Social Security Act 1991

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This compilation is in 6 volumes

Volume 1:	**sections 1–514F**
Volume 2:	sections 540–1061ZUC
Volume 3:	sections 1061ZVAA–1157
Volume 4:	sections 1157A–1263 Schedule 1A
Volume 5:	Endnotes 1–4
Volume 6:	Endnotes 5 and 6

Each volume has its own contents

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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 1 November 2025 (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. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

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.

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

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The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

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. Any modifications affecting the law are accessible on the Register.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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

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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.

3AB References to Employment Secretary

A reference in a provision of this Act or the Administration Act to the Employment Secretary does not, by implication, affect the meaning of a reference to the Secretary in any other provision of this Act or the Administration Act.

Note: Under subsection 23(1), ***Secretary*** generally means the Secretary of the Department. Applying section 19A of the *Acts Interpretation Act 1901* (which deals with references in provisions of Acts to the Department), the Secretary referred to in many provisions of this Act or the Administration Act will be the Employment Secretary.

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.

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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:

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;

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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).

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:

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(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:

(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

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(iii) any legal obligations owed by one person in respect of the other person; and

(iv) the basis of any sharing of day-to-day household expenses;

(b) the nature of the household, including:

(i) any joint responsibility for providing care or support of children; and

(ii) the living arrangements of the people; and

(iii) the basis on which responsibility for housework is distributed;

(c) the social aspects of the relationship, including:

(i) whether the people hold themselves out as married to, 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.

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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;

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

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Section 4

Affected provisions		
Item	**Provisions of this Act**	**Subject matter**
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	Jobseeker payment liquid assets test
6	sections 611 and 612	Jobseeker payment assets test
10	sections 733 and 734	Special benefit assets test
11A	Part 2.26	Fares allowance
12	Module E of Pension Rate Calculator A	Ordinary income test
13	Module G of Pension Rate Calculator A	Assets test
14	Module F of Pension Rate Calculator D	Ordinary income test
15	Module H of Pension Rate Calculator D	Assets test
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

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(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

(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 accesses short-term funded aged care services (within the meaning of the *Aged Care Act 2024*) through the service group residential care (within the meaning of that Act) on that day.

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

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(iii) is not receiving a service pension, income support supplement or a veteran payment; and

(c) a person is ***partnered (partner getting pension or benefit)*** if the person is a member of a couple and the person's partner is receiving:

(i) a social security pension; or

(ii) a social security benefit; or

(iii) a service pension, 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

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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

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(ii) if a parent referred to in subparagraph (b)(i) is a member of a couple and normally lives with the other member of the couple—the other member of the couple; or

(iii) any other person (other than the relevant person's partner) on whom the relevant person is wholly or substantially dependent; or

(iv) if none of the preceding paragraphs applies—the natural 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

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person's step-child except that the person is not legally married to the partner.

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

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(b) the young person:
(i) is not a dependent child of someone else under paragraph (a) or (aa); and
(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, jobseeker payment 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) jobseeker payment;
  (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.

Pacific engagement visa means:

(a) a visa referred to in the regulations made under the *Migration Act 1958* as a Subclass 192 (Pacific Engagement) visa; or

(b) a visa of a kind determined under subsection (4C).

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

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

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

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

(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;

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(ii) if the Secretary extended the person's portability period for the payment under section 1218C—the end of the extended period.

(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

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(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:

(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

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(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.

(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);

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.

(4C) The Minister may, by legislative instrument, determine a kind of visa for the purposes of paragraph (b) of the definition of ***Pacific engagement visa*** in subsection (1) if the Minister has been advised by the Minister administering the *Migration Act 1958* (the

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Immigration Minister) that, in the opinion of the Immigration Minister:

(a) the kind of visa has replaced or will replace:

(i) the kind of visa mentioned in paragraph (a) of that definition; or

(ii) a kind of visa previously determined under this subsection; and

(b) the replacement kind of visa is intended to give the same benefits as the replaced kind of visa.

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

(a) the person has, at any time, been an Australian resident for a continuous period of not less than 10 years; or

(b) the person has been an Australian resident during more than one period and:

(i) at least one of those periods is 5 years or more; and

(ii) the aggregate of those periods exceeds 10 years.

(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, jobseeker payment or special benefit) 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, jobseeker payment, carer payment, carer allowance, mobility allowance, a seniors health card or a health care card—was a

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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

(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

Item No.	Class description	Relevant item in Schedule 1 to Migration Regulations

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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**
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
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

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(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 subparagraphs 540(1)(d)(ii), 540BA(f)(ii) and 593(1)(g)(ii), (1D)(b)(ii) and (5)(e)(ii) and paragraph 666(1)(g), a person is ***exempt from the residence requirement*** in respect of a period if:

(a) throughout the period, the person was the holder of a special category visa; and

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

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

(c) receiving jobseeker payment or youth allowance for a continuous period of more than 6 months because of this subsection; or

(d) receiving jobseeker payment or youth allowance for more than one non-continuous period because of this subsection; or

(e) receiving more than one of that payment and that allowance 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.

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

(a) is held by or on behalf of the person; and

(b) is not deposit money of the person; and

(c) is not the subject of a loan made by the person.

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

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

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

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 1: See also subsection (7).

Note 2: A pension loans scheme advance payment (within the meaning of Division 4 of Part 3.12) is an example of a payment under a home equity conversion agreement.

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

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(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.

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).

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Note 3: For provisions affecting the amount of a person's ordinary income see Division 1 of Part 3.10 (ordinary income concept and treatment of certain income amounts), 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.

(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 for remunerative work of 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; 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.

