income*

- (4) The Secretary may accept the estimate only if:
- (a) the person does not have an assessed taxable income for the tax year; and
  - (b) one of the following applies:
    - (i) the tax year has not ended;

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- (ii) the Secretary is satisfied that the person is not required to lodge a return of income for the tax year under the Income Tax Assessment Act;
- (iii) the Secretary is satisfied that the person has lodged, or proposes to lodge, a return of income for the tax year under the Income Tax Assessment Act; and
- (c) the Secretary is satisfied that the estimate is reasonable.

### *Accepted estimated taxable income*

- (5) A person's ***accepted estimated taxable income*** for a tax year is the taxable income according to the estimate that was most recently given to the Secretary under subsection (3) or (3A) and accepted by the Secretary.

### *Nil amounts of taxable income*

- (6) A person's assessed taxable income or accepted estimate of taxable income may be a nil amount.

## 198C Appropriate tax year

### *Appropriate tax year in ordinary cases*

- (1) Subject to this section, the appropriate tax year for a day is the base tax year for that day.

Note: For ***base tax year*** see subsection (6).

- (2) If:
  - (a) carer payment would not be payable to a person because the care receiver or care receivers would not pass the income test under subsection 198A(1) apart from this subsection; and
  - (b) the Secretary is given a written request to treat the care receiver or care receivers as if the tax year in which the request is given were the appropriate tax year; and
  - (c) the request is given to the Secretary by the person, any care receiver who is 16 or over or a parent of any care receiver who is under 16; and

- (d) the taxable income of the care receiver, or the sum of the taxable incomes of the care receivers, for the tax year in which the request is made is likely to be less than the income ceiling;

the appropriate tax year, for the purposes of applying subsection 198A(1) to the care receiver or care receivers on or after the day on which the request is given, is the tax year in which the request is made.

Note 1: For **taxable income** see section 198B.

Note 2: For **income ceiling** see subsection 198A(1).

*Current tax year to be retained for consecutive calendar years in certain circumstances*

(3) If:

- (a) an instalment of carer payment (the **first payment**) is paid to a person on a day in one calendar year; and
  - (b) the next instalment of carer payment (the **second payment**) is paid to a person on a day in the next calendar year; and
  - (c) the instalment period to which the second payment relates:
    - (i) commences immediately after the end of the instalment period to which the first payment related; and
    - (ii) includes the first day of the calendar year referred to in paragraph (b); and
  - (d) the person's carer payment is payable in relation to the period referred to in subparagraph (c)(i) because, as a result of a request under paragraph (2)(b), the appropriate tax year is the tax year in which that period occurs (the **current tax year**); and
  - (e) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the current tax year is less than the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the base tax year;
- the care recipient's appropriate tax year, as from the beginning of the later calendar year, is the current tax year and not the base tax

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year unless the care recipient's taxable income for the base tax year is less than the income ceiling.

Note 1: For **base tax year** see subsection (6).

Note 2: For **income ceiling** see subsection 198A(1).

*Change to appropriate tax year because of notifiable event*

(4) For the purposes of section 198A, if:

- (a) a notifiable event occurs in relation to a care receiver or any of 2 or more care receivers; and
- (b) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year in which the notifiable event occurs exceeds the income ceiling;

the appropriate tax year is the tax year in which the notifiable event occurs.

Note 1: For **notifiable event** see subsection (6).

Note 2: For **taxable income** see section 198B.

Note 3: For **income ceiling** see subsection 198A(1).

Note 4: The effect of subsection (4) is that the person caring for the care receiver or care receivers will cease to be qualified for carer payment because the care receiver or care receivers will not pass the income test under subsection 198A(1).

*Change to appropriate tax year because of effect of notifiable event on taxable income for later tax year*

(5) For the purposes of section 198A, if:

- (a) a notifiable event occurs in relation to a care receiver or any of 2 or more care receivers; and
- (b) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year in which the notifiable event occurs (the **event tax year**) does not exceed the income ceiling; and

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- (c) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year that follows the event tax year is likely to exceed the income ceiling;  
the appropriate tax year is the year that follows the event tax year.

Note 1: For **notifiable event** see subsection (6).

Note 2: For **taxable income** see section 198B.

*Definitions*

- (6) For the purposes of this section:
- (a) the **base tax year** for a day is the tax year that ended on 30 June in the calendar year immediately before the calendar year in which the day falls; and
  - (b) a **notifiable event** is an event or change of circumstances that:
    - (i) is specified in a notice under section 70 of the Administration Act; and
    - (ii) is described by the notice as a notifiable event.

Example: Suppose 4 April 1996 is a carer payment payday. It falls in the calendar year 1 January to 31 December 1996, so the base tax year for that payday is the tax year that ended on 30 June 1995 (i.e. the year of income beginning on 1 July 1994).

## 198D Assets test

*Higher ADAT score adult passing the assets test*

- (1) A care receiver who is a higher ADAT score adult passes the assets test if the total value of the following assets is less than \$376,750:
- (a) the care receiver's assets;
  - (b) if the care receiver has a partner—any assets of the partner;
  - (c) if the care receiver or the care receiver's partner has one or more FTB children—any assets of the FTB children.

Note: The amount specified in subsection (1) is indexed on each 1 January (see sections 1190 and 1191).

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*Sole care child passing the assets test*

- (1A) A care receiver who is a sole care child passes the assets test if the total value of the following assets is less than \$410,000:
- (a) the child's assets;
  - (b) if the child lives with his or her parent:
    - (i) the assets of the parent;
    - (ii) if the parent is a member of a couple—the assets of the parent's partner;
    - (iii) if the parent or the partner has one or more FTB children—the assets of those FTB children.

Note: See also subsection 197F(5).

- (1B) For the purposes of this Division (other than subsection (1A)), if the child lives with his or her parent, the child's assets are taken to include the assets listed in subsection (1A).

*Combined care children passing the assets test*

- (1C) Care receivers who are 2 or more combined care children pass the assets test if the total value of the following assets is less than \$410,000:
- (a) the assets of all of the children;
  - (b) if any of the children lives with his or her parent:
    - (i) the assets of the parent;
    - (ii) if the parent is a member of a couple—the assets of the parent's partner;
    - (iii) if the parent or the partner has one or more FTB children—the assets of those FTB children.

However, assets of the same person are not to be taken into account more than once.

Note: See also subsection 197F(5).

- (1D) For the purposes of this Division (other than subsection (1C)), if any of the children lives with his or her parent, the child's assets are taken to include the assets listed in paragraph (1C)(b) in

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relation to the child. However, assets of the same person are not to be included in the assets of more than one child.

*Lower ADAT score adult and multiple care child or children passing the assets test*

- (1DA) Care receivers who are a lower ADAT score adult and one or more multiple care children pass the assets test if the total value of the assets of the following people is less than \$571,500:
- (a) the adult;
  - (b) each child;
  - (c) if any of the children lives with his or her parent:
    - (i) the parent; and
    - (ii) if the parent is a member of a couple—the parent's partner; and
    - (iii) if the parent or the partner has one or more FTB children—those FTB children;
  - (d) if the adult is a member of a couple—the adult's partner;
  - (e) if the adult or the partner has one or more FTB children—the FTB children.

However, assets of the same person are not to be taken into account more than once.

- (1DB) For the purposes of this Division (other than subsection (1DA)), if any of the multiple care children lives with his or her parent, the child's assets are taken to include the assets listed in paragraph (1DA)(c) in relation to the child. However, assets of the same person are not to be included in the assets of more than one child.

*Lower ADAT score adult and dependent child passing the assets test*

- (1E) Care receivers who are a lower ADAT score adult and a dependent child pass the assets test if the total value of the assets of the following people is less than \$410,000:
- (a) the adult;

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- (b) the dependent child;
- (c) if the adult is a member of a couple—the adult’s partner;
- (d) if the adult or the partner has one or more FTB children—the FTB children.

**198E Working out the value of assets**

For the purposes of subsection 198D(1), (1A), (1C) or (1E), the value of assets is to be worked out in accordance with:

- (a) Part 3.12, except Divisions 2, 3 and 4 of that Part; and
- (b) sections 198F to 198MA (inclusive); and
- (c) Part 3.18, except Division 9.

Note: Sections 198F to 198MA (inclusive) make special provision for the assets test for care receivers in relation to subjects covered more generally by Division 2 of Part 3.12.

**198F Disposal of assets—care receiver assets test**

- (1) For the purposes of this Division, a person *disposes of assets* of the person if:
  - (a) the person engages in a course of conduct that directly or indirectly:
    - (i) destroys all or some of the person’s assets; or
    - (ii) disposes of all or some of the person’s assets; or
    - (iii) diminishes the value of all or some of the person’s assets; and
  - (b) one of the following subparagraphs is satisfied:
    - (i) the person receives no consideration in money or money’s worth for the destruction, disposal or diminution;
    - (ii) the person receives inadequate consideration in money or money’s worth for the destruction, disposal or diminution;
    - (iii) the Secretary is satisfied that the person’s purpose, or dominant purpose, in engaging in that course of conduct



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was to enable another person who provides care for the person to obtain a carer payment.

- (1A) For the purposes of this Division, a person disposes of assets of a care child or a dependent child if:
- (a) the person engages in a course of conduct that directly or indirectly:
    - (i) destroys all or some of the child's assets; or
    - (ii) disposes of all or some of the child's assets; or
    - (iii) diminishes the value of all or some of the child's assets; and
  - (b) one of the following paragraphs is satisfied:
    - (i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;
    - (ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;
    - (iii) the Secretary is satisfied that the person's purpose, or dominant purpose, in engaging in that course of conduct was to enable the person who provides care for the child to obtain a carer payment.

Note: Subsections 198D(1B) and (1D) provide that if the child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be the assets of the child.

- (2) If, under subsection 1147(1A), the value of a granny flat interest is less than the amount paid, or agreed to be paid, for the interest, then, for the purposes of this section, so much of the amount paid, or agreed to be paid, as exceeds the value of the interest is not consideration for the interest.

Note: For *granny flat interest* see subsection 12A(2).

**198G Amount of disposition—care receiver assets test**

If a person disposes of assets, the *amount of the disposition* is:

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- (a) if the person receives no consideration for the destruction, disposal or diminution—an amount equal to:
  - (i) the value of the assets that are destroyed; or
  - (ii) the value of the assets that are disposed of; or
  - (iii) the amount of the diminution in the value of the assets whose value is diminished; or
- (b) if the person receives consideration for the destruction, disposal or diminution—an amount equal to:
  - (i) the value of the assets that are destroyed; or
  - (ii) the value of the assets that are disposed of; or
  - (iii) the amount of the diminution in the value of the assets whose value is diminished;less the amount of the consideration received by the person in respect of the destruction, disposal or diminution.

**198H Disposal of assets in pre-pension years—individual higher ADAT score adults**

- (1) This section applies in determining whether a person (the *carer*) qualifies for a carer payment when claiming it for caring for a care receiver who:
  - (a) is a higher ADAT score adult; and
  - (b) is not a member of a couple when the claim is made.
- (1A) This section applies only to disposals of assets that took place before 1 July 2002.
- (2) If:
  - (a) the care receiver has disposed of an asset of the care receiver during a pre-pension year of the carer; and
  - (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pre-pension year, exceeds \$10,000;the lesser of the following amounts is to be included in the value of the care receiver's assets for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

- (3) In this section:

*pre-pension year*, in relation to a carer, means:

- (a) the 12 months ending on the carer's start day for carer payment; or
- (b) any preceding period of 12 months.

### **198HA Disposal of assets in pre-pension years—profoundly disabled child or disabled children**

- (1) This section applies in determining whether a person (the *carer*) qualifies for a carer payment when claiming it for caring for a care receiver who is a profoundly disabled child or care receivers each of whom is a disabled child.
- (1A) This section applies only to disposals of assets that took place before 1 July 2002.
- (2) If:
  - (a) a person has disposed of one or more of the child's assets during a pre-pension year of the carer; and
  - (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of the child's assets previously made during that pre-pension year, exceeds \$10,000;the lesser of the following amounts is to be included in the value of the child's assets for the period of 5 years that starts on the day on which the disposition took place:
  - (c) the amount of the first-mentioned disposition;

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- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

Note 3: Subsections 198D(1B) and (1D) provide that if the child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be assets of the child.

- (3) In this section:

*pre-pension year*, in relation to a carer, means:

- (a) the 12 months ending on the carer's start day for carer payment; or  
(b) any preceding period of 12 months.

**198HB Disposal of assets in pre-pension years—lower ADAT score adult and dependent child**

*Application*

- (1) This section applies in determining whether a person (the *carer*) qualifies for a carer payment when claiming it for caring for care receivers who are a lower ADAT score adult and a dependent child.

*Disposals before 1 July 2002*

- (1A) This section applies only to disposals of assets that took place before 1 July 2002.

*Increase in value of assets of lower ADAT score adult*

- (2) Subject to subsection (3), if:  
(a) there has been a disposal, during a pre-pension year of the carer, of an asset of any of the following persons (a *qualifying person*):

- (i) the lower ADAT score adult;
  - (ii) the dependent child;
  - (iii) if the adult is a member of a couple—the adult's partner and any FTB child of the adult or of the partner;
  - (iv) if the adult is not a member of a couple—any FTB child of the adult; and
- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets of any of the qualifying persons during the pre-pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the assets of the lower ADAT score adult, for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets of the qualifying persons during that pre-pension year exceeds \$10,000.

Note 1: For *disposition of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

*Effect of ceasing to be member of couple or death of FTB child after disposal of assets*

- (3) If:
- (a) an amount is included under subsection (2) in the value of the assets of the lower ADAT score adult because of the disposition of an asset of any of the qualifying persons; and
  - (b) if the lower ADAT score adult is a member of a couple—either:
    - (i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or
    - (ii) any of the FTB children dies; and
  - (c) if the lower ADAT score adult is not a member of a couple—any of the FTB children dies;

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then, for the purposes of subsection (2), the following are to be disregarded:

- (d) in a subparagraph (b)(i) case—the partner and any FTB child of the partner and any disposition of their assets; or
- (e) in a subparagraph (b)(ii) or paragraph (c) case—the FTB child and any disposition of his or her assets.

*Pre-pension year*

- (4) In this section:

***pre-pension year***, in relation to a carer, means:

- (a) the 12 months ending on the carer's provisional commencing day for the carer payment; or
- (b) any preceding period of 12 months.

**198J Disposal of assets before 1 July 2002—individual higher ADAT score adults**

- (1) This section applies in determining whether a person (the *carer*) who has been receiving a carer payment for caring for a care receiver who:
  - (a) is a higher ADAT score adult; and
  - (b) is not a member of a couple;continues to qualify for the pension.
- (1A) This section applies only to disposals of assets that took place before 1 July 2002.
- (2) If:
  - (a) the care receiver has disposed of an asset of the care receiver during a pension year of the carer; and
  - (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pension year, exceeds \$10,000;

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the lesser of the following amounts is to be included in the value of the care receiver's assets for the period of 5 years that starts on the day on which the disposition takes place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets, and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

(3) In this section:

***pension year***, in relation to a carer, means:

- (a) the 12 months starting on the day the carer payment first became payable to the carer; or
- (b) any preceding or following period of 12 months.

**198JA Disposal of assets before 1 July 2002—profoundly disabled children or disabled children**

- (1) This section applies in determining whether a person (the ***carer***) who has been receiving a carer payment for caring for a care receiver who is a profoundly disabled child or care receivers each of whom is a disabled child continues to qualify for the pension.
- (1A) This section applies only to disposals of assets that took place before 1 July 2002.
- (2) If:
  - (a) a person has disposed of one or more of the child's assets during a pension year of the carer; and
  - (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of the child's assets previously made during that pension year, exceeds \$10,000;

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the lesser of the following amounts is to be included in the value of the child's assets for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made during that pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

Note 3: Subsections 198D(1B) and (1D) provide that if the child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be assets of the child.

(3) In this section:

*pension year*, in relation to a carer, means:

- (a) the 12 months starting on the day the carer payment first became payable to the carer; or
- (b) any preceding or following period of 12 months.

**198JB Disposal of assets before 1 July 2002—lower ADAT score adult and dependent child**

*Application*

- (1) This section applies in determining whether a person (the *carer*) who has been receiving a carer payment for caring for care receivers who are a lower ADAT score adult and a dependent child continues to qualify for the pension.
- (1A) This section applies only to disposals of assets that took place before 1 July 2002.



*Increase in value of assets of lower ADAT score adult*

- (2) Subject to subsection (3), if:
- (a) there has been a disposal, during a pension year of the carer, of an asset of any of the following persons (a **qualifying person**):
    - (i) the lower ADAT score adult;
    - (ii) the dependent child;
    - (iii) if the adult is a member of a couple—the adult’s partner and any FTB child of the adult or of the partner;
    - (iv) if the adult is not a member of a couple—any FTB child of the adult; and
  - (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets of any of the qualifying persons during the pension year exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the assets of the lower ADAT score adult, for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets of the qualifying persons during that pension year exceeds \$10,000.

Note 1: For **disposition of assets** see section 198F.

Note 2: For **amount of disposition** see section 198G.

*Effect of ceasing to be member of couple or death of FTB child after disposal of assets*

- (3) If:
- (a) an amount is included under subsection (2) in the value of the assets of the lower ADAT score adult because of the disposition of an asset of any of the qualifying persons; and
  - (b) if the lower ADAT score adult is a member of a couple—either:

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- (i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or
  - (ii) any of the FTB children dies; and
  - (c) if the lower ADAT score adult is not a member of a couple—any of the FTB children dies;
- then, for the purposes of subsection (2), the following are to be disregarded:
- (d) in a subparagraph (b)(i) case—the partner and any FTB child of the partner and any disposition of their assets; or
  - (e) in a subparagraph (b)(ii) or paragraph (c) case—the FTB child and any disposition of his or her assets.

*Pension year*

- (4) In this section:

***pension year***, in relation to a carer, means:

- (a) the 12 months starting on the day the carer payment first became payable to the carer; or
- (b) any preceding or following period of 12 months.

**198JC Disposal of assets in income year—individual higher ADAT score adults**

*Application*

- (1) This section has effect in determining whether a person (the ***carer***) who has been receiving a carer payment for caring for a care receiver who:
- (a) is a higher ADAT score adult; and
  - (b) is not a member of a couple;
- continues to qualify for the payment.

*Disposals to which section applies*

- (2) This section applies to a disposal (the ***relevant disposal***) on or after 1 July 2002 by the care receiver of an asset of the care receiver.

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*Increase in value of assets of higher ADAT score adult*

- (3) If the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the care receiver during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the care receiver's assets for the period of 5 years starting on the day on which the relevant disposal took place:
- (a) the amount of the relevant disposal;
  - (b) the amount by which the sum of the amount of the relevant disposal, and the amounts (if any) of other disposals of assets previously made by the care receiver during the income year in which the relevant disposal took place, exceeds \$10,000.

**198JD Disposal of assets in 5 year period—individual higher ADAT score adults**

*Application*

- (1) This section also has effect in determining whether a person (the **carer**) who has been receiving a carer payment for caring for a care receiver who:
- (a) is a higher ADAT score adult; and
  - (b) is not a member of a couple;
- continues to qualify for the payment.

*Disposals to which section applies*

- (2) This section applies to a disposal (the **relevant disposal**) on or after 1 July 2002 by the care receiver of an asset of the care receiver.

*Increase in value of assets of higher ADAT score adult*

- (3) If:

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- (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals during the rolling period by the care receiver of assets of the care receiver;

*less*

- (b) the sum of any amounts included in the value of the care receiver's assets during the rolling period under section 198JC or any previous application or applications of this section;

exceeds \$30,000, then, for the purposes of this Act, an amount equal to the excess is to be included in the value of the care receiver's assets for the period of 5 years starting on the day on which the relevant disposal took place.

*Rolling period*

- (4) For the purposes of this section, the **rolling period** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

**198JE Disposal of assets in income year—sole care children**

*Application*

- (1) This section has effect in determining whether a person who has been receiving a carer payment for caring for a care receiver who is a sole care child continues to qualify for the payment.

*Disposals to which section applies*

- (2) This section applies to a disposal (the **relevant disposal**) on or after 1 July 2002 by a person of one or more of the child's assets.

*Increase in value of child's assets*

- (3) If the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of the child's assets previously made by a person during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the

purposes of this Act, the lesser of the following amounts is to be included in the value of the child's assets for the period of 5 years starting on the day on which the relevant disposal took place:

- (a) the amount of the relevant disposal;
- (b) the amount by which the sum of the amount of the relevant disposal, and the amounts (if any) of other disposals of the child's assets previously made during the income year in which the relevant disposal took place, exceeds \$10,000.

### **198JF Disposal of assets in 5 year period—sole care child**

#### *Application*

- (1) This section also has effect in determining whether a person who has been receiving a carer payment for caring for a care receiver who is a sole care child continues to qualify for the payment.

#### *Disposals to which section applies*

- (2) This section applies to a disposal (the **relevant disposal**) on or after 1 July 2002 by a person of one or more of the child's assets.

#### *Increase in value of child's assets*

- (3) If:
  - (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals during the rolling period by a person of any of the child's assets;

*less*

  - (b) the sum of any amounts included in the value of the child's assets during the rolling period under section 198JE or any previous application or applications of this section;

exceeds \$30,000, then, for the purposes of this Act, an amount equal to the excess is to be included in the value of the child's assets for the period of 5 years starting on the day on which the relevant disposal took place.

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*Rolling period*

- (4) For the purposes of this section, the **rolling period** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

**198JG Disposal of assets in income year—lower ADAT score adult and child or children**

*Application*

- (1) This section has effect in determining whether a person (the **carer**) who has been receiving a carer payment for caring for care receivers who are a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child, continues to qualify for the payment.

*Disposals to which section applies*

- (2) This section applies to a disposal (the **relevant disposal**) on or after 1 July 2002 of an asset of any of the following persons (each of whom is called a **qualifying person**):
- (a) the lower ADAT score adult;
  - (b) each multiple care child or dependent child;
  - (c) if the adult is a member of a couple—the adult's partner and any FTB child of the adult or of the partner;
  - (d) if the adult is not a member of a couple—any FTB child of the adult.

*Increase in value of assets of lower ADAT score adult*

- (3) Subject to subsection (4), if the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets of any of the qualifying persons previously made during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the

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lower ADAT score adult for the period of 5 years starting on the day on which the relevant disposal took place:

- (a) the amount of the relevant disposal;
- (b) the amount by which the sum of the amount of the relevant disposal and the amounts (if any) of other disposals of assets of the qualifying persons previously made during the income year in which the relevant disposal took place, exceeds \$10,000.

*Effect of ceasing to be member of couple or death of FTB child after disposal of assets*

- (4) If:
- (a) an amount is included under subsection (3) in the value of the assets of the lower ADAT score adult because of the relevant disposal; and
  - (b) if the lower ADAT score adult is a member of a couple—either:
    - (i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or
    - (ii) any of the FTB children dies; and
  - (c) if the lower ADAT score adult is not a member of a couple—any of the FTB children dies;
- then, for the purposes of subsection (3), the following are to be disregarded:
- (d) in a subparagraph (b)(i) case—the partner and any FTB child of the partner and any disposal of their assets; or
  - (e) in a subparagraph (b)(ii) or paragraph (c) case—the FTB child and any disposal of his or her assets.

**198JH Disposal of assets in 5 year period—lower ADAT score adult and child or children**

*Application*

- (1) This section also has effect in determining whether a person (the **carer**) who has been receiving a carer payment for caring for care

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receivers who are a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child, continues to qualify for the payment.

*Disposals to which section applies*

- (2) This section applies to a disposal (the **relevant disposal**) on or after 1 July 2002 of an asset of any of the following persons (each of whom is called a **qualifying person**):
- (a) the lower ADAT score adult;
  - (b) each multiple care child or dependent child;
  - (c) if the adult is a member of a couple—the adult’s partner and any FTB child of the adult or of the partner;
  - (d) if the adult is not a member of a couple—any FTB child of the adult.

*Increase in value of assets of lower ADAT score adult*

- (3) Subject to subsection (4), if:
- (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals during the rolling period of assets of any of the qualifying persons;
- less*
- (b) the sum of any amounts included in the value of the assets of the lower ADAT score adult during the rolling period under section 198JG or any previous application or applications of this section;
- exceeds \$30,000, then, for the purposes of this Act, an amount equal to the excess is to be included in the value of the assets of the lower of the ADAT score adult for the period of 5 years starting on the day on which the relevant disposal took place.

*Effect of ceasing to be member of couple or death of FTB child after disposal of assets*

- (4) If:



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- (a) an amount is included under subsection (3) in the value of the assets of the lower ADAT score adult because of the relevant disposal; and
  - (b) if the lower ADAT score adult is a member of a couple—  
either:
    - (i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or
    - (ii) any of the FTB children dies; and
  - (c) if the lower ADAT score adult is not a member of a couple—  
any of the FTB children dies;
- then, for the purposes of subsection (3), the following are to be disregarded:
- (d) in a subparagraph (b)(i) case—the partner and any FTB child of the partner and any disposal of their assets; or
  - (e) in a subparagraph (b)(ii) or paragraph (c) case—the FTB child and any disposal of his or her assets.

*Rolling period*

- (5) For the purposes of this section, the **rolling period** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

**198K Disposal of assets in pre-pension years—members of couples including higher ADAT score adults**

- (1) This section applies in determining whether a person (the *carer*) qualifies for carer payment when claiming it for caring for a higher ADAT score adult who is a member of a couple when the claim is made.
- (1A) This section applies only to disposals of assets that took place before 1 July 2002.

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*Increase in value of assets of care receiver and of care receiver's partner*

- (2) Subject to subsections (3) and (4), if:
- (a) the care receiver or the care receiver's partner has disposed of an asset during a pre-pension year of the carer; and
  - (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the care receiver or the partner during that pre-pension year, exceeds \$10,000;
- the lesser of the following amounts is to be included in the value of both the assets of the care receiver and the assets of the partner, for the period of 5 years that starts on the day on which the disposition took place:
- (c) 50% of the amount of the first-mentioned disposition;
  - (d) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

*Effect of separation of couple after disposal of care receiver's asset*

- (3) If:
- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the care receiver; and
  - (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);
- the amount that was included in the value of the partner's assets because of that disposition is to be included in the assets of the care receiver.

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*Effect of separation of couple after disposal of partner's asset*

- (4) If:
- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the partner; and
  - (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);
- the amount that was included in the value of the care receiver's assets because of that disposition is no longer to be included in the assets of the care receiver.

*Pre-pension year*

- (5) In this section:
- pre-pension year***, in relation to a carer, means:
- (a) the 12 months ending on the carer's start day for the carer payment; or
  - (b) any preceding period of 12 months.

**198L Disposal of assets before 1 July 2002—members of couples including higher ADAT score adults**

- (1) This section applies in determining whether a person (the ***carer***) who has been receiving a carer payment for caring for a higher ADAT score adult who is a member of a couple continues to qualify for the pension.
- (1A) This section applies only to disposals of assets that took place before 1 July 2002.

*Increase in value of assets of care receiver and of care receiver's partner*

- (2) Subject to subsections (3) and (4), if:

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- (a) the care receiver or the care receiver's partner disposed of an asset during a pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of both the assets of the care receiver and the assets of the partner, for the period of 5 years that starts on the day on which the disposition took place:

- (c) 50% of the amount of the first-mentioned disposition;
- (d) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

*Effect of separation of couple after disposal of care receiver's asset*

(3) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the care receiver; and
- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the partner's assets because of that disposition is to be included in the assets of the care receiver.

*Effect of separation of couple after disposal of partner's asset*

- (4) If:
- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the partner; and
  - (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);
- the amount that was included in the value of the care receiver's assets because of that disposition is no longer to be included in the assets of the care receiver.

*Pension year*

- (5) In this section:
- pension year***, in relation to a carer, means:
- (a) the 12 months starting on the day the carer payment first became payable to the carer; or
  - (b) any preceding or following period of 12 months.

**198LA Disposal of assets in income year—members of couples including higher ADAT score adults**

*Application*

- (1) This section has effect in determining whether a person (the ***carer***) who has been receiving a carer payment for caring for a care receiver who is a higher ADAT score adult and is a member of a couple continues to qualify for the payment.

*Disposals to which section applies*

- (2) This section applies to a disposal (the ***relevant disposal***) on or after 1 July 2002 of an asset by the care receiver, the care receiver's partner, or the care receiver and the care receiver's partner.

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*Increase in value of assets*

- (3) If the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the care receiver, the care receiver's partner, or the care receiver and the care receiver's partner (whether before or after they became members of the couple), during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the care receiver and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposal took place:
- (a) one-half of the amount of the relevant disposal;
  - (b) one-half of the amount by which the sum of the amount of the relevant disposal and the amounts (if any) of other disposals of assets previously made by the care receiver, the partner, or the care receiver and the partner, during the income year in which the relevant disposal took place, exceeds \$10,000.

*Effect of ceasing to be a member of couple after disposal by care receiver*

- (4) If:
- (a) the relevant disposal is the disposal of an asset by the care receiver; and
  - (b) after the relevant disposal, the care receiver and the care receiver's partner cease to be members of the same couple (either because the partner dies or for another reason);
- the amount that was included in the value of the assets of the partner because of the relevant disposal is to be included in the value of the assets of the care receiver.

*Effect of ceasing to be a member of couple after disposal by care receiver's partner*

- (5) If:

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- (a) the relevant disposal is the disposal of an asset by the care receiver's partner; and
- (b) after the relevant disposal, the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the assets of the care receiver because of the relevant disposal is no longer to be included in the value of the assets of the care receiver.

**198LB Disposal of assets in 5 year period—members of couples including higher ADAT score adults**

*Application*

- (1) This section also has effect in determining whether a person (the **carer**) who has been receiving a carer payment for caring for a care receiver who is a higher ADAT score adult and is a member of a couple continues to qualify for the payment.

*Disposals to which section applies*

- (2) This section applies to a disposal (the **relevant disposal**) on or after 1 July 2002 of an asset by the care receiver, the care receiver's partner, or the care receiver and the care receiver's partner.

*Increase in value of assets*

- (3) If:
  - (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals during the rolling period of assets by the care receiver, the care receiver's partner, or the care receiver and the care receiver's partner;

*less*

  - (b) the sum of any amounts included in the value of the assets of the care receiver or the partner during the rolling period under a provision of this Subdivision other than this section or under any previous application or applications of this section;

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exceeds \$30,000, then, for the purposes of this Act, an amount equal to one-half of the excess is to be included in the value of the assets of the care receiver and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposal took place.

*Effect of ceasing to be member of couple after disposal by care receiver*

- (4) If:
- (a) the relevant disposal is a disposal of an asset by the care receiver; and
  - (b) after the relevant disposal, the care receiver and the care receiver's partner cease to be members of the same couple (either because the partner dies or for another reason);
- the amount that was included in the value of the assets of the partner because of the relevant disposal is to be included in the value of the assets of the care receiver.

*Effect of ceasing to be member of couple after disposal by care receiver's partner*

- (5) If:
- (a) the relevant disposal is a disposal of an asset by the care receiver's partner; and
  - (b) after the relevant disposal, the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);
- the amount that was included in the value of the assets of the care receiver because of the relevant disposal is no longer to be included in the value of the assets of the care receiver.

*Rolling period*

- (6) For the purposes of this section, the **rolling period** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.



**198M Certain dispositions to be disregarded for care receiver assets test**

This Division does not apply to a disposition of an asset by a person (the *disposer*):

- (a) more than 5 years before the time when another person (the *carer*) became qualified for a carer payment:
  - (i) because the carer was providing care for the disposer and the disposer was a care receiver or one of 2 or more care receivers; or
  - (ii) because the carer was providing care for the person who was the disposer's partner at the time of the disposition and that person was a care receiver or one of 2 or more care receivers; or
- (b) less than 5 years before the time referred to in paragraph (a) but before the time when the disposer could, in the Secretary's opinion, reasonably have expected that the carer would become qualified for carer payment for a reason described in paragraph (a); or
- (c) before 9 May 1995.

**198MA Other disposals to be disregarded for care receiver assets test**

This Division does not apply to a disposal by a person (the *disposer*) of an asset of a child:

- (a) more than 5 years before the carer became qualified for a carer payment because the carer was providing care for the child and the child was a care receiver or one of 2 or more care receivers; and
- (b) less than 5 years before the time referred to in paragraph (a) but before the time when the disposer could, in the Secretary's opinion, reasonably have expected that the carer would become qualified for carer payment because the carer was providing care for the child.

Note: Subsections 198D(1B), (1D) and (1DB) provide that if a sole care child, a combined care child or a multiple care child lives with a

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parent, the assets listed in subsection 198D(1A) and paragraphs 198D(1C)(b) and (1DA)(c) are taken to be the assets of the child.

**198N Exemption from care receiver assets test**

*Application by parent or carer of sole care child*

(1AA) Subsections (2), (3), (4), (5) and (6) have effect if:

- (a) subparagraph 197B(4)(d)(i) or 197E(5)(d)(i) would disqualify from carer payment a person caring for a care receiver who is a sole care child; and
- (b) the parent or the carer of the care receiver lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and
- (c) the request includes a written estimate of the taxable income of the care receiver for the current financial year under subsection 198B(3); and
- (d) the Secretary accepts the estimate under subsection 198B(4).

*Application by parent or carer of combined care children*

(1AB) Subsections (2), (3), (4), (5) and (6) have effect if:

- (a) subparagraph 197C(4)(d)(i) would disqualify from carer payment a person caring for 2 or more care receivers each of whom is a combined care child; and
- (b) the parent or the carer of any of the care receivers lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and
- (c) the request includes written estimates of the taxable incomes of the care receivers for the current financial year under subsection 198B(3); and
- (d) the Secretary accepts the estimate under subsection 198B(4).

*Application by lower ADAT score adult (multiple care child or children)*

(1AC) Subsections (2), (3), (4), (5) and (6) have effect if:

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- (a) subparagraph 197D(4)(d)(i) would disqualify from carer payment a person caring for care receivers who are a lower ADAT score adult and one or more multiple care children; and
- (b) the lower ADAT score adult lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and
- (c) the request includes written estimates of the taxable incomes of the lower ADAT score adult and each child under subsection 198B(3A); and
- (d) the Secretary accepts the estimate under subsection 198B(4).