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(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 ordinary income of the person's partner; and

(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:

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

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

(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;
- (f) a payment under Part III of the former *Disability Services Act 1986* or the value of any rehabilitation program (including any follow-up program) provided under that Part;
- (fa) the value of supports or services that are specified in an instrument under subsection (8AAAB) and are provided under an arrangement or grant under the *Disability Services and Inclusion Act 2023*;
- (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;

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(j) a payment made to the person for or in respect of a dependent child of the person;

(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, ETR payment, first 2020 economic support payment, second 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021, 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;

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(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*;

(jc) a payment under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*;

(jd) a payment under the scheme known as the Territories Stolen Generations Redress Scheme;

(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;

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(q) in the case of a person who pays or who is liable to pay rent, a payment by way of rent subsidy made by the Commonwealth, by a State or Territory or by an authority of the Commonwealth or of a State or Territory to or on behalf of the person who pays or who is liable to pay rent;

(r) a payment received by a trainee in full-time training under a program included in the programs known as Labour Market Programs, to the extent that the payment includes one or more of the following amounts:

(i) an amount calculated by reference to a rate of jobseeker payment;

(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;

(t) a payment received by the person under a self-employment program;

(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

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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
  (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;

(vd) a payment under the program established by the Commonwealth and known as the Support for Australia's Thalidomide Survivors program;

(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:
  (ia) pension under Part II or IV of the Veterans' Entitlements Act (other than a pension that is payable

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under section 30 of that Act to a dependant of a deceased veteran); or

(i) service pension, income support supplement or veteran payment; or

(ib) pension payable because of subsection 4(6) or (8B) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* (other than a pension payable in respect of a child); 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

(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

(viiaaa) prisoner of war recognition supplement under Part VIB of that Act; or

(viiaa) 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

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(viii) a bereavement payment under Part IIIB, or section 98A of that Act; or

(ix) a funeral benefit under Part VI of that Act;

(ya) a payment made by the Commonwealth and known as the one-off payment to the aged; or

(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*;

(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;

(ym) a first 2020 economic support payment under Division 1 of Part IIIH of the Veterans' Entitlements Act;

(yn) a second 2020 economic support payment under Division 2 of Part IIIH of the Veterans' Entitlements Act;

(yo) an additional economic support payment 2020 under Division 1 of Part IIIJ of the Veterans' Entitlements Act;

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(yp) an additional economic support payment 2021 under Division 2 of Part IIIJ of the Veterans' Entitlements Act;

(yq) a 2022 cost of living payment under Division 1 of Part IIIK 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

(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;

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(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);

(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

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(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.

(zma) a payment under section 186 of the *Aged Care Act 2024*;

(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.

Note 3: The operation of this paragraph is limited by subsection (10A).

(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).

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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: The operation of this paragraph is limited by subsection (10A).

(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: The operation of this paragraph is limited by subsection (10A).

(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);

(zoa) a payment (either as a weekly amount or a lump sum) under section 68, 71, 75 or 80 of the Military Rehabilitation and Compensation Act (permanent impairment);

(zob) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act;

(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, 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.

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(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;

(zsa) a payment under an instrument made under any of the following:

(i) section 268B of the *Military Rehabilitation and Compensation Act 2004*;

(ii) section 41B of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;

(iii) section 115S of the *Veterans' Entitlements Act 1986*;

(zt) a cash flow boost (within the meaning of the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020*);

(zu) a payment:

(i) paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(ii) stated, in those rules, not to be income in relation to the person for the purposes of this Act;

(zv) a payment made by the Commonwealth to an individual under a program that is established by the Commonwealth and is determined in an instrument under subsection (8AC) to be an employment program;

(zw) a payment made by a State or Territory to an individual under a program that is established by the State or Territory and is determined in an instrument under subsection (8AC) to be an employment program.

(8AAAA) Paragraph (8)(a) does not apply to a payment under an arrangement or grant referred to in section 1062A. This subsection does not

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prevent another paragraph of subsection (8) from applying to such a payment.

(8AAAB) The Secretary may, by legislative instrument, specify supports or services for the purposes of paragraph (8)(fa). The supports or services must be employment supports or services within the meaning of the *Disability Services and Inclusion Act 2023*.

(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).

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.

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

(8AC) The Employment Secretary may, by notifiable instrument, determine programs to be employment programs for the purposes of:

(a) paragraph (8)(zv) of this section and paragraph 5H(8)(zzf) of the *Veterans' Entitlements Act 1986*; or

(b) paragraph (8)(zw) of this section and paragraph 5H(8)(zzg) of the *Veterans' Entitlements Act 1986*.

(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 if:

(a) those paragraphs did not apply in relation to the person immediately before the commencement of the *Aged Care Act 2024*; or

(b) a period of 28 consecutive days ends after that commencement in which the person:

(i) was not provided with residential care or flexible care through a residential care service or a flexible care service; and

(ii) did not access ongoing funded aged care services in an approved residential care home;

other than because the person was on leave.

(10C) An expression used in subsection (10A) and in the *Aged Care Act 2024* or the *Aged Care Act 1997* (as in force immediately before the commencement of the *Aged Care Act 2024*) has the same meaning in that subsection as in those Acts.

(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

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(b) the amount of a payment making up for arrears in such a series.

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

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

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).

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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:

(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, 9BA and 9BB.

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.

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financial asset means:

(a) a financial investment; or

(b) a deprived asset.

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

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(e) a body that had, before 13 December 1987, been approved for the purpose of the definition of ***friendly society*** in subsection 115(1) of the 1947 Act.

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

income stream means:

(a) an income stream arising under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*; or

(b) an income stream arising under a public sector superannuation scheme (within the meaning of that Act); or

(c) an income stream arising under a retirement savings account; or

(d) an income stream provided 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

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(ii) the person's total and permanent disability or incapacity.

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).

military invalidity pension income stream has the meaning given by subsection (1G).

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

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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.

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

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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.

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:

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(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

(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.

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

(a) the money or property invested is paid by the investor directly or indirectly to a body corporate or into a trust fund; and

(b) the assets that represent the money or property invested (the ***invested assets***) are not held in the names of investors; and

(c) the investor does not have effective control over the management of the invested assets; and

(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.

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(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;

(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).

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(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 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).

(1G) An income stream is a ***military invalidity pension income stream*** if:

(a) the income stream is:

(i) invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; or

(ii) an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or

(iii) an income stream provided under a superannuation scheme and that is covered by an instrument under subsection (3); and

(b) the income stream is not a defined benefit income stream.

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(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).

(3) For the purposes of subparagraph (1G)(a)(iii), the Secretary may, by legislative instrument, do any one or more of the following:

(a) specify an income stream;

(b) describe an income stream;

(c) determine requirements relating to an income stream;

regardless of whether the income stream relates to military service or invalidity.

(3A) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, an instrument under subsection (3) may make different provision in relation to:

(a) different kinds of income streams; and

(b) different kinds of circumstances.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(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:

(a) a person has an ***investment*** in an ATO small superannuation account if:

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(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 or VIIIC 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 or VIIIC 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

(ivc) to the extent necessary in order to comply with section 136-80 in Schedule 1 to the *Taxation Administration Act 1953*; 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

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(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).

(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:

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(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).

(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

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the first primary beneficiary reaches age 100 (assuming that the first 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 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:

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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.

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

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(b) the Secretary has made a determination under subsection (11) in respect of the income stream.

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

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(v) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

(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 or VIIIC of the *Family Law Act 1975*; or

(via) to the extent necessary in order to comply with section 136-80 in Schedule 1 to the *Taxation Administration Act 1953*; 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

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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 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:

(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

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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:

$$\frac{\text{Account balance}}{\text{PF}}$$

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;

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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;

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).

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(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.

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.

9BB Meaning of asset-test exempt income stream—military invalidity pension income stream

An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if the income stream is a military invalidity pension income stream.

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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 or VIIIC 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***) 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.

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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

(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.

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(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.

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:

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

assessable fringe benefit means a fringe benefit that is:

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

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

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

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

Note: Subsection 136(1) of the Fringe Benefits Tax Assessment Act adopts the definition of ***associate*** in section 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***.

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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

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

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dwelling has the meaning given by subsection (7).

eligible urban area means:

(a) an area that:

(i) is situated in an area described in Schedule 2 to the Income Tax Assessment Act; and

(ii) is an urban centre with a census population of 28,000 or more; or

(b) any other area that is an urban centre with a census population of 14,000 or more.

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

employee means:

(a) a current employee; or

(b) a future employee; or

(c) a former employee.

employer means:

(a) a current employer; or

(b) a future employer; or

(c) a former employer.

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

expense benefit has the meaning given by section 1157JA.

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

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

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

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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:

(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***.

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

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

housing benefit has the meaning given by section 1157I.

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

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

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

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

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

lease includes a sub-lease.

loan includes:

(a) an advance of money; and

(b) the provision of credit or any other form of financial accommodation; and

(c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether expressed or implied) to repay the amount; and

(d) a transaction (whatever its terms or form) which in substance effects a loan of money.

loan benefit has the meaning given by section 1157G.

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

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

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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.

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.

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

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

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

surface route means a route other than an air route.

target foreign income means foreign income that is not:

(a) taxable income; or

(b) received in the form of a fringe benefit.

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

unit of accommodation includes:

(a) a house, flat or home unit; and

(b) accommodation in a house, flat or home unit; and

(c) accommodation in a hotel, hostel, motel or guesthouse; and

(d) accommodation in a bunkhouse or any living quarters; and

(e) accommodation in a ship, vessel or floating structure; and

(f) a caravan or other mobile home.

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

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(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.

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:

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(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 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

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(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

(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

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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.

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

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(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.

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.

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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 2024*.

accommodation bond balance has the same meaning as in the *Aged Care Act 2024*.

accommodation charge has the same meaning as in the *Aged Care Act 2024*.

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* (as in force immediately before the commencement of the *Aged Care Act 2024*).

daily accommodation contribution has the same meaning as in the *Aged Care Act 2024*.

daily accommodation payment has the same meaning as in the *Aged Care Act 2024*.

disposes of assets has the meaning given by section 1123.

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

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.

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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.

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 2024*.

refundable deposit balance has the same meaning as in the *Aged Care Act 2024*.

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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.

(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.

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(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

(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;

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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 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.

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(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.

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.

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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;

(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:

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(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 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;

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(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;
(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; and
(ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and

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

(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 conditions under section 143 of the *Aged Care Act 2024* 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 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 conditions under section 143 of the *Aged Care Act 2024* 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 if:

(a) that subsection did not apply in relation to the person immediately before the commencement of the *Aged Care Act 2024*; or

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(b) a period of 28 consecutive days ends after that commencement in which the person:

(i) was not provided with residential care or flexible care through a residential care service or a flexible care service; and

(ii) did not access ongoing funded aged care services in an approved residential care home;

other than because the person was on leave.

(8C) An expression used in subsection (8A) and in the *Aged Care Act 2024* or the *Aged Care Act 1997* (as in force immediately before the commencement of the *Aged Care Act 2024*) has the same meaning in that subsection as in those Acts.

(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) or (9B)) 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:

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(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).

(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.

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(9B) For the purposes of paragraph (9)(a), the Secretary may, in relation to a person and a residence of the person, determine, in writing, a longer period if:

(a) the Secretary is satisfied that the person is temporarily absent from that residence because the person is absent from Australia; and

(b) the Secretary is satisfied that the person's absence from Australia is temporary; and

(c) the Secretary is satisfied that the person is unable to return to Australia before the end of the following period because of circumstances beyond the person's control:

(i) the 12 months mentioned in paragraph (9)(a), unless subparagraph (ii) of this paragraph applies;

(ii) if the Secretary has determined a period under subsection (9A) in relation to the person and that residence—that period.