*Application by higher ADAT score adult*

- (1) If:
- (a) subparagraph 198(5)(d)(i) would disqualify for carer payment a person caring for a care receiver who is a higher ADAT score adult; and
  - (b) the higher ADAT score adult lodges with the Department, in a form approved by the Secretary, a request that the adult not be disqualified by that subparagraph; and
  - (c) the request includes a written estimate of the higher ADAT score adult's taxable income for the current financial year under subsection 198B(3); and
  - (d) the Secretary accepts the estimate under subsection 198B(4);
- subsections (2), (3), (4), (5) and (6) have effect.

*Application by lower ADAT score adult*

- (1B) If:
- (a) subparagraph 198(5)(d)(i) would disqualify from carer payment a person caring for care receivers who are a lower ADAT score adult and a dependent child; and
  - (b) the lower ADAT score adult lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and

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- (c) the request includes written estimates of the taxable incomes of the lower ADAT score adult and the dependent child under subsection 198B(3); and
- (d) the Secretary accepts the estimate under subsection 198B(4); subsections (2), (3), (4), (5) and (6) have effect.

*Failing assets test but passing special income test*

- (2) The Secretary may decide that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) does not disqualify the person from carer payment if:
  - (a) the value of the assets of the care receiver or the sum of the values of the assets of the care receivers is more than \$410,000 but not more than \$608,500; and
  - (b) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is less than the liquid assets limit; and
  - (c) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the current financial year is less than the threshold amount worked out under subsection (6).

Note 1: The amounts specified in paragraph (2)(a) are indexed each year on 1 January (see sections 1190 and 1191).

Note 2: For calculating the value of assets and liquid assets, see paragraph (5)(a).

Note 3: For *liquid assets* see subsection 19B(1).

Note 4: For *liquid assets limit* see paragraph (5)(b).

Note 5: For *accepted estimated taxable income* see subsection 198B(5).

*Failing assets and special income tests*

- (3) The Secretary may decide that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) does not disqualify the person from carer payment if the value of the assets of the care receiver, or the sum of the values of the assets of the

care receivers, is more than \$410,000 and not more than \$608,500 and:

- (a) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is equal to or greater than the liquid assets limit; or
- (b) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the current financial year is equal to or more than the threshold amount worked out under subsection (6).

Note 1: The amounts specified in subsection (3) are indexed each year on 1 January (see sections 1190 and 1191).

Note 2: For calculating the value of assets and liquid assets, see paragraph (5)(a).

Note 3: For *liquid assets* see subsection 19B(1).

Note 4: For *liquid assets limit* see paragraph (5)(b).

Note 5: For *accepted estimated taxable income* see subsection 198B(5).

*Failing assets test by large margin but passing special income test*

- (4) The Secretary may decide that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) does not disqualify the person from carer payment if:
- (a) the value of the assets of the care receiver, or the sum of the values of the assets of the care receivers, is more than \$608,500; and
  - (b) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is less than the liquid assets limit; and
  - (c) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the current financial year is less than the threshold amount worked out under subsection (6).

Note 1: The amount specified in paragraph (4)(a) is indexed each year on 1 January (see sections 1190 and 1191).

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Note 2: For calculating the value of assets and liquid assets, see paragraph (5)(a).

Note 3: For *liquid assets* see subsection 19B(1).

Note 4: For *liquid assets limit* see paragraph (5)(b).

Note 5: For *accepted estimated taxable income* see subsection 198B(5).

*Definitions—assets and income*

(5) For the purposes of this section:

- (a) the value of the assets or liquid assets of a care receiver who is a higher ADAT score adult is the sum of the values of the assets or liquid assets (as the case requires) of the following people:
  - (i) the care receiver;
  - (ii) if the care receiver has a partner—the partner;
  - (iii) if the care receiver or the care receiver's partner has one or more FTB children—those FTB children; and
- (aa) the value of the liquid assets of a care receiver who is a sole care child, combined care child or multiple care child is the sum of the values of the liquid assets of the following people:
  - (i) the care receiver;
  - (ii) if the care receiver lives with his or her parent—the parent;
  - (iii) if the parent with whom the care receiver lives is a member of a couple—the parent's partner;
  - (iv) if the parent with whom the care receiver lives or the parent's partner has one or more FTB children—those FTB children.

However, if the care receiver is one of 2 or more care receivers each of whom is a combined care child or a multiple care child, liquid assets of the same person are not to be taken into account in respect of any of the other care receivers; and

- (ab) the value of the liquid assets of a care receiver who is a lower ADAT score adult is the sum of the values of the liquid assets of the following people:

- (i) the care receiver;
- (ii) if the care receiver is a member of a couple—the care receiver’s partner and any FTB child (except the child who is the other care receiver or the children who are the other care receivers) of the care receiver or the care receiver’s partner;
- (iii) if the care receiver is not a member of a couple—any FTB child (except the child who is the other care receiver or the children who are the other care receivers).

However, liquid assets of the same person are not to be taken into account in respect of any of the other care receivers; and

Note: The value of the liquid assets of the child who is the other care receiver or the children who are the other care receivers is not adjusted by adding any other person’s liquid assets.

- (b) the **liquid assets limit** is \$10,000 if the care receiver or any of the care receivers is a member of a couple, or \$6,000 if not; and
- (c) the **taxable income** of a care receiver or of any of 2 or more care receivers for a particular financial year is the taxable income of the care receiver for that year as worked out under section 198B.

Note 1: For **liquid assets** see subsection 19B(1).

Note 2: Subsections 198D(1B), (1D) and (1DB) provide that if a sole care child, a combined care child or a multiple care child lives with a parent, the assets listed in subsection 198D(1A) and paragraphs 198D(1C)(b) and (1DA)(c) are taken to be assets of the child.

Note 3: For subparagraph (5)(aa)(ii), see also subsection 197F(5).

*Working out the threshold amount*

- (6) For the purposes of paragraphs (2)(c), (3)(b) and (4)(c), the threshold amount is the amount worked out using the following formula:

$$(\text{MBR} \times 2) + (\$639.60 \times \text{FPC})$$

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where:

**MBR** is the maximum basic rate of age pension payable, as at the last 1 January, to a person who has a partner.

**FPC** is:

- (a) in the case of a care receiver who is a higher ADAT score adult—the number of FTB children of the care receiver or the care receiver’s partner (if the care receiver has a partner); or
- (b) in the case of a care receiver who is a sole care child who lives with his or her parent—the number of FTB children of the parent or the parent’s partner (if the parent has a partner); or
- (c) in the case of a care receiver who is a sole care child who does not live with his or her parent—0; or
- (d) in the case of care receivers who are 2 or more combined care children:
  - (i) if any of the children lives with his or her parent—the sum of the number of FTB children of each such parent or of the partner (if the parent has a partner) of each such parent; or
  - (ii) in any other case—0; or
- (e) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child—the number of FTB children of the care receiver or the care receiver’s partner (if the care receiver has a partner).

Note 1: For the maximum basic rate of age pension see point 1064-B1 of Pension Rate Calculator A in section 1064.

Note 2: For paragraphs (b), (d) and (e) of the definition of **FPC**, see also subsection 197F(5).



**198P Date of effect of favourable decision under section 198N**

*Date of effect*

- (1) If the Secretary decides under subsection 198N(2), (3) or (4) that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) does not disqualify a person from carer payment, the day on which the decision takes effect is worked out under this section.

*Basic rule*

- (2) Subject to subsections (3), (4) and (5), the decision takes effect on the day on which the decision was made or on such later or earlier day (not being a day more than 3 months before the decision was made) as is specified in the decision.

*Notified decision—review sought within 3 months*

- (3) If:
- (a) a decision (the **previous decision**) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and
  - (b) notice of the making of the previous decision is given:
    - (i) in the case of a care receiver who is a higher ADAT score adult—to the adult or the person caring for the adult; or
    - (ii) in the case of a care receiver who is a sole care child—to his or her parent or carer; or
    - (iii) in the case of care receivers who are 2 or more combined care children—to the carer of the children or to the parent of any of the children; or
    - (iiia) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children—to the lower ADAT score adult or the person caring for that adult; or

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- (iv) in the case of care receivers who are a lower ADAT score adult and a dependent child—to the lower ADAT score adult or the person caring for that adult; and
  - (c) within 3 months after the notice is given, a person applies to the Secretary under section 129 of the Administration Act for review of the previous decision; and
  - (d) a decision favourable to the person caring for the care receiver or care receivers (the *favourable decision*) is made as a result of the application for review;
- the favourable decision takes effect on the day on which the previous decision took effect.

*Notified decision—review sought after 3 months*

- (4) If:
- (a) a decision (the *previous decision*) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and
  - (b) notice of the making of the previous decision is given:
    - (i) in the case of a care receiver who is a higher ADAT score adult—to the adult or the person caring for the adult; or
    - (ii) in the case of a care receiver who is a sole care child—to his or her parent or carer; or
    - (iii) in the case of care receivers who are 2 or more combined care children—to the carer of the children or to the parent of any of the children; or
    - (iiia) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children—to the lower ADAT score adult or the person caring for that adult; or
    - (iv) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child—to the lower ADAT score adult or the person caring for that adult; and

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- (c) more than 3 months after the notice is given, a person applies to the Secretary under section 129 of the Administration Act for review of the previous decision; and
  - (d) a decision favourable to the person caring for the care receiver or care receivers (the ***favourable decision***) is made as a result of the application for review;
- the favourable decision takes effect on the day on which the person sought the review.

*Decision not notified*

- (5) If:
- (a) a decision (the ***previous decision***) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and
  - (b) notice of the making of the previous decision is not given to a person specified in paragraph (4)(b) as a person to whom notice is to be given; and
  - (c) a person applies to the Secretary under section 129 of the Administration Act for review of the previous decision; and
  - (d) a decision favourable to the person caring for the care receiver or care receivers (the ***favourable decision***) is made as a result of the application for review;
- the favourable decision takes effect on the day on which the previous decision took effect.

**198Q Date of effect of adverse decision under section 198N**

If the Secretary decides under subsection 198N(2), (3) or (4) that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) disqualifies a person from carer payment, the decision takes effect:

- (a) on the day on which the request under section 198N in respect of the care receiver or care receivers was lodged with the Department; or
- (b) if the request was lodged after the Secretary rejected a claim for carer payment by a person caring for the care receiver or

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care receivers—on the day on which the decision to reject the claim took effect.

**Subdivision B—Payability**

**199 Carer payment not payable if payment rate nil**

- (1) Subject to subsection (2), a carer payment is not payable to a person if the person's carer payment rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

**201AA Newly arrived resident's waiting period**

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

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

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

Note: For *qualifying residence exemption* in relation to carer payment, see paragraph 7(6AA)(f).

- (3) Subsection (1) does not apply to a person who is:
  - (a) the holder of a subclass 104 visa—Preferential family; and
  - (b) either a carer or a special need relative.
- (4) Subsection (1) does not apply to a person who is:
  - (a) the holder of a subclass 806 visa—Family; and
  - (b) either a carer or a special need relative.

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- (5) Subsection (1) does not apply to a person if, at the time the person made the claim for a carer payment, the person holds a visa that is in a class of visas determined in an instrument under subsection (5B).
- (5A) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a carer payment; or
  - (b) the following apply:
    - (i) before the person made the claim for a carer payment, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a carer payment or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a carer payment.
- (5B) The Minister may, by legislative instrument, determine a class of visas for the purposes of subsection (5). The class must not be a class covered by paragraph 7(6AA)(f).
- (6) In this section:
- carer* has the same meaning as in the Migration Regulations.
- family member* has the meaning given by subsection 7(6D).
- former refugee* has the meaning given by subsection 7(1).
- refugee* has the meaning given by subsection 7(6B).
- special need relative* has the same meaning as in the Migration Regulations as in force on 30 November 1998.

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**201AB Duration of newly arrived resident's waiting period**

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

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

**202 Multiple entitlement exclusion**

- (1) A carer payment is not payable to a person if the person is already receiving a service pension or a veteran payment.
- (2) If:
  - (a) a person is receiving a carer payment; and
  - (b) another social security pension, a social security benefit, a service pension or a veteran payment becomes payable to the person;the carer payment 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).
- (3) A carer payment is not payable to a person who:
  - (a) is an armed services widow or an armed services widower; and
  - (b) is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
  - (c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.
- (4) Subsection (3) does not apply if:
  - (a) the person:

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- (i) was on 20 March 1995 receiving; and
    - (ii) has from that day continuously received; and
    - (iii) is receiving;the carer payment; and
  - (b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the carer payment.
- (5) Subsection (3) does not apply if:
- (a) before 20 March 1995, the person had made a claim for carer payment; and
  - (b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and
  - (c) on or after 20 March 1995, the person was granted carer payment; and
  - (d) the person has since that time continued to receive, and is receiving, the pension.
- (6) Subsection (3) does not apply if:
- (a) before 20 March 1995:
    - (i) the person had made a claim for wife pension; and
    - (ii) the claim had been rejected; and
    - (iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and
  - (b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and
  - (c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted wife pension; and
  - (d) the person has since that time continued to receive, and is receiving, the pension.
- (7) A carer payment is not payable to a person who:

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- (a) is an armed services widow or an armed services widower; and
- (b) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and
- (c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

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

Note 2: For *MRCA* and *VEA* see subsection 23(1).

**202A Exclusion of certain participants in ABSTUDY Scheme**

(1) If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and
- (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
- (d) the payment relates to a period;

carer payment is not payable to the person in respect of any part of the period.

(2) If:

- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
- (b) the payment for which the person is qualified is a payment that:
  - (i) is made on the basis that the person is a full-time student; and
  - (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and



(iii) relates to a period;  
carer payment is not payable to the person in respect of any part of the period.

- (3) If:
- (a) a person may enrol in a full-time course of education; and
  - (b) a payment referred to in subsection (2) may be made in respect of the person;
- the Secretary may decide that, in spite of subsection (2), carer payment is payable to the person before the person starts the course.

### **203 Seasonal workers—preclusion period**

- (1) This section applies if:
- (a) a person has lodged a claim for carer payment; and
  - (b) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.
- Note: For *seasonal work* see subsection 16A(1).
- (2) Carer payment 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).
- (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

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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) or subsection 19C(3) (person who is a member of a couple).

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

## **Division 4—Rate of carer payment**

### **210 How to work out a person's carer payment rate**

A person's carer payment rate is worked out using Pension Rate Calculator A at the end of section 1064 (see Part 3.2).

## Division 9—Bereavement payments

### Subdivision A—Continuation of carer payment

#### 235 Continuation of carer payment for bereavement period where person cared for dies

(1) If:

- (a) a person is receiving carer payment because he or she ordinarily cares for a care receiver or care receivers; and
  - (b) the person is caring for the care receiver or care receivers or has temporarily ceased to care for the care receiver or care receivers; and
  - (c) the care receiver or any of the care receivers dies; and
  - (d) the care receiver who dies is not the person's partner; and
  - (e) because of the death, the person would, apart from this subsection, cease to be qualified for the carer payment;
- the person remains qualified for the carer payment during the bereavement period as if the death had not occurred.

(1A) If:

- (a) a person (the *carer*) is receiving a carer payment only because section 198AA or subsection 198AC(2) applies; and
- (b) the death occurs of:
  - (i) the person or any of the persons for whom the person would qualify for carer payment as mentioned in paragraph 198AA(1)(b); or
  - (ia) the person or any of the persons for whom the carer would qualify for carer payment as mentioned in subsection 198AA(4) or (5); or
  - (ii) the person or any of the persons for whom the care mentioned in paragraph 198AC(2)(c) is assumed to be provided; and
- (c) the person who dies is not the carer's partner;

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the carer remains qualified for carer payment during the bereavement period as if the death had not occurred.

- (3) A person to whom subsection (1) applies may, by written notice to the Secretary, choose not to receive payments under this Subdivision and to receive instead any payments to which the person would be otherwise entitled.
- (4) If a person makes an election under subsection (3):
  - (a) this Act, or Part III or IIIA of the Veterans' Entitlements Act, has effect accordingly; and
  - (b) the person may not withdraw the election after the Department has taken all the action required to give effect to the election.

**236 Continued carer payment rate**

If a person is qualified for a carer payment solely because of section 235, the rate at which the pension is payable is to be determined having regard to the person's actual circumstances.

**236A Lump sum payable in some circumstances**

- (1) A lump sum is payable to a person under this section if:
  - (a) the person remains qualified for carer payment because subsection 235(1) or (1A) applies; and
  - (b) immediately before the death of the person mentioned in that subsection, the person who died was not a member of a couple, or was a member of a couple and his or her partner:
    - (i) was not receiving a social security pension; and
    - (ii) was not receiving a social security benefit; and
    - (iii) was not receiving a service pension, income support supplement or a veteran payment.
- (1A) However, if subsection (1) would apply where 2 or more persons die at the same time, only one payment is payable under that subsection.

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- (2) The amount of the lump sum under this section is the lesser of the amount worked out under subsection (3) and the amount worked out under subsection (4).

- (3) The amount under this subsection is:

$$\frac{(\text{Partnered MBR} + \text{Pension supplement})}{26} \times 7$$

where:

**partnered MBR** is the maximum basic rate applicable, on the day that the person dies, to a person covered by item 2 of the Maximum Basic Rate Table in point 1064-B1 of Pension Rate Calculator A in section 1064.

**pension supplement** is the person's pension supplement worked out under Module BA of Pension Rate Calculator A.

- (4) The amount under this subsection is:

$$\text{carer's current instalment} \times 7$$

where:

**carer's current instalment** is the amount of the last instalment of carer payment paid to the carer before the person died.

### 236B Subdivision not to apply in certain cases involving simultaneous death

If:

- (a) either:

- (i) a lower ADAT score adult and one or more multiple care children die at the same time; or
- (ii) a lower ADAT score adult and a dependent child of the adult die at the same time; and

- (b) apart from this subsection and section 243, because of those deaths, a person would continue to qualify for carer payment under section 235 and would be qualified for payments under Subdivision B; and

- (c) the sum of the carer payments for which the person would continue to qualify under section 235 and any lump sum payable to the person under section 236A is less than the sum of the amounts payable to the person under Subdivision B; the person does not continue to qualify for carer payment under section 235 and no lump sum is payable to the person under section 236A.

## **Subdivision B—Death of partner**

### **237 Qualification for payments under this Subdivision**

- (1) If:
- (a) a person is receiving a carer payment; 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, income support supplement or a veteran payment; 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 238 (continued payment of partner's pension or allowance); and
    - (ii) the amount that would otherwise be payable to the person under section 240 (person's continued rate);

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

Note 1: Section 238 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.

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Note 2: Section 239 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.

Note 3: A person who is qualified for payments under this Subdivision for the death of the person's partner may, in some circumstances, be automatically transferred to a parenting payment after the end of the bereavement period without making a claim for that payment (see subsection 501(4)).

(1A) If:

- (a) a person is receiving a carer payment; and
- (b) immediately before starting to receive the carer payment 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.

(1AB) Subsection (1) or (1A) does not apply in relation to care receivers who are a lower ADAT score adult and one or more multiple care children if:

- (a) the person is receiving carer payment under section 235 because of the death of the child or children; and
- (b) the person's partner is the lower ADAT score adult.

(1B) Subsection (1) or (1A) does not apply if:

- (a) the person is receiving carer payment under section 235 because of the death of a care receiver who is a dependent child of a lower ADAT score adult; and
- (b) the person's partner is the lower ADAT score adult.

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

(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.
- (4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which carer payment is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 240.
- (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
    - (iii) was receiving a youth training allowance; or
    - (iv) was receiving a service pension, income support supplement or a veteran payment.
- (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.

### **238 Continued payment of deceased partner's previous entitlement**

- (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 or social security benefit—the amount that would have been payable to the partner on the payday if the partner had not died; or

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- (b) where the partner was receiving a service pension, income support supplement or a veteran payment—the amount that would have been payable to the partner under Part III, IIIA or IIIAA (as the case may be) 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 pension payday; or
  - (ii) in any other case—follows the pension payday; if the partner had not died.

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

- (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.

### 239 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

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- (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 240, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.

Step 5. Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.

Step 6. Work out the number of the partner's paydays 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.

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**240 Adjustment of person's carer payment rate**

If:

- (a) a person is qualified for payments under this Subdivision;  
and
- (b) the person does not elect under subsection 237(2) not to receive payments under this Subdivision;

the rate of the person's carer payment during the bereavement period is worked out as follows:

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

**241 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 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 240, 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 partner's paydays 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.

**242 Benefits under this Subdivision**

(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 or IIIA 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).

(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 or IIIA of the *Veterans' Entitlements Act 1986*, 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 representative of the person's partner or anyone else in respect of the payment of that money to the person.

### **243 Subdivision not to apply in certain cases involving simultaneous death**

If:

- (a) either:
  - (i) a lower ADAT score adult and one or more multiple care children die at the same time; or
  - (ii) a lower ADAT score adult and a dependent child of the adult die at the same time; and
- (b) apart from this subsection and section 236B, because of those deaths a person would be qualified for payments under this Subdivision and would continue to qualify for carer payment under section 235; and
- (c) the sum of the amounts payable to the person under this Subdivision is less than or equal to the sum of the carer payments for which the person would continue to qualify under section 235 and any lump sum payable to the person under section 236A;

no amounts are payable to the person under this Subdivision.

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**Subdivision D—Death of recipient**

**246 Death of recipient**

- (1) If:
- (a) a person is receiving carer payment; 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, income support supplement or a veteran payment; 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.
- (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: For death of a person qualified for bereavement payments under Subdivision B see section 241.



## **Part 2.5A—One-off payments to carers eligible for carer payment**

### **Division 1—One-off payment to carers eligible for carer payment**

#### **247 One-off payment to carers (carer payment related)**

A person (the *qualified person*) is qualified for a one-off payment to carers (carer payment related) if the person has been paid an instalment of carer payment in respect of a period that includes 11 May 2004.

Note: The person may also be qualified for a one-off payment to carers (carer allowance related) under Division 1 of Part 2.19A.

#### **248 What is the amount of the payment?**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 2—2005 one-off payment to carers eligible for carer payment**

### **249 2005 one-off payment to carers (carer payment related)**

A person (the *qualified person*) is qualified for a 2005 one-off payment to carers (carer payment related) if the person has been paid an instalment of carer payment in respect of a period that includes 10 May 2005.

Note: The person may also be qualified for a 2005 one-off payment to carers (carer allowance related) under Division 2 of Part 2.19A.

### **250 What is the amount of the payment?**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 3—2005 one-off payment to carers eligible for carer service pension**

### **251 2005 one-off payment to carers (carer service pension related)**

A person (the *qualified person*) is qualified for a 2005 one-off payment to carers (carer service pension related) if the person has been paid an instalment of carer service pension as a result of the operation of subclause 8(2) or (4) of Schedule 5 to the *Veterans' Entitlements Act 1986* in respect of a period that includes 10 May 2005.

### **252 What is the amount of the payment?**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 4—2006 one-off payment to carers eligible for carer payment**

### **253 2006 one-off payment to carers (carer payment related)**

A person (the *qualified person*) is qualified for a 2006 one-off payment to carers (carer payment related) if:

- (a) the person has been paid an instalment of carer payment in respect of a period that includes 9 May 2006; and
- (b) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

### **254 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 5—2006 one-off payment to carers eligible for wife pension**

### **255 2006 one-off payment to carers (wife pension related)**

A person (the *qualified person*) is qualified for a 2006 one-off payment to carers (wife pension related) if:

- (a) the person:
  - (i) has been paid an instalment of wife pension in respect of a period that includes 9 May 2006; and
  - (ii) was paid that instalment because of a claim the person made on or before 9 May 2006; and
- (b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (i) the instalment was in respect of a period that includes 9 May 2006;
  - (ii) the reason why that instalment covered 9 May 2006 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (iii) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

### **256 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 6—2006 one-off payment to carers eligible for partner service pension**

### **257 2006 one-off payment to carers (partner service pension related)**

A person (the *qualified person*) is qualified for a 2006 one-off payment to carers (partner service pension related) if:

- (a) the person:
  - (i) has been paid an instalment of partner service pension under Part III of the Veterans' Entitlements Act in respect of a period that includes 9 May 2006; and
  - (ii) was paid that instalment because of a claim the person made on or before 9 May 2006; and
- (b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (i) the instalment was in respect of a period that includes 9 May 2006;
  - (ii) the reason why that instalment covered 9 May 2006 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (iii) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

### **258 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 7—2006 one-off payment to carers eligible for carer service pension**

### **259 2006 one-off payment to carers (carer service pension related)**

A person (the *qualified person*) is qualified for a 2006 one-off payment to carers (carer service pension related) if:

- (a) the person has been paid an instalment of carer service pension as a result of the operation of subclause 8(2) or (4) of Schedule 5 to the Veterans' Entitlements Act in respect of a period that includes 9 May 2006; and
- (b) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

### **260 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

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**Division 8—2007 one-off payment to carers eligible for carer payment**

**261 2007 one-off payment to carers (carer payment related)**

A person (the *qualified person*) is qualified for a 2007 one-off payment to carers (carer payment related) if:

- (a) the person has been paid an instalment of carer payment in respect of a period that includes 8 May 2007; and
- (b) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

**262 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.



## **Division 9—2007 one-off payment to carers eligible for wife pension**

### **263 2007 one-off payment to carers (wife pension related)**

A person (the *qualified person*) is qualified for a 2007 one-off payment to carers (wife pension related) if:

- (a) the person:
  - (i) has been paid an instalment of wife pension in respect of a period that includes 8 May 2007; and
  - (ii) was paid that instalment because of a claim the person made on or before 8 May 2007; and
- (b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (i) the instalment was in respect of a period that includes 8 May 2007;
  - (ii) the reason why that instalment covered 8 May 2007 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (iii) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

### **264 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 10—2007 one-off payment to carers eligible for partner service pension**

### **265 2007 one-off payment to carers (partner service pension related)**

A person (the *qualified person*) is qualified for a 2007 one-off payment to carers (partner service pension related) if:

- (a) the person:
  - (i) has been paid an instalment of partner service pension under Part III of the Veterans' Entitlements Act in respect of a period that includes 8 May 2007; and
  - (ii) was paid that instalment because of a claim the person made on or before 8 May 2007; and
- (b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (i) the instalment was in respect of a period that includes 8 May 2007;
  - (ii) the reason why that instalment covered 8 May 2007 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (iii) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

### **266 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 11—2007 one-off payment to carers eligible for carer service pension**

### **267 2007 one-off payment to carers (carer service pension related)**

A person (the *qualified person*) is qualified for a 2007 one-off payment to carers (carer service pension related) if:

- (a) the person has been paid an instalment of carer service pension as a result of the operation of subclause 8(2) or (4) of Schedule 5 to the Veterans' Entitlements Act in respect of a period that includes 8 May 2007; and
- (b) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

### **268 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 12—2008 one-off payment to carers eligible for carer payment**

### **269 2008 one-off payment to carers (carer payment related)**

A person (the *qualified person*) is qualified for a 2008 one-off payment to carers (carer payment related) if:

- (a) the person has been paid an instalment of carer payment in respect of a period that includes 13 May 2008; and
- (b) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

### **270 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 13—2008 one-off payment to carers eligible for wife pension**

### **271 2008 one-off payment to carers (wife pension related)**

A person (the *qualified person*) is qualified for a 2008 one-off payment to carers (wife pension related) if:

- (a) the person:
  - (i) has been paid an instalment of wife pension in respect of a period that includes 13 May 2008; and
  - (ii) was paid that instalment because of a claim the person made on or before 13 May 2008; and
- (b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (i) the instalment was in respect of a period that includes 13 May 2008;
  - (ii) the reason why that instalment covered 13 May 2008 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (iii) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

### **272 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

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## **Division 14—2008 one-off payment to carers eligible for partner service pension**

### **273 2008 one-off payment to carers (partner service pension related)**

A person (the *qualified person*) is qualified for a 2008 one-off payment to carers (partner service pension related) if:

- (a) the person:
  - (i) has been paid an instalment of partner service pension under Part III of the Veterans' Entitlements Act in respect of a period that includes 13 May 2008; and
  - (ii) was paid that instalment because of a claim the person made on or before 13 May 2008; and
- (b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (i) the instalment was in respect of a period that includes 13 May 2008;
  - (ii) the reason why that instalment covered 13 May 2008 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (iii) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

### **274 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

## **Division 15—2008 one-off payment to carers eligible for carer service pension**

### **275 2008 one-off payment to carers (carer service pension related)**

A person (the *qualified person*) is qualified for a 2008 one-off payment to carers (carer service pension related) if:

- (a) the person has been paid an instalment of carer service pension as a result of the operation of subclause 8(2) or (4) of Schedule 5 to the Veterans' Entitlements Act in respect of a period that includes 13 May 2008; and
- (b) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

### **276 Amount of the one-off payment**

The amount of the one-off payment to the qualified person is \$1000.

Note: The amount is \$1000, regardless of the number of people for whom the qualified person provides care.

Section 300

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## Part 2.6—One-off energy assistance payment

### 300 One-off energy assistance payment

- (1) A person is qualified for a one-off energy assistance payment if:
- (a) age pension, disability support pension or pension PP (single) is payable to the person on 20 June 2017; and
  - (b) that pension is so payable because of a claim the person made on or before 20 June 2017; and
  - (c) the person is residing in Australia on 20 June 2017.

*More than one entitlement under this section*

- (2) A person may receive one payment only under this section, regardless of how many times the person qualifies under this section.

*More than one entitlement under this section and the Veterans' Entitlements Act*

- (3) If a payment under Part IIIF of the Veterans' Entitlements Act is paid to a person, no payment under this section can be paid to the person.

### 301 Amount of one-off energy assistance payment

The amount of a person's one-off energy assistance payment under section 300 is worked out using the following table, having regard to the person's situation on 20 June 2017:

<b>Energy assistance payment</b>		
<b>Item</b>	<b>Person's situation on 20 June 2017</b>	<b>Amount of one-off energy assistance payment</b>
1	Not a member of a couple	\$75
2	Partnered	\$62.50



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<b>Energy assistance payment</b>		
<b>Item</b>	<b>Person's situation on 20 June 2017</b>	<b>Amount of one-off energy assistance payment</b>
3	Member of an illness separated couple	\$75
4	Member of a respite care couple	\$75
5	Partnered (partner in gaol)	\$75

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Note: For *member of a couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

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## Part 2.6A—2019 one-off energy assistance payment

### 302 One-off energy assistance payment

- (1) A person is qualified for a one-off energy assistance payment if:
  - (a) a benefit mentioned in subsection (2) is payable to the person on 2 April 2019; and
  - (b) that benefit is so payable because of a claim the person made on or before 2 April 2019; and
  - (c) the person is residing in Australia on 2 April 2019.
- (2) For the purposes of paragraph (1)(a), the benefits are the following:
  - (a) age pension;
  - (b) disability support pension;
  - (c) wife pension;
  - (d) carer payment;
  - (e) widow B pension;
  - (f) widow allowance;
  - (g) parenting payment;
  - (h) youth allowance;
  - (i) AUSTUDY payment;
  - (j) newstart allowance;
  - (k) sickness allowance;
  - (l) special benefit;
  - (m) partner allowance;
  - (n) double orphan pension;
  - (o) farm household allowance under the *Farm Household Support Act 2014*.

*More than one entitlement under this section*

- (3) A person may receive one payment only under this section, regardless of how many times the person qualifies under this section.

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*More than one entitlement under this section and the Veterans' Entitlements Act*

- (4) If a payment under Part IIIG of the Veterans' Entitlements Act is paid to a person, no payment under this section can be paid to the person.

**303 Amount of one-off energy assistance payment**

The amount of a person's one-off energy assistance payment under section 302 is worked out using the following table, having regard to the person's situation on 2 April 2019.

<b>Energy assistance payment</b>		
<b>Item</b>	<b>Person's situation on 2 April 2019</b>	<b>Amount of one-off energy assistance payment</b>
1	Not a member of a couple	\$75
2	Partnered	\$62.50
3	Member of an illness separated couple	\$75
4	Member of a respite care couple	\$75
5	Partnered (partner in gaol)	\$75

Note: For *member of a couple*, *partnered*, *illness separated couple*, *respite care couple* and *partnered (partner in gaol)*, see section 4.

## **Part 2.7—Bereavement allowance**

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

#### **Subdivision A—Qualification**

#### **315 Qualification for bereavement allowance**

- (1) A person is qualified for a bereavement allowance on a day if:
- (a) the person:
    - (i) was a member of a couple; and
    - (ii) stopped being a member of a couple because the person's partner died; and
  - (b) the person is not a member of a couple; and
  - (d) at least one of the following conditions is satisfied:
    - (i) when the person's partner died, both the person and the person's partner were Australian residents;
    - (ii) the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks; or
    - (iiia) the person has a qualifying residence exemption for a bereavement allowance;
    - (iv) the person is a woman:
      - (A) to whom a wife pension, or a partner service pension under Part III of the Veterans' Entitlements Act, was payable immediately before her partner died; and
      - (B) who was not in Australia when her partner died; and
  - (e) the day occurs:
    - (i) if the person is a man, or a woman who was not pregnant when her partner died—in the period of

- 14 weeks starting on the day of the death of the partner;  
or  
(ii) if the person is a woman who was pregnant when her partner died:  
    (A) in the period of 14 weeks starting on the day of the death of the partner; or  
    (B) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;  
whichever ends later.

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

## **Subdivision B—Payability**

### **316 Bereavement allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), a bereavement allowance is not payable to a person if the person's bereavement allowance rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

### **321 Multiple entitlement exclusion**

- (1) A bereavement allowance is not payable to a person if the person is already receiving a service pension or a veteran payment.
- (2) If:
- (a) a person is receiving a bereavement allowance; and
  - (b) another social security pension, a social security benefit, a service pension or a veteran payment becomes payable to the person;
- the bereavement allowance is not payable to the person.

**Chapter 2** Pensions, benefits and allowances

**Part 2.7** Bereavement allowance

**Division 1** Qualification for and payability of bereavement allowance

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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).

- (3) A bereavement 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: For *armed services widow* see subsection 4(1).

- (4) A bereavement 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).

**321A Exclusion of certain participants in ABSTUDY Scheme**

- (1) If:
- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
  - (b) the payment is made on the basis that the person is a full-time student; and
  - (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
  - (d) the payment relates to a period;
- bereavement allowance is not payable to the person in respect of any part of the period.
- (2) If:
- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
  - (b) the payment for which the person is qualified is a payment that:

- (i) is made on the basis that the person is a full-time student; and
  - (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
  - (iii) relates to a period;
- bereavement allowance is not payable to the person in respect of any part of the period.
- (3) If:
- (a) a person may enrol in a full-time course of education; and
  - (b) a payment referred to in subsection (2) may be made in respect of the person;
- the Secretary may decide that, in spite of subsection (2), bereavement allowance is payable to the person before the person starts the course.

### **322 Newly arrived resident's waiting period**

- (1) Subject to this section, a person who:
- (a) has entered Australia; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks;
- is subject to a newly arrived resident's waiting period.
- Note: For *Australian resident* see subsection 7(2).
- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a bereavement allowance.
- Note: For *qualifying residence exemption* in relation to a bereavement allowance see subsection 7(6).
- (3) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a bereavement allowance; or
  - (b) the following apply:
    - (i) before the person made the claim for a bereavement allowance, the person was a family member of another person at the time the other person became a refugee;

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- (ii) the person is a family member of that other person at the time the person made the claim for a bereavement allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a bereavement allowance.
- (4) For the purposes of subsection (3):
  - (a) *family member* has the meaning given by subsection 7(6D);  
and
  - (b) *former refugee* has the meaning given by subsection 7(1);  
and
  - (c) *refugee* has the meaning given by subsection 7(6B).

**323 Duration of newly arrived resident's waiting period**

- (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.
- (2) 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, 208 weeks.



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

### **329 How to work out a person's bereavement allowance rate**

A person's rate of bereavement allowance is worked out using  
Pension Rate Calculator C at the end of section 1066 (see Part 3.4).

## **Division 9—Bereavement payments**

### **Subdivision B—Death of recipient**

#### **359 Death of recipient**

- (1) If:
  - (a) a person is receiving bereavement allowance; and
  - (b) 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.
- (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.

## **Part 2.8—Widow B pension**

### **Division 1—Qualification for and payability of widow B pension**

#### **Subdivision A—Qualification**

#### **362A Widow B pension not to be granted in certain cases**

- (1) In spite of anything else in this Part, a 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.
- (2) For the purposes of subsection (1), if a provision of section 15 of the Administration Act applies, the woman is taken to have lodged her claim for a widow B pension on the day on which she lodged her incorrect claim or her initial claim, as the case may be.
- (3) This section does not apply in relation to a determination by the Secretary under section 85 or 85AA of the Administration Act.
- (4) For the purposes of subsection (2):

*incorrect claim* or *initial claim* has the same meaning as in the provision of section 15 of the Administration Act that applies as referred to in subsection (2).

#### **362 Qualification for widow B pension**

- (1) A woman is qualified for a widow B pension if:
  - (a) the woman:
    - (i) was, immediately before 1 July 1987, receiving a widow's pension as a class B widow under the 1947 Act; or

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- (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's pension after 1 March 1989; or
- (iii) on 1 July 1987 had turned 50 years old; and
- (b) the woman is not qualified for parenting payment; and
- (c) 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; or
  - (iii) is divorced from her husband; or
  - (iv) was legally married and her husband has deserted her without just cause for a period of at least 6 months; or
  - (v) is legally married to a man who is in gaol and has been in gaol continuously for at least 6 months; or
  - (vi) was:
    - (A) a party to a purported marriage that is void; and
    - (B) the man who was the other party to the purported marriage has deserted her without just cause for a period of at least 6 months; and
    - (C) in the Secretary's opinion, she believed that the purported marriage was valid when it took place; and
- (d) the woman is not a member of another couple; and
- (e) either:
  - (i) the woman had been an Australian resident for a continuous period of at least 5 years immediately before

- the day she lodged the claim for the widow B pension;  
or
- (ii) the woman has, at any time, been an Australian resident for a continuous period of at least 10 years; or
  - (iia) the woman has a qualifying residence exemption for a widow B pension; or
  - (iii) both the woman and her partner were Australian residents at the time:
    - (A) if she was legally married and her husband has died—when he died; or
    - (B) if she was a dependent female—when her partner died; or
    - (C) if she is divorced—when she became divorced; or
    - (D) if she was legally married and her husband has deserted her—when she was deserted; or
    - (E) if she was a party to a purported marriage and the man who was the other party has deserted her—when she was deserted; or
    - (F) if she was legally married and her husband has been in gaol for a period of at least 6 months—when that period began.

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

- (2) A woman does not have to satisfy paragraph (1)(e) in order to be qualified for a widow B pension if:
  - (a) the woman became a person to whom paragraph (1)(c) applied because of the death of a man; and
  - (b) the woman was, immediately before the man died, receiving:
    - (i) a wife pension because the man was receiving:
      - (A) an age pension; or
      - (B) an invalid pension or a disability support pension; or
      - (C) a special needs age pension; or

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- (D) a special needs invalid pension or a special needs disability support pension; or
  - (ii) a partner service pension under Part III of the Veterans' Entitlements Act because the man was receiving a service pension under that Part; and
  - (c) the woman was not in Australia at the time when the man died.
- (3) Subsection (1) has effect subject to:
- (a) sections 1215 to 1216B (limits on portability); and
  - (b) sections 1218, 1218A, 1218B, 1218C and 1219 (departure certificate requirements for people leaving Australia).

**Subdivision B—Payability**

**364 Widow B pension not payable if pension rate nil**

- (1) Subject to subsection (2), a Widow B pension is not payable to a person if the person's Widow B pension rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

**368 Multiple entitlement exclusion**

- (1) A widow B pension is not payable to a woman if the woman is already receiving a service pension or a veteran payment.
- (2) If:
  - (a) a woman is receiving a widow B pension; and
  - (b) another social security pension, a social security benefit, a service pension or a veteran payment becomes payable to the woman;the widow B pension is not payable to the woman.

Note 1: Another payment type will generally not become payable to the woman until the woman claims it.

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

- (3) A widow B 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).

### 368A Exclusion of certain participants in ABSTUDY Scheme

- (1) If:
- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
  - (b) the payment is made on the basis that the person is a full-time student; and
  - (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
  - (d) the payment relates to a period;
- widow B pension is not payable to the person in respect of any part of the period.
- (2) If:
- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
  - (b) the payment for which the person is qualified is a payment that:
    - (i) is made on the basis that the person is a full-time student; and
    - (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
    - (iii) relates to a period;
- widow B pension is not payable to the person in respect of any part of the period.

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(3) If:

(a) a person may enrol in a full-time course of education; and

(b) a payment referred to in subsection (2) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (2), widow B pension is payable to the person before the person starts the course.



## **Division 4—Rate of widow B pension**

### **376 How to work out the rate of widow B pension**

A woman's widow B pension rate is worked out using Pension Rate Calculator C at the end of section 1066 (see Part 3.4).

## **Division 9—Bereavement payments**

### **Subdivision B—Death of recipient**

#### **407 Death of recipient**

(1) If:

(a) a person is receiving widow B pension; and

(b) 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.

(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: For amounts owing to the recipient before the recipient's death see section 386.

## **Part 2.8A—Widow allowance**

### **Division 1—Time limit on grants of widow allowance**

#### **408AA Time limit on grants**

- (1) A woman is not to be granted widow allowance on or after 1 July 2005 unless she was born on or before 1 July 1955.
- (2) Despite anything else in this Part, widow allowance must not be granted to a woman unless:
  - (a) the woman's claim for the allowance is made before the commencement of this subsection; and
  - (b) the woman is qualified for the allowance before the commencement of this subsection.

Note: A woman's claim for widow allowance may be taken to have been made before the commencement of this subsection in accordance with section 12 or 15 of the Administration Act.

- (3) This section does not apply in relation to a determination by the Secretary under section 85 of the Administration Act.

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## Division 2—Qualification for and payability of widow allowance

### Subdivision A—Qualification

#### 408BA Qualification for widow allowance

- (2) Subject to section 408BB, a woman is qualified for widow allowance in respect of a period if:
- (a) she has turned 50; and
  - (b) she was a member of a couple and since turning 40:
    - (i) her partner died; or
    - (ii) she separated from her partner; or
    - (iii) she divorced from her husband; and
  - (c) she satisfies the Secretary that she has no recent workforce experience on the day when she makes her claim for the allowance; and
  - (d) at least one of the following is satisfied:
    - (i) the woman has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks before the day she lodged the claim for the allowance; or
    - (ii) she has 10 years qualifying Australian residence; or
    - (iii) she has a qualifying residence exemption for widow allowance; or
    - (iv) both the woman and her partner were Australian residents at the time when the qualifying event under paragraph (b) occurred; and
  - (e) throughout the period, she:
    - (i) is not a member of a couple; and
    - (ii) is an Australian resident.

Note 1: For *recent workforce experience* see subsection (3).

Note 2: For *Australian resident* and *qualifying residence exemption* see section 7.

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

- (3) For the purposes of subsection (2), *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 woman lodged the claim for the allowance.

#### **408BB Assurance of support**

A woman is not qualified for widow allowance in respect of a period if the Secretary is satisfied that:

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

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

#### **Subdivision B—Payability**

##### **408CA Widow allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), a widow allowance is not payable to a person if the person's widow allowance rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:
  - (a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or
  - (b) the person has been paid an advance pharmaceutical allowance under the social security law.

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**408CE Assets test—allowance not payable if assets value limit exceeded**

- (1) Widow allowance is not payable to a woman if the value of her assets exceeds her assets value limit.
- (2) A woman'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>Woman's situation</b>	<b>Assets value limit</b>
1	Woman is a homeowner	\$250,000
2	Woman is not a homeowner	\$450,000

Note 1: For *homeowner* see section 11.

Note 2: The assets value limit in column 3 of item 1 is indexed annually in line with CPI increases (see sections 1190 to 1194).

Note 3: The assets value limit in column 3 of item 2 is adjusted annually (see subsection 1204(1)).

Note 4: If widow allowance is not payable to a woman because of the value of the her assets, she may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).

**408CF Multiple entitlement exclusion**

- (1) Widow allowance is not payable to a woman if she is already receiving a service pension, income support supplement or a veteran payment.
- (2) If:
  - (a) a woman is receiving widow allowance; and
  - (b) a social security pension, another social security benefit, a service pension, income support supplement or a veteran payment becomes payable to her;widow allowance is not payable to her.

Note: Another payment type will generally not become payable to the woman until the woman claims it.

- (3) Widow allowance is not payable to a woman if:
- (a) she is an armed services widow; and
  - (b) she 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) she has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and
- (d) before 1 November 1986 she 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 1068(3).

- (4) Subject to subsections (5) and (6), widow allowance is not payable to a woman for a period if a payment has been or may be made in respect of the woman 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: For *prescribed educational scheme* see section 5.

- (5) If:
- (a) a woman enrolls in a full-time course of education; and
  - (b) a payment under a scheme referred to in subsection (4) may be made in respect of her;

the Secretary may decide that, in spite of subsection (4), widow allowance is payable to her for a period before she starts the course.

- (6) If:
- (a) a woman enrolls in a full-time course of education; and
  - (b) the course is to last for 6 months or more; and
  - (c) an application is made for a payment in respect of her under:

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- (ii) the ABSTUDY Schools Scheme; or
  - (iii) the ABSTUDY Tertiary Scheme; and
  - (d) she was receiving widow allowance immediately before the start of the course;
- the Secretary may decide that, in spite of subsection (4), widow allowance is payable to her until:
- (e) the application is determined; or
  - (f) the end of 3 weeks commencing on the day on which the course starts;
- whichever happens first.

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

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

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

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

**408CH Seasonal workers**

- (1) This section applies if, at any time during the 6 months immediately before the day on which a woman lodges a claim for widow allowance, she has been engaged in seasonal work.

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

- (2) Widow allowance is not payable to the woman:
  - (a) if she 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 her—for her seasonal work preclusion period; or
  - (b) if the Secretary has made a determination under subsection (3) in relation to her—for that part (if any) of her



seasonal work preclusion period to which she is subject as a result of the determination.

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

- (3) If the Secretary is satisfied that a woman is in severe financial hardship because she has incurred unavoidable or reasonable expenditure while she 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 she 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).

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

## Division 5—Rate of widow allowance

### 408FA How to work out a woman's widow allowance rate

A woman's widow allowance rate is worked out using the Benefit Rate Calculator B at the end of section 1068.

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

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

***quarter*** means a CDEP Scheme quarter.

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

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

## **Part 2.10—Parenting payment**

### **Division 1—Qualification for and payability of parenting payment**

#### **Subdivision A—Qualification**

#### **500 Qualification for parenting payment**

- (1) A person is qualified for parenting payment if:
- (a) the person has at least one PP child (see section 500D); and
  - (b) the person is an Australian resident; and
  - (c) in a case where the person is not a member of a couple and does not have at least one PP child who has not turned 6—the person meets any participation requirements that apply to the person under section 500A; and
  - (ca) in a case where the person is in a class of persons specified by legislative instrument under subsection (2)—the person meets any participation requirements that apply to the person under section 500A; and
  - (d) at least one of the following conditions is satisfied:
    - (i) the person is not a member of a couple and the person was not a lone parent at the start of the person's current period as an Australian resident;
    - (ii) the person has, at any time, been in Australia for a period of, or periods adding up to, at least 104 weeks during a continuous period throughout which the person was an Australian resident;
    - (iii) the person has a qualifying residence exemption for parenting payment;
    - (iv) the person satisfies subsection (3).

Note 1: For *Australian resident*, see section 7. For *qualifying residence exemption* in relation to parenting payment, see subsection 7(6) and paragraph 7(6AA)(f).

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Note 2: If a person is claiming parenting payment under a scheduled international social security agreement, the requirements of this subsection could be modified by section 10 of the *Social Security (International Agreements) Act 1999*.

Note 3: For ***lone parent*** and ***current period as an Australian resident*** see subsection 23(1).

- (2) For the purposes of paragraph (1)(ca), the Minister may, by legislative instrument, specify a class of persons.
- (3) A person satisfies this subsection if the following apply:
- (a) before the person made the claim for parenting payment, the person was a family member of another person at the time the other person became a refugee;
  - (b) the person is a family member of that other person at the time the person made the claim for parenting payment or, if that other person has died, the person was a family member of that other person immediately before that other person died.
- (4) For the purposes of subsection (3):
- (a) ***family member*** has the meaning given by subsection 7(6D); and
  - (b) ***refugee*** has the meaning given by subsection 7(6B).

**500A Participation requirements**

The participation requirements are as follows:

- (a) the person must enter into a Parenting Payment Employment Pathway Plan when the person is required by the Secretary under section 501 to do so;
- (b) while the plan is in force, the person must comply with the requirements in the plan;
- (c) at any time while the plan is in force the person must be prepared to enter into another such plan, instead of the existing plan, if required to do so by the Secretary under section 501;
- (d) the person must comply with any requirements that the Secretary notifies to the person under subsection 502(1).

**500B Qualification—assurance of support**

A person is not qualified for parenting payment if the Secretary is satisfied that:

- (a) an assurance of support is in force in respect of the person (the *assuree*); 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 would be reasonable for the assuree to accept that support.

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

**500C Qualification affecting member of couple—unemployment due to industrial action**

- (1) If:
  - (a) a person (*claimant*) who is a member of a couple has claimed but has not yet received parenting payment; and
  - (b) when the claim was lodged, the claimant was unemployed; the claimant is not qualified for parenting payment unless the Secretary is satisfied that the claimant's unemployment is not due to the fact that the claimant is, or has been, engaged in industrial action or a series of industrial actions.
- (2) For the purposes of subsection (1) and without limiting that subsection, a claimant is taken not to be, or not to have been, engaged in industrial action or a series of industrial actions if the Secretary is satisfied that the claimant's unemployment is due to the fact that other persons are, or have been, engaged in industrial action or in a series of industrial actions, and that:
  - (a) if industrial action is still being engaged in:
    - (i) those persons, or some of those persons, are members of a trade union that is involved in the industrial action, or have been such members at any time since industrial action started; and
    - (ii) the claimant has not been a member of that trade union at any time since industrial action started; or

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- (b) if industrial action has stopped:
  - (i) at any time while industrial action was being engaged in, those persons, or some of those persons, were members of a trade union that was involved in the industrial action; and
  - (ii) the claimant was not a member of that trade union at any time while industrial action was being engaged in.
- (3) Subsection (1) does not prevent a person from being qualified for parenting payment after the relevant industrial action or series of industrial actions has stopped.

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

**500D PP child**

- (1) A child is a **PP child** of a person if:
  - (a) the child is a child of the person; and
  - (b) the person is a member of a couple; and
  - (c) the child has not turned 6; and
  - (d) the person is the principal carer of the child.
- (2) A child is a **PP child** of a person if:
  - (a) the child is a child of the person; and
  - (b) the person is not a member of a couple; and
  - (c) the child has not turned 8; and
  - (d) the person is the principal carer of the child.

Note: For *principal carer* see subsections 5(15) to (24).

**500E Prospective determinations for some recipients**

- (1) A person is qualified for parenting payment for a period determined by the Secretary if:
  - (a) the person is receiving parenting payment; and
  - (b) the Secretary considers at the start of the period that:

- (i) the person may reasonably be expected to satisfy the qualification requirements for parenting payment (see sections 500 to 500C) during the period; and
  - (ii) it is reasonable to expect that parenting payment will be payable to the person for the period; and
  - (iii) the person will comply with the Act during the period; and
  - (c) except where the person is a CDEP Scheme participant in respect of the period, the person is not indebted at the start of the period to the Commonwealth under or as a result of this Act; and
  - (d) the Secretary is satisfied that the person should be qualified under this section for a parenting payment for the period.
- (2) The Minister:
- (a) must determine, by legislative instrument, guidelines for making decisions under paragraph (1)(b); and
  - (b) may revoke or vary the determination.

If the Minister revokes a determination, the Minister must determine, by legislative instrument, guidelines that commence immediately after the revocation.

### **Subdivision B—General principles relating to payability**

#### **500I Parenting payment not payable if payment rate nil**

- (1) Subject to subsection (2), a parenting payment is not payable to a person if the person's parenting payment rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:
  - (a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or
  - (b) the person has been paid an advance pharmaceutical allowance under the social security law.

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**500J Situations where payment not payable for failure to comply with certain requirements**

Parenting payment is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

**500Q Assets test—payment not payable if assets value limit exceeded**

- (1) Parenting payment is not payable to a person if the value of the person's assets exceeds the person's assets value limit.
- (2) The assets value limit of a person who is not a member of a couple is worked out using the following table:

Table—Assets value limits for person who is not a member of a couple		
Column 1 Item	Column 2 Person's situation	Column 3 Assets value limit
1	Person is a homeowner	\$250,000
2	Person is not a homeowner	\$450,000

Note 1: For *homeowner* see section 11.

Note 2: The assets value limit in Column 3 of Item 1 is indexed annually in line with CPI increases (see sections 1190 to 1194).

Note 3: The assets value limit in Column 3 of Item 2 is adjusted annually (see subsection 1204(1)).

Note 4: If parenting payment 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 1130B and 1130C).



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- (3) The assets value limit of a person who is a member of a couple is worked out using the following table:

<b>Table—Assets value limits for person who is a member of a couple</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>	
		<b>Column 3A</b>	<b>Column 3B</b>
		<b>Either person or partner homeowner</b>	<b>Neither person nor partner homeowner</b>
1	Person is partnered (partner getting neither pension nor benefit)	\$375,000	\$575,000
2	Person is partnered (partner getting pension or benefit)	\$187,500	\$287,500

Note 1: For *partnered (partner getting neither pension nor benefit)* and *partnered (partner getting pension or benefit)* see subsection 4(11).

Note 2: For *homeowner* see subsection 11(4).

Note 3: If item 1 applies to a person, the value of all the assets of the person's partner are to be taken as being included in the value of the person's assets (see subsection (4)). If item 2 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 (5)).

Note 4: If benefit PP (partnered) 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 item 2 are indexed annually in line with CPI increases (see sections 1191 to 1194).

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Note 6: The item 1 assets value limits are adjusted annually so that they are twice the corresponding item 2 limits (see subsections 1204(2) and (3)).

- (4) For the purposes of subsection (3), if the person is partnered (partner getting neither pension nor benefit):
- (a) the value of the person's assets includes the value of the partner's assets; and
  - (b) the value of assets of a particular kind of the person includes the assets of that kind of the partner.

Note: For *partnered (partner getting neither pension nor benefit)* see subsection 4(11).

- (5) For the purposes of subsection (3), if the person is partnered (partner getting pension or benefit):
- (a) 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
  - (b) the value of the person's assets of a particular kind are 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 *partnered (partner getting pension or benefit)* see subsection 4(11).

**500S Multiple entitlement exclusion**

- (1) Parenting payment is not payable to a person if the person is already receiving a service pension or a veteran payment.
- (2) If:
- (a) a person is receiving parenting payment; and
  - (b) a social security pension other than a pension PP (single) or a social security benefit other than a benefit PP (partnered) or a service pension or a veteran payment becomes payable to the person;
- parenting payment is not payable to the person.

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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).

- (3) Parenting payment 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 widower* see subsection 4(1).

- (4) Parenting payment 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).

- (5) Parenting payment is not payable to a person if:
- (a) the person is an armed services widow or an armed services widower; and
  - (b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For *MRCA* see subsection 23(1).

### **500V Educational schemes exclusion—person member of a couple**

- (1) This section applies to a person who is a member of a couple.

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- (2) Parenting payment is not payable to the person if the person is receiving:
- (b) payments under the ABSTUDY Scheme (other than payments under the ABSTUDY Scheme as a part-time student); or
  - (c) payments under a Student Financial Supplement Scheme.

**500VA Exclusion of certain participants in ABSTUDY Scheme**

- (1) If:
- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
  - (b) the payment is made on the basis that the person is a full-time student; and
  - (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
  - (d) the payment relates to a period;
- pension PP (single) is not payable to the person in respect of any part of the period.
- (2) If:
- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
  - (b) the payment for which the person is qualified is a payment that:
    - (i) is made on the basis that the person is a full-time student; and
    - (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
    - (iii) relates to a period;
- pension PP (single) is not payable to the person in respect of any part of the period.
- (3) If:
- (a) a person may enrol in a full-time course of education; and

(b) a payment referred to in subsection (2) may be made in respect of the person;  
the Secretary may decide that, in spite of subsection (2), pension PP (single) is payable to the person before the person starts the course.

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

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

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

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

**500WA Ordinary waiting period**

- (1) Subject to subsection (2), a person is subject to an ordinary waiting period unless:
- (a) at some time in the 13 weeks immediately before the person's start day (worked out disregarding clause 5 of Schedule 2 to the Administration Act), the person received an income support payment; or
  - (b) the Secretary is satisfied that the person is experiencing a personal financial crisis.
- Note 1: For *income support payment* see subsection 23(1).
- Note 2: For *experiencing a personal financial crisis* see section 19DA.
- (2) Subsection (1) does not apply to a person who:
- (a) is undertaking an activity specified in an instrument made under subsection (3); and
  - (b) has been exempted from the application of subsection (1) by the Secretary.

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- (3) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

**500WB Duration of ordinary waiting period**

- (1) Subject to subsections (2) and (4), if a person is subject to an ordinary waiting period, the ordinary waiting period is the period of 7 days that starts on the person's start day (worked out disregarding clause 5 of Schedule 2 to the Administration Act).
- (2) Subject to subsection (4), if:
- (a) a person is subject to an ordinary waiting period; and
  - (b) apart from this subsection, the ordinary waiting period would be the period of 7 days that starts on the person's start day (worked out disregarding clause 5 of Schedule 2 to the Administration Act); and
  - (c) that start day falls within one or more of the following periods (each of which is an *exclusion period*) that the person is subject to:
    - (i) a seasonal work preclusion period;
    - (ii) a lump sum preclusion period under Part 3.14;
    - (iii) an income maintenance period, where the person's rate of parenting payment on that start day would be nil;
- then the ordinary waiting period is the period of 7 days that starts on the first day after all the exclusion periods have ended.
- (3) If:
- (a) subparagraph (2)(c)(iii) applies to a person; and
  - (b) on a day in that income maintenance period, the person's rate of parenting payment would be greater than nil if parenting payment were payable to the person on that day;
- then, for the purposes of subsection (2), that income maintenance period is taken to have ended at the end of the day before that day.
- (4) If:
- (a) a person qualifies for a social security payment (other than parenting payment); and

(b) because the person is subject to an ordinary waiting period relating to that payment, that payment is not payable to the person for a period starting on a particular day (the *initial day*); and

(c) during that period the person:

- (i) ceases to be qualified for that payment; and
- (ii) claims parenting payment;

the person's ordinary waiting period relating to parenting payment is the period of 7 days that starts on the initial day.

Note: Ordinary waiting periods apply to parenting payment, youth allowance, newstart allowance and sickness allowance.

### **500X Newly arrived resident's waiting period**

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

- (a) has entered Australia; and
- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks;

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

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

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

Note: For *qualifying residence exemption* in relation to parenting payment see subsection 7(6) and paragraph 7(6AA)(f).

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

- (a) is the principal carer of one or more children; and
- (b) is not a member of a couple; and
- (c) was not a lone parent at the start of the person's current period as an Australian resident.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *lone parent* and *current period as an Australian resident* see subsection 23(1).

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

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- (a) the person is a refugee, or a former refugee, at the time the person made the claim for parenting payment; or
  - (b) the following apply:
    - (i) before the person made the claim for parenting payment, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for parenting payment or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for parenting payment.
- (5) For the purposes of subsection (4):
- (a) **family member** has the meaning given by subsection 7(6D); and
  - (b) **former refugee** has the meaning given by subsection 7(1); and
  - (c) **refugee** has the meaning given by subsection 7(6B).

**500Y Duration of newly arrived resident's waiting period**

- (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.
- (2) 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, 208 weeks.

**500Z Seasonal workers—preclusion period**

- (1) This section applies if:
  - (a) a person has lodged a claim for parenting payment; and



- (b) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

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

- (2) Parenting payment 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).

- (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(3) (person who is a member of a couple).

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

## **Division 2—Parenting Payment Employment Pathway Plans**

### **501 Parenting Payment Employment Pathway Plans**

- (1) The Secretary may require a person who is subject to participation requirements to enter into a Parenting Payment Employment Pathway Plan under this section.

Note: For when a person is *subject to participation requirements* see subsection 23(1).

- (2) If a Parenting Payment Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.
- (3) Subject to subsection (4), subsections (1) and (2) do not apply to a person at any time during which the person is covered by a participation exemption under Division 3A.
- (4) If a person is covered by a participation exemption under Division 3A only because of the application of section 502H, subsections (1) and (2) apply to the person only if subsection 502J(1) applies to the person.
- (5) The Secretary is to give a person who is required to enter into a Parenting Payment Employment Pathway Plan notice of:
- (a) the requirement; and
  - (b) the places and times at which the plan is to be negotiated.
- (6) A Parenting Payment Employment Pathway Plan must be in a form approved by the Secretary.

### **501A Parenting Payment Employment Pathway Plan—terms**

#### *Suitable requirements*

- (1) Subject to subsections (2) and (3) and sections 501B to 501E, a Parenting Payment Employment Pathway Plan that is in force in

relation to a person is to contain one or more terms (the *requirements*) that:

- (a) the person is required to comply with; and
  - (b) the Secretary regards as suitable for the person.
- (1A) Without limiting the requirements that a Parenting Payment Employment Pathway Plan may contain, a plan relating to a person to whom paragraph 500(1)(ca) applies may contain requirements relating to one or more of the following:
- (a) the person's education;
  - (b) the health of a PP child of the person;
  - (c) the education of a PP child of the person.
- (2) If a Parenting Payment Employment Pathway Plan requires a person, during a period, to engage for at least 30 hours per fortnight in paid work that the Secretary regards as suitable, the plan must not require the person to undertake any other activities.
- (3) A plan must not contain a requirement of a kind that the Secretary determines under subsection (4).
- (4) The Secretary must determine, by legislative instrument, kinds of requirements that plans must not contain.
- (4A) To avoid doubt, a determination under subsection (4) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular plan under subsection (1).

*Optional terms*

- (4B) A plan may also contain one or more terms that the person may, but is not required to, comply with.

*Approval of requirements*

- (5) The requirements in a plan are to be approved by the Secretary.
- (6) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:

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- (a) the person's capacity to comply with the requirements; and
  - (b) the person's needs.
- (7) In having regard to a person's capacity to comply with the requirements in a plan, the Secretary is to take into account, but is not limited to, the following matters:
  - (a) the person's education, experience, skills and age;
  - (b) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;
  - (c) the state of the local labour market and the transport options available to the person in accessing that market;
  - (d) the participation opportunities available to the person;
  - (e) the family and caring responsibilities of the person;
  - (f) the length of travel time required to comply with the requirements;
  - (g) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs;
  - (h) any other matters that the Secretary or the person considers relevant in the circumstances.

*Variation, suspension, cancellation and review*

- (8) A plan that is in force in relation to a person:
  - (a) may be varied (in negotiation with the person) or suspended by the Secretary; and
  - (b) must be cancelled by the Secretary if the person enters into another Parenting Payment Employment Pathway Plan; and
  - (c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and
  - (d) may be cancelled by the Secretary after a review under paragraph (c).

*Circumstances preventing or affecting compliance*

- (9) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

**501B Parenting Payment Employment Pathway Plans—  
requirement to look for work of appropriate number of  
hours per week**

- (1) A Parenting Payment Employment Pathway Plan that requires a person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.
- (2) The appropriate number of hours per week is:
- (a) 15; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

**501C Parenting Payment Employment Pathway Plans—people with  
partial capacity to work**

- (1) A Parenting Payment Employment Pathway Plan that:
- (a) is in force in relation to a person who has a partial capacity to work; and
  - (b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable; must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.

Note: For *partial capacity to work* see section 16B.

- (2) The appropriate number of hours per week is:
- (a) 15; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

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**501D Parenting Payment Employment Pathway Plans—  
requirement to participate in an approved program of  
work**

- (1) A Parenting Payment Employment Pathway Plan that is in force in relation to a person must not require the person to participate in an approved program of work for income support payment if:
  - (a) either:
    - (i) if the person's rate of parenting payment is worked out under the Pension PP (Single) Rate Calculator in section 1068A—because of the application of Module E of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or
    - (ii) if the person's rate of parenting payment is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B—because of the application of Module D of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or
  - (b) in the Secretary's opinion:
    - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
    - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (c) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (2) If a Parenting Payment Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person, revoke the requirement to participate in the program if the Secretary:
  - (a) is satisfied that:

- (i) if the person's rate of parenting payment is worked out under the Pension PP (Single) Rate Calculator in section 1068A—because of the application of Module E of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or
    - (ii) if the person's rate of parenting payment is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B—because of the application of Module D of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or
  - (b) forms the opinion that:
    - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
    - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (3) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.
- (4) A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Parenting Payment Employment Pathway Plan under this section:
- (a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;
  - (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;

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- (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
- (d) an employee for the purposes of the *Fair Work Act 2009*.

**501E Parenting Payment Employment Pathway Plans—suspension of plans in cases of domestic violence etc.**

A Parenting Payment Employment Pathway Plan that is in force in relation to a person is taken to be suspended during any period during which the person is covered by a participation exemption under Division 3A because of section 502C or 502D.



## **Division 3—Additional participation requirements**

### **502 Secretary may impose additional participation requirements**

- (1) Subject to sections 502A and 502B, if the Secretary is of the opinion that, throughout a period, a person who:
- (a) is subject to participation requirements; and
  - (b) is not covered by a participation exemption under Division 3A;
- should undertake particular paid work, other than paid work that is unsuitable to be done by the person, the Secretary may notify the person that the person is required to act in accordance with the opinion.

Note 1: For when a person is *subject to participation requirements* see subsection 23(1).

Note 2: See subsection (4) on what paid work is unsuitable.

- (2) To avoid doubt, the work that the person is required to undertake under subsection (1) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Parenting Payment Employment Pathway Plan that is in force in relation to the person.
- (3) The person can be taken not to have complied with requirements notified to the person under subsection (1) whether or not the person has complied with:
- (a) any requirement to enter into a Parenting Payment Employment Pathway Plan; and
  - (b) the requirements in the plan.
- (4) Subject to subsections (7) and (8), for the purposes of this section, particular paid work is unsuitable for a person if and only if, in the Secretary's opinion:
- (a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or

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- (b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
- (c) the person does not have access to appropriate care and supervision, for the one or more children for whom the person is the principal carer, at the times when the person would be required to undertake the work; or

Note: For *principal carer* see subsections 5(15) to (24).

- (d) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or
  - (g) commuting between the person's home and the place of work would be unreasonably difficult; or
  - (h) the work would require enlistment in the Defence Force or the Reserves; or
  - (i) the work requires the person to move from a home in one place to a home in another place; or
  - (j) for any other reason, the work is unsuitable for the person.
- (4A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (4)(j), particular paid work is unsuitable for a person.
- (4B) To avoid doubt, a determination under subsection (4A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (4)(j), particular paid work is unsuitable for a person.
- (5) A person has, for the purposes of paragraph (4)(c), access to appropriate care and supervision for a child at a particular time if, at that time:

- (a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or
  - (b) the child could be provided with other care that the person considers to be suitable; or
  - (c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.
- (6) For the purposes of paragraph (4)(c), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.
- (7) If:
- (a) a person seeks work in an area (the **new area**) that is outside the area (the **old area**) in which the person's home is situated; and
  - (b) the person is offered permanent work (whether or not work of the kind sought) in the new area;
- the work offered is not unsuitable for the person because of paragraph (4)(g) or (i) unless:
- (c) the person is under the age of 18; or
  - (d) the person or the person's partner is pregnant; or
  - (e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or
  - (f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or
  - (g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or
  - (h) the person or the person's partner has significant caring responsibilities in the old area; or

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- (i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or
  - (j) it is more appropriate for the person to participate in education or training than to accept the offer; or
  - (k) the person would suffer severe financial hardship if the person were to accept the offer.
- (8) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (7) to seek work outside the area at the time when the representation is made.