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

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

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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

(ii) communal facilities for use by occupants of the units referred to in subparagraph (i).

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(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
  (ba) subsections 500Q(4) and (5); and
  (d) section 612; and
  (f) subsection 895(2); and
  (g) section 734.

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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:
    (i) is absent from the person's principal home, in relation to which the person is a homeowner; and

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(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

(ii) for services provided in a retirement village that is the person's principal home; or

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(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

(e) any fees charged for attending the boarding school are taken to be payable by the person.

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(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.

(3B) If an amount described in subparagraph 13(2)(a)(ia) and an amount described in another subparagraph of paragraph 13(2)(a) are

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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 to access funded aged care services in the service group residential care is in effect for the person under Division 3 of Part 2 of Chapter 2 of the *Aged Care Act 2024*.

(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 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

(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

(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

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(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 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:
(a) during the 4 weeks immediately before a person claims youth allowance, austudy payment or jobseeker payment, 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

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(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 or jobseeker payment;

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

(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.

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(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 or 598 (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

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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.

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

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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

(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.

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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

(b) the person has made a claim for jobseeker payment, youth allowance, special benefit, parenting payment, disability support pension, 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

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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 jobseeker payment, parenting payment, youth allowance, special benefit, disability support pension, 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:

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***.

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

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

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

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

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

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

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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

(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.

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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. 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***.

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

Step 7B. If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the person's ***intervening weeks***.

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

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

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

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

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

(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;

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

Method statement

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

Step 2. If a period identified in Step 1 has already been taken into account when working out a seasonal work preclusion period in relation to a previous claim by the person (whether for the same or a different allowance or payment), disregard the period. Each remaining period is called a ***relevant period of seasonal work***.

Step 3. Work out the total amount of income from personal exertion earned by the person during the partner's relevant periods of seasonal work. The result is called the ***person's earnings***.

Step 4. Work out the amount of seasonal work income earned by the partner during each of the partner's relevant periods of seasonal work, disregarding any income by way of a lump sum that was earned during that period but was not paid to the partner before the day on which the claim was lodged.

Step 5. Add together the amounts worked out in Step 4. The result is called the partner's ***seasonal work earnings***.

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Step 6. Add the partner's seasonal work earnings and the person's earnings. The result is called the ***couple's combined earnings***.

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), subsection (2) or point 1068-B1AA, the Secretary

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

Note: Point 1068-B1AA deals with a person who has a partial capacity to work that prevents the person from doing 15 hours per week of work independently of a program of support within the next 2 years.

(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) or point 1068-B1AA.

(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

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(c) a social security benefit; or
(f) a carer payment; or
(g) a special needs disability support pension; or
(h) a special needs disability support wife pension; 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.

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

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(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.

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
  (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

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(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.

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.

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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

(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.

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(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:

(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

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(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.

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

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(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:

$$\frac{2 \times \left(\text{Maximum basic rate} + \text{Pension supplement component} + \text{Energy supplement component} \right) + \text{Ordinary free area limit}}{52}$$

where:

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.

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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).

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.

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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:

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 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).

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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.

(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.

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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*.

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*.

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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:

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.

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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.

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.

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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*.

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

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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 same meaning as in the *Higher Education Support Act 2003*.

office means a branch office but does not include an agency or administrative office.

original amount has the meaning given by subsection 1061ZZCW(1).

overpayment, for a person in relation to an eligibility period, means either of the following:

(a) a debt or overpayment that is to be recovered under Chapter 5 from the person during the eligibility period;

(b) an amount the person is liable to pay to the Commonwealth under section 1061ZZDE, 1061ZZDL, 1061ZZDV or 1061ZZEE that the Secretary has decided is to be recovered during the eligibility period.

participating corporation has the meaning given by subsection 1061ZZAG(3).

principal sum, at a time during the contract period of a financial supplement contract, means the total of the amounts of financial

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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).

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.

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trade back has the meaning given by section 1061ZZAT.

trade in has the meaning given by section 1061ZZAR.

undertaking a course: see subsection (5).

WPI index number for a quarter means the Wage Price Index (quarterly index/total hourly rates of pay excluding bonuses/Australia/private and public/all industries) number published by the Australian Statistician in respect of that quarter.

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.

(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

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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

(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.

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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, jobseeker payment, austudy payment, special benefit, disability support pension, carer payment or one of the following allowances:
  (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 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, jobseeker payment, austudy payment, special benefit, disability support pension, carer payment or one of the following allowances:
  (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

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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:

(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;

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(f) expenditure to buy replacement essential household goods because of loss of those goods through theft or natural disaster when the cost of replacement is not the subject of an insurance policy;
(g) the costs of essential repairs to the person's car or home;
(h) premiums in respect of vehicle or home insurance;
(i) expenses in respect of vehicle registration;
(j) essential medical expenses;
(k) any other costs that the Secretary determines are unavoidable or reasonable expenditure in the circumstances in relation to a person.

However, ***unavoidable or reasonable expenditure*** does not include any reasonable costs of living other than those referred to in paragraph (a).

Meaning of ***reasonable costs of living***

(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 jobseeker payment or allowance that would have been payable to the person during

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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 jobseeker payment or 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 jobseeker payment, 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 jobseeker payment, 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 payment or allowance 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 jobseeker payment or 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 jobseeker payment, 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 jobseeker payment, allowance or parenting payment (as the case may be) that

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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 jobseeker payment, 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 payment or allowance 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

(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

(b) in relation to jobseeker payment 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

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(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.