**502A People 55 and over who are engaged in work**

- (1) Subject to subsection (2), the Secretary must not notify under subsection 502(1) a person in respect of a period (the ***relevant period***) if the person has reached 55 years and:
  - (a) is engaged in approved unpaid voluntary work for an approved organisation for at least 30 hours in the period; or
  - (b) is engaged, for at least 30 hours in the period in a combination of:
    - (i) approved unpaid voluntary work for an approved organisation; and
    - (ii) paid work that the Secretary regards as suitable; or
  - (c) is engaged for at least 30 hours in the period in paid work that the Secretary regards as suitable.
- (2) This section does not apply to a person in respect of a day in a relevant period if, in respect of the person, having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that this section is not to apply to the person in respect of that day.

- (3) For the purposes of this section:
- (a) approved voluntary unpaid work is work that has been approved by the Secretary for the purposes of this section; and
  - (b) an approved organisation is an organisation that has been approved by the Secretary for the purposes of this section.

**502B Persons engaged in suitable paid work for at least 30 hours per fortnight**

The Secretary must not notify under subsection 502(1) a person who is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

## **Division 3A—Participation exemptions**

### **502C Domestic violence etc.**

- (1) A person is covered by a participation exemption under this Division in respect of a period that the Secretary determines under this section in relation to the person.
- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
  - (a) the person was subjected to domestic violence in the 26 weeks before the making of the determination; or
  - (b) there are special circumstances relating to the person's family that make it appropriate to make the determination.
- (2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.
- (2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).
- (3) The period that the Secretary determines under this section must be the lesser of:
  - (a) the period that the Secretary considers to be appropriate; or
  - (b) 16 weeks.
- (4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.
- (5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:
  - (a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and

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- (b) is the first determination made on those grounds (or on grounds that include those grounds) in relation to the person on or after 1 July 2010.
- (6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

**502D People with disabled children and other circumstances**

- (1) A person is covered by a participation exemption under this Division in respect of a period that the Secretary determines under this section in relation to the person.
- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:
  - (a) who suffer from a physical, intellectual or psychiatric disability or illness; and
  - (b) whose care needs are such that the person should, for the period specified in the determination, not be required to meet participation requirements.

Note: For *principal carer* see subsections 5(15) to (24).

- (3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:
  - (a) the person is a registered and active foster carer; or
  - (b) the person is a home educator of that child, or one or more of those children; or
  - (c) the person is a distance educator of that child, or one or more of those children; or

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- (d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *registered and active foster carer* see section 5B.

Note 3: For *home educator* see section 5C.

Note 4: For *distance educator* see section 5D.

Note 5: For *family law order* see subsection 23(1).

Note 6: For *relative (other than a parent)* see section 5E.

- (3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

- (a) the person is the principal carer of a child; and
- (b) the person is one or both of the following:
  - (i) the principal carer of one or more other children;
  - (ii) the main supporter of one or more secondary pupil children; and
- (c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *main supporter* see section 5G.

Note 3: For *secondary pupil child* see section 5F.

- (3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

- (a) the person is the main supporter of one or more secondary pupil children; and
- (b) the person is a home educator or distance educator of one or more of those children.

Note 1: For *main supporter* see section 5G.

Note 2: For *secondary pupil child* see section 5F.

Note 3: For *home educator* see section 5C.

Note 4: For *distance educator* see section 5D.



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- (3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is the principal carer of one or more children; and
  - (b) the person is a relative (other than a parent) of a child (the *kin child*); and
  - (c) there is a document that:
    - (i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and
    - (ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and
  - (d) the person is acting in accordance with the document.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *relative (other than a parent)* see section 5E.

- (4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is a person included in a class of persons specified under subsection (5); and
  - (b) the person's circumstances are such that the person should not be required to meet any of the participation requirements.
- (5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.
- (6) The period that the Secretary determines under this section must be the lesser of:
- (a) the period that the Secretary considers to be appropriate; or
  - (b) 12 months.
- (7) Any such period may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.

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- (8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

**502E Training camps**

A person is covered by a participation exemption under this Division in respect of a period when the person is attending a training camp as a member of:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

**502F Special circumstances**

- (1) A person is covered by a participation exemption under this Division in respect of a period if:
  - (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
  - (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet participation requirements for that period.
- (1A) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.
- (2) The period referred to in subsection (1) is not to exceed 13 weeks.
- (3) If:
  - (a) the Secretary makes a number of determinations under any one or more of the following provisions:
    - (i) subsection 525AA(3) of this Act as previously in force;
    - (ii) subsection 542H(1) of this Act;

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(iii) subsection 603A(1) of this Act;

(iv) subsection 731E(1) of this Act;

(v) subsection (1) of this section; and

(b) the periods to which the determinations relate form a continuous period;

the continuous period is not to exceed 13 weeks, unless the Secretary determines otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding determination was based.

**502G Pre-natal and post-natal relief**

- (1) A pregnant woman is covered by a participation exemption under this Division for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).
- (2) If a woman gives birth to a child (whether or not the child is born alive), the woman is covered by a participation exemption under this Division for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

**502H Temporary incapacity**

- (1) Subject to sections 502J and 502K, a person is covered by a participation exemption under this Division in respect of a period if:
  - (a) throughout the period the person is incapacitated for work 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
  - (d) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:

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- (i) the medical practitioner's diagnosis; and
  - (ii) the medical practitioner's prognosis; and
  - (iii) that the person is incapacitated for work; and
  - (iv) the period for which the person is incapacitated for work; and
  - (e) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from meeting the participation requirements.
- (1AA) Subsection (1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.
- (1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:
  - (a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;
  - (b) whether, for the purposes of paragraph (a) of the definition of **work** in subsection (2), work is of a kind that a person could be reasonably expected to do.
- (1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).
- (2) In this section:
  - work**, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:
    - (a) is of a kind that the person could, in the Secretary's opinion, be reasonably expected to do; and
    - (b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

**502J Time limit for temporary incapacity exemption—Secretary satisfied person can undertake activity**

- (1) Section 502H ceases to apply to a person if the Secretary is satisfied that, although the person meets the requirements of that section, the person should undertake one or more activities that the Secretary regards as suitable for the person.
- (2) The cessation occurs:
  - (a) if the person has failed to comply with a requirement to enter into a Parenting Payment Employment Pathway Plan—when the person so failed; or
  - (b) in any other case—when the person has entered into such a plan.
- (3) This section does not prevent section 502H ceasing to apply to a person under section 502K.

**502K Time limit for temporary incapacity exemption—end of person's maximum exemption period**

- (1) Section 502H ceases to apply to a person if the person's maximum exemption period ends.
- (2) Subject to this section, a person's maximum exemption period is:
  - (a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether section 502H applies to the person—the lesser of the following periods:
    - (i) the period stated in the certificate as the period for which the person would be incapacitated for work;
    - (ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or
  - (b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person's incapacity for work began.

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(3) If:

- (a) section 502H applies to a person; and
- (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 502H(1)(d) and is in accordance with the form approved under that paragraph; and
- (c) the Secretary is satisfied that the person's incapacity for work will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by a period that is not more than the lesser of the following periods:

- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
- (e) 13 weeks.

(4) If:

- (a) section 502H applied to a person; and
- (b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 502H(1)(d) and is in accordance with a form approved under that paragraph; and
- (c) the Secretary is satisfied that the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period that is not more than the lesser of the following periods:

- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
- (e) 13 weeks.

(5) If:

- (a) section 502H applies to a person; and

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(b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (3)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption 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 (3)(b) before the end of the maximum exemption period; and

(ii) the person's incapacity for work will continue after the end of the person's maximum exemption period;

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

(6) If:

(a) section 502H applied to a person; and

(b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption 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 (4)(b); and

(ii) the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;

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

(7) If:

(a) section 502H applies to a person; and

(b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in

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paragraph (3)(b) before the end of the person's maximum exemption period; and

- (c) before the end of the person's maximum exemption 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 so to satisfy himself or herself is an act or omission of an officer of the Department;

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

- (8) This section does not prevent section 502H ceasing to apply to a person under section 502J.



**Division 4—Rate of parenting payment****Subdivision A—Rate of parenting payment****503 How to work out a person's parenting payment rate**

A person's parenting payment rate is worked out using:

- (a) if the person is not a member of a couple—the Pension PP (Single) Rate Calculator at the end of section 1068A (see Part 3.6A); or
- (b) if the person is a member of a couple—the Benefit PP (Partnered) Rate Calculator at the end of section 1068B (see Part 3.6A).

**503A Approved program of work supplement**

If a person:

- (a) is receiving a parenting payment; and
- (b) is participating in an approved program of work for income support payment;

the rate of the person's parenting payment is increased by an amount of \$20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program.

**503AA Approved program of work supplement not payable in certain circumstances**

- (1) An approved program of work supplement is not payable to a person in respect of a fortnight if pensioner education supplement under Part 2.24A or under ABSTUDY is payable to the person in respect of a day in the fortnight.
- (2) An approved program of work supplement under section 503A is not payable to a person in respect of a fortnight if a training supplement is payable to the person in respect of the fortnight.

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**503B Training supplement**

- (1) This section applies if a person:
- (a) is receiving a parenting payment; and
  - (b) is subject to participation requirements; and
  - (c) is participating in an approved training course for training supplement for the person; and
  - (d) started participating in the course during the period beginning on the day on which this section commenced and ending on 30 June 2011.

Note: For when a person is *subject to participation requirements*, see subsection 23(1).

- (2) The rate of the person's parenting payment is increased by an amount of \$41.60 (to be known as a training supplement) for each fortnight during which the person participates in the course.
- (3) However, a training supplement is not payable for a fortnight during which the person participates in the course if:
- (a) a Parenting Payment Employment Pathway Plan is in force in relation to the person; and
  - (b) during the fortnight, the person ceases to participate in the course in circumstances that constitute a failure to comply with the plan.

**503C National Green Jobs Corps supplement**

- (1) This section applies if a person:
- (a) is receiving a parenting payment; and
  - (b) has reached 17, but is under 25, years of age; and
  - (c) is participating in the National Green Jobs Corps program; and
  - (d) started participating in that program before 2012.
- (2) The rate of the person's parenting payment is increased by an amount of \$41.60 (to be known as a National Green Jobs Corps

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supplement) for each fortnight during which the person participates in the National Green Jobs Corps program.

- (3) However, a National Green Jobs Corps supplement is not payable for a fortnight during which the person participates in the National Green Jobs Corps program if:
- (a) both:
    - (i) a Parenting Payment Employment Pathway Plan is in force in relation to the person; and
    - (ii) during the fortnight, the person ceases to participate in that program in circumstances that constitute a failure to comply with the plan; or
  - (b) the rate of the person's parenting payment is increased by training supplement for the fortnight.

### **Subdivision C—Accumulation of parenting payments by CDEP Scheme participants**

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

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

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(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—Continuation of parenting payment after death of child**

#### **512 Death of PP child—continuation of qualification for 14 weeks**

- (1) If:
- (a) a person is receiving parenting payment for a dependent child; and
  - (b) the child dies; and
  - (c) following the child's death, there is no other dependent child of the person who is a PP child;
- the person is qualified for parenting payment in respect of the child, for the period of 14 weeks that starts on the day of the child's death.
- (2) If a person is qualified under subsection (1), the person's parenting payment rate during the 14 weeks is to be worked out as if the child had not died.

### **Subdivision B—Death of recipient**

#### **513 Death of recipient—recipient not member of a couple**

- (1) If:
- (a) a person is receiving parenting payment; and
  - (b) the person is not a member of a couple; 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 payday after the person's death if the person had not died.

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- (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: For death of a person qualified for bereavement payments under Subdivision C see section 514E.

### 513A Death of recipient—recipient member of a couple

If:

- (a) a person is receiving parenting payment; and
  - (b) the person is a member of a couple; and
  - (c) the person dies; and
  - (d) the person:
    - (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a PP child; or
    - (ii) would have been qualified if the person had not died; and
  - (e) the person's partner claims the payments referred to in paragraph (d) within 13 weeks after the death of the child;
- there is payable to the partner of the person an amount equal to the amount of parenting payment that would have been payable to the person under Subdivision A if the person had not died.

### Subdivision C—Death of partner

#### 514 Surviving partner and deceased partner

If:

- (a) a person is receiving parenting payment; 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*.

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**514A Qualification for payments under this Subdivision**

- (1) If:
- (a) a person is receiving a benefit PP (partnered); and
  - (b) the person's partner dies; and
  - (c) immediately before the deceased partner died, he or she:
    - (i) was a long-term social security recipient; or
    - (ii) was receiving a social security pension, a service pension, income support supplement or a veteran payment; and
  - (d) immediately before the deceased partner died, the surviving partner was a long-term social security recipient;
- the surviving partner is qualified for payments under this Subdivision to cover the bereavement period.
- Note 1: For *benefit PP (partnered)* see section 18 and for *long-term social security recipient* see subsection 23(1).
- Note 2: Section 514B 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 3: Section 514C 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 4: For *bereavement period* see section 21.
- (2) A surviving partner who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
- (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.

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### 514B 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.

### 514C 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.



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

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 (8).

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 pension PP (single) that would, if section 514D did not apply, have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday: 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 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.

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### 514D Adjustment of person's parenting payment rate

- (1) This section applies if a surviving partner:
  - (a) is qualified for payments under this Subdivision; and
  - (b) does not elect under subsection 514A(2) not to receive payments under this Subdivision.
- (2) The surviving partner's parenting payment rate during the bereavement rate continuation period is the benefit PP (partnered) 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.
- (3) The surviving partner's parenting payment rate during the bereavement lump sum period (if any) is the pension PP (single) rate.

Note 1: For *bereavement period*, *bereavement rate continuation period*, *bereavement lump sum period* and *first available bereavement adjustment payday* see section 21.

Note 2: For *illness separated couple* and *respite care couple* see subsections 4(7) and (8) respectively.

Note 3: For *pension PP (single)* and *benefit PP (partnered)* see section 18.

### 514E 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 (8).

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 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 (8).

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

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- Step 4. Work out the amount of pension PP (single) that would, if section 514D did not apply, have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if the surviving partner 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 deceased 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.

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

**514F Matters affecting payments under this Subdivision**

(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 or IIIA of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the surviving partner 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 surviving partner or from the personal

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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).

(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 or IIIA 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.

Note: For *bereavement period* see section 21.

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

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

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

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

## **Part 2.11—Youth allowance**

### **Division 1—Qualification for youth allowance**

#### **Subdivision A—Basic qualifications**

##### **540 Qualification for youth allowance—general rule**

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

- (a) either of the following applies:
  - (i) throughout the period the person satisfies the activity test (see Subdivision B) or is not required to satisfy the activity test (see Subdivision C);
  - (ii) the person is a CDEP Scheme participant (see section 1188B) in respect of the period;
- (b) throughout the period the person is of youth allowance age (see Subdivision D); and
- (c) throughout the period the person satisfies any requirements relating to Youth Allowance Employment Pathway Plans that apply to the person under Subdivision E; and
- (d) 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: Subdivision G provides for prospective qualification for youth allowance.

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

**540A Qualification for youth allowance—claimants for disability support pension***General rule*

- (1) Subject to this Subdivision, a person is qualified for a youth allowance in respect of a period if:
- (b) throughout the period, the person is of youth allowance age (see Subdivision D); and
  - (c) the person made a claim for disability support pension at or before the start of the period and the claim was not determined before the end of the period; and
  - (d) the Secretary is satisfied that, throughout the period, the person suffers from a medical condition that had a significant adverse effect on the person's ability to work or study; and
  - (e) throughout the period, the person satisfies the residency requirements that apply to the person under Subdivision F; and
  - (f) the person satisfies any one of the conditions in subsection (2).

*Conditions for qualification*

- (2) The conditions referred to in paragraph (1)(f) are:
- (a) a condition that the person was an Australian resident when the significant adverse effect of the medical condition on the person's ability to work or study first occurred; and
  - (b) a condition that at the start of the period the person had 10 years qualifying Australian residence or had a qualifying residence exemption for a social security benefit or youth training allowance; and
  - (c) a condition that:
    - (i) the person was born outside Australia; and
    - (ii) when the significant adverse effect of the medical condition first occurred the person was not an Australian resident but was a dependent child of an Australian resident; and

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- (iii) the person became an Australian resident while a dependent child of an Australian resident.

Note 1: Subdivision G provides for prospective qualification for youth allowance.

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

**540AA Qualification for youth allowance—new apprentices**

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

- (a) the person is a new apprentice; and
- (b) the person is of youth allowance age (see Subdivision D); and
- (c) the person:
  - (i) is an Australian resident; or
  - (ii) is exempt from the residence requirement within the meaning of subsection 7(7).

Note 1: Subdivision G provides for prospective qualification for youth allowance.

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

**540AB Qualification for youth allowance—claimants with medical conditions affecting their capacity to work**

*General rule*

- (1) Subject to this Subdivision, a person is qualified for a youth allowance in respect of the period starting in accordance with subsection (2) and ending in accordance with subsection (3) if:
  - (a) the person satisfies the Secretary that throughout the period the person is unemployed; and
  - (b) throughout the period, the person is of youth allowance age (see Subdivision D); and



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- (c) the person has made a claim, or is taken to have made a claim, for youth allowance; and
- (d) the person satisfies the Secretary that it is likely that the person has a permanent medical condition that would prevent the person from undertaking full-time work; and
- (e) the person satisfies the Secretary that it would be unreasonable to expect the person to satisfy the activity test until an assessment of the person's capacity to work has been undertaken; and
- (f) 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: Subdivision G provides for prospective qualification for youth allowance.

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

*Period for which person is qualified*

- (2) The period for which the person is qualified for a youth allowance under this section starts:
  - (a) if the person is already receiving youth allowance when the Secretary becomes aware of the medical condition referred to in paragraph (1)(d)—when the Secretary becomes aware of the medical condition; or
  - (b) otherwise—when the person made, or is taken to have made, the claim for youth allowance.
- (3) The period for which the person is qualified for a youth allowance under this section ends:
  - (a) if the person has failed to comply with a requirement to enter into a Youth Allowance Employment Pathway Plan—on the day on which the person so failed; or
  - (b) in any other case—when the person enters into a Youth Allowance Employment Pathway Plan.

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*Extending the meaning of who is unemployed*

- (4) The Secretary may, for the purposes of this section, treat a person as being unemployed throughout a period if:
- (a) during the period, the person undertakes:
    - (i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or
    - (ii) any other activity;  
as a result of which he or she would, but for this subsection, not be taken to be unemployed; and
  - (b) the Secretary is of the opinion that, taking into account:
    - (i) the nature of the work or other activity; and
    - (ii) the duration of the work or other activity; and
    - (iii) any remuneration received for the work or other activity; and
    - (iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;the activity should be disregarded.
- (5) However, the activity must not be or include an activity of a kind that the Secretary determines under subsection (6).
- (6) The Secretary may determine, by legislative instrument, kinds of activities that are not to be taken into account for the purposes of subsection (4).

**540B Qualification for youth allowance—transferee from social security pension**

If:

- (a) a person was receiving a social security pension; and
- (b) the person claims a youth allowance within 14 days after the day on which the last instalment of the person's pension was paid; and

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- (c) the person becomes qualified for a youth allowance 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 youth allowance for the whole of the 14 day period.

**540C Qualification for youth allowance may continue to end of payment period**

If:

- (a) a person is receiving a youth allowance; and
- (b) apart from this section, the person would cease on a particular day to be qualified for the allowance because the person has attained the maximum age for youth allowance; and
- (c) the day falls in, but is not the last day of, a period for which an instalment of youth allowance is payable to the person;

the person continues to be qualified for the allowance until the end of that period.

**Subdivision B—Activity test****541 Activity test***General*

- (1) Subject to section 541A and subsection (3) of this section, a person satisfies the activity test in respect of a period if:
- (a) the person satisfies the Secretary that, throughout the period, the person is undertaking full-time study (see section 541B); or
  - (b) subject to subsection (4), the person (not being an early school leaver) satisfies the Secretary that, throughout the period, the person is actively seeking, and willing to undertake, paid work in Australia (other than paid work that is unsuitable for the person).

Note: See section 541D on paid work that is unsuitable.

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*Persons who comply with Employment Pathway Plan*

- (1AA) Subject to section 541A and subsection (3) of this section, a person also satisfies the activity test in respect of a period if:
- (a) throughout the period, the person complies with the terms of a Youth Allowance Employment Pathway Plan that is in force in relation to the person; and
  - (b) any of the following subparagraphs applies in relation to the person:
    - (ia) the person is an early school leaver;
    - (i) the person is included in a class of persons specified in an instrument made under subsection (1AB);
    - (ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.

- (1AB) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (1AA)(b)(i).

*Certain principal carers and people with partial capacity to work*

- (1B) A person who:
- (a) is the principal carer of at least one child; or
  - (b) has a partial capacity to work;
- is taken to satisfy the activity test in respect of a period if, during the period, the person is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *partial capacity to work* see section 16B.

*Participation in the National Green Jobs Corps program*

- (1C) A person also satisfies the activity test in respect of a period if, throughout the period, the person is participating in the National Green Jobs Corps program.

*Requirement to undertake paid work*

- (2) A person also satisfies the activity test in respect of a period if:
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- (aa) the person is not an early school leaver; and
- (a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than paid work that is unsuitable to be done by the person; and

Note: See section 541D on paid work that is unsuitable.

- (b) the Secretary notifies the person that the person is required to act in accordance with the opinion; and
  - (c) the person complies, throughout the period, with the Secretary's requirement.
- (2A) To avoid doubt, the work that the person is required to undertake under subsection (2) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Youth Allowance Employment Pathway Plan that is in force in relation to the person.
- (2B) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (2):
- (a) whether or not the person complies with subsection (1) or (1AA); and
  - (b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.

*Full-time employees etc.*

- (3) A person cannot be taken to satisfy the activity test if:
- (a) the person is a new apprentice; or
  - (b) except in the case of a person who is undertaking full-time study—the person is employed in full-time paid work for at least:
    - (i) 35 hours per week; or
    - (ii) such lesser period per week as is, in the Secretary's opinion, the normal number of hours per week that constitutes full-time work in the industry in which the person is employed; or

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- (c) except in the case of a person who is undertaking full-time study—the person is, in the Secretary’s opinion, involved to a substantial degree in the operation of a family business and, in the Secretary’s opinion, should not be taken to satisfy the activity test.

(3A) Paragraph (3)(b) does not apply to a person:

- (a) if the full-time paid work is qualifying seasonal horticultural work (within the meaning of subsection 1073K(6)); and
- (b) while ordinary income earned, derived or received by the person from that work is being disregarded under subsection 1073K(2).

*People who cease undertaking full-time study*

- (4) For the purposes of paragraph (1)(b), a person who has:
  - (a) ceased undertaking full-time study; and
  - (b) been given a notice under section 68 of the Administration Act that has the effect of requiring the person to inform the Department of that cessation; and
  - (c) refused or failed to comply with the notice in respect of that cessation;

cannot satisfy the Secretary that, at a particular time after the refusal or failure, the person is actively seeking, and willing to undertake, paid work in Australia unless, before that time, the person has informed the Department of that cessation or the Department has become aware of that cessation.

Note: For *undertaking full-time study* see section 541B.

**541A Failure to satisfy the activity test**

- (1) A person cannot be taken to satisfy the activity test in respect of a period if:
  - (a) the person fails to comply, throughout the period, with a requirement of the Secretary under subsection 541(2); or

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- (b) the person fails, throughout the period, to comply with the requirements in a Youth Allowance Employment Pathway Plan applying to the person; or
  - (c) the person (not being an early school leaver) refuses or fails, without reasonable excuse, to attend a job interview; or
  - (d) the person voluntarily ceases, without reasonable excuse, to take part in, or is dismissed for misconduct from, a labour market program; or
  - (e) the person refuses or fails to commence, or to complete, an approved program of work for income support payment that the person is required to undertake; or
  - (f) the person refuses or fails to comply with the conditions of such a program.
- (2) Paragraphs (1)(d) to (f) apply in relation to a person who is an early school leaver only if:
- (a) a Youth Allowance Employment Pathway Plan is in force in relation to the person; and
  - (b) the plan requires the person to take part in a labour market program or, as the case may be, to undertake an approved program of work for income support payment.

**541B Undertaking full-time study***General*

- (1) For the purposes of this Act, a person is undertaking full-time study if:
- (a) the person:
    - (i) is enrolled in a course of education at an educational institution; or
    - (ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or
    - (iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being

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enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and

(b) the person:

(i) is undertaking in the particular study period (such as, for example, a semester) for which he or she is enrolled for the course; or

(ii) intends to undertake in the next study period for which he or she intends to enrol for the course;

either:

(iii) in a case to which subsection (1A) does not apply—at least three-quarters of the normal amount of full-time study in respect of the course for that period (see subsections (2) to (4)); or

(iv) in a case to which subsection (1A) applies—at least two-thirds of the normal amount of full-time study in respect of the course for that period (see subsections (2) to (4)); and

(c) the course in question is an approved course of education or study (see subsection (5)); and

(d) in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

**Note:** Only one course of education can be considered in deciding if a person satisfies the undertaking full-time study requirement: see section 541C.

*When two-thirds study load applies*

(1A) This subsection applies for the purposes of subparagraph (1)(b)(iv) if the person cannot undertake the normal amount of full-time study in respect of the course for that period:

(a) because of the usual requirements of the institution in question in respect of the course; or

(b) because of a specific direction in writing to the student from the academic registrar, or an equivalent officer, of the institution in question; or



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- (c) because the academic registrar, or an equivalent officer, of the institution in question recommends in writing that the person undertake the amount of study mentioned in subparagraph (1)(b)(iv) in respect of the course for specified academic or vocational reasons.

Paragraph (c) applies for no longer than half of the academic year.

*Meaning of normal amount of full-time study*

- (2) For the purposes of paragraph (1)(b), the normal amount of full-time study in respect of a course is:
  - (a) if:
    - (i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and
    - (ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course; the full-time student load for the course; or
  - (b) if the course is not such a course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or
  - (c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

*Alternative meaning of normal amount of full-time study*

- (3) For the purposes of paragraph (1)(b), and without limiting subsection (2), the normal amount of full-time study in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

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*Meaning of satisfactory progress*

- (3A) In forming an opinion about whether a person is making satisfactory progress for the purpose of paragraph (1)(d), the Secretary is to have regard to the guidelines.
- (3B) The Minister, by legislative instrument:
  - (a) is to set guidelines for the exercise of the Secretary's discretion under subsection (3A); and
  - (b) may revoke or vary those guidelines.

*First fortnight of classes*

- (4) For the purposes of paragraph (1)(b), a person is taken to be undertaking full-time study in respect of a course during the period (the **relevant period**):
  - (a) starting on the first day of classes in a study period; and
  - (b) ending on the Friday of the second week of classes in the study period;

if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

*Meaning of approved course of education or study*

- (5) For the purposes of paragraph (1)(c), the course is an approved course of education or study if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

**541C One course of education**

- (1) Whether subparagraph 541B(1)(a)(i) or (ii) and paragraphs 541B(1)(b), (c) and (d) are satisfied in relation to a person is to be determined in relation to only one course of education.
- (2) Whether a person satisfies the Secretary of the person's intention mentioned in subparagraph 541B(1)(a)(iii) and whether paragraphs

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541B(1)(b), (c) and (d) are satisfied in relation to the person is to be determined in relation to only one course of education.

Note 1: The effect of this section is that 2 or more courses of education for a person cannot be aggregated to satisfy the undertaking full-time study requirement.

Note 2: The one course of education may be a combined course: see the legislative instrument made under section 5D of the *Student Assistance Act 1973*.

**541D Unsuitable paid work**

*What is unsuitable paid work*

- (1) Subject to subsections (1A) and (1B), for the purposes of section 541, particular paid work is unsuitable for a person if, and only if, in the Secretary's opinion:
- (a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or
  - (b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
  - (ba) the person is the principal carer for one or more children, and does not have access to appropriate care and supervision for the children at the times when the person would be required to undertake the work; or
- Note: For *principal carer* see subsections 5(15) to (24).
- (c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or
  - (g) commuting between the person's home and the place of work would be unreasonably difficult; or

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- (ga) the place of work is not accessible by public transport services and the person does not have access to alternative transport facilities and could not reasonably be expected to travel to the place of work; or
  - (h) the work would require enlistment in the Defence Force or the Reserves; or
  - (ha) the work requires the person to move from a home in one place to a home in another place; or
  - (i) for any other reason, the work is unsuitable for the person.
- (1AA) A person has, for the purposes of paragraph (1)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:
  - (a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or
  - (b) the child could be provided with other care that the person considers to be suitable; or
  - (c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.
- (1AB) For the purposes of paragraph (1)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.
- (1AC) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.
- (1AD) To avoid doubt, a determination under subsection (1AC) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

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(1A) If:

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

the work offered is not unsuitable for the person because of paragraph (1)(g), (ga) or (ha) unless:

- (c) the person is under the age of 18; or
- (d) the person or the person's partner is pregnant; or
- (e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or
- (f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or
- (g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or
- (h) the person or the person's partner has significant caring responsibilities in the old area; or
- (i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or
- (j) it is more appropriate for the person to participate in education or training than to accept the offer; or
- (k) the person would suffer severe financial hardship if the person were to accept the offer.

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

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subsection (1A) to seek work outside the area at the time when the representation is made.

**Subdivision C—Exemptions from the activity test**

**542 Situations in which a person is not required to satisfy the activity test**

For the purposes of this Part, a person is not required to satisfy the activity test in respect of a period if, throughout the period:

- (a) the person has a temporary incapacity exemption under section 542A; or
- (b) the person has a pre-natal exemption or a post-natal exemption under section 542D; or
- (c) the person has a remote area exemption under section 542E; or
- (d) the person has a domestic violence or other special family circumstances exemption under section 542F; or
- (da) the person has a disabled children or other family circumstances exemption under section 542FA; or
- (db) the person has a new claimants exemption under section 542FB; or
- (e) the person has a training camp exemption under section 542G; or
- (f) the person has a special circumstances exemption under section 542H.

**542A Temporary incapacity exemption**

*General*

- (1) Subject to subsection (2) of this section and sections 542B and 542C, a person has a temporary incapacity exemption if:
  - (a) throughout the period the person:
    - (i) if the person is undertaking full-time study—does not have the capacity to undertake the course of education

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in respect of which he or she is undertaking full-time study; or

- (ia) if the person is an early school leaver and a Youth Allowance Employment Pathway Plan is in force in relation to the person—does not have the capacity to undertake the required activities; or
- (ii) in any other case—is incapacitated for work; 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
- (d) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:
  - (i) the medical practitioner's diagnosis; and
  - (ii) the medical practitioner's prognosis; and
  - (iii) that the person is incapacitated for study, the required activities or work (as the case requires); and
  - (iv) the period for which the person is incapacitated for study, the required activities or work (as the case requires); and
- (e) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from the activity test.

(1AA) Subsection (1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant, a new apprentice or undertaking full-time study.

- (1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:
- (a) whether subparagraph (1)(a)(ii) or paragraph (1)(b) or (c) applies to a person in respect of a period;
  - (b) whether, for the purposes of paragraph (b) of the definition of **work** in subsection (3), work is of a kind that a person is reasonably capable of performing.

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- (1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

*Claimants for disability support pension*

- (2) This section does not apply to a person who is qualified for a youth allowance under section 540A.

*Definitions*

- (3) In this section:

***required activities***, in relation to an early school leaver in relation to whom a Youth Allowance Employment Plan is in force, means the activities required to be undertaken by the plan.

***work***, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:

- (a) if the person was employed at the time the sickness or accident in question occurred—the person has contracted to perform under a contract of employment that:
  - (i) the person had immediately before the person becomes incapacitated; and
  - (ii) continues after the person becomes incapacitated; and
- (b) if the person was not employed at that time—the person is reasonably capable of performing;

being work that is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

**542B Failure to attend interview etc. may result in cessation of temporary incapacity exemption**

*General*

- (1) A person ceases to have a temporary incapacity exemption if:
- (a) the Secretary is of the opinion that the person should:
    - (i) contact a particular officer of the Department; or



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- (ii) attend an interview at a particular place; or
- (iii) complete a questionnaire; or
- (iv) attend a medical, psychiatric or psychological examination; and
- (b) the Secretary gives the person a written notice stating that the person is required, within a period stated in the notice, being a period of not less than 14 days, to:
  - (i) contact the officer; or
  - (ii) attend the interview; or
  - (iii) complete the questionnaire; or
  - (iv) attend the examination; or
  - (v) if the person has undergone an examination—give the Secretary a report on the examination in the approved form; and
- (c) the Secretary is satisfied that it is reasonable for this section to apply to the person; and
- (d) the person does not comply with the requirement.

*Contents of notice*

- (2) A notice under paragraph (1)(b) must inform the person to whom it is given of the effect of failure by the person to comply with the requirement set out in the notice.

**542BA Time limit for temporary incapacity exemptions—capacity to undertake activity***General*

- (1) A person ceases to have a temporary incapacity exemption if the Secretary is satisfied that, although the person meets the requirements of section 542A, the person should undertake one or more activities that the Secretary regards as suitable for the person.

*When cessation occurs*

- (2) The cessation occurs:

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- (a) if the person has been required to enter into a Youth Allowance Employment Pathway Plan but has failed to enter that plan—when the person so failed; or
- (b) in any other case—when the person has entered into such a plan.

*Section 542C unaffected by this section*

- (3) This section does not prevent a person ceasing to have a temporary incapacity exemption under section 542C.

**542C Time limit for temporary incapacity exemptions—maximum exemption period**

*General*

- (1) A person ceases to have a temporary incapacity exemption if the person's maximum exemption period ends.

*Maximum exemption period*

- (2) Subject to this section, a person's maximum exemption period is:
  - (a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether the person was required to satisfy the activity test—the lesser of the following periods:
    - (i) the period stated in the certificate as the period for which the person would be incapacitated for study, the required activities or work (as the case may be);
    - (ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or
  - (b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person's incapacity for study, the required activities or work (as the case may be) began.