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.

(5) In this section:

maximum payment rate, in relation to each of the following social security payments, means (unless otherwise stated below) the rate

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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;

  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

(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 jobseeker payment—the Rate Calculator at the end of section 1068; 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

(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.

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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).

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.

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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:

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(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.

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.

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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;

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:

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(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;

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%

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Item	Person's family situation	Use this %
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:

(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.

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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, 238, 514B 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 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

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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*.

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.

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.

accelerator program course has the same meaning as in the *Higher Education Support Act 2003*.

accommodation bond: see subsection 11(1).

accommodation bond balance: see subsection 11(1).

accommodation charge: see subsection 11(1).

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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
(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

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(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).

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

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(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 jobseeker payment.

approved respite care: see subsection 4(9).

approved scholarship: see subsection 8(1).

approved scholarship course has the meaning given by section 592M.

armed services widow: see subsection 4(1).

armed services widower: see subsection 4(1).

ART means the Administrative Review Tribunal.

ART Act means the *Administrative Review Tribunal Act 2024*.

ART review has the same meaning as in the Administration Act.

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, 9BA and 9BB.

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).

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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).

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*.

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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.

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:

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(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

(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).

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combined couple rate of minimum pension supplement has the meaning given by subsection 20A(2).

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);

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(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

(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 jobseeker payment, 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.

current special educational assistance scheme means:

(a) the Assistance for Isolated Children Scheme; or

(b) the ABSTUDY Scheme (also known as the Aboriginal Study Assistance Scheme).

daily accommodation contribution: see subsection 11(1).

daily accommodation payment: see subsection 11(1).

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decision has the same meaning as in the ART Act.

Note: Section 4 of the ART Act defines ***decision*** to include the following:

(a) making, suspending, revoking or refusing to make an order or determination;

(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;

(c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;

(d) imposing a condition or restriction;

(e) making a declaration, demand or requirement;

(f) retaining, or refusing to deliver up, an article;

(g) 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).

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 than a health care card for which the person is qualified under subsection 1061ZK(4))—see section 6A; or

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(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.

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:

(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

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(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 Division 3AA of Part 3 of the Administration Act.

employment income: see subsections 8(1), (1A) and (1B).

Employment Minister means the Minister who administers Division 3AA of Part 3 of the Administration Act.

employment pathway plan means an employment pathway plan under Division 2A of Part 3 of the Administration Act.

Employment Secretary means the Secretary of the Employment Department.

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).

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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

(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).

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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).

full year course has the meaning given by subsection (10C).

funeral investment: see subsection 19E(3).

gainful employment: see section 19.

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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).

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 Services Australia.

Human Services Secretary means the Chief Executive Officer of Services Australia.

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).

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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
(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:

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(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.

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).

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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 and 598.

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.

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maintenance: see section 10.

maintenance income: see section 10.

major disaster means a disaster in respect of which a determination is in force under subsection 36(1).

managed investment: see subsections 9(1A), (1B) and (1C).

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.

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

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(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 invalidity pension income stream: see subsection 9(1G).

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).

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.*

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

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(c) a youth allowance newly arrived resident's waiting period under section 549D; or

(ca) an austudy payment newly arrived resident's waiting period under section 575D; or

(cb) a pensioner education supplement newly arrived resident's waiting period under section 1061PU; or

(e) a jobseeker payment newly arrived resident's waiting period under sections 623A and 623B; or

(g) a special benefit newly arrived resident's waiting period under sections 732 and 739A; 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 who is:

(a) the holder of a visa that is included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies; and

(b) a person to whom subsection 729(2A) applies.

non-benefit parenting allowance means non-benefit parenting allowance under this Act as previously in force.

non-benefit PP (partnered): see section 18.

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 jobseeker payment ordinary waiting period under sections 620 and 621.

original family law affected income stream: see section 9C.

Pacific engagement visa: see subsection 7(1).

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.

partial capacity to work has the meaning given by section 16B.

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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

(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

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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.

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.

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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.

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 former *Disability Services Act 1986.*

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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

(aa) 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 Human Services Department within the meaning of this Act as in force at any time; 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.

However, information about a person that was obtained by an officer under Chapter 2D of this Act is not protected information.

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 remote income support payment: see section 661B.

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.

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registered charity means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as 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 former *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).

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relevant minimum wage, for an employee, means the minimum wage payable to the employee under law.

relevant number in relation to an income stream: see subsection 9(1).

remote area: see subsection 14(1).

remote engagement placement, under the remote engagement program, means a part of the program (if any) determined by the Minister under paragraph 661A(2)(b).

remote engagement program means the arrangement (if any) determined by the Minister under paragraph 661A(2)(a).

remote engagement program provider means a person or organisation that is a party to an agreement with the Commonwealth under which the person or organisation receives Commonwealth funding to deliver the remote engagement program.

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).

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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).

satisfies the employment pathway plan requirements: a person ***satisfies the employment pathway plan requirements*** if the following apply:

(a) the person enters into an employment pathway plan if required to do so by the Employment Secretary under subsection 40A(1) or (2) of the Administration Act;

(b) while an employment pathway plan is in force in relation to the person, the person satisfies the Employment Secretary that the person is complying with the requirements in the plan.

seasonal work: see subsections 16A(1), (1A) and (2).

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).

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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.

self-employment program means:

(a) the scheme known as the New Enterprise Incentive Scheme; or

(b) the program known as:

(i) the Self-Employment Assistance program; or

(ii) if the Self-Employment Assistance program is known by another name—that other name.

Note: For the purposes of subparagraph (b)(ii), if the name of the Self-Employment Assistance program changes, the Employment Secretary must give notice of that change (see subsection (25)).