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*Extension where paragraph 542A(1)(d) certificate given*

(3) If:

- (a) a person has a temporary incapacity exemption; and
- (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 542A(1)(d) and is in accordance with the form approved under that paragraph; and
- (c) the Secretary is satisfied that the person's incapacity for study, the required activities or work (as the case may be) will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by a period that is not more than the lesser of the following periods:

- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for study, the required activities or work (as the case may be);
- (e) 13 weeks.

*Extension where paragraph 542A(1)(d) certificate given after end of maximum exemption period*

(4) If:

- (a) a person had a temporary incapacity exemption; and
- (b) within 14 days after the end of the person's maximum exemption period, the person gives the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 542A(1)(d) and is in accordance with the form approved under that paragraph; and
- (c) the Secretary is satisfied that the person's incapacity for study, the required activities or work (as the case may be) has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period of not more than the lesser of the following periods:

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- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for study, the required activities or work (as the case may be);
- (e) 13 weeks.

*Extension where other written evidence given*

- (5) If:
- (a) a person has a temporary incapacity exemption; and
  - (b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (3)(b)) that the person's incapacity for study, the required activities or work (as the case may be) will continue after the end of the person's maximum exemption 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 (3)(b) before the end of the maximum exemption period; and
    - (ii) the person's incapacity for study, the required activities or work (as the case may be) will continue after the end of the person's maximum exemption period;
- the Secretary may extend the person's maximum exemption period by not more than 4 weeks.

*Extension where other written evidence given after end of maximum exemption period*

- (6) If:
- (a) a person had a temporary incapacity exemption; and
  - (b) within 14 days after the end of the person's maximum exemption period, the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4)(b)) that the person's incapacity for study, the required activities or work (as the case may be) will continue after the end of the person's maximum exemption period; and

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(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 (4)(b); and
- (ii) the person's incapacity for study, the required activities or work (as the case may be) has continued after the end of the person's maximum exemption period and that the incapacity will continue;

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

*Extension where paragraph 542A(1)(d) certificate not considered in a timely manner*

(7) If:

- (a) a person has a temporary incapacity exemption; and
- (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in paragraph (3)(b) before the end of the person's maximum exemption period; and
- (c) before the end of the person's maximum exemption period, the Secretary does not satisfy himself or herself that the person's incapacity for study, the required activities or work (as the case may be) will continue after the end of that period; and
- (d) the sole or dominant cause of the Secretary failing so to satisfy himself or herself is an act or omission of an officer of the Department;

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

*Section 542BA unaffected by this section*

- (8) This section does not prevent a person ceasing to have a temporary incapacity exemption under section 542BA.

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*Definition*

- (9) In this section:

*required activities* has the meaning given by subsection 542A(3).

**542D Pre-natal and post-natal exemptions**

*Pre-natal exemption*

- (1) A pregnant woman has a pre-natal exemption for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).

*Post-natal exemption*

- (2) If a woman gives birth to a child (whether or not the child is born alive), the woman has a post-natal exemption for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

**542E Remote area exemption**

*General*

- (1) Subject to subsection (2), a person has a remote area exemption in respect of a period if the Secretary considers that:
- (a) it would be reasonable to assume that, at the end of a period, a person is present in an area where:
    - (i) there is no locally accessible labour market; and
    - (ii) there is no locally accessible vocational training course or labour market program; and
    - (iii) in a case where the person is an early school leaver—there is no locally accessible approved course of training or education within the meaning given by subsection 544DA(6) (including any such course available by distance education); and

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- (b) it would also be reasonable to assume that the person is throughout the period:
  - (i) unemployed; and
  - (ii) capable of undertaking paid work that in the Secretary's opinion is suitable to be undertaken by the person; and
  - (iii) willing to undertake paid work that in the Secretary's opinion is suitable to be undertaken by the person; and
- (c) having regard to all the relevant factors, including:
  - (i) the location of offices of the Department; and
  - (ii) difficulties with transport and communication; and
  - (iii) the educational and cultural background of the person;it would be unreasonable to expect the person to satisfy the activity test in order to be qualified for youth allowance for the period.

Note: The activity test is dealt with in Subdivision B.

*Effect of subsection 541(2) notices*

- (2) This section does not apply if the person has been notified of a requirement under subsection 541(2) in relation to the period.

**542F Domestic violence or other special family circumstances exemption***General*

- (1) A person has a domestic violence or other special family circumstances exemption in respect of a period that the Secretary determines under this section in relation to the person.

*Circumstances in which a determination may be made*

- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
  - (a) the person:
    - (i) is the principal carer of one or more children; and

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- (ii) was subjected to domestic violence in the 26 weeks before the making of the determination; or
- (b) the person is the principal carer of one or more children, and there are special circumstances relating to the person's family that make it appropriate to make the determination.

Note: For *principal carer* see subsections 5(15) to (24).

- (2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.
- (2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

*Duration of period*

- (3) The period that the Secretary determines under this section must be the lesser of:
  - (a) the period that the Secretary considers to be appropriate; or
  - (b) 16 weeks.
- (4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.
- (5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:
  - (a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and
  - (b) is the first determination made on those grounds (or on grounds that include those grounds) in relation to the person on or after 1 July 2010.



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*Revocation of determination*

- (6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

**542FA Disabled children or other family circumstances exemption***General*

- (1) A person has a disabled children or other family circumstances exemption in respect of a period that the Secretary determines under this section in relation to the person.

*Circumstances in which a determination may be made*

- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:
  - (a) who suffer from a physical, intellectual or psychiatric disability or illness; and
  - (b) whose care needs are such that the person should, for the period specified in the determination, not be required to satisfy the activity test.

Note: For *principal carer* see subsections 5(15) to (24).

- (3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:
  - (a) the person is a registered and active foster carer; or
  - (b) the person is a home educator of that child, or one or more of those children; or
  - (c) the person is a distance educator of that child, or one or more of those children; or

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- (d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *registered and active foster carer* see section 5B.

Note 3: For *home educator* see section 5C.

Note 4: For *distance educator* see section 5D.

Note 5: For *family law order* see subsection 23(1).

Note 6: For *relative (other than a parent)* see section 5E.

- (3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

- (a) the person is the principal carer of a child; and
- (b) the person is one or both of the following:
  - (i) the principal carer of one or more other children;
  - (ii) the main supporter of one or more secondary pupil children; and
- (c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *main supporter* see section 5G.

Note 3: For *secondary pupil child* see section 5F.

- (3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

- (a) is not the principal carer of one or more children; and
- (b) is a registered and active foster carer; and
- (c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *registered and active foster carer* see section 5B.

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- (3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:
- (a) is the main supporter of one or more secondary pupil children; and
  - (b) is a home educator or distance educator of one or more of those children.

Note 1: For *main supporter* see section 5G.

Note 2: For *secondary pupil child* see section 5F.

Note 3: For *home educator* see section 5C.

Note 4: For *distance educator* see section 5D.

- (3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is the principal carer of one or more children; and
  - (b) the person is a relative (other than a parent) of a child (the *kin child*); and
  - (c) there is a document that:
    - (i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and
    - (ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and
  - (d) the person is acting in accordance with the document.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *relative (other than a parent)* see section 5E.

- (4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is a person included in a class of persons specified under subsection (5); and
  - (b) the person's circumstances are such that the person should not be required to satisfy the activity test for the period.
- (5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.

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*Duration of period*

- (6) The period that the Secretary determines under this section, except subsection (3B), must be the lesser of:
  - (a) the period that the Secretary considers to be appropriate; or
  - (b) 12 months.
- (6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:
  - (a) the period:
    - (i) starting when the person starts to provide foster care to the child; and
    - (ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and
  - (b) 12 months.
- (7) A period determined by the Secretary under this section in relation to the person may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.

*Revocation of determination*

- (8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

**542FB New claimants exemption**

*General*

- (1) A person has a new claimants exemption in respect of the period to which subsection (4) applies if:
    - (a) during the period, the person undertakes:
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- (i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or
- (ii) any other activity; and
- (b) the Secretary is of the opinion that, taking into account:
  - (i) the nature of the work or other activity; and
  - (ii) the duration of the work or other activity; and
  - (iii) any remuneration received for the work or other activity; and
  - (iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;it would be unreasonable to expect the person to satisfy the activity test for the period.

*Work or other activities that are not to be taken into account*

- (2) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (3).
- (3) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).

*Duration of period*

- (4) This subsection applies to the period:
  - (a) starting:
    - (i) when the person made a claim, or is taken to have made a claim, for youth allowance; or
    - (ii) when the person started to undertake the work or other activity;whichever happens later; and
  - (b) ending:
    - (i) if the person has been required to enter into a Youth Allowance Employment Pathway Plan but has failed to enter that plan—when the person so failed; or

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- (ii) in any other case—when the person has entered into such a plan.

**542G Training camp exemption**

A person has a *training camp exemption* if the person is attending a training camp as a member of:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

**542H Special circumstances exemption**

*General*

- (1) Subject to subsections (2) and (3), a person has a special circumstances exemption in respect of a period if:
  - (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
  - (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to satisfy the activity test for that period.
- (1AA) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant, a new apprentice or undertaking full-time study.

*Meaning of special circumstances*

- (1A) In making a decision under subsection (1), the Secretary is to have regard to the guidelines.
- (1B) The Minister, by legislative instrument:
  - (a) is to set guidelines for the exercise of the Secretary's discretion under subsection (1A); and
  - (b) may revoke or vary those guidelines.

*Duration of period*

- (2) The period referred to in subsection (1) is not to be more than 13 weeks.

*Duration where a number of determinations made*

- (3) If:
- (a) the Secretary makes more than one decision under subsection (1) or under subsection 731E(1); and
  - (b) the periods to which the decisions relate form a continuous period;
- the continuous period is not to be more than 13 weeks, unless the Secretary decides otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding decision was based.

**Subdivision D—Youth allowance age****543 Youth allowance age**

For the purposes of this Part, a person is of youth allowance age if the person:

- (a) has attained the minimum age for youth allowance (see section 543A); and
- (b) has not yet attained the maximum age for youth allowance (see section 543B).

**543A Minimum age for youth allowance***General*

- (1) Subject to this section, the person has attained the minimum age for youth allowance if the person:
- (a) is at least 16 years old; or
  - (b) is 15 years old and is independent.

Note: For *independent* see section 1067A.

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- (2) Subject to subsections (2AA), (2A) and (2B), a person who satisfies paragraph (1)(a) or (b) but is not yet 18 years old is not taken under subsection (1) to have attained the minimum age for youth allowance unless the person:
- (a) has completed the final year of secondary school, or an equivalent level of education; or
  - (b) is undertaking full-time study; or
  - (c) the person has entered into or agreed to enter into a Youth Allowance Employment Pathway Plan; or
  - (d) is a new apprentice.
- (2AA) Paragraph (2)(b) does not apply to a person who is aged 16 or 17 and who is undertaking full-time study in respect of a secondary course at a secondary school (within the meaning of the *Student Assistance Act 1973*) or at a TAFE institution unless:
- (a) the person is independent (see section 1067A); or
  - (b) the person is taken by section 1067D to be required to live away from home; or
  - (c) the person was receiving youth allowance immediately before starting that course; or
  - (d) the Secretary determines that the person is not benefiting from family tax benefit that is being paid to the person's parents.
- (2AB) For the purposes of subsection (2AA), a **secondary course** is a course that is determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act.
- (2A) Subject to subsection (2B), subsection (2) does not apply to the person if the Secretary considers that the person does not have the capacity to undertake full-time study or training because he or she:
- (a) is ill or has had an accident and the incapacity is, or is likely to be, of a temporary nature; or
  - (b) has a physical, psychiatric or intellectual disability, or a learning difficulty such as attention deficit disorder; or



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- (c) is pregnant and the expected date of confinement is within 6 weeks; or
- (d) has given birth within the previous 6 weeks; or
- (f) has been refused enrolment and no other education or training place is available within a reasonable distance; or
- (g) is required to provide full-time care for a family member who is incapacitated due to illness or accident and the incapacity is, or is likely to be, of a temporary nature; or
- (h) has suffered a personal crisis such as the death of an immediate family member, a marriage breakup, family dislocation or physical, emotional or sexual abuse; or
- (i) is homeless and unable to obtain stable accommodation; or
- (j) has suffered a major disruption of their home such as fire damage, flooding, earthquake damage, vandalism or burglary; or
- (k) suffers from alcohol or drug abuse sufficient to cause intermittent or temporary absences from full-time study or training; or
- (l) is engaged in part-time work, education, training or a combination of these for not less than 25 hours per week; or
- (m) is a refugee whose capacity to undertake full-time education is reduced because:
  - (i) the person has suffered torture, imprisonment or other traumatic circumstances; or
  - (ii) lacks sufficient English skills; or
  - (iii) is recently arrived and lacks stable accommodation; or
- (n) is the subject of a community service or juvenile justice order which reduces the person's capacity to engage in full-time education; or
- (p) is receiving Commonwealth funded intensive assistance for jobseekers or State, Territory or community provided case management approved by the Secretary or, where no intensive assistance or case management place is available to the person, is suitable for and agrees to undertake intensive assistance or case management; or

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- (q) is in other circumstances which, in the opinion of the Secretary, make it unreasonable for the person to be in full-time education or training.
- (2B) If the following circumstances exist in relation to the person in respect of a period (the *qualifying period*):
- (a) except for paragraph 540(b), the person would be qualified for a youth allowance in respect of the qualifying period;
  - (b) the person is taken to have attained the minimum age for youth allowance in respect of the qualifying period only because one or more of the grounds (the *precluding grounds*) referred to in subsection (2A) preclude subsection (2) from applying to the person;
- the person is qualified for youth allowance under section 540 only in respect of so much of the qualifying period as does not exceed:
- (c) if the only precluding ground is the ground referred to in paragraph (2A)(c) or (d)—6 weeks; or
  - (d) if the only precluding ground is the ground referred to in paragraph (2A)(h) or (j)—2 weeks; or
  - (e) if the only precluding ground is the ground referred to in paragraph (2A)(l)—the period for which the work, education or training lasts; or
  - (f) if the only precluding grounds are 2 or more of the grounds referred to in paragraphs (2A)(c), (d), (h), (j) and (l)—the longer or longest period prescribed by paragraphs (c), (d) and (e) of this subsection in relation to those precluding grounds; or
  - (g) otherwise—13 weeks or such longer period as the Secretary approves.

*Independent persons*

- (3) For the purposes of this section, the person cannot be taken to be independent unless the person:
  - (a) has reached the minimum school leaving age for the State or Territory in which the person is living; or

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- (b) is the subject of a formal exemption from attending school granted by the education authority of that State or Territory.

**543B Maximum age for youth allowance***General*

- (1) Subject to subsection (2), the person has attained the maximum age for youth allowance if:
  - (a) the person is not undertaking full-time study and is at least 22 years old; or
  - (b) the person:
    - (i) is undertaking full-time study in respect of a course of education that is to last for less than 12 months; and
    - (ii) was, immediately before starting the course of education, receiving newstart allowance; and
    - (iii) is at least 22 years old; or
  - (c) the person is undertaking full-time study and is at least 25 years old; or
  - (d) the person is not a new apprentice and is at least 22 years old; or
  - (e) the person is a new apprentice and is at least 25 years old.

*Continuance of full-time study after turning 25*

- (2) If the person is at least 25 years old, the person is taken not to have attained the maximum age for youth allowance if the person:
  - (a) was receiving youth allowance immediately before turning 25; and
  - (b) is either:
    - (i) undertaking full-time study in respect of a course of education that the person had commenced before turning 25; or
    - (ii) a new apprentice and became a new apprentice before turning 25.

## **Subdivision E—Youth Allowance Employment Pathway Plans**

### **544 Requirements relating to Youth Allowance Employment Pathway Plans**

- (1) The requirements that apply to a person relating to Youth Allowance Employment Pathway Plans in respect of a period are as follows:
  - (a) the person must enter into a Youth Allowance Employment Pathway Plan in relation to the period when the person is required by the Secretary under section 544A to do so; and
  - (b) while the plan is in force, the person must comply with the requirements in the plan; and
  - (c) at all times when the plan is in force, the person must be prepared to enter into another such plan instead of the existing plan, if required to do so by the Secretary.
- (3) For the purposes of this Part, if:
  - (a) a person starts to receive youth allowance on a particular day; and
  - (b) immediately before that day a Special Benefit Employment Pathway Plan was in force in relation to the person; and
  - (c) the period covered by the plan ends after that day;the plan has effect on or after that day as if it were a Youth Allowance Employment Pathway Plan.
- (4) For the purposes of this Part, if:
  - (a) a person starts to receive youth allowance on a particular day; and
  - (b) immediately before that day, a Parenting Payment Employment Pathway Plan was in force in relation to the person; and
  - (c) the period covered by the plan ends after that day;the plan has effect on and after that day as if it were a Youth Allowance Employment Pathway Plan.

**544A Youth Allowance Employment Pathway Plans—requirement***Requirement to enter into plan*

- (1) If a Youth Allowance Employment Pathway Plan is not in force in relation to a person, the Secretary may require the person to enter into such a plan if:
- (a) the person is receiving, or has made a claim for, a youth allowance; or
  - (b) the Department is contacted by or on behalf of the person in relation to a claim for a youth allowance.

*Persons who have certain exemptions etc. are not to be required to enter plans*

- (2) A person who:
- (b) has a pre-natal exemption or a post-natal exemption under section 542D; or
  - (ba) has a domestic violence or other special family circumstances exemption under section 542F; or
  - (bb) has a disabled children or other family circumstances exemption under section 542FA; or
  - (c) is qualified for a youth allowance under section 540A;
- is not to be required to enter into a Youth Allowance Employment Pathway Plan.

*Persons who have a temporary incapacity exemption*

- (2A) A person who has a temporary incapacity exemption under section 542A is not to be required to enter into a Youth Allowance Employment Pathway Plan unless subsection 542BA(1) applies to the person.

*Requirement to enter another plan*

- (3) If a Youth Allowance Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.

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*Notice of requirement*

- (4) The Secretary is to give a person who is required to enter into a Youth Allowance Employment Pathway Plan notice of:
- (a) the requirement; and
  - (b) the places and times, being places and times which are reasonable in all the circumstances, at which the plan is to be negotiated; and
  - (c) the effect of failure by the person to comply with the requirement.

*Form of plan*

- (5) A Youth Allowance Employment Pathway Plan must be in a form approved by the Secretary.

**544B Youth Allowance Employment Pathway Plans—terms**

*Suitable requirements*

- (1) Subject to sections 544C, 544D and 544DA, a Youth Allowance Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the **requirements**) that:
- (a) the person is required to comply with; and
  - (b) the Secretary regards as suitable for the person.
- (1A) A plan must not contain a requirement of a kind that the Secretary determines under subsection (1B).
- (1B) The Secretary must determine, by legislative instrument, kinds of requirements that plans must not contain.
- (1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular plan under subsection (1).

*Optional terms*

- (1D) A plan may also contain one or more terms that the person may, but is not required to, comply with.

*Approval of requirements*

- (2) The requirements in a plan are to be approved by the Secretary.
- (3) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:
- (a) the person's capacity to comply with the requirements; and
  - (b) the person's needs.
- (4) In having regard to a person's capacity to comply with the requirements in a plan, the Secretary is to take into account, but is not limited to the following matters:
- (a) the person's education, experience, skills and age;
  - (aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;
  - (b) the state of the local labour market and the transport options available to the person in accessing that market; and
  - (c) the participation opportunities available to the person; and
  - (d) the family and caring responsibilities of the person; and
  - (e) the length of travel time required to comply with the requirements; and
  - (f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs; and
  - (g) any other matters that the Secretary or the person considers relevant in the circumstances.

*Variation, suspension, cancellation and review*

- (5) A plan that is in force in relation to a person:

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- (a) may be varied (in negotiation with the person) or suspended by the Secretary; and
- (b) must be cancelled by the Secretary if the person enters into another Youth Allowance Employment Pathway Plan; and
- (c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and
- (d) may be cancelled by the Secretary after a review under paragraph (c).

*Circumstances preventing or affecting compliance*

- (6) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

*Situations in which participation in an approved program of work for income support payment cannot be required*

- (7) A Youth Allowance Employment Pathway Plan that is in force in relation to a person must not require the person to participate in an approved program of work for income support payment if:
  - (a) the person is under 18 years of age; or
  - (b) the person is undertaking full-time study; or
  - (c) because of the application of one or more Modules of the Youth Allowance Rate Calculator in section 1067G, the person would receive or is receiving a youth allowance at a rate that has been reduced; or
  - (d) in the Secretary's opinion:
    - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
    - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or



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- (e) the program of work requires the person to move from a home in one place to a home in another place.

*Revocation of requirement to participate in an approved program of work*

- (7A) If a Youth Allowance Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person, revoke the requirement to participate in the program if the Secretary:
  - (a) is satisfied that the person is undertaking full-time study; or
  - (b) is satisfied that the person is a person to whom paragraph (7)(c) applies; or
  - (c) forms the opinion that subparagraph (7)(d)(i) or (ii) applies in relation to the performance of that work by the person.

*Activities that do not give rise to employment under certain industrial relations legislation*

- (8) A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Youth Allowance Employment Pathway Plan under this section:
  - (a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;
  - (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;
  - (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
  - (d) an employee for the purposes of the *Fair Work Act 2009*.

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**544C Youth Allowance Employment Pathway Plans—principal carers**

- (1) A Youth Allowance Employment Pathway Plan that:
  - (a) is in force in relation to a person who is the principal carer of at least one child; and  

Note: For *principal carer* see subsections 5(15) to (24).
  - (b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable; must require the person to undertake looking for such part-time work of at least the appropriate number of hours per week.
- (2) The appropriate number of hours per week is:
  - (a) 15; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

**544D Youth Allowance Employment Pathway Plans—people with partial capacity to work**

- (1) A Youth Allowance Employment Pathway Plan that:
  - (a) is in force in relation to a person who has a partial capacity to work; and  

Note: For *partial capacity to work* see section 16B.
  - (b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable; must require the person to undertake looking for part-time work of at least the appropriate number of hours per week.
- (2) The appropriate number of hours per week is:
  - (a) 15; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

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**544DA Youth Allowance Employment Pathway Plans—early school leavers**

- (1) This section applies in relation to a Youth Allowance Employment Pathway Plan that is in force in relation to a person who is an early school leaver.
- (2) Unless subsection (5) applies in relation to the person, the plan must require the person to undertake for at least the appropriate number of hours per week:
  - (a) one or more approved courses of training or education; or
  - (b) a combination of:
    - (i) one or more approved courses of training or education; and
    - (ii) one or more other activities that the Secretary considers suitable for the person.
- (3) If subsection (5) applies in relation to the person, the plan must require the person to undertake, for at least the appropriate number of hours per week, one or more activities (other than an approved course of training or education) that the Secretary considers suitable for the person.
- (4) The appropriate number of hours per week is:
  - (a) 25; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.
- (5) This subsection applies in relation to a person if:
  - (a) there is no locally accessible approved course of training or education (including any such course available by distance education); or
  - (b) where there is such a course:
    - (i) there is no place available on the course for the person; or
    - (ii) the person is not qualified to undertake the course; or
    - (iii) the person lacks capacity to undertake the course because he or she has a physical, psychiatric or

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- intellectual disability or a learning disability such as attention deficit disorder; or
- (c) in the Secretary's opinion, special circumstances exist that make it unreasonable to require the person to undertake an approved course of training or education.
- (6) For the purposes of this section, a course is an ***approved course of training or education*** for a person if it:
- (a) is a course of study or instruction determined under section 5D of the *Student Assistance Act 1973* as a secondary course or a tertiary course for the purposes of that Act; and
- (b) would, in the Secretary's opinion, assist or allow the person to complete the final year of secondary school or an equivalent level of education.
- (7) The Secretary may, by legislative instrument, set guidelines for the exercise of the Secretary's discretion under (either or both):
- (a) paragraph (5)(c); and
- (b) paragraph (6)(b).
- (8) In forming an opinion for the purposes of paragraph (5)(c) or (6)(b), the Secretary must have regard to the guidelines.

**544E Youth Allowance Employment Pathway Plans—suspension of plans for people with certain exemptions**

A Youth Allowance Employment Pathway Plan that is in force in relation to a person is taken to be suspended during any period in respect of which the person:

- (a) has a domestic violence or other special family circumstances exemption under section 542F; or
- (b) has a disabled children or other family circumstances exemption under section 542FA.

**Subdivision G—Miscellaneous****546 Prospective determinations for some allowance recipients**

*Recipients may qualify in advance in some cases*

- (1) A person is qualified for youth allowance for a period determined by the Secretary if:
- (a) the person is receiving youth allowance; and
  - (b) the Secretary considers at the start of the period that:
    - (i) the person may reasonably be expected to satisfy the qualification requirements for youth allowance (see Subdivision A) during the period; and
    - (ii) it is reasonable to expect that youth allowance will be payable to the person for the period; and
    - (iii) the person will comply with this Act during the period; and
  - (c) except where the person is a CDEP Scheme participant in respect of the period, the person is not indebted at the start of the period to the Commonwealth under or as a result of:
    - (i) this Act; or
    - (ii) the *Student Assistance Act 1973* as in force immediately before the commencement of this section; and
  - (d) the Secretary is satisfied that the person should be qualified under this section for youth allowance for the period.
- (2) The Minister, by legislative instrument:
- (a) must determine guidelines for making decisions under paragraph (1)(b); and
  - (b) may revoke or vary the determination.

If the Minister revokes a determination, the Minister must determine guidelines that commence immediately after the revocation.

## **Division 2—Situations in which youth allowance is not payable**

### **Subdivision A—Situations in which allowance not payable (general)**

#### **547 Youth allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), a youth allowance is not payable to a person if the person's youth allowance rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:
  - (a) an election by the person under subsection 915A(1) (about quarterly energy supplement) is in force; or
  - (b) an advance pharmaceutical allowance has been paid to the person under the social security law.

#### **547AA Youth allowance not payable if person fails to attend interview etc. in certain circumstances**

##### *General*

- (1) A youth allowance is not payable to a person if:
  - (a) before or after the person made a claim for a youth allowance, the Department is contacted by or on behalf of the person in relation to a claim for a youth allowance; and
  - (b) as a result of the contact, the Department required the person to do one or both of the following:
    - (i) attend an interview with a specified person or organisation at a time and place specified in the requirement;
    - (ii) enter into a Youth Allowance Employment Pathway Plan; and
  - (c) the person fails to comply with that requirement, or those requirements; and

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- (d) the person is not undertaking full-time study and is not a new apprentice.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

*Secretary may decide that this section does not apply*

- (2) This section does not apply to a person if the Secretary is satisfied, in accordance with any guidelines under subsection (3), that it should not apply to the person.
- (3) The Secretary may, by legislative instrument, make guidelines to be complied with in deciding under subsection (2) whether this section applies to a person.

*When this section ceases to apply*

- (4) This section ceases to apply:
- (a) when the person complies with:
    - (i) that requirement, or those requirements; or
    - (ii) any requirements that the Secretary has required the person to undertake in place of that requirement, or those requirements; or
  - (b) at such earlier time as the Secretary determines, in accordance with any guidelines under subsection (5).
- (5) The Secretary may, by legislative instrument, make guidelines to be complied with in making determinations under paragraph (4)(b).

*This section is unaffected by date of claim*

- (6) To avoid doubt, the fact that a person is taken, because of section 13 of the Administration Act, to have made a claim for a youth allowance on the day on which the Department was contacted by or on behalf of the person in relation to the claim does not affect the operation of this section.

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**547AB Situations where allowance not payable for failure to comply with certain requirements**

A youth allowance is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

**Subdivision AB—Assets test**

**547A Allowance not payable if assets value limit exceeded**

A youth allowance is not payable to a person if:

- (a) the person is not excluded from the application of the youth allowance assets test; and
- (b) the value of the person's assets is more than the person's assets value limit.

Note 1: For persons excluded from application of test see section 547B.

Note 2: For *assets value limit* see section 547C.

**547B Who is excluded from application of assets test?**

A person is excluded from the application of the youth allowance assets test if the person is not independent.

**547C Assets value limit**

A person's *assets value limit* is:

- (b) \$250,000 if the person:
  - (ii) is not a member of a couple (see section 4); and
  - (iii) is a homeowner; or
- (c) \$450,000 if the person:
  - (ii) is not a member of a couple; and
  - (iii) is not a homeowner; or
- (d) \$375,000 if the person:



- (ii) is a member of a couple; and
- (iii) is a homeowner; or
- (e) \$575,000 if the person:
  - (ii) is a member of a couple; and
  - (iii) is not a homeowner.

Note 1: For *homeowner* see subsection 11(4).

Note 2: The amounts in paragraphs (b), (c), (d) and (e) are indexed annually on 1 July (see sections 1191 to 1194).

### **547D Value of person's assets to include value of assets of partner in certain circumstances**

The value of a person's assets is the sum of the following values:

- (a) the value of the person's assets (disregarding paragraph (b));
- (b) if the person is a member of a couple (see section 4)—the value of the assets of the person's partner.

## **Subdivision C—Waiting periods**

### **549 Waiting periods**

- (1) A youth allowance is not payable to a person who is qualified for youth allowance while the person is subject to a waiting period.
- (2) For the purposes of this Part, a person may be subject to the following waiting periods:
  - (a) a liquid assets test waiting period (see sections 549A, 549B and 549C);
  - (aa) an ordinary waiting period (see sections 549CA and 549CB);
  - (b) a newly-arrived resident's waiting period (see sections 549D and 549E).

#### **549A Liquid assets test waiting period**

*When person subject to liquid assets test waiting period—general*

- (1) Subject to this section, if:
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- (a) the value of a person's liquid assets is more than the person's maximum reserve on:
  - (i) the day on which the person becomes qualified for youth allowance; or
  - (ii) the day on which the person claims a youth allowance; and
- (b) the person is not a transferee to a youth allowance; the person is subject to a liquid assets test waiting period.

Note: For *liquid assets* and *maximum reserve* see section 14A.

*Exception—person already subject to liquid assets test waiting period in previous 12 months*

- (2) Subsection (1) does not apply to a person if, at any time during the 12 months before:
  - (a) the day on which the person becomes qualified for youth allowance; or
  - (b) the day on which the person claims youth allowance;the person:
  - (c) was subject to a liquid assets test waiting period under this Part and that period has ended; or
  - (d) has served a liquid assets test waiting period under another Part of this Act;that started during that 12 months.

*Exception—waiver for hardship*

- (3) 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 subsections 19C(2) (person who is not a member of a couple) and 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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*Exception—certain transferees to youth allowance*

- (4) Subsection (1) does not apply to a person if:
- (a) the person is a transferee to a youth allowance; and
  - (b) the person claims the youth allowance within 14 days of the transfer day.

*Exemption—person undertaking specified activity*

- (5) Subsection (1) does not apply to a person who:
- (a) is undertaking an activity specified in an instrument made under subsection (6); and
  - (b) has been exempted from the application of subsection (1) by the Secretary.
- (6) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (5)(a).

**549B Start of liquid assets test waiting period**

*General*

- (1) The liquid assets test waiting period of a person who does not have a temporary incapacity exemption starts on the day on which the person became qualified for youth allowance.

*Person has temporary incapacity exemption*

- (2) If a person has a temporary incapacity exemption, the person's liquid assets test waiting period starts on the day on which the person became incapacitated.

**549C Length of liquid assets test waiting period**

*Number of weeks*

- (1) A person's liquid assets test waiting period is:
- (a) if the result obtained under subsection (2) is 13 or more whole weeks—13 weeks; or

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- (b) if the result obtained under subsection (2) is fewer than 13 whole weeks—the number of whole weeks obtained under that subsection.

*Working out number of weeks*

- (2) Subject to subsection (3), the number of weeks is worked out by using the following formula:

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

where:

**divisor**, in relation to the person, means:

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

**liquid assets** means the person's liquid assets on the day referred to in subparagraph 549A(1)(a)(i) or (ii) (as the case requires).

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

*Weeks etc. to be disregarded*

- (3) For the purposes of subsection (2), disregard:
- (a) any weeks after the person claimed youth allowance during which the person was not qualified for youth allowance; and  
(b) any fractions of a week.

**549CA Ordinary waiting period**

- (1) This section applies if a person is qualified for a youth allowance, where neither section 540AA (about new apprentices) nor paragraph 541(1)(a) (about full-time study) applies.
- (2) Subject to subsection (3), the person is subject to an ordinary waiting period unless:

- (a) at some time in the 13 weeks immediately before the person's start day (worked out disregarding clauses 4A and 5 of Schedule 2 to the Administration Act), the person received an income support payment; or
- (b) the Secretary is satisfied that the person is experiencing a personal financial crisis; or
- (c) on the day before the day the person qualified for the youth allowance mentioned in subsection (1), the person was qualified for a youth allowance where section 540AA or paragraph 541(1)(a) applied.

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

Note 2: For *experiencing a personal financial crisis* see section 19DA.

- (3) Subsection (2) does not apply to a person who:
  - (a) is undertaking an activity specified in an instrument made under subsection (4); and
  - (b) has been exempted from the application of subsection (2) by the Secretary.
- (4) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (3)(a).

### **549CB Duration of ordinary waiting period**

- (1) Subject to subsections (2) and (4), if a person is subject to an ordinary waiting period, the ordinary waiting period is the period of 7 days that starts on the person's start day (worked out disregarding clauses 4A and 5 of Schedule 2 to the Administration Act).
- (2) Subject to subsection (4), if:
  - (a) a person is subject to an ordinary waiting period; and
  - (b) apart from this subsection, the ordinary waiting period would be the period of 7 days that starts on the person's start day (worked out disregarding clauses 4A and 5 of Schedule 2 to the Administration Act); and

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- (c) that start day falls within one or more of the following periods (each of which is an ***exclusion period***) that the person is subject to:
- (i) a liquid assets test waiting period;
  - (ii) a newly arrived resident's waiting period;
  - (iii) a seasonal work preclusion period;
  - (iv) a lump sum preclusion period under Part 3.14;
  - (v) an income maintenance period, where the person's rate of youth allowance on that start day would be nil;

then the ordinary waiting period is the period of 7 days that starts on the first day after all the exclusion periods have ended.

(3) If:

- (a) subparagraph (2)(c)(v) applies to a person; and
- (b) on a day in that income maintenance period, the person's rate of youth allowance would be greater than nil if youth allowance were payable to the person on that day;

then, for the purposes of subsection (2), that income maintenance period is taken to have ended at the end of the day before that day.

(4) If:

- (a) a person qualifies for a social security payment (other than youth allowance); and
- (b) because the person is subject to an ordinary waiting period relating to that payment, that payment is not payable to the person for a period starting on a particular day (the ***initial day***); and
- (c) during that period the person:
  - (i) ceases to be qualified for that payment; and
  - (ii) claims youth allowance and is qualified for youth allowance, where neither section 540AA (about new apprentices) nor paragraph 541(1)(a) (about full-time study) applies;

the person's ordinary waiting period relating to that youth allowance is the period of 7 days that starts on the initial day.

Note: Ordinary waiting periods apply to parenting payment, youth allowance, newstart allowance and sickness allowance.

### 549D Newly arrived resident's waiting period

#### *Basic rule*

- (1) Subject to this section, a person is subject to a newly arrived resident's waiting period if the person:
- (a) has entered Australia; and
  - (b) has not been an Australian resident in Australia for a period of, or periods totalling, 208 weeks.

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

#### *Exception—qualifying residence exemption*

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

Note: For **qualifying residence exemption** in relation to youth allowance, see paragraph 7(6AA)(f).

#### *Exception—lone parent*

- (6) Subsection (1) does not apply to a person if the person:
- (a) is the principal carer of one or more children; and
  - (b) is not a member of a couple; and
  - (c) is not undertaking full-time study; and
  - (d) is not a new apprentice; and
  - (e) was not a lone parent at the start of the person's current period as an Australian resident.

Note 1: For **principal carer** see subsections 5(15) to (24).

Note 2: For **undertaking full-time study** see section 541B.

Note 3: For **new apprentice** see subsection 23(1).

Note 4: For **lone parent** and **current period as an Australian resident** see subsection 23(1).

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*Exception—other*

- (7) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a youth allowance; or
  - (b) the following apply:
    - (i) before the person made the claim for a youth allowance, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a youth allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a youth allowance.
- (8) For the purposes of subsection (7):
- (a) **family member** has the meaning given by subsection 7(6D); and
  - (b) **former refugee** has the meaning given by subsection 7(1); and
  - (c) **refugee** has the meaning given by subsection 7(6B).

**549E Length of newly arrived resident's waiting period**

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

- (a) starts on the day the person first became an Australian resident; and
- (b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 208 weeks after that day.

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



**549F Effect of being subject to multiple waiting periods**

For the avoidance of doubt, if a person is subject to 2 or more waiting periods under this Subdivision, a youth allowance is not payable to the person until all of those waiting periods have ended.

**Subdivision D—Situations where allowance not payable because of youth allowance participation failure**

**549G Application of Subdivision**

This Subdivision applies to a person only if the person is undertaking full-time study (see section 541B).

Note: If the person is not undertaking full-time study, Division 3AA or 3A of Part 3 of the Administration Act might apply.

**550 Youth allowance participation failures**

*Meaning of youth participation failure*

- (1) A person commits a **youth allowance participation failure** if the person:
- (a) fails to comply with a requirement:
    - (i) that was notified to the person under subsection 63(2) or (4) of the Administration Act; and
    - (ii) that was reasonable; and
    - (iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute a youth allowance participation failure; or
  - (b) fails to satisfy the activity test; or
  - (k) fails to comply with a requirement to undertake another activity referred to in paragraph 550B(1)(b).

*Reasonable excuse*

- (2) Despite subsection (1), a failure of a kind referred to in that subsection is not a youth allowance participation failure if the

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person satisfies the Secretary that the person had a reasonable excuse for the failure.

- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a youth allowance participation failure.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the youth allowance participation failure referred to in subsection (1).

*Subsequent failures in the same instalment period*

- (3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed a youth allowance participation failure, the failure is not a youth allowance participation failure if:
- (a) the instalment period is the person's first instalment period for youth allowance; or
  - (b) the instalment period is not the person's first instalment period for youth allowance, and:
    - (i) the person did not commit a youth allowance participation failure in the immediately preceding instalment period of the person; or
    - (ii) in respect of each youth allowance participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary notified in respect of that failure.

*Failures covered by section 547AA*

- (4) Despite subsection (1), a failure of a kind referred to in that subsection is not a youth allowance participation failure if it results in youth allowance not being payable to the person under section 547AA.

*New apprentices*

- (6) Subsection (1) does not apply to a failure if the person is a new apprentice.

Note: For *new apprentice* see subsection 23(1).

**550B Allowance not payable because of youth allowance participation failure**

*General*

- (1) A youth allowance is not payable to a person, for the period starting in accordance with section 550C and ending in accordance with section 550D, if:
- (a) the person commits a youth allowance participation failure; and
  - (b) the Secretary requires the person:
    - (i) to comply with the requirement, or undertake the activity, to which the youth allowance participation failure relates; or
    - (ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;during the participation failure instalment period for the failure, or at a particular time during that period; and
  - (c) the person fails to comply with the requirement.

*Reasonable excuse etc.*

- (2) This section does not apply in relation to the failure if:
- (a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or
  - (b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for

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the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).

- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

*Meaning of participation failure instalment period*

- (3) The *participation failure instalment period* for the youth allowance participation failure is the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

*Failures covered by section 551*

- (4) This section does not apply to a youth allowance participation failure if section 551 applies to the failure.

**550C When the period of non-payment starts**

The period for which youth allowance is not payable to the person because of section 550B is taken to have started at the start of the participation failure instalment period for the youth allowance participation failure.

**550D When the period of non-payment ends**

The period for which youth allowance is not payable to the person because of section 550B ends when:

- (a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the youth allowance participation failure related, the person has complied with the requirement or undertaken the activity; or
- (b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement

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- or activity to which the youth allowance participation failure related, the person has undertaken the other activity; or
- (c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the youth allowance participation failure related, the person has complied with the other requirement.

**Subdivision E—Situations where allowance not payable because of repeated failure**

**550E Application of Subdivision**

This Subdivision applies to a person only if the person is undertaking full-time study (see section 541B).

Note: If the person is not undertaking full-time study, Division 3AA or 3A of Part 3 of the Administration Act might apply.

**551 Allowance not payable because of repeated failure**

*General*

- (1) A youth allowance is not payable to a person, for the period of 8 weeks starting in accordance with section 551A, if the person commits a youth allowance participation failure (the ***repeated failure***), having committed youth allowance participation failures (the ***earlier failures***) on 2 or more other occasions during the period of 12 months preceding that failure.

*Reasonable excuse etc.*

- (2) Disregard any earlier failure that is a failure to which subsection 550B(1) does not apply because of subsection 550B(2).
- (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.

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### **551A When the period of non-payment starts**

The period for which youth allowance is not payable to the person because of subsection 551(1) is taken to start, or to have started:

- (a) if the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
- (b) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For *participation failure instalment period* see subsection 550B(3).

### **Subdivision F—Multiple entitlement exclusions**

#### **552 Multiple entitlement exclusions**

- (1) Youth allowance is not payable to a person who is qualified for youth allowance while the person is subject to a multiple entitlement exclusion.
- (2) For the purposes of this Division, a person is subject to a multiple entitlement exclusion if:
  - (a) the person is receiving a youth allowance and another social security benefit, a social security pension, a service pension, income support supplement or a veteran payment becomes payable to the person; or
  - (b) a payment under a scheme referred to in section 552A has been or may be made to the person or to someone else in respect of the person; or
  - (c) an assurance of support applies to the person.
- (3) Youth allowance is not payable to a person if:
  - (a) the person is an armed services widow or an armed services widower; and
  - (b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced

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weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For *MRCA* see subsection 23(1).

**552A Person receiving payment under certain schemes**

*General*

- (1) Subject to subsection (2), the schemes for the purposes of paragraph 552(2)(b) are:
- (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; and
  - (aa) the Assistance for Isolated Children Scheme; and
  - (b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; and
  - (c) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; and
  - (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; and
  - (e) the scheme known as the Ready Reserve Education Assistance Scheme; and
  - (f) the scheme to provide an allowance known as the Living Away from Home Allowance.

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

*Application made under ABSTUDY Scheme*

- (2) If:
- (a) a person is undertaking full-time study in respect of a course of education that is to last for 6 months or more; and
  - (b) an application is made for a payment in respect of the person under the ABSTUDY Scheme; and

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- (c) the person was receiving youth allowance immediately before the start of the course;
- the Secretary may decide that the person is not subject to a multiple entitlement exclusion, because of subsection (1), before:
- (d) the application is determined; or
  - (e) the end of the period of 3 weeks beginning on the day on which the course starts;
- whichever happens first.

### 552B Assurance of support

An assurance of support applies to a person if:

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

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

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

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

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

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

## Subdivision G—Employment-related exclusions

### 553 Employment-related exclusions

- (1) Youth allowance is not payable to a person who is qualified for youth allowance while the person is subject to an employment-related exclusion.



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- (2) For the purposes of this Division, a person is subject to an employment-related exclusion:
- (a) if the person is not undertaking full-time study and is not a new apprentice—while one or more of sections 553A to 553C apply to the person; or
  - (b) if the person is undertaking full-time study or is a new apprentice—while section 553C applies to the person.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

### 553A Unemployment due to industrial action

#### *Engaged in industrial action*

- (1) Subject to subsection (2), a person who is unemployed is subject to an employment-related exclusion unless the person satisfies the Secretary that the person's unemployment was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.

#### *Other people engaged in industrial action*

- (2) If:
- (a) a 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 that was involved in the industrial action;
- the person is subject to an employment-related exclusion unless the person satisfies the Secretary that the person was not a member of the trade union during the person's period of unemployment.

#### *Length of employment-related exclusion*

- (3) Subject to subsection (4), the employment-related exclusion to which a person is subject under subsection (1) or (2) ends when the industrial action or series of industrial actions stop.

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*Industrial action etc. in breach of order, direction or injunction*

- (4) Where the industrial action or series of industrial actions concerned is in breach of an order, direction or injunction issued by:
- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
  - (b) the Fair Work Commission or the Australian Industrial Relations Commission; or
  - (c) the Federal Court of Australia; or
  - (d) the Federal Circuit Court of Australia;
- the person's employment-related exclusion under subsection (1) or (2) of this section ends 6 weeks after the day on which the industrial action or series of industrial actions stop.

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

**553B Move to area of lower employment prospects**

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

the period of the exclusion ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.

*Exemption for person undertaking specified activity*

- (2) Subsection (1) does not apply to a person who:
- (a) is undertaking an activity specified in an instrument made under subsection (2A); and
  - (b) has been exempted from the application of subsection (1) by the Secretary.
- (2A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

*Sufficient reason for moving*

- (3) For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if, and only if, the person:
- (a) moves to live with a family member who has already established his or her residence in that place of residence; or
  - (b) moves to live near a family member who has already established residence in the same area; or
  - (c) is receiving youth allowance at the rate that applies to a person who:
    - (i) is not independent; and
    - (ii) lives at home;and moves to accompany his or her parents who wish to establish, or have established, a place of residence; or
  - (d) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a disease or illness suffered by the person or by a family member; or
  - (e) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person

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

Note 1: For *independent* see section 1067A.

Note 2: For parent see subsection 5(1), paragraph (b) of the definition of *parent*.

Note 3: For *family member* see subsection 23(1).

*Secretary may determine when period begins*

- (4) The Secretary may determine in writing the day on which the period referred to in subsection (1) begins. The day may be before the day of the determination.

*Living away from home*

- (5) A person lives away from home for the purposes of this section if he or she lives away from home for the purposes of Part 3.5.

**553C Seasonal workers**

*Application*

- (1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for youth 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).

*Exclusion during seasonal work preclusion period*

- (2) The person is subject to an employment-related exclusion:
- (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).

*Exemption in cases of severe financial hardship*

- (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).

*Exemption for person undertaking specified activity*

- (4) Subsection (2) does not apply to a person who:
  - (a) is undertaking an activity specified in an instrument made under subsection (5); and
  - (b) has been exempted from the application of subsection (2) by the Secretary.
- (5) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (4)(a).

## **Division 5—Rate of youth allowance**

### **556 How to work out a person's youth allowance rate**

Subject to this section, the rate of a person's youth allowance is to be worked out in accordance with the Youth Allowance Rate Calculator in section 1067G.

#### **556A Approved program of work supplement**

If a person:

- (a) is receiving youth allowance; and
- (b) is participating in an approved program of work for income support payment;

the rate of the person's youth allowance is increased by an amount of \$20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program unless, during that fortnight, the person ceases to participate in the program in circumstances that constitute:

- (c) a failure of the activity test to which the person is subject; or
- (d) a failure to comply with a requirement in a Youth Allowance Employment Pathway Plan that is in force in relation to the person.

#### **556B National Green Jobs Corps supplement**

- (1) This section applies if a person:
  - (a) is receiving youth allowance; and
  - (b) is only qualified for youth allowance under section 540; and
  - (c) satisfies the Secretary that the person is not undertaking full-time study (see section 541B); and
  - (d) has reached 17 years of age; and
  - (e) is participating in the National Green Jobs Corps program; and
  - (f) started participating in that program before 2012.

- (2) The rate of the person's youth allowance is increased by an amount of \$41.60 (to be known as a National Green Jobs Corps supplement) for each fortnight during which the person participates in the National Green Jobs Corps program.
- (3) However, a National Green Jobs Corps supplement is not payable for a fortnight during which the person participates in the National Green Jobs Corps program if:
  - (a) a Youth Allowance Employment Pathway Plan is in force in relation to the person; and
  - (b) during the fortnight, the person ceases to participate in that program in circumstances that constitute a failure to comply with the plan.

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

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

***quarter*** means a CDEP Scheme quarter.

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

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

## Division 10—Bereavement payments

### Subdivision A—Bereavement payments on death of partner

#### 567 Qualification for payments under this Division

##### *Qualification for payment*

- (1) If:
- (a) a person is receiving youth 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, income support supplement or a veteran payment; 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 Division is less than the sum of:
    - (i) the amount that would otherwise be payable to the person under section 567C (person's continued rate) on that payday; and
    - (ii) the amount (if any) that would otherwise be payable to the person under section 567A (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 Division to cover the bereavement period.

Note 1: Section 567A provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the



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instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 567B 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.

Note 3: For **first available bereavement adjustment payday** and **bereavement period** see section 21.

*Choice not to receive payments*

- (2) A person who is qualified for payments under this Division may choose not to receive payments under this Division.

*Form of choice*

- (3) A choice 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 Division; and
  - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that choice.

*Rate during bereavement period*

- (4) If a person is qualified for payments under this Division in relation to the partner's death, the rate at which youth allowance is payable to the person during the bereavement period is, unless the person has made a choice under subsection (2), governed by section 567C.

### **567A Continued payment of partner's pension or benefit**

If a person is qualified for payments under this Division 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.

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

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**567B Lump sum payable in some circumstances**

If:

- (a) a person is qualified for payments under this Division 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**

*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 the ***combined rate***.

Step 2. Work out the amount that, apart from section 567C, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is the ***partner's instalment component***.

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- 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.

**567C Adjustment of person's youth allowance rate**

If:

- (a) a person is qualified for payments under this Division; and
- (b) the person does not elect under subsection 567(2) not to receive payments under this Division;

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

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

**567D Effect of death of person entitled to payments under this Division**

If:

- (a) a person is qualified for payments under this Division 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 any person that the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

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**Lump sum calculator**

*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
- (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 the ***combined rate***.

Step 2. Work out the amount that, apart from section 567C, 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 the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is the ***partner's instalment component***.

Step 4. Work out the number of paydays of the partner in the period that begins 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.

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**567E Matters affecting payments under this Division***Recovery/reduction of amount payable*

(1) If:

- (a) a person is qualified for payments under this Division 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 or IIIA 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 is more than the amount payable to the person under this Division;
- (e) the amount payable to the person under this Division is to be reduced by the amount referred to in paragraph (b).

*Bank not liable*

(2) If:

- (a) a person is qualified for payments under this Division 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 or IIIA 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 more than the total of the amounts paid as mentioned in paragraph (b);

the bank is, despite 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.

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

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

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

**Subdivision B—Continuation of youth allowance rate after death of child**

**567G Death of child—continuation of youth allowance rate for 14 weeks**

If:

- (a) a person is receiving youth allowance; and
- (b) the person is the principal carer of a child who dies; and
- (c) the person is not undertaking full-time study and is not a new apprentice; and
- (d) apart from this section, the person's rate of youth allowance would be reduced because the person is no longer the child's principal carer;

the person's rate of youth allowance, during the period of 14 weeks that starts on the day of the child's death, is to be worked out as if the child had not died.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *undertaking full-time study* see section 541B.

Note 3: For *new apprentice* see subsection 23(1).

## **Part 2.11A—Austudy payment**

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

#### **Subdivision A—Basic qualifications**

##### **568 Qualification for austudy payment—general rule**

Subject to this Subdivision, a person is qualified for an austudy payment in respect of a period if, throughout the period:

- (a) the person satisfies the activity test (see Subdivision B); and
- (b) the person is of austudy age (see Subdivision C); and
- (c) the person is an Australian resident.

Note: Division 2 sets out situations in which an austudy payment is not payable even if the person qualifies for it.

##### **568AA Qualification for austudy payment—new apprentices**

Subject to this Subdivision, a person is qualified for an austudy payment in respect of a period if, throughout the period:

- (a) the person is a new apprentice; and
- (b) the person is of austudy age (see Subdivision C); and
- (c) the person is an Australian resident.

Note: Division 2 sets out situations in which an austudy payment is not payable even if the person qualifies for it.

##### **568A Qualification for austudy payment—transferee from social security pension**

If:

- (a) a person was receiving a social security pension; and
- (b) the person claims an austudy payment within 14 days after the day on which the last instalment of the person's pension was paid; and

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- (c) the person becomes qualified for an austudy payment at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for an austudy payment for the whole of the 14 day period.

**Subdivision B—Activity test**

**569 Activity test**

*General*

- (1) Subject to subsection (2), a person satisfies the activity test in respect of a period if the person satisfies the Secretary that, throughout the period, the person is undertaking qualifying study (see section 569A).

*Persons who do not satisfy the activity test*

- (2) A person cannot be taken to satisfy the activity test if the person:
  - (a) is a new apprentice; or
  - (b) has completed a course for:
    - (i) a degree of Doctor at an educational institution; or
    - (ii) a qualification at a foreign institution that is, in the Secretary's opinion, of the same standing as a degree of Doctor at an educational institution.

Note: For *educational institution* see subsection 23(1).

**569A Undertaking qualifying study**

For the purposes of this Part, a person is *undertaking qualifying study* if:

- (a) the person:
  - (i) is enrolled in a course of education at an educational institution; or
  - (ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being



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- enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or
- (iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and
- (b) the course in which the person is enrolled, or intends to enrol, is an approved course of education or study (see section 569B); and
- (c) the person is a full-time student or a concessional study-load student in respect of that course (see sections 569C and 569D); and
- (d) the person satisfies the progress rules (see sections 569G and 569H).

Note: Only one course of education can be considered in deciding if a person satisfies the undertaking qualifying study requirement: see section 569AA.

**569AA One course of education**

- (1) Whether subparagraph 569A(a)(i) or (ii) and paragraphs 569A(b), (c) and (d) are satisfied in relation to a person is to be determined in relation to only one course of education.
- (2) Whether a person satisfies the Secretary of the person's intention mentioned in subparagraph 569A(a)(iii) and whether paragraphs 569A(b), (c) and (d) are satisfied in relation to the person is to be determined in relation to only one course of education.

Note 1: The effect of this section is that 2 or more courses of education for a person cannot be aggregated to satisfy the undertaking qualifying study requirement.

Note 2: The one course of education may be a combined course: see the legislative instrument made under section 5D of the *Student Assistance Act 1973*.

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### 569B Approved course of education or study

For the purposes of paragraph 569A(b), a course is an approved course of education or study if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

### 569C Full-time students

For the purposes of this Subdivision, a person is a **full-time student** in respect of a course if:

- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period; or
- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Note: For **normal amount of full-time study** see section 569E.

### 569D Concessional study-load students

- (1) For the purposes of this Subdivision, there are 2 classes of concessional study-load students, namely:
  - (a) 25% concessional study-load students; and
  - (b) 66% concessional study-load students.
- (2) For the purposes of this Subdivision, a person is a **25% concessional study-load student** in respect of a course if this subsection applies to the person and:
  - (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or

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- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.
- (3) For the purposes of this Subdivision, a person is a **66% concessional study-load student** in respect of a course if this subsection applies to the person and:
  - (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
  - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

Note: For **normal amount of full-time study** see section 569E.

- (4) Subsection (2) applies to a person if:
  - (a) an officer in the Commonwealth Rehabilitation Service or an appropriate medical practitioner who has a detailed knowledge of the person's physical condition has stated in writing that:
    - (i) the person has a substantial physical disability; and
    - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
  - (b) a medical practitioner specialising in psychiatry has stated in writing that:
    - (i) the person has a substantial psychiatric disability; and
    - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or

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- (c) a psychologist who is registered with the Board established under the law of a State or Territory that registers psychologists has stated in writing that the person:
  - (i) is intellectually disabled; and
  - (ii) cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability.
- (5) Subsection (3) applies to a person if:
  - (a) the person cannot undertake the course as a full-time student because of:
    - (i) the relevant educational institution's usual requirements for the course; or
    - (ii) a specific direction in writing to the person from the academic registrar or an equivalent officer; or
  - (b) the academic registrar (or an equivalent officer) of the relevant educational institution recommends in writing that the person undertake less than the normal amount of full-time study in respect of the course for specified academic or vocational reasons for a period not exceeding half an academic year.

**569E Normal amount of full-time study**

- (1) For the purposes of this Subdivision, the ***normal amount of full-time study*** in respect of a course is:
  - (a) if:
    - (i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and
    - (ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course; the full-time student load for the course; or
  - (b) if the course is not such a course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or

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- (c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.
- (2) Without limiting subsection (1), the *normal amount of full-time study* in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

**569F First fortnight of classes**

A person is taken to be undertaking full-time study or a concessional study-load (as the case may be) in respect of a course during the period (the *relevant period*):

- (a) starting on the first day of classes in a study period; and
- (b) ending on the Friday of the second week of classes in the study period;

if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

**569G Progress rules—secondary students***General rule*

- (1) Subject to subsection (2), a person enrolled in, or intending to enrol in, a secondary course satisfies the progress rules for the purposes of paragraph 569A(d) if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

*Students repeating year 12*

- (2) A person does not satisfy the progress rules if:
  - (a) the person is enrolled in a secondary course that is at year 12 level, or the overall level of which is at year 12 level (see subsections (3) and (4)); and

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- (b) the person has been a full-time student in respect of a course at that level (a *previous course*) in each of 2 previous years; and
- (c) none of the following circumstances apply:
  - (i) the person failed a previous course because of an illness that had not been diagnosed when the person began that course;
  - (ii) the person failed a previous course because of other circumstances beyond the person's control that were not apparent when the person began that course;
  - (iii) the person failed a previous course because English is not the person's native language;
  - (iv) the person completed or discontinued a previous course within 6 months after the relevant academic year started;
  - (v) each of the previous courses was undertaken more than 10 years before the present study.

*Course at year 12 level*

- (3) A secondary course is at year 12 level if the institution in which the course is undertaken regards it as being at year 12 level.

*Overall level of course at year 12 level*

- (4) The overall level of a secondary course is at year 12 level if the institution in which the course is undertaken regards at least 50% of the course as being at year 12 level.

*Meaning of secondary course*

- (5) For the purposes of this section, a course is a secondary course if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act.

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**569H Progress rules—tertiary students***Full-time students*

- (1) A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
  - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;
- the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.

Note: For allowable study time for a course see subsection (3).

*Concessional study-load students*

- (2) A person who is a concessional study-load student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
  - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;
- the time already spent by the person on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for the course.

Note: For allowable study time for a course see subsections (3) and (4).

*Allowable study time—full-time students and 66% concessional study-load students*

- (3) The allowable study time for a course undertaken by a full-time student or a 66% concessional study-load student is:

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- (a) if the minimum amount of time needed to complete the course as a full-time student is one year or less—that minimum amount of time; or
- (b) if the minimum amount of time needed to complete the course as a full-time student is more than 1 year and:
  - (i) the student is enrolled, or intends to enrol, in a year-long subject; or
  - (ii) the student's further progress in the course depends on passing a whole year's work in the course;the minimum amount of time plus 1 year; or
- (c) in any other case—the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

*Allowable study time—25% concessional study-load students*

- (4) The allowable study time for a course undertaken by a 25% concessional study-load student is twice the minimum period in which it is possible to complete the course as a full-time student but the Secretary may approve, in particular cases, an allowable study time of up to four times the minimum period in which it is possible to complete the course as a full-time student.

*Time spent by person studying part-time*

- (5) If a student has studied part-time for a course over a certain period, the time spent by the student on that course is taken to be the proportion of that period calculated by using the formula:

$$\frac{\text{Study undertaken}}{\text{Normal full-time study}}$$

where:

***normal full-time study*** means the normal amount of full-time study for the course.

***study undertaken*** means the amount of study undertaken part-time by the student for the course.



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*Current full-time students who have previously undertaken courses as concessional study-load students*

- (6) If:
- (a) a person is undertaking a course as a full-time student; and
  - (b) the person has previously undertaken:
    - (i) part of the course; or
    - (ii) one or more than one other course at the same level as that course;as a concessional study-load student; and
  - (c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the ***previous study***) is not to be disregarded under subsection (7);
- the time spent by the person undertaking the previous study is taken to be equal to the minimum amount of time that a full-time student would have taken to complete the previous study.

*Current 25% concessional study-load students who have previously undertaken courses on a different basis*

- (6A) If:
- (a) a person is undertaking a course as a 25% concessional study-load student; and
  - (b) the person has previously undertaken:
    - (i) part of that course; or
    - (ii) one or more than one other course at the same level as that course;in any of the following ways:
    - (iii) as a full-time student;
    - (iv) as a 66% concessional study-load student;
    - (v) on a part-time basis; and
  - (c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the ***previous study***) is not to be disregarded under subsection (7);

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the time spent by the person undertaking the previous study is taken to be:

- (d) twice the time that the person took to complete the previous study; or
- (e) if the Secretary has approved, under subsection (4), a longer allowable study time in relation to the person for the course—the time taken by the person to complete the previous study multiplied by the factor used by the Secretary for the purposes of the approval under that subsection.

*Matters to be disregarded in determining whether someone has exceeded the allowable study time*

- (7) In determining whether a person has exceeded the allowable study time (for a full-time student or a concessional study-load student), disregard the following:
  - (a) if the person has completed a course (a pre-requisite course) the completion of which is the normal requirement for admission to the course in which the person is enrolled or intends to enrol—time spent undertaking the pre-requisite course;
  - (b) a failed year of study, or a failed part of a year of study, if the failure is because of:
    - (i) the person's illness; or
    - (ii) other circumstances beyond the person's control;
  - (c) time spent undertaking a course that has been permanently discontinued because of:
    - (i) the person's illness; or
    - (ii) other circumstances beyond the person's control;
  - (d) time spent undertaking a course that has been completed but which, because of the person's illness, the person cannot use in any of the trades or profession to which the course is appropriate;
  - (e) time spent undertaking a TAFE course or a course provided by a VET provider if the normal length of the course for a full-time student is one year or less;

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- (f) time spent undertaking a course more than 10 years ago, unless the course has since been completed;
- (g) time spent undertaking a course after 1973 if the course was not:
  - (i) approved for the Tertiary Education Assistance Scheme; or
  - (ii) approved for the AUSTUDY scheme; or
  - (iii) an approved course for the purposes of paragraph 541B(1)(c), 569A(b) or 1061PB(1)(b) of this Act;
- (h) time spent undertaking a course at a foreign institution;
- (i) time spent undertaking a subject from which the student withdrew, if the educational institution in which the subject was undertaken did not record the withdrawal from the subject as a failure;
- (j) any time spent undertaking a course during which the person was ineligible to receive:
  - (i) AUSTUDY; or
  - (ii) a benefit under the Tertiary Education Assistance Scheme; or
  - (iii) youth allowance; or
  - (iv) austudy payment;because of the application of rules in respect of academic progress.

*Levels of tertiary courses*

- (8) There are 5 levels of tertiary courses: levels M, A, B, C and D.

*Level M courses*

- (8A) A course for a degree of Master (or equivalent) is a Level M course.

*Level A courses*

- (9) The following are Level A courses:

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- (a) a postgraduate bachelor degree course, with or without honours;
- (b) a graduate or postgraduate diploma course;
- (c) a course of practical legal training at a higher education institution;
- (d) a course of advanced education regarded by an accrediting authority as being at PG1 level;
- (e) a graduate certificate course.

*Level B courses*

(10) The following are Level B courses:

- (a) a bachelor degree course (other than a postgraduate course), with or without honours;
- (b) the bachelor level component of a masters degree course with concurrent bachelor and masters level study;
- (c) a diploma course other than:
  - (i) a graduate or postgraduate diploma course; or
  - (ii) a course for which an entry requirement is successful completion of year 10 of secondary studies; or
  - (iii) a TAFE course or a course provided by a VET provider;
- (d) a Master's qualifying course;
- (e) the Barristers or Solicitors Admission Board's course;
- (f) a course of advanced education regarded by an accrediting authority as being at UG1 or UG2 level.

*Level C courses*

(11) The following are Level C courses:

- (a) an associate degree course;
- (b) an associate diploma course;
- (c) a diploma course at a TAFE institution or provided by a VET provider for which an entry requirement is successful completion of year 12 of secondary studies;
- (d) a 2-year undergraduate diploma course.

*Level D courses*

- (12) The following are Level D courses:
- (a) a TAFE course at a higher education institution;
  - (b) a TAFE course or a course provided by a VET provider, unless the course is in Level M, A, B or C.

*Meaning of tertiary course*

- (13) For the purposes of this section, a course is a tertiary course if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a tertiary course for the purposes of that Act.

**Subdivision C—Austudy age**

**570 Austudy age**

*General*

- (1) Subject to subsection (2), a person is of austudy age for the purposes of this Part if the person is at least 25 years old.

*Study begun before turning 25*

- (2) Even if the person is at least 25 years old, the person is taken not to be of austudy age if the person:
- (a) was receiving youth allowance immediately before turning 25; and
  - (b) has not yet attained the maximum age for youth allowance (see subsection 543B(2)).

## **Division 2—Situations in which austudy payment is not payable**

### **Subdivision A—Situation in which austudy payment not payable (general)**

#### **572 Austudy payment not payable if payment rate nil**

- (1) Subject to subsection (2), an austudy payment is not payable to a person if the person's austudy payment rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:
  - (a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or
  - (b) the person has been paid an advance pharmaceutical allowance under the social security law.

#### **572A Situations where austudy payment not payable for failure to comply with certain requirements**

Austudy payment is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

### **Subdivision B—Assets test**

#### **573 Austudy payment not payable if assets value limit exceeded**

An austudy payment is not payable to a person if the value of the person's assets is more than the person's assets value limit.

Note: For *assets value limit* see section 573B.

### **573B Assets value limit**

A person's *assets value limit* is:

- (a) \$250,000 if the person:
  - (i) is not a member of a couple (see section 4); and
  - (ii) is a homeowner; or
- (b) \$450,000 if the person:
  - (i) is not a member of a couple; and
  - (ii) is not a homeowner; or
- (c) \$375,000 if the person:
  - (i) is a member of a couple; and
  - (ii) is a homeowner; or
- (d) \$575,000 if the person:
  - (i) is a member of a couple; and
  - (ii) is not a homeowner.

Note 1: For *homeowner* see subsection 11(4).

Note 2: The amounts in this section are indexed annually on 1 July (see sections 1191 to 1194).

### **573C Value of person's assets to include value of assets of partner**

The value of a person's assets is the sum of the following values:

- (a) the value of the person's assets (disregarding paragraph (b));
- (b) if the person is a member of a couple (see section 4)—the value of the assets of the person's partner.

## **Subdivision D—Waiting periods**

### **575 Waiting periods**

- (1) An austudy payment is not payable to a person who is qualified for an austudy payment while the person is subject to a waiting period.
- (2) For the purposes of this Part, a person may be subject to the following waiting periods:

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- (a) a liquid assets test waiting period (see sections 575A, 575B and 575C);
- (b) a newly arrived resident's waiting period (see sections 575D and 575E).

**575A Liquid assets test waiting period**

*When person subject to liquid assets test waiting period—general*

- (1) Subject to this section, if:
  - (a) the value of a person's liquid assets is more than the person's maximum reserve on:
    - (i) the day on which the person becomes qualified for austudy payment; or
    - (ii) the day on which the person claims austudy payment; and
  - (b) the person is not a transferee to austudy payment;the person is subject to a liquid assets test waiting period.

Note: For *liquid assets* and *maximum reserve* see section 14A.

*Exception—person already subject to liquid assets test waiting period in previous 12 months*

- (2) Subsection (1) does not apply to a person if, at any time during the 12 months before:
  - (a) the day on which the person becomes qualified for austudy payment; or
  - (b) the day on which the person claims austudy payment;the person:
  - (c) was subject to a liquid assets test waiting period under this Part and that period has ended; or
  - (d) has served a liquid assets test waiting period under another Part of this Act; or
  - (e) has served a liquid assets test waiting period under the *Student Assistance Act 1973* as previously in force.



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*Exception—waiver for hardship*

- (3) 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 subsections 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

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

*Exception—certain transferees to austudy payment*

- (4) Subsection (1) does not apply to a person if:
- (a) the person is a transferee to austudy payment; and
  - (b) the person claims austudy payment within 14 days of the transfer day.

**575B Start of liquid assets test waiting period**

The liquid assets test waiting period of a person starts on the day on which the person became qualified for austudy payment.

**575C Length of liquid assets test waiting period**

*Number of weeks*

- (1) A person's liquid assets test waiting period is:
- (a) if the result obtained under subsection (2) is 13 or more whole weeks—13 weeks; or
  - (b) if the result obtained under subsection (2) is fewer than 13 whole weeks—the number of whole weeks obtained under that subsection.