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

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(b) an invalidity service pension under Part III of the Veterans' Entitlements Act; or
(c) a partner service pension under Part III of the Veterans' Entitlements Act; or
(d) a carer service pension under Part III of the Veterans' Entitlements Act.

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:
(aab) youth allowance; or
(aac) austudy payment; or
(a) jobseeker payment; or
(d) special benefit; 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
(d) a carer payment; or
(e) a parenting payment; or
(ha) a youth allowance; or
(hb) an austudy payment; or
(i) a job search allowance; or
(j) a jobseeker payment.

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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 subsection (17).

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

(d) a carer payment; or

(e) a pension PP (single); or

(ea) a sole parent pension; or

(k) a special needs pension.

social security recipient status, for the purposes of the definition of ***long-term social security recipient***, means:

(a) in the case of a person who is receiving a youth allowance, an austudy payment or jobseeker payment—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.

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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
(f) a jobseeker payment; or
(g) a pension PP (single); or
(k) a youth allowance.

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).

STARTUP-HELP assistance has the same meaning as in the *Higher Education Support Act 2003*.

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.

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study includes vocational training.

subject to a seasonal work preclusion period: see subsection 16A(11).

superannuation benefit: see subsection 9(1).

superannuation contributions surcharge: see subsection 9(1).

superannuation fund: see subsection 9(1).

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.

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trade union: see subsection 16(1).

transfer day, in relation to a transferee to a social security pension or benefit, has the same meaning as in the Administration Act.

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.

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).

unsuitable: particular paid work is ***unsuitable*** to be done by a person in the circumstances set out in section 40X of the Administration Act.

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).

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value of a particular asset: see subsection 11(2).

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) jobseeker payment ordinary waiting period under sections 620 and 621; or

(ca) a jobseeker payment newly arrived resident's waiting period under sections 623A and 623B; or

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(ka) a special benefit newly arrived resident's waiting period under sections 732 and 739A; 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.

(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.

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(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.

(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 has 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,

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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 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) 24 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.

Note: In relation to paragraph (g), see also subsection (4AB).

(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;

(ac) Part 2.6B (2020 economic support payments);

(ad) paragraph 313(2)(a);

(ae) Part 2.13 (remote engagement program payment);

(af) Part 2.6D (2022 cost of living payment);

(b) section 1048;

(c) section 1061PJ;

(d) section 1061Q;

(e) subsection 1061ZK(5);

(f) 1070W;

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(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.

(4AB) For the purposes only of applying subsection (4A) in relation to a person at a particular time, the following provisions do not apply in determining under paragraph (4A)(g) whether the person continues to be qualified for the pension or benefit:

(a) subparagraph 540(2)(a)(iii);

(b) subparagraph 540(2)(b)(iii);

(c) subparagraph 593(1)(a)(i).

Note: Subparagraphs 540(2)(a)(iii) and (b)(iii) deal with qualification for youth allowance. Subparagraph 593(1)(a)(i) deals with qualification for jobseeker payment.

(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 from the provision of supports or services specified in an instrument under subsection (4BA) and provided under an arrangement or grant under the *Disability Services and Inclusion Act 2023*; or

(b) the person is permanently blind.

(4BA) The Secretary may, by legislative instrument, specify supports or services for the purposes of subparagraph (4B)(a)(ii). The supports or services must be employment supports or services within the meaning of the *Disability Services and Inclusion Act 2023*.

(4C) For the purposes of this Act, a person is ***in disability accommodation*** if:

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(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 accessing funded aged care services (other than under a specialist aged care program) through the service group residential care in an approved residential care home.

(4CB) An expression used in subsection (4CA) and in the *Aged Care Act 2024* has the same meaning in that subsection as in that Act.

(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.

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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
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

Column 1 Item no.	Column 2 Period within which woman was born (both dates inclusive)	Column 3 Pension age
1.	From 1 July 1935 to 31 December 1936	60 years and 6 months
2.	From 1 January 1937 to 30 June 1938	61 years
3.	From 1 July 1938 to 31 December 1939	61 years and 6 months
4.	From 1 January 1940 to 30 June 1941	62 years
5.	From 1 July 1941 to 31 December 1942	62 years and 6 months
6.	From 1 January 1943 to 30 June 1944	63 years
7.	From 1 July 1944 to 31 December 1945	63 years and 6 months
8.	From 1 January 1946 to 30 June 1947	64 years

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Table—Pension age for women		
Column 1 **Item no.**	**Column 2** **Period within which woman was born (both dates inclusive)**	**Column 3** **Pension age**
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		
Column 1 **Item**	**Column 2** **Period during which woman was born**	**Column 3** **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

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***.

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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).

(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 and 598.

(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;

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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;

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

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(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

(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).

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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;

(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) For the purposes of this Act, the ***social security law*** is:

(a) this Act; and

(b) the Administration Act; and

(c) any other Act, or provision of an Act, that is expressed to form part of the social security law; and

(d) a legislative instrument made under an Act or provision referred to in paragraph (a), (b) or (c).

(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).

Self-Employment Assistance program

(25) If the program known as the Self-Employment Assistance program becomes known by another name, the Employment Secretary must, by notifiable instrument, give notice of the change in name.

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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).

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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 ART is reviewing the original decision or a later decision arising out of the original decision;

the Secretary or the ART, 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 ART is reviewing that determination or a later decision arising out of that determination;

the Secretary or the ART, 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.

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28 Approved programs of work for income support payment

(1) The Secretary may, by legislative instrument, declare 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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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.

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:

(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.

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31 Approval of follow-up rehabilitation programs

The Secretary may determine that:

(a) a follow-up program under Part III of the former *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.

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.

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33 Approval of sheltered employment—supported employment

(1) If:

(a) the Minister administering the former *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:

(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.

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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:

(a) the Minister is satisfied that the event is a disaster that has such a significant impact on individuals that a government response is required; or

(b) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the event is an emergency to which the declaration relates.

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 section that the terrorist act is a major disaster (see subsection 35B(2)).

(1A) In deciding whether to make a determination under paragraph (1)(b), the Minister may have regard to the matter in paragraph (1)(a).

(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:

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(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 determination under this section relating to some or all of the locations; or
(b) make 2 or more determinations under this section, each relating to one or more of the locations (whether or not the determinations 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) either:
(i) the event is of national significance; or
(ii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the event is an emergency to which the declaration relates.

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(1A) In deciding whether to make a determination under subparagraph (1)(b)(ii), the Minister may have regard to the matters in paragraph (1)(a) and subparagraph (1)(b)(i).

(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) unless subparagraph (1)(b)(ii) applies—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

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(c) the adult is making a reasonable contribution towards the expenses of maintaining the young person; and

(d) the Secretary determines that the young person is to be taken to be a dependent child of the adult.

38B Notional continuous period of receipt of income support payments

(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

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before the end of the period of 12 months referred to in that subsection is to be taken into account.

EXAMPLE OF APPLICATION OF SUBSECTION (5)

Facts:

John receives an income support payment for 48 weeks. He is then employed for 14 weeks. After the 14 weeks he again begins to receive an income support payment. How does his break in payments affect the calculation of his continuous period of receipt of income support payments?

Application:

At the end of the first 4 weeks of John's employment he may be taken, under subsection 38B(3), to have received income support payments for a continuous period of 12 months because no longer than 6 weeks have elapsed since he actually received such a payment.

Therefore, as John may be taken to have accrued 12 months continuous receipt of income support payments, he may have a period, under subsection 38B(4), of not longer than 13 weeks without income support payments and still be taken to be in continuous receipt.

However, under subsection 38B(5), the period of not longer than 13 weeks allowed under subsection 38B(4) must include the period of 4 weeks that occurred immediately before, as well as the 10 weeks immediately after, John was taken to have accrued 12 months duration.

As his total period in which he did not receive income support payments was 14 weeks, it exceeds the 13 weeks allowed under subsection 38B(4). His continuous period in receipt of income support ceased, under subsection 38B(2), on the last day he received payment before he started employment.

A new period of continuous receipt of income support payments will begin when John resumes income support payments after his 14 week break.

(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);

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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

(c) subsection 547AA(1) or 615(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

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(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.

(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 1.3B—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.

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 Human Services Secretary.

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 Human Services Secretary.

(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.

40 Activities that do not give rise to employment under certain industrial relations legislation

(1) If a person:
   (a) participates in an approved program of work for income support payment or in an employment program; or
   (b) undertakes an activity (other than paid work) in accordance with a requirement, or an optional term, of an employment pathway plan;

the person is not to be taken to be one of the following merely because of that participation or of the undertaking of that activity:
   (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*;
   (d) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;

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(e) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;

(f) an employee for the purposes of the *Fair Work Act 2009*.

(2) For the purposes of this section, an ***employment program*** is a program that is established by the Commonwealth and is determined in an instrument under subsection (3) to be an employment program.

(3) The Employment Secretary may, by notifiable instrument, determine programs to be employment programs for the purposes of subsection (2).

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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.

(1B) A woman is qualified for an age pension if:

(a) immediately before 20 March 2020:

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(i) the woman was receiving a wife pension under Part 2.4; or

(ii) the woman was receiving a wife pension under a scheduled international social security agreement; and

(b) immediately before 20 March 2020, the woman was not receiving carer allowance under Part 2.19; and

(c) the woman has reached pension age; and

(d) the woman is not otherwise qualified for an age pension.

Note: For ***pension age*** see subsections 23(5A), (5B) (5C) and (5D).

(1C) A woman is qualified for an age pension if:

(a) the woman was receiving widow allowance immediately before 1 January 2022; and

(b) the woman is not otherwise qualified for an age pension.

(3) Subsection (1) has effect subject to subsection 6(3) of the *Social Security (International Agreements) Act 1999*.

(4) A woman is qualified for an age pension if:

(a) the woman was receiving a special needs widow B pension under Part 2.16 immediately before 20 March 2020; and

(b) the woman is not otherwise qualified for an age pension.

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.

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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:

(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:

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(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.

(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.

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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

(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.

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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

(iia) 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:

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

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

LUMP SUM CALCULATOR

This is how to work out the amount of the lump sum:

Method statement

Step 1. Work out the amount that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if:

(a) the person's partner had not died; and

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

Step 2. Work out the amount that would have been payable to the person's partner on the 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.

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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:

(a) neither the person nor the partner had 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 rate***.

Step 4. Work out the amount that, but for section 85, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.

Step 5. Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.

Step 6. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.

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

87 Matters affecting payment of benefits under this Subdivision

(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.

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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.

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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.

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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

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(f) the person has not already received:

(i) another pension bonus; or

(ii) a bonus under Part IIIAB of the Veterans' Entitlements Act.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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:

$$0.094 \times \text{No. of years in the person's overall qualifying period}$$

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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).

(2A) The annual pension rate is to be worked out under subsection (2) by disregarding the amendments made by Part 1 of Schedule 1 to the *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020*.

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).

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Amount for paragraphs (2)(b) and (3)(b)

(4) For the purposes of paragraphs (2)(b) and (3)(b), the table is as follows:

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)):

$$\text{Annual pension rate} \times \text{Pension multiple} \times \frac{\text{No. of years in the person's overall qualifying period}}{}$$

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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)):

$$\left[\text{Annual notional single pension rate} \times \text{Pension multiple} \times \text{No. of single years during overall qualifying period}\right] + \left[\text{Annual notional partnered pension rate} \times \text{Pension multiple} \times \text{No. of partnered years during overall qualifying period}\right]$$

(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:

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(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 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.