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### *Working out number of weeks*

- (2) Subject to subsection (3), the number of weeks is worked out by using the following formula:

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

where:

**divisor**, in relation to the person, means:

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

**liquid assets** means the person's liquid assets on the day referred to in subparagraph 575A(1)(a)(i) or (ii) (as the case requires).

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

### *Weeks etc. to be disregarded*

- (3) For the purposes of subsection (2), disregard:
- (a) any weeks after the person claimed austudy payment during which the person was not qualified for austudy payment; and
  - (b) any fractions of a week.

## **575D Newly arrived resident's waiting period**

### *Basic rule*

- (1) Subject to this section, a person is subject to a newly arrived resident's waiting period if the person:
- (a) has entered Australia; and
  - (b) has not been an Australian resident in Australia for a period of, or periods totalling, 208 weeks.

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

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*Exception—qualifying residence exemption*

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

Note: For **qualifying residence exemption** in relation to austudy payment, see paragraph 7(6AA)(f).

*Exception—other*

- (3) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for an austudy payment; or
  - (b) the following apply:
    - (i) before the person made the claim for an austudy payment, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for an austudy payment or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for an austudy payment.
- (4) For the purposes of subsection (3):
- (a) **family member** has the meaning given by subsection 7(6D); and
  - (b) **former refugee** has the meaning given by subsection 7(1); and
  - (c) **refugee** has the meaning given by subsection 7(6B).

**575E Length of newly arrived resident's waiting period**

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

- (a) starts on the day the person first became an Australian resident; and

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- (b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 208 weeks after that day.

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

**575EA Seasonal workers—preclusion period**

*Application*

- (1) This section applies if:
  - (a) a person has lodged a claim for austudy payment; and
  - (b) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

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

*Exclusion during seasonal work preclusion period*

- (2) Austudy payment 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).

*Exemption in cases of severe financial hardship*

- (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):

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- (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) or subsection 19C(3) (person who is a member of a couple).

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

**575F Effect of being subject to 2 waiting periods**

For the avoidance of doubt, if a person is subject to 2 waiting periods under this Subdivision, an austudy payment is not payable to the person until both of those waiting periods have ended.

**Subdivision E—Situations where austudy payment not payable because of austudy participation failure**

**576 Austudy participation failures**

*Meaning of austudy participation failure*

- (1) A person commits an *austudy participation failure* if the person:
  - (a) fails to comply with a requirement:
    - (i) that was notified to the person under subsection 63(2) or (4) of the Administration Act; and
    - (ii) that was reasonable; and
    - (iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute an austudy participation failure; or
  - (b) fails to satisfy the activity test; or
  - (c) fails to comply with a requirement to undertake another activity referred to in paragraph 576A(1)(b).

*Reasonable excuse*

- (2) Despite subsection (1), a failure of a kind referred to in that subsection is not an austudy participation failure if the person

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satisfies the Secretary that the person had a reasonable excuse for the failure.

- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing an austudy participation failure.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the austudy participation failure referred to in subsection (1).

*Subsequent failures in the same instalment period*

- (3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed an austudy participation failure, the failure is not an austudy participation failure if:
- (a) the instalment period is the person's first instalment period for austudy payment; or
  - (b) the instalment period is not the person's first instalment period for austudy payment, and:
    - (i) the person did not commit an austudy participation failure in the immediately preceding instalment period of the person; or
    - (ii) in respect of each austudy participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary that was notified in respect of that failure.

**576A Allowance not payable because of austudy participation failure**

*General*

- (1) Austudy payment is not payable to a person, for the period starting in accordance with section 576B and ending in accordance with section 576C, if:
- (a) the person commits an austudy participation failure; and
  - (b) the Secretary requires the person:
    - (i) to comply with the requirement, or undertake the activity, to which the austudy participation failure relates; or
    - (ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;during the participation failure instalment period for the failure, or at a particular time during that period; and
  - (c) the person fails to comply with the requirement.

*Reasonable excuse etc.*

- (2) This section does not apply in relation to the failure if:
- (a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or
  - (b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind mentioned in paragraph (1)(c).
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

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### *Meaning of participation failure instalment period*

- (3) The ***participation failure instalment period*** for the austudy participation failure is the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

### *Failures covered by section 577*

- (4) This section does not apply to an austudy participation failure if section 577 applies to the failure.

## **576B When the period of non-payment starts**

The period for which austudy payment is not payable to the person because of section 576A is taken to have started at the start of the participation failure instalment period for the austudy participation failure.

## **576C When the period of non-payment ends**

The period for which austudy payment is not payable to the person because of section 576A ends when:

- (a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the austudy participation failure related, the person has complied with the requirement or undertaken the activity; or
- (b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the austudy participation failure related, the person has undertaken the other activity; or
- (c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the austudy participation failure related, the person has complied with the other requirement.



## **Subdivision F—Situations where payment not payable because of repeated failure**

### **577 Payment not payable because of repeated failure**

#### *General*

- (1) Austudy payment is not payable to a person, for the period of 8 weeks starting in accordance with section 577A, if the person commits an austudy participation failure (the ***repeated failure***), having committed austudy participation failures (the ***earlier failures***) on 2 or more other occasions during the period of 12 months preceding that failure.

#### *Reasonable excuse etc.*

- (2) Disregard any earlier failure that is a failure to which subsection 576A(1) does not apply because of subsection 576A(2).
- (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.

### **577A When the period of non-payment starts**

The period for which austudy payment is not payable to the person is taken to start, or to have started:

- (a) if the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
- (b) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For ***participation failure instalment period*** see subsection 576A(3).

## Subdivision G—Multiple entitlement exclusions

### 578 Multiple entitlement exclusions

- (1) An austudy payment is not payable to a person who is qualified for an austudy payment while the person is subject to a multiple entitlement exclusion.
- (2) For the purposes of this Division, a person is subject to a multiple entitlement exclusion if:
  - (a) the person is receiving an austudy payment and another social security benefit, a social security pension, a service pension, income support supplement or a veteran payment becomes payable to the person; or
  - (b) a payment under a scheme referred to in section 578A has been, or may be, made to the person; or
  - (c) an assurance of support applies to the person.
- (3) An austudy payment 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.
- (4) An austudy payment is not payable to a person if:
  - (a) the person is an armed services widow or an armed services widower; and
  - (b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For *MRCA* see subsection 23(1).

## **578A Person receiving payment under certain schemes**

### *General*

- (1) Subject to subsection (2), the schemes for the purposes of paragraph 578(2)(b) are:
- (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; and
  - (b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; and
  - (c) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; and
  - (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; and
  - (e) the scheme known as the Ready Reserve Education Assistance Scheme; and
  - (f) the scheme to provide an allowance known as the Living Away from Home Allowance.

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

### *Application made under ABSTUDY Scheme*

- (2) If:
- (a) a person is undertaking qualifying study in respect of a course of education that is to last for 6 months or more; and
  - (b) an application is made for a payment in respect of the person under the ABSTUDY Scheme; and
  - (c) the person was receiving an austudy payment immediately before the start of the course;
- the Secretary may decide that the person is not subject to a multiple entitlement exclusion, because of subsection (1), before:
- (d) the application is determined; or
  - (e) the end of the period of 3 weeks beginning on the day on which the course starts;
- whichever happens first.

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**578B Assurance of support**

An assurance of support applies to a person if:

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

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

## **Division 5—Rate of austudy payment**

### **581 How to work out a person's austudy payment rate**

Subject to this section, the rate of a person's austudy payment is to be worked out in accordance with the Austudy Payment Rate Calculator in section 1067L.

## Division 10—Bereavement payments on death of partner

### 592 Qualification for payments under this Division

#### *Qualification for payment*

- (1) If:
- (a) a person is receiving an austudy payment; 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, income support supplement or a veteran payment; 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 Division is less than the sum of:
    - (i) the amount that would otherwise be payable to the person under section 592C (person's continued rate) on that payday; and
    - (ii) the amount (if any) that would otherwise be payable to the person under section 592A (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 Division to cover the bereavement period.

Note 1: Section 592A 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.

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Note 2: Section 592B 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.

Note 3: For *first available bereavement adjustment payday* and *bereavement period* see section 21.

*Choice not to receive payments*

- (2) A person who is qualified for payments under this Division may choose not to receive payments under this Division.

*Form of choice*

- (3) A choice 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 Division; and
  - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that choice.

*Rate during bereavement period*

- (4) If a person is qualified for payments under this Division in relation to the partner's death, the rate at which austudy payment is payable to the person during the bereavement period is, unless the person has made a choice under subsection (2), governed by section 592C.

**592A Continued payment of partner's pension or benefit**

If a person is qualified for payments under this Division 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.

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

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**592B Lump sum payable in some circumstances**

If:

- (a) a person is qualified for payments under this Division 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**

*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 the ***combined rate***.

Step 2. Work out the amount that, apart from section 592C, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is the ***partner's instalment component***.



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- 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.

**592C Adjustment of person's austudy payment rate**

If:

- (a) a person is qualified for payments under this Division; and
- (b) the person does not elect under subsection 592(2) not to receive payments under this Division;

the rate of the person's austudy payment during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of austudy payment payable to the person is the rate at which the austudy payment 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 austudy payment is payable to the person is the rate at which austudy payment would be payable to the person apart from this Division.

**592D Effect of death of person entitled to payments under this Division**

If:

- (a) a person is qualified for payments under this Division 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 any person that the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

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**Lump sum calculator**

*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
- (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 the ***combined rate***.

Step 2. Work out the amount that, apart from section 592C, 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 the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is the ***partner's instalment component***.

Step 4. Work out the number of paydays of the partner in the period that begins 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.

**592E Matters affecting payments under this Division**

*Recovery/reduction of amount payable*

(1) If:

- (a) a person is qualified for payments under this Division 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 or IIIA 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 is more than the amount payable to the person under this Division;
- (e) the amount payable to the person under this Division is to be reduced by the amount referred to in paragraph (b).

*Bank not liable*

(2) If:

- (a) a person is qualified for payments under this Division 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 or IIIA 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 more than the total of the amounts paid as mentioned in paragraph (b);

the bank is, despite 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 2.11B—Scholarship payments for students**

### **Division 2—Relocation scholarship payment**

#### **592J Qualification for relocation scholarship payment**

A person is qualified for a relocation scholarship payment at a time (the *qualification time*) if:

- (a) at the qualification time, the person is qualified for youth allowance and youth allowance is payable to the person; and
- (b) at the qualification time, the person is receiving youth allowance and would be receiving youth allowance if steps 2 and 3 of the method statement in point 1067G-A1 of the Youth Allowance Rate Calculator were disregarded for the purposes of working out the person's rate of that allowance; and
- (c) the person:
  - (i) is independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11); or
  - (ii) is not independent (see section 1067A) but is required to live away from home (see section 1067D); and
- (d) the person is receiving youth allowance because the person is undertaking full-time study in an approved scholarship course; and
- (e) the Secretary is satisfied that in the period of 35 days starting immediately after the qualification time, the person proposes to start to undertake the course or to continue to undertake the course; and
- (f) the Secretary is satisfied that the person is not likely to receive the amount or value of a disqualifying accommodation scholarship in the period of 12 months starting immediately after the qualification time.

Note: For *approved scholarship course*, see section 592M.

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**592K Circumstances in which person is not qualified for relocation scholarship payment**

*Previous qualification for, or receipt of, same or similar payment*

- (1) Despite section 592J, a person is not qualified for a relocation scholarship payment if 1 or more of the circumstances listed in subsection (2) apply to the person in the period of 12 months (or shorter period determined under subsection (3)) ending immediately before the person's qualification time.
- (2) The circumstances are:
  - (a) the person has qualified for a relocation scholarship payment; or
  - (b) the person has qualified for a payment under the ABSTUDY Scheme known as an ABSTUDY relocation scholarship payment; or
  - (c) the person has qualified for a payment known as a relocation scholarship payment under the scheme referred to in section 117 of the Veterans' Entitlements Act; or
  - (d) the person has qualified for a payment known as a relocation scholarship payment under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act; or
  - (e) the person has received the amount or value of a disqualifying accommodation scholarship; or
  - (f) the person was entitled to the amount or value of a disqualifying accommodation scholarship but has not received the full entitlement only because the scholarship was suspended.
- (3) For the purposes of subsection (1), the Secretary may determine a period in relation to a person that is at least 3 months but less than 12 months if the Secretary considers that the determination would enable the person to qualify for a relocation scholarship payment on or near 1 January in a year.

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- (4) However, the Secretary must not make a determination under subsection (3) if the effect of the determination would be to enable the person to receive more than 2 relocation scholarship payments in a period of 2 successive calendar years.

*Independent but did not receive same or similar payment*

- (5) Despite section 592J, a person is not qualified for a relocation scholarship payment if:
- (a) at the person's qualification time, the person has attained the age at which the person is independent (see subsection 1067A(4)); and
  - (b) before the qualification time, the person has not received any of the following:
    - (i) a relocation scholarship payment;
    - (ii) a payment under the ABSTUDY Scheme known as an ABSTUDY relocation scholarship;
    - (iii) a payment known as a relocation scholarship payment under the scheme referred to in section 117 of the Veterans' Entitlements Act;
    - (iv) a payment known as a relocation scholarship payment under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act;
    - (v) the amount or value of a disqualifying accommodation scholarship.

*Person's place of study is in a major city location*

- (6) Despite section 592J, a person is not qualified for a relocation scholarship payment if:
- (a) at the person's qualification time, the person is not independent (see section 1067A); and
  - (b) at the person's qualification time, the person is required to live away from home (see section 1067D); and
  - (c) on the day the person started to undertake the course referred to in paragraph 592J(d), the home of each parent of the person was in a major city location; and

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- (d) at the person's qualification time, the person's place of study, worked out in accordance with an instrument in force under subsection (8), is in a major city location.

Note: For *parent* see subsection 5(1) and for *major city location* see subsection (9).

- (7) Despite section 592J, a person is not qualified for a relocation scholarship payment if:
- (a) at the person's qualification time, the person is independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11); and
  - (b) on the day 6 months before the person started to undertake the course referred to in paragraph 592J(d), the person's usual place of residence was in a major city location; and
  - (c) at the person's qualification time, the person's place of study, worked out in accordance with an instrument in force under subsection (8), is in a major city location.

Note: For *major city location* see subsection (9).

- (8) The Secretary may, by legislative instrument, make principles that must be complied with when working out a person's place of study at a particular time.
- (9) In this section:

***major city location*** means a location categorised as one of the Major Cities of Australia, under the Remoteness Structure as defined in subsection 1067A(10F).

### **592L Amount of relocation scholarship payment**

- (1) The amount of a relocation scholarship payment to a person is \$4,000 if the person has not received a student relocation payment (see subsection (7)) before.

Note: The amount of a relocation scholarship payment for which a person is qualified on or after 1 January 2013 is indexed annually in line with CPI increases (see sections 1190 to 1194).

- (2) Subsection (1) does not apply if:



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- (a) the person has, at any time before the calendar year containing the qualification time, undertaken full-time study in a course that, had the person undertaken it at the qualification time, would have been an approved scholarship course at that time; and
- (b) at a time that was both while the person was undertaking that study and more than 6 months before the qualification time, the person was either:
  - (i) independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11); or
  - (ii) required to live away from home (see section 1067D).

- (3) The amount of a relocation scholarship payment to a person is \$1,000 if neither subsection (1) nor subsection (4) applies.

Note: The amount of a relocation scholarship payment for which a person is qualified on or after 1 January 2013 is indexed annually in line with CPI increases (see sections 1190 to 1194).

- (4) The amount of a relocation scholarship payment to a person is \$2,000 if:
- (a) in 1 or more calendar years (the *prior years*) that precede the calendar year containing the qualification time, the person undertook full-time study in a course that, had the person undertaken it at the qualification time, would have been an approved scholarship course at that time; and
  - (b) in 1 or 2 (but no more) of the prior years:
    - (i) the person was, while undertaking such study, either independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11) or required to live away from home (see section 1067D); or
    - (ii) the person received a student relocation payment (see subsection (7)); and
  - (c) subsection (5) or (6) applies to the person.

Note: The amount of a relocation scholarship payment for which a person is qualified on or after 1 January 2013 is indexed annually in line with CPI increases (see sections 1190 to 1194).

- (5) This subsection applies to a person if, at the qualification time:
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- (a) the person is not independent (see section 1067A); and
- (b) the person is required to live away from home (see section 1067D); and
- (c) the home of a parent of the person is in a regional or remote location (see subsection (7)).

Note: For **parent** see subsection 5(1).

- (6) This subsection applies to a person if:
  - (a) at the qualification time, the person is independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11); and
  - (b) at the time 6 months before the person first undertook study described in paragraph (4)(a) of this section, the person's usual place of residence was in a location that at the qualification time is a regional or remote location (see subsection (7)).

*Definitions*

- (7) In this section:

**regional or remote location** means:

- (a) a location categorised as Inner Regional Australia, Outer Regional Australia, Remote Australia or Very Remote Australia, under the Remoteness Structure as defined in subsection 1067A(10F); or
- (b) Norfolk Island.

**student relocation payment** means any of the following:

- (a) a relocation scholarship payment;
- (b) a payment under the ABSTUDY Scheme known as an ABSTUDY relocation scholarship payment;
- (c) a payment known as a relocation scholarship payment under the scheme referred to in section 117 of the Veterans' Entitlements Act;
- (d) a payment known as a relocation scholarship payment under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act;

- (e) the amount or value of a disqualifying accommodation scholarship.

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## Division 3—Approved scholarship course

### 592M Definition

In this Act:

***approved scholarship course*** means:

- (a) a course of study or instruction approved by the Minister under a determination made for the purposes of section 592N; or
- (b) if no determination is in force—a course determined to be a tertiary course under section 5D of the *Student Assistance Act 1973* for the purposes of that Act.

### 592N Approved scholarship course

- (1) The Minister may, by legislative instrument, determine that a course of study or instruction is an ***approved scholarship course*** for the purposes of this Act.
- (2) Despite subsection 14(2) of the *Legislation Act 2003*, a determination made for the purposes of subsection (1) may make provision for, or in relation to, a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.

## **Part 2.12—Newstart allowance**

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

#### **Subdivision A—Basic qualifications**

#### **593 Qualification for newstart allowance**

- (1) Subject to sections 596, 596A, 597 and 598, a person is qualified for a newstart allowance in respect of a period if:
- (a) the person satisfies the Secretary that:
    - (i) throughout the period the person is unemployed; or
    - (ii) the person is a CDEP Scheme participant in respect of the period; and
- Note: For *CDEP Scheme participant* see section 1188B.
- (b) in the case of a person to whom subparagraph (a)(i) applies—throughout the period, or for each period within the period, the person:
    - (i) satisfies the activity test; or
    - (ii) is not required to satisfy the activity test; and
  - (c) if subsection 605(1) applies to the person, at all times (if any) during the period when a Newstart Employment Pathway Plan is not in force in relation to the person, the person is prepared to enter into such a plan; and
  - (d) if subsection 605(1) or (2) applies to the person, at all times during the period when a Newstart Employment Pathway Plan is in force in relation to the person, the person is prepared to enter into another such plan instead of the existing plan; and
  - (e) if the person is required by the Secretary to enter into a Newstart Employment Pathway Plan in relation to the period, the person enters into that plan; and

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- (f) while the plan is in force, the person satisfies the Secretary that the person is complying with the requirements in the plan; and
- (g) throughout the period the person:
  - (i) is at least 22 years of age and has not reached the pension age; and
  - (ii) is an Australian resident or is exempt from the residence requirement within the meaning of subsection 7(7); and
- (i) the person was not in receipt of a youth allowance during the period.

Note 1: A person may be treated as unemployed (see section 595).

Note 2: The activity test is set out in section 601.

Note 3: For Newstart Employment Pathway Plan see sections 605 and 606.

Note 5: For *pension age* see section 23.

Note 6: For *Australian resident* see section 7.

Note 8: A person may not be qualified if the person's unemployment is due to industrial action (see section 596).

Note 9: A person may not be qualified if the person has reduced the person's employment prospects by moving to an area of lower employment prospects (see section 597).

Note 12: A person could be in receipt of a youth allowance during a period for which the person would qualify for a newstart allowance, if paragraph (i) was disregarded, because of section 540C (extension of youth allowance to end of payment period).

Note 13: A newstart allowance is not payable in certain situations even if the person is qualified (see Subdivisions C, D, E and F and Part 4.2).

- (1B) Subject to sections 596, 596A, 597 and 598, a person is qualified for a newstart allowance in respect of a period if:
- (a) the person satisfies the Secretary that throughout the period the person is unemployed; and
  - (b) throughout the period the person:
    - (i) has reached the age of 22 years and has not reached the pension age; and
    - (ii) is an Australian resident; and

- (c) the person was not in receipt of a youth allowance during the period; and
- (d) the person made a claim for disability support pension at or before the start of the period and the claim was not determined before the end of the period; and
- (e) the Secretary is satisfied that throughout the period the person suffered from a medical condition that had a significant adverse effect on the person's ability to work; and
- (f) the person satisfies any one of the conditions in subsection (1C).

(1C) The conditions referred to in paragraph (1B)(f) are:

- (a) a condition that the person was an Australian resident when the significant adverse effect of the medical condition on the person's ability to work first occurred; and
- (b) a condition that at the start of the period the person had 10 years qualifying Australian residence or had a qualifying residence exemption for newstart allowance; and
- (c) a condition that:
  - (i) the person was born outside Australia; and
  - (ii) when the significant adverse effect of the medical condition first occurred the person was not an Australian resident but was a dependent child of an Australian resident; and
  - (iii) the person became an Australian resident while a dependent child of an Australian resident.

(1D) Subject to sections 596, 596A and 598, a person is qualified for a newstart allowance, in respect of the period starting in accordance with subsection (1E) and ending in accordance with subsection (1F), if:

- (a) the person satisfies the Secretary that throughout the period the person is unemployed; and
- (b) throughout the period the person:
  - (i) has reached the age of 22 years and has not reached the pension age; and

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- (ii) is an Australian resident or is exempt from the residence requirement within the meaning of subsection 7(7); and
  - (c) the person was not in receipt of a youth allowance during the period; and
  - (d) the person has made, or is taken to have made, a claim for newstart allowance; and
  - (e) the person satisfies the Secretary that it is likely that the person has a permanent medical condition that would prevent the person from undertaking full-time work; and
  - (f) the person satisfies the Secretary that it would be unreasonable to expect the person to satisfy the activity test until an assessment of the person's capacity to work has been undertaken.
- (1E) The period for which the person is qualified for a newstart allowance under subsection (1D) starts:
  - (a) if the person is already receiving newstart allowance when the Secretary becomes aware of the medical condition referred to in paragraph (1D)(e)—when the Secretary becomes aware of the medical condition; or
  - (b) otherwise—when the person made, or is taken to have made, the claim for newstart allowance.
- (1F) The period for which the person is qualified for a newstart allowance under subsection (1D) ends:
  - (a) if the person has failed to comply with a requirement to enter into a Newstart Employment Pathway Plan—on the day on which the person so failed; or
  - (b) in any other case—when the person enters into a Newstart Employment Pathway Plan.
- (4) If:
  - (a) a person was receiving a social security pension, a service pension, income support supplement or a veteran payment; and
  - (b) the person claims a newstart allowance within 14 days of the day on which the last instalment of the person's social



security pension, service pension, income support supplement or veteran payment was paid; and

- (c) the person becomes qualified for a newstart allowance 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 newstart allowance for the whole of the 14 day period.

Note: Subsection (4) operates when a person transfers from a social security pension, a service pension, income support supplement or a veteran payment to a newstart allowance and the person is not qualified for a newstart allowance immediately after the day on which the person's last instalment of social security pension, service pension, income support supplement or veteran payment is paid. The subsection deems the person to be so qualified. As a result, the person may be paid a newstart allowance for the period beginning on the day after the day on which the person's last instalment of social security pension, service pension, income support supplement or veteran payment was paid. The subsection aims to ensure that there is minimal disruption to a person's payments when a person transfers from a social security pension, a service pension, income support supplement or a veteran payment to a newstart allowance.

## **595 Persons may be treated as unemployed**

- (1) The Secretary may treat a person as being unemployed throughout a period if:
  - (a) during the period, the person undertakes:
    - (i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or
    - (ii) any other activity;as a result of which he or she would, but for this subsection, not be taken to be unemployed; and
  - (b) the Secretary is of the opinion that, taking into account:
    - (i) the nature of the work or other activity; and
    - (ii) the duration of the work or other activity; and
    - (iii) any remuneration received for the work or other activity; and

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- (iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;

the activity should be disregarded.

Note: The person may, under subsection 603(3), also be treated as satisfying the activity test.

- (1A) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (1B).
- (1B) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).
- (2) A person complying with a Newstart Employment Pathway Plan, or with a requirement under subsection 601(1A), may be treated by the Secretary as being unemployed.
- (3) In deciding whether to treat a person as being unemployed, the Secretary is to take into account:
  - (a) the nature of the activity undertaken by the person so as to comply with a requirement under subsection 601(1A) (activity test) or a requirement in a Newstart Employment Pathway Plan; and
  - (b) the duration of the activity; and
  - (c) any other matters relating to the activity that the Secretary considers relevant.

**596 Unemployment due to industrial action**

- (1) A person is not qualified for a newstart allowance in respect of a period unless the person satisfies the Secretary that the person's unemployment during the period was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.
- (2) A person is not qualified for a newstart allowance in respect of a period unless the Secretary is satisfied:

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- (a) that the person's unemployment during the period 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.
- (3) Subject to subsection (4), subsections (1) and (2) do not prevent a person from being qualified for a newstart 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.

- (4) Where the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by:
- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
  - (b) the Fair Work Commission or the Australian Industrial Relations Commission; or
  - (c) the Federal Court of Australia; or
  - (d) the Federal Circuit Court of Australia;
- a person is not qualified for a newstart 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.

### 596A Assurance of support

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

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

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

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**598 Liquid assets test waiting period**

- (1) Subject to subsections (4A), (5), (6), (7) and (8), if:
- (a) the value of a person's liquid assets exceeds the person's maximum reserve on:
    - (i) the day following the day on which the person ceased work or ceased to be enrolled in a full time course of education or of vocational training; or
    - (ii) the day on which the person claims a newstart allowance; and
  - (b) the person is not a transferee to a newstart allowance;
- the person is not qualified for a newstart 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 3: For *served the waiting period* in relation to a liquid assets test waiting period, see subsection 23(10A).

- (2) The liquid assets test waiting period in relation to the claim is to be worked out under subsections (2A), (2B) and (2C).
- (2A) 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 14A(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.
- (2B) 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.
- (2C) If subsection (2B) 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.
- (3) Subject to subsections (3AA) and (4), 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 following the day on which the person ceased work or ceased to be enrolled in a full time course of education or of vocational training.
- (3AA) Subject to subsection (4), if the person:
  - (a) is not a member of a couple; and
  - (b) is, under Subdivision BA, not required to satisfy the activity test;the liquid assets test waiting period in relation to the claim starts on the day on which the person became incapacitated.
- (3A) Subject to subsections (3B) and (4), 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 following the day on which the person ceased work or ceased to be enrolled in a full time course of education or of vocational training;
  - (b) if, when the claim is made, the person's partner has ceased work—the day following the day on which the person's partner ceased work;
  - (ba) if, when the claim is made, the person's partner has ceased to be enrolled in a full time course of education or of vocational training—the day following the day on which the person's partner so ceased;

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

(3B) Subject to subsection (4), if the person:

- (a) is a member of a couple; and
- (b) is, under Subdivision BA, not required to satisfy the activity test;

the liquid assets test waiting period in relation to the claim starts on the last occurring of the following days:

- (c) the day on which the person became incapacitated for work;
- (d) if, when the claim is made, the person's partner has ceased work—the day following the day on which the person's partner ceased work;
- (da) if, when the claim is made, the person's partner has ceased to be enrolled in a full time course of education or of vocational training—the day following the day on which the person's partner so ceased;
- (e) if, when the claim is made, the person's partner is incapacitated for work—the day on which the person's partner became incapacitated for work.

(4) If:

- (a) a person becomes incapacitated for work; and
- (b) because of section 674 (sickness allowance liquid assets test waiting period), the person is not qualified for sickness allowance during the liquid assets test waiting period that starts on the day on which the person becomes incapacitated for work; and
- (c) within that liquid assets test waiting period:
  - (i) the person ceases to be incapacitated for work; and
  - (ii) the person claims a newstart allowance;

the liquid assets test waiting period starts on the day on which the person becomes incapacitated for work.

(4A) Subsection (1) does not apply to a person if, at any time during the 12 months preceding:

- (a) the day following the day on which the person ceased work or ceased to be enrolled in a full time course of education or of vocational training; or
- (b) the day on which the person claims a newstart allowance; the person or their partner was serving a liquid assets test waiting period that started during that 12 months.

(5) 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 19C(3) (person who is a member of a couple).

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

(6) Subsection (1) does not apply to a person who becomes qualified for newstart allowance at the end of a continuous period in respect of which the person received income support payments (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 subsection).

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

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

(8) Subsection (1) does not apply to a person who:

- (a) is undertaking an activity specified in an instrument made under subsection (8A); and
- (b) has been exempted from the application of subsection (1) by the Secretary.

(8A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (8)(a).

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- (9) A reference in this section to the day on which a person ceased work (whether the person ceases work permanently, temporarily or by reason of being on unpaid leave) is a reference:
- (a) except where the person is on paid leave immediately after last performing work—to the day on which the person last performed work before so ceasing; and
  - (b) if the person is on paid leave—to the last day on which the person is on that paid leave.

**600 Prospective determinations for some allowance recipients**

- (1) A person is qualified for newstart allowance for a period determined by the Secretary if:
- (a) the person is receiving newstart allowance; and
  - (b) the Secretary considers at the start of the period that:
    - (i) the person may reasonably be expected to satisfy the qualification requirements for newstart allowance (sections 593 to 598) during the period; and
    - (ii) it is reasonable to expect that newstart allowance will be payable to the person for the period; and
    - (iii) the person will comply with the Act during the period; and
  - (c) except where the person is a CDEP Scheme participant in respect of the period, the person is not indebted at the start of the period to the Commonwealth under or as a result of this Act; and
  - (d) the Secretary is satisfied that the person should be qualified under this section for a newstart allowance for the period.
- (2) The Minister, by legislative instrument:
- (a) must determine guidelines for making decisions under paragraph (1)(b); and
  - (b) may revoke or vary the determination.

If the Minister revokes a determination, the Minister must determine guidelines that commence immediately after the revocation.



## **Subdivision B—Activity test**

### **601 Activity test**

- (1) Subject to subsections (1A) and (5), a person satisfies the activity test in respect of a period if the person satisfies the Secretary that, throughout the period, the person is:
- (a) actively seeking; and
  - (b) willing to undertake;
- paid work in Australia, other than paid work that is unsuitable to be undertaken by the person.

Note 1: For situations in which a person is taken to satisfy, or is not required to satisfy, the activity test see:

- (a) section 603 (persons attending training camps or in remote areas);
- (b) section 603A (special circumstances);
- (c) section 603AA (persons 55 and over who are engaged in work);
- (d) section 603AB (certain principal carers and people with partial capacity to work).

Note 2: See subsection (2A) on what paid work is unsuitable.

- (1A) A person also satisfies the activity test in respect of a period if:
- (a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than paid work that is unsuitable to be done by the person; and
- Note: See subsection (2A) on what paid work is unsuitable.
- (b) the Secretary notifies the person that the person is required to act in accordance with that opinion; and
  - (c) the person complies, throughout the period, with the Secretary's requirement.

- (1B) To avoid doubt, the work that the person is required to undertake under subsection (1A) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Newstart Employment Pathway Plan that is in force in relation to the person.

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- (2) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (1A):
- (a) whether or not the person complies with subsection (1) or (4); and
  - (b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.
- (2A) Subject to subsections (2AA) and (2AB), for the purposes of subsection (1) and paragraph (1A)(a), particular paid work is unsuitable for a person if and only if, in the Secretary's opinion:
- (a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or
  - (b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
  - (ba) the person is the principal carer for one or more children, and does not have access to appropriate care and supervision for the children at the times when the person would be required to undertake the work; or
- Note: For *principal carer* see subsections 5(15) to (24).
- (c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or
  - (g) commuting between the person's home and the place of work would be unreasonably difficult; or
  - (h) the work would require enlistment in the Defence Force or the Reserves; or

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- (i) the work requires the person to move from a home in a place to a home in another place; or
  - (j) for any other reason, the work is unsuitable for the person.
- (2AAA) A person has, for the purposes of paragraph (2A)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:
  - (a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or
  - (b) the child could be provided with other care that the person considers to be suitable; or
  - (c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.
- (2AAB) For the purposes of paragraph (2A)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.
- (2AA) If:
  - (a) a person seeks work in an area (the *new area*) that is outside the area (the *old area*) in which the person's home is situated; and
  - (b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area;the work offered is not unsuitable for the person because of paragraph (2A)(g) or (i) unless:
  - (c) the person is under the age of 18; or
  - (d) the person or the person's partner is pregnant; or
  - (e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or

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- (f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or
  - (g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or
  - (h) the person or the person's partner has significant caring responsibilities in the old area; or
  - (i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or
  - (j) it is more appropriate for the person to participate in education or training than to accept the offer; or
  - (k) the person would suffer severe financial hardship if the person were to accept the offer.
- (2AB) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (2AA) to seek work outside the area at the time when the representation is made.
- (2AC) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2A)(j), particular paid work is unsuitable for a person.
- (2AD) To avoid doubt, a determination under subsection (2AC) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2A)(j), particular paid work is unsuitable for a person.
- (4) A person also satisfies the activity test in respect of a period if:

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- (a) throughout the period, the person complies with the terms of a Newstart Employment Pathway Plan that is in force in relation to the person; and
- (b) either:
  - (i) the person is included in a class of persons specified in an instrument made under subsection (4A); or
  - (ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.
- (4A) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (4)(b)(i).
- (4B) A person also satisfies the activity test in respect of a period if, throughout the period, the person:
  - (a) is participating in an approved training course for training supplement; and
  - (b) is, in the Secretary's opinion, making satisfactory progress towards completing the course.
- (4C) In forming an opinion about whether a person is making satisfactory progress for the purpose of paragraph (4B)(b), the Secretary must have regard to guidelines set under subsection 541B(3B).
- (4D) A person also satisfies the activity test in respect of a period if, throughout the period, the person is participating in the National Green Jobs Corps program.
- (5) If a person fails to comply, throughout a period, with a requirement in a Newstart Employment Pathway Plan that is in force in relation to the person, the person cannot be taken to satisfy the activity test in respect of the period in spite of any compliance of the person with subsection (1), (4B) or (4D).