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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).

(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.

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(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.

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).

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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.

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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

(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.

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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:

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(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.

Note 3: A person receiving disability support pension, and who receives employment services from a remote engagement program provider, may also qualify for a remote engagement program payment: see Part 2.13.

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

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support was wholly or partly funded by the Commonwealth; and

(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.

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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

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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 with a view to obtaining an exemption, because of the person's incapacity, from:

(a) the requirement to satisfy the activity test for the purposes of austudy payment; or

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(b) undertaking full-time study (see section 541B); or

(c) the requirement to satisfy the employment pathway plan requirements for the purposes of jobseeker payment or youth allowance.

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:
  (a) in employment that is supported by supported employment services within the meaning of section 7 of the former *Disability Services Act 1986*; or
  (b) in employment that is supported by supports or services that are specified in an instrument under subsection (3) of this section and are provided under an arrangement or grant under the *Disability Services and Inclusion Act 2023*.

(3) The Secretary may, by legislative instrument, specify supports or services for the purposes of paragraph (2)(b). The supports or services must be employment supports or services within the meaning of the *Disability Services and Inclusion Act 2023*.

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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

(iia) 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

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(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.

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 with a view to obtaining an exemption, because of the person's blindness, from:

(a) the requirement to satisfy the activity test for the purposes of austudy payment; or

(b) undertaking full-time study (see section 541B); or

(c) the requirement to satisfy the employment pathway plan requirements for the purposes of jobseeker payment or youth allowance.

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.

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(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.

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Note 1: Another payment type will generally not become payable to the person until the person claims it.

Note 2: ***Social security benefit*** includes jobseeker payment.

(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.

(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.

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(6) Subsection (3) does not apply if:

(a) before 20 March 1995:

(i) the person had made a claim for disability support pension; and

(ii) the claim had been rejected; and

(iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and

(b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and

(c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted disability support pension; and

(d) the person has since that time continued to receive, and is receiving, the pension.

(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).

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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

(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:

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(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).

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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

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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.

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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 ***combined rate***.

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 ***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.

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.

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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 (5A), (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 subsections (3A) and (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.

(3A) For the purposes of subsection (3), assume that paragraph 197E(1)(a) continues to apply in relation to the person (the ***care receiver***) after the care receiver turns 16 until the later of the following:

(a) the end of the day before the day the care receiver turns 18;

(b) if a person who qualifies for a carer payment for caring for the care receiver ensures that, on or before the day the care receiver turns 18, the Secretary is given all the information,

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statements and other materials that are needed in order for the care receiver to be assessed and rated and given a score under the Adult Disability Assessment Tool—the end of the day before the first day on which the care receiver is given such a score.

Combined care child

(4) Subject to subsections (5A), (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 (5A), (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

(5A) For the purposes of subsections (2), (4) and (5), assume that paragraph 197B(1)(a) or 197C(1)(a) or subparagraph 197D(1)(a)(ii) (as the case requires) continues to apply in relation to the person (the ***care receiver***) after the care receiver turns 16 until the later of the following:

(a) the end of the period of 3 months starting on the day the care receiver turns 16;

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(b) if a person who qualifies for a carer payment for caring for the care receiver ensures that, on or before the day the care receiver turns 16, the Secretary is given all the information, statements and other materials that are needed in order for the care receiver to be assessed and rated and given a score under the Adult Disability Assessment Tool—the end of the day before the first day on which the care receiver is given such a score.

(6) For the purposes of subsections (2), (4) and (5), assume that 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.

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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);

(j) section 198AD (wife pension and carer allowance recipient).

(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)

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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), if:

(a) a person is qualified under subsection (1) for a carer payment for caring for a care receiver aged under 16; and

(b) the care receiver turns 16; and

(c) apart from the care receiver turning 16, the person would remain qualified for a carer payment under subsection (1);

then the person remains qualified for a carer payment under subsection (1) until the later of the following:

(d) the end of the day before the day the care receiver turns 18;

(e) if the person ensures that, on or before the day the care receiver turns 18, the Secretary is given all the information, statements and other materials that are needed in order for the care receiver to be assessed and rated and given a score under the Adult Disability Assessment Tool—the end of the day before the first day on which the care receiver is given such a score.

Constant care in home

(3) The constant care must be provided in a private residence that is the home of the care receiver.

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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

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(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.

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.

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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.

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:

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(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
  (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.

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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:

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(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.

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:

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(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 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.

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(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.

(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 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.

(2) If, apart from the care receiver turning 16, the person would remain qualified for a carer payment under that provision, then the person remains qualified under that provision until the later of the following:

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(a) the end of the period of 3 months starting on the day the care receiver turns 16;

(b) if the person ensures that, on or before the day the care receiver turns 16, the Secretary is given all the information, statements and other materials that are needed in order for the care receiver to be assessed and rated and given a score under the Adult Disability Assessment Tool—the end of the day before the first day on which the care receiver is given such a score.

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:

(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

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(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.

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:

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(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.

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.

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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.

(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

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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 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

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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 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:

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(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:

(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.

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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:

(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

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(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

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(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 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.

Rule if limit on subsection (1), (1A) or (2) is exceeded

(3C) If:

(a) a person ceases to be qualified for carer payment because the person exceeds the limit set out in subsection (3) or (3A) in a calendar year; and

(b) the person resumes providing care for the care receiver or care receivers on a day in the calendar year;

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the person:

(c) is not precluded from qualifying again for carer payment in relation to that day or any later day in the calendar year for which the person provides care for the care receiver or care receivers merely because the person has exceeded the limit; but

(d) is not qualified for carer payment on any later day in that calendar year when the person is not providing that care.

Note: A person must also meet the other qualification requirements