Note: For situations in which a person is not required to satisfy the activity test see section 603 (persons attending training camps or in remote areas).

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**602A Relief from activity test—persons to whom subsection 614(6) applies**

If:

- (a) newstart allowance is payable to a person because of subsection 614(6); and
- (b) the person has commenced the full-time course of education referred to in paragraph 614(6)(a);

the person is taken to satisfy the activity test in respect of the period during which the allowance is payable to the person because of that subsection.

**602B Relief from activity test—domestic violence etc.**

- (1) A person is not required to satisfy the activity test in respect of a period that the Secretary determines under this section in relation to the person.
- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
  - (a) the person:
    - (i) is the principal carer of one or more children; and
    - (ii) was subjected to domestic violence in the 26 weeks before the making of the determination; or
  - (b) the person is the principal carer of one or more children, and there are special circumstances relating to the person's family that make it appropriate to make the determination.

Note: For *principal carer* see subsections 5(15) to (24).

- (2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.
- (2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

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- (3) The period that the Secretary determines under this section must be the lesser of:
  - (a) the period that the Secretary considers to be appropriate; or
  - (b) 16 weeks.
- (4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.
- (5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:
  - (a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and
  - (b) is the first determination made on those grounds (or on grounds that include those grounds) in relation to the person on or after 1 July 2010.
- (6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

**602C Relief from activity test—people with disabled children and other circumstances**

- (1) A person is not required to satisfy the activity test in respect of a period that the Secretary determines under this section in relation to the person.
- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:
  - (a) who suffer from a physical, intellectual or psychiatric disability or illness; and

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- (b) whose care needs are such that the person should, for the period specified in the determination, not be required to satisfy the activity test.

Note: For *principal carer* see subsections 5(15) to (24).

- (3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:
  - (a) the person is a registered and active foster carer; or
  - (b) the person is a home educator of that child, or one or more of those children; or
  - (c) the person is a distance educator of that child, or one or more of those children; or
  - (d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *registered and active foster carer* see section 5B.

Note 3: For *home educator* see section 5C.

Note 4: For *distance educator* see section 5D.

Note 5: For *family law order* see subsection 23(1).

Note 6: For *relative (other than a parent)* see section 5E.

- (3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
  - (a) the person is the principal carer of a child; and
  - (b) the person is one or both of the following:
    - (i) the principal carer of one or more other children;
    - (ii) the main supporter of one or more secondary pupil children; and
  - (c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *main supporter* see section 5G.



Note 3: For *secondary pupil child* see section 5F.

- (3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:
- (a) is not the principal carer of one or more children; and
  - (b) is a registered and active foster carer; and
  - (c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *registered and active foster carer* see section 5B.

- (3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:
- (a) is the main supporter of one or more secondary pupil children; and
  - (b) is a home educator or distance educator of one or more of those children.

Note 1: For *main supporter* see section 5G.

Note 2: For *secondary pupil child* see section 5F.

Note 3: For *home educator* see section 5C.

Note 4: For *distance educator* see section 5D.

- (3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is the principal carer of one or more children; and
  - (b) the person is a relative (other than a parent) of a child (the *kin child*); and
  - (c) there is a document that:
    - (i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and
    - (ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and
  - (d) the person is acting in accordance with the document.

**Chapter 2** Pensions, benefits and allowances

**Part 2.12** Newstart allowance

**Division 1** Qualification for and payability of newstart allowance

**Section 602C**

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Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *relative (other than a parent)* see section 5E.

- (4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
  - (a) the person is a person included in a class of persons specified under subsection (5); and
  - (b) the person's circumstances are such that the person should not be required to satisfy the activity test for the period.
- (5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.
- (6) The period that the Secretary determines under this section, except subsection (3B), must be the lesser of:
  - (a) the period that the Secretary considers to be appropriate; or
  - (b) 12 months.
- (6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:
  - (a) the period:
    - (i) starting when the person starts to provide foster care to the child; and
    - (ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and
  - (b) 12 months.
- (7) A period determined by the Secretary under this section in relation to the person may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.
- (8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.

- (9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

### **603 Relief from activity test—general**

- (1) A person is taken to satisfy the activity test in respect of a period when the person is attending a training camp as a member of:
- (a) the Naval Reserve; or
  - (b) the Army Reserve; or
  - (c) the Air Force Reserve.
- (2) Where the Secretary considers that:
- (a) it would be reasonable to assume that, at the end of a period, a person is present in an area where:
    - (i) there is no locally accessible labour market; and
    - (ii) there is no locally accessible vocational training course or labour market program; and
  - (aa) it would be reasonable to assume that, throughout the period, the person is unemployed and is capable of undertaking, and is willing to undertake, paid work that, in the Secretary's opinion, is suitable for the person to undertake; and
  - (b) having regard to all the relevant factors, including:
    - (i) the location of offices of the Department; and
    - (ii) difficulties with transport and communication; and
    - (iii) the educational and cultural background of the person;it would be unreasonable to expect the person to comply with the activity test in order to be qualified for newstart allowance for that period;

then, unless the person has been notified of a requirement under subsection 601(1A) in relation to the period, the person is taken to satisfy the activity test during that period.

Note 1: For **activity test** see section 601.

Note 2: For **remote area** see section 14.

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- (3) If:
- (a) a person is treated as being unemployed because of subsection 595(1); and
  - (b) the Secretary is satisfied that it is appropriate for this subsection to apply;
- the person is taken to satisfy the activity test during the period starting when the person made a claim, or is to be taken to have made a claim, for newstart allowance and ending:
- (c) if the person has been required to enter into a Newstart Employment Pathway Plan but has failed to enter that plan—when the person so failed; or
  - (d) in any other case—when the person has entered into such a plan.
- (4) Subsection (3) does not apply if, at the time of becoming a person who is treated as being unemployed because of subsection 595(1), the person had already been required to enter into a Newstart Employment Pathway Plan.

**603A Relief from activity test—special circumstances**

- (1) Subject to subsections (2) and (3), a person is not required to satisfy the activity test for a period if:
- (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
  - (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to comply with the activity test for that period.
- (1A) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.
- (2) The period referred to in subsection (1) is not to exceed 13 weeks.
- (3) If:
- (a) the Secretary makes a number of determinations under any one or more of the following provisions:

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- (i) subsection 525AA(3) of this Act as previously in force;
- (ii) subsection 542H(1) of this Act;
- (ia) subsection 731E(1) of this Act;
- (iii) subsection (1) of this section; and

- (b) the periods to which the determinations relate form a continuous period;

the continuous period is not to exceed 13 weeks, unless the Secretary determines otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding determination was based.

**603AAA Pre-natal and post-natal relief from activity test**

- (1) A pregnant woman is not required to satisfy the activity test for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).
- (2) If a woman gives birth to a child (whether or not the child is born alive), the woman is not required to satisfy the activity test for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

**603AA Relief from activity test—people 55 and over who are engaged in work**

- (1) Subject to subsections (2) and (3), a person who has reached 55 years is taken to satisfy the activity test in respect of a period of 2 weeks (the *relevant period*) if the person:
  - (a) is engaged in approved unpaid voluntary work for an approved organisation for at least 30 hours in the relevant period; or
  - (b) is engaged, for at least 30 hours in the relevant period, in a combination of:
    - (i) approved unpaid voluntary work for an approved organisation; and

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- (ii) paid work that the Secretary regards as suitable; or
  - (c) is engaged for at least 30 hours in the relevant period in paid work that the Secretary regards as suitable.
- (2) Subsection (1) does not apply in relation to a person who has reached 55, but is under 60, years of age and to a period of 2 weeks (the **relevant period**) if that period begins before the end of 12 months starting on the day the person starts to receive newstart allowance. Instead the person is taken to satisfy the activity test in respect of the relevant period if the person:
  - (a) is engaged, for at least 30 hours in the relevant period, in a combination of:
    - (i) approved unpaid voluntary work for an approved organisation; and
    - (ii) paid work that the Secretary regards as suitable and that is at least 15 hours in the relevant period; or
  - (b) is engaged for at least 30 hours in the relevant period in paid work that the Secretary regards as suitable.

Note: Because of the definition of **receive** in section 23, this subsection applies separately in relation to each occasion the person starts to receive newstart allowance.

- (2A) If newstart allowance ceases to be payable to a person for a period of less than 3 months (except because the newstart allowance was cancelled), then, for the purposes of subsection (2), the person is taken to be receiving newstart allowance during that period.
- (3) This section does not apply to a person in respect of a day in a relevant period if, in respect of the person, having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that this section is not to apply to the person in respect of that day.
- (4) For the purposes of this section:
  - (a) approved unpaid voluntary work, either full-time or otherwise, is work that has been approved by the Secretary for the purposes of this section; and

- (b) an approved organisation is an organisation that has been approved by the Secretary for the purposes of this section.

**603AB Relief from activity test—certain principal carers and people with partial capacity to work**

A person who:

- (a) is the principal carer of at least one child; or
- (b) has a partial capacity to work;

is taken to satisfy the activity test in respect of a period if, during the period, the person is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *partial capacity to work* see section 16B.

**603AC Relief from activity test—cessation of claims for widow allowance**

- (1) A woman is not required to satisfy the activity test for a period (the *relevant period*) if the following apply:
  - (a) she made the claim for newstart allowance on or after the commencement of this section;
  - (b) she was born on or before 1 July 1955;
  - (c) she ceased to be a member of a couple after turning 40;
  - (d) she satisfies the Secretary that she has no recent workforce experience on the day she made the claim for newstart allowance;
  - (e) the woman is not a member of a couple throughout the relevant period.
- (2) For the purposes of paragraph (1)(d), *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 woman made the claim for newstart allowance.

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**Subdivision BA—Exemption from activity test—people temporarily incapacitated for work**

**603BA Subdivision not to apply to a person with a pending claim for disability support pension**

This Subdivision does not apply to a person who is qualified for newstart allowance under subsection 593(1B).

**603B Interpretation**

A reference in this Subdivision to a person being exempt from the activity test, or ceasing to be exempt from the activity test, under, or under a provision of, this Subdivision is a reference to a person not being required to satisfy the activity test, or becoming required to satisfy the activity test, as the case may be, because of the operation of, or the operation of that provision of, this Subdivision.

**603C Incapacitated person not required to satisfy activity test**

- (1) Subject to this Subdivision, a person is not required to satisfy the activity test in respect of a period if:
  - (a) throughout the period the person is incapacitated for work 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
  - (d) if this Subdivision had not been enacted and paragraphs 593(1)(b), (c), (d) and (e) were disregarded, the person would qualify for newstart allowance; and
  - (e) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:
    - (i) the medical practitioner's diagnosis; and
    - (ii) the medical practitioner's prognosis; and
    - (iii) that the person is incapacitated for work; and



- (iv) the period for which the person is incapacitated for work; and
  - (f) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from the activity test.
- (1AA) Subsection (1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.
- (1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:
  - (a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;
  - (b) whether, for the purposes of paragraph (a) of the definition of **work** in subsection (2), work is of a kind that a person could be reasonably expected to do.
- (1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).
- (2) In this section:
  - work**, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:
    - (a) is of a kind that the person could, in the Secretary's opinion, be reasonably expected to do; and
    - (b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

**603D Time limit for exemption—Secretary satisfied person can undertake activity**

- (1) A person ceases to be exempt, under this Subdivision, from the activity test if the Secretary is satisfied that, although the person meets the requirements of section 603C, the person should

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undertake one or more activities that the Secretary regards as suitable for the person.

- (2) The cessation occurs:
  - (a) if the person has failed to comply with a requirement to enter into a Newstart Employment Pathway Plan—when the person so failed; or
  - (b) in any other case—when the person has entered into such a plan.
- (3) This section does not prevent a person ceasing to be exempt under section 603F.

**603F Time limit for exemption—end of person’s maximum exemption period**

- (1) A person ceases to be exempt, under this Subdivision, from the activity test if the person’s maximum exemption period ends.
- (2) Subject to this section, a person’s maximum exemption period is:
  - (a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether the person was required to satisfy the activity test—the lesser of the following periods:
    - (i) the period stated in the certificate as the period for which the person would be incapacitated for work;
    - (ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or
  - (b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person’s incapacity for work began.
- (4) If:
  - (a) a person is exempt, under this Subdivision, from the activity test; and
  - (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical

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practitioner that states the matters listed in paragraph 603C(1)(e) and is in accordance with the form approved under that paragraph; and

- (c) the Secretary is satisfied that the person's incapacity for work will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by a period that is not more than the lesser of the following periods:

- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
- (e) 13 weeks.

(4A) If:

- (a) a person was exempt, under this Subdivision, from the activity test; and
- (b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 603C(1)(e) and is in accordance with a form approved under that paragraph; and
- (c) the Secretary is satisfied that the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period that is not more than the lesser of the following periods:

- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
- (e) 13 weeks.

(5) If:

- (a) a person is exempt, under this Subdivision, from the activity test; and
- (b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and

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(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 (4)(b) before the end of the maximum exemption period; and
- (ii) the person's incapacity for work will continue after the end of the person's maximum exemption period;

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

(5A) If:

- (a) a person was exempt, under this Subdivision, from the activity test; and
- (b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4A)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption 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 (4A)(b); and
  - (ii) the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;

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

(6) If:

- (a) a person is exempt, under this Subdivision, from the activity test; and
- (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in paragraph (4)(b) before the end of the person's maximum exemption period; and

- (c) before the end of the person's maximum exemption 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 so to satisfy himself or herself is an act or omission of an officer of the Department;
- the Secretary may extend the person's maximum exemption period by not more than 4 weeks.
- (7) This section does not prevent a person ceasing to be exempt under section 603D.

### **Subdivision C—Newstart Employment Pathway Plans**

#### **605 Newstart Employment Pathway Plans—requirement**

- (1) If a Newstart Employment Pathway Plan is not in force in relation to a person, the Secretary may require the person to enter into such a plan if:
  - (a) the person is receiving, or has made a claim for, a newstart allowance; or
  - (b) the Department is contacted by or on behalf of the person in relation to a claim for a newstart allowance.
- (2) If a Newstart Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.
- (2A) If, under Subdivision BA, a person is not required to satisfy the activity test, subsections (1) and (2) apply to the person only if subsection 603D(1) applies to the person.
- (2B) Subsections (1) and (2) do not apply to a person who is qualified for a newstart allowance only under subsection 593(1B).
- (2C) Subsections (1) and (2) do not apply to a person at a time during which, under section 602B, 602C or 603AC, the person is not required to satisfy the activity test.

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- (3) The Secretary is to give a person who is required to enter into a Newstart Employment Pathway Plan notice of:
  - (a) the requirement; and
  - (b) the places and times at which the plan is to be negotiated.
- (4) A Newstart Employment Pathway Plan must be in a form approved by the Secretary.
- (5) For the purposes of this Part, if:
  - (a) a person starts to receive newstart allowance on a particular day; and
  - (b) immediately before that day, a Parenting Payment Employment Pathway Plan was in force in relation to the person; and
  - (c) the period covered by the plan ends after that day;the plan has effect on and after that day as if it were a Newstart Employment Pathway Plan.
- (6) For the purposes of this Part, if:
  - (a) a person starts to receive newstart allowance on a particular day; and
  - (b) immediately before that day, a Youth Allowance Employment Pathway Plan was in force in relation to the person; and
  - (c) the period covered by the plan ends after that day;the plan has effect on and after that day as if it were a Newstart Employment Pathway Plan.
- (7) For the purposes of this Part, if:
  - (a) a person starts to receive newstart allowance on a particular day; and
  - (b) immediately before that day a Special Benefit Employment Pathway Plan was in force in relation to the person; and
  - (c) the period covered by the plan ends after that day;the plan has effect on and after that day as if it were a Newstart Employment Pathway Plan.

## **606 Newstart Employment Pathway Plans—terms**

### *Suitable requirements*

- (1) Subject to sections 607 to 607B, a Newstart Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the **requirements**) that:
  - (a) the person is required to comply with; and
  - (b) the Secretary regards as suitable for the person.
- (1A) However, a plan must not contain a requirement of a kind that the Secretary determines under subsection (1B).
- (1B) The Secretary must determine, by legislative instrument, the kinds of requirements that plans must not contain.
- (1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular plan under subsection (1).

### *Optional terms*

- (1D) A plan may also contain one or more terms that the person may, but is not required to, comply with.

### *Approval of requirements*

- (2) The requirements in a plan are to be approved by the Secretary.
- (3) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:
  - (a) the person's capacity to comply with the requirements; and
  - (b) the person's needs.
- (4) In having regard to a person's capacity to comply with the requirements in a plan, the Secretary is to take into account, but is not limited to the following matters:
  - (a) the person's education, experience, skills and age; and

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- (aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities; and
- (b) the state of the local labour market and the transport options available to the person in accessing that market; and
- (c) the participation opportunities available to the person; and
- (d) the family and caring responsibilities of the person; and
- (e) the length of travel time required to comply with the requirements; and
- (f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs; and
- (g) any other matters that the Secretary or the person considers relevant in the circumstances.

*Variation, suspension, cancellation and review*

- (5) A plan that is in force in relation to a person:
  - (a) may be varied (in negotiation with the person) or suspended by the Secretary; and
  - (b) must be cancelled by the Secretary if the person enters into another Newstart Employment Pathway Plan; and
  - (c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and
  - (d) may be cancelled by the Secretary after a review under paragraph (c).

*Circumstances preventing or affecting compliance*

- (6) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.



**607 Newstart Employment Pathway Plans—principal carers**

- (1) A Newstart Employment Pathway Plan that:
- (a) is in force in relation to a person who is the principal carer of at least one child; and
  - (b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable; must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.

Note: For *principal carer* see subsections 5(15) to (24).

- (2) The appropriate number of hours per week is:
- (a) 15; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

**607A Newstart Employment Pathway Plans—people with partial capacity to work**

- (1) A Newstart Employment Pathway Plan that:
- (a) is in force in relation to a person who has a partial capacity to work; and
  - (b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable; must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.

Note: For *partial capacity to work* see section 16B.

- (2) The appropriate number of hours per week is:
- (a) 15; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

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**607B Newstart Employment Pathway Plans—requirement to participate in an approved program of work**

- (1) A Newstart Employment Pathway Plan that is in force in relation to a person must not require the person to participate in an approved program of work for income support payment if:
  - (a) because of the application of Module G of Payment Rate Calculator B in section 1068, the person is receiving a newstart allowance at a rate that has been reduced; or
  - (b) in the Secretary's opinion:
    - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
    - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (c) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (2) If a Newstart Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person, revoke the requirement to participate in the program if the Secretary:
  - (a) is satisfied that, because of the application of Module G of Payment Rate Calculator B in section 1068, the person is receiving a newstart allowance at a rate that has been reduced; or
  - (b) forms the opinion that:
    - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or

- (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (3) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.

**607C Newstart Employment Pathway Plans—suspension of plans in cases of domestic violence etc.**

A Newstart Employment Pathway Plan that is in force in relation to a person is taken to be suspended during any period during which the person is not required to satisfy the activity test because of section 602B or 602C.

**Subdivision D—Situations where allowance not payable (general)**

**608 Newstart allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), a newstart allowance is not payable to a person if the person's newstart allowance rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:
  - (a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or
  - (b) the person has been paid an advance pharmaceutical allowance under the social security law.

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

- (1) A newstart allowance is not payable to a person if the value of the person's assets is more than the person's assets value limit.
- (2) 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>			
<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>Column 3B</b>
		<b>Either person or partner homeowner</b>	<b>Neither person nor partner homeowner</b>
1.	Not member of a couple	\$250,000	\$450,000
2.	Partnered (partner getting neither pension nor allowance)	\$375,000	\$575,000
3.	Partnered (partner getting pension or allowance)	\$187,500	\$287,500
<p>Note 1: For <i>member of a couple</i>, <i>partnered (partner getting neither pension nor allowance)</i> and <i>partnered (partner getting pension or allowance)</i> see section 4.</p> <p>Note 2: For <i>homeowner</i> see section 11.</p> <p>Note 3: If item 2 applies to a person, the value of <i>all</i> the assets of the person's partner are to be taken as being included in the value of the person's assets (see subsection 612(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 <i>half</i> the combined value of the person's assets and the assets of the person's partner (see subsection 612(2)).</p>			

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- Note 4: If a newstart 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 item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

## 612 Value of assets of members of couples

- (1) If:
- (a) a 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, income support supplement or a veteran payment; 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).
- (2) If:
- (a) a person is a member of a couple; and
  - (b) the person's partner is in receipt of:
    - (i) a social security or service pension, income support supplement or a veteran payment; or
    - (ii) a social security benefit;
- the value of:
- (c) 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 person's assets of a particular kind are 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.

**613 Full-time students**

- (1) Subject to subsection (2), a newstart 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.
- (2) Subsection (1) does not prevent a newstart allowance from being payable for any period during which:
  - (b) the person is engaged in a course undertaken under a Newstart Employment Pathway Plan; or
  - (c) the person has deferred a course of education.

Note: For Newstart Employment Pathway Plan see sections 605 and 606.

**614 Multiple entitlement exclusion**

- (1) A newstart allowance is not payable to a person if the person is already receiving a service pension, income support supplement or a veteran payment.
- (2) If:
  - (a) a person is receiving a newstart allowance; and

- (b) a social security pension, another social security benefit, a service pension, income support supplement or a veteran payment becomes payable to the person;  
a newstart 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 pension* and *social security benefit* see subsection 23(1).

Note 3: For the day on which the newstart allowance ceases to be payable see section 660.

- (3) A newstart 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 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 1068(3).

- (3A) A newstart 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).

- (3B) A newstart allowance is not payable to a person if:
- (a) the person is an armed services widow or armed services widower; and

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- (b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For *MRCA* see subsection 23(1).

- (4) Subject to subsections (5) and (6), a newstart 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; or
  - (ba) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or
  - (bb) 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.

- (5) If:
  - (a) a person may enrol in a full-time course of education; and
  - (b) a payment under a scheme referred to in subsection (4) may be made in respect of the person;the Secretary may decide that, in spite of subsection (4), newstart allowance is payable to the person for a period before the person starts the course.
- (6) If:
  - (a) a person enrolls in a full-time course of education; and
  - (c) an application is made for a payment in respect of the person under the ABSTUDY Scheme; and



- (d) the person was receiving newstart allowance immediately before the start of the course;
- the Secretary may decide that, in spite of subsection (4), newstart allowance is payable to the person for the period of 3 weeks commencing on the day on which the course starts.

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

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

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

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

**615 Newstart allowance not payable if person fails to attend interview etc. in certain circumstances**

- (1) A newstart allowance is not payable to a person if:
- (a) before or after the person made a claim for a newstart allowance, the Department is contacted by or on behalf of the person in relation to a claim for a newstart allowance; and
  - (b) as a result of the contact, the Department required the person to do one or both of the following:
    - (i) attend an interview with a specified person or organisation at a time and place specified in the requirement;
    - (ii) enter into a Newstart Employment Pathway Plan; and
  - (c) the person fails to comply with that requirement, or those requirements.
- (2) This section does not apply to a person if the Secretary is satisfied, in accordance with any guidelines under subsection (3), that it should not apply to the person.

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- (3) The Secretary may, by legislative instrument, make guidelines to be complied with in deciding under subsection (2) whether this section applies to a person.
- (4) This section ceases to apply:
  - (a) when the person complies with:
    - (i) that requirement, or those requirements; or
    - (ii) any requirements that the Secretary has required the person to undertake in place of that requirement, or those requirements; or
  - (b) at such earlier time as the Secretary determines, in accordance with any guidelines under subsection (5).
- (5) The Secretary may, by legislative instrument, make guidelines to be complied with in making determinations under paragraph (4)(b).
- (6) To avoid doubt, the fact that a person is taken, because of section 13 of the Administration Act, to have made a claim for a newstart allowance on the day on which the Department was contacted by or on behalf of the person in relation to the claim does not affect the operation of this section.

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

**620 Ordinary waiting period**

- (1) Subject to subsection (2), a person is subject to an ordinary waiting period unless:
  - (a) at some time in the 13 weeks immediately before the person's start day (worked out disregarding clauses 4A and 5 of Schedule 2 to the Administration Act), the person received an income support payment; or
  - (fa) 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 newstart allowance; or
- (g) the Secretary is satisfied that the person is experiencing a personal financial crisis.

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

Note 2: For *experiencing a personal financial crisis* see section 19DA.

- (2) Subsection (1) does not apply to a person who:
  - (a) is undertaking an activity specified in an instrument made under subsection (3); and
  - (b) has been exempted from the application of subsection (1) by the Secretary.
- (3) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

## **621 Duration of ordinary waiting period**

- (1) Subject to subsections (3) and (5), if a person:
  - (a) is subject to an ordinary waiting period; and
  - (b) is not disqualified for newstart allowance under section 598 (liquid assets test);the ordinary waiting period is the period of 7 days that starts on the person's start day (worked out disregarding clauses 4A and 5 of Schedule 2 to the Administration Act).
- (2) Subject to subsections (3) and (5), if a person:
  - (a) is subject to an ordinary waiting period; and
  - (b) is disqualified for newstart allowance under section 598 (liquid assets test);the ordinary waiting period is the period of 7 days that starts on the day after the end of the liquid assets test waiting period referred to in subsection 598(2).

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- (3) Subject to subsection (5), if:
- (a) a person is subject to an ordinary waiting period; and
  - (b) apart from this subsection, the ordinary waiting period would be the period of 7 days that starts on the person's start day (worked out disregarding clauses 4A and 5 of Schedule 2 to the Administration Act); and
  - (c) that start day falls within one or more of the following periods (each of which is an **exclusion period**) that the person is subject to:
    - (i) a newly arrived resident's waiting period;
    - (ii) a seasonal work preclusion period;
    - (iii) a lump sum preclusion period under Part 3.14;
    - (iv) an income maintenance period, where the person's rate of newstart allowance on that start day would be nil;
- then the ordinary waiting period is the period of 7 days that starts on the first day after all the exclusion periods have ended.
- (4) If:
- (a) subparagraph (3)(c)(iv) applies to a person; and
  - (b) on a day in that income maintenance period, the person's rate of newstart allowance would be greater than nil if newstart allowance were payable to the person on that day;
- then, for the purposes of subsection (3), that income maintenance period is taken to have ended at the end of the day before that day.
- (5) If:
- (a) a person qualifies for a social security payment (other than newstart allowance); and
  - (b) because the person is subject to an ordinary waiting period relating to that payment, that payment is not payable to the person for a period starting on a particular day (the **initial day**); and
  - (c) during that period the person:
    - (i) ceases to be qualified for that payment; and
    - (ii) claims newstart allowance;

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the person's ordinary waiting period relating to newstart allowance is the period of 7 days that starts on the initial day.

Note: Ordinary waiting periods apply to parenting payment, youth allowance, newstart allowance and sickness allowance.

**623A Newly arrived resident's waiting period**

- (1) Subject to this section, a person who:
- (a) has entered Australia; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks;
- is subject to a newly arrived resident's waiting period.

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

Note: For *qualifying residence exemption* in relation to newstart allowance, see paragraph 7(6AA)(f).

- (7) Subsection (1) does not apply to a person if the person:
- (a) is the principal carer of one or more children; and
  - (b) is not a member of a couple; and
  - (c) was not a lone parent at the start of the person's current period as an Australian resident.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *lone parent* and *current period as an Australian resident* see subsection 23(1).

- (8) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a newstart allowance; or
  - (b) the following apply:
    - (i) before the person made the claim for a newstart allowance, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a newstart allowance or, if that other person has died, the person was a family

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- member of that other person immediately before that other person died; or
- (c) the person is an Australian citizen at the time the person made the claim for a newstart allowance.
- (9) For the purposes of subsection (8):
- (a) *family member* has the meaning given by subsection 7(6D); and
- (b) *former refugee* has the meaning given by subsection 7(1); and
- (c) *refugee* has the meaning given by subsection 7(6B).

**623B Duration of newly arrived resident's waiting period**

- (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.
- (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, 208 weeks.

**Subdivision G—Situations where allowance not payable (administrative breaches)**

**631 Situations where allowance not payable for failure to comply with certain requirements**

A newstart allowance is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

**Subdivision GA—Activities that do not give rise to employment  
under certain industrial relations legislation**

**631C Activities that do not give rise to employment under certain  
industrial relations legislation**

A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Newstart Employment Pathway Plan under section 606:

- (a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;
- (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;
- (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
- (d) an employee for the purposes of the *Fair Work Act 2009*.

**Subdivision H—Other situations where allowance not payable**

**633 Seasonal workers**

- (1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for newstart 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).

- (2) Newstart 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

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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).

- (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).

- (4) Subsection (2) does not apply to a person who:
  - (a) is undertaking an activity specified in an instrument made under subsection (5); and
  - (b) has been exempted from the application of subsection (2) by the Secretary.
- (5) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (4)(a).

**634 Move to area of lower employment prospects**

- (1) Subject to subsections (1B) and (2), if, in the opinion of the Secretary, a person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, a newstart allowance is not payable to the person for 26 weeks.



- (1A) Subsection (1) extends to a person who makes a claim for newstart allowance on or after the day on which the person moved to the new place of residence and before the end of the period referred to in that subsection.
- (1B) If a person to whom a newstart allowance is not payable under subsection (1) for a period of 26 weeks (including that subsection as it applies by subsection (1A)) does either of the following during that period:
- (a) moves back to the place of residence (the ***original place of residence***) the movement from which resulted in newstart allowance not being payable to him or her;
  - (b) moves to another place of residence a movement to which from the original place of residence would not have resulted in newstart allowance not being payable to him or her;
- the period of 26 weeks ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.
- (2) Subsection (1) does not apply to a person who:
- (a) is undertaking an activity specified in an instrument made under subsection (2A); and
  - (b) has been exempted from the application of subsection (1) by the Secretary.
- (2A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).
- (3) For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person:
- (a) moves to live with a family member who has already established his or her residence in that place of residence; or
  - (b) moves to live near a family member who has already established residence in the same area; or
  - (c) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or

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

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

- (4) The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

**Division 4—Rate of newstart allowance****643 How to work out a person's newstart allowance rate**

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

**644AAA Approved program of work supplement**

If a person:

- (a) is receiving newstart allowance; and
- (b) is participating in an approved program of work for income support payment;

the rate of the person's newstart allowance is increased by an amount of \$20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program unless, during that fortnight, the person subsequently ceases to participate in the program in circumstances that constitute:

- (c) a failure of the activity test to which the person is subject; or
- (d) a failure to comply with a requirement in a Newstart Employment Pathway Plan that is in force in relation to the person.

**644AAB Approved program of work supplement not payable in certain circumstances**

An approved program of work supplement under section 644AAA is not payable to a person in respect of a fortnight if a training supplement is payable to the person in respect of the fortnight.

**644AAC Training supplement**

- (1) This section applies if a person:
  - (a) is receiving newstart allowance; and

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- (b) is participating in an approved training course for training supplement for the person; and
  - (c) started participating in the course during the period beginning on the day on which this section commenced and ending on 30 June 2011.
- (2) The rate of the person's newstart allowance is increased by an amount of \$41.60 (to be known as a training supplement) for each fortnight during which the person participates in the course.
- (3) However, a training supplement is not payable for a fortnight during which the person participates in the course if, during the fortnight, the person ceases to participate in the course in circumstances that constitute:
  - (a) a failure of the activity test to which the person is subject; or
  - (b) if a Newstart Employment Pathway Plan is in force in relation to the person—a failure to comply with a requirement in the plan.

**645 National Green Jobs Corps supplement**

- (1) This section applies if a person:
  - (a) is receiving newstart allowance; and
  - (b) is under 25 years of age; and
  - (c) is participating in the National Green Jobs Corps program; and
  - (d) started participating in that program before 2012.
- (2) The rate of the person's newstart allowance is increased by an amount of \$41.60 (to be known as a National Green Jobs Corps supplement) for each fortnight during which the person participates in the National Green Jobs Corps program.
- (3) However, a National Green Jobs Corps supplement is not payable for a fortnight during which the person participates in the National Green Jobs Corps program if:
  - (a) both:

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- (i) a Newstart Employment Pathway Plan is in force in relation to the person; and
  - (ii) during the fortnight, the person ceases to participate in that program in circumstances that constitute a failure to comply with the plan; or
- (b) the rate of the person's newstart allowance is increased by training supplement for the fortnight.

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

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

**quarter** means a CDEP Scheme quarter.

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

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

## **Division 9—Bereavement payments**

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

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

- (1) If:
- (a) a person is receiving a newstart 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 a veteran payment;  
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 660LD (person's continued rate) on that payday; and
    - (ii) the amount (if any) that would otherwise be payable to the person, under section 660LB (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 660LB 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.

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Note 2: Section 660LC 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.

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

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

**660LB 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.

**660LC 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;

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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 660LD, 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.



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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.

**660LD Adjustment of a person's newstart allowance rate**

If:

- (a) a person is qualified for payments under this Subdivision; and
- (b) the person does not elect under subsection 660LA(2) not to receive payments under this Subdivision;

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

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

**660LE 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
- (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 660LD, 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.

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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.

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

(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 or IIIA 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).

(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 or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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- (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.

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

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

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

**Subdivision B—Continuation of newstart allowance rate after death of child**

**660M Death of child—continuation of newstart allowance rate for 14 weeks**

If:

- (a) a person is receiving newstart allowance; and
- (b) the person is the principal carer of a child who dies; and
- (c) apart from this section, the person's rate of newstart allowance would be reduced because the person is no longer the child's principal carer;

the person's rate of newstart allowance, during the period of 14 weeks that starts on the day of the child's death, is to be worked out as if the child had not died.

Note: For *principal carer* see subsections 5(15) to (24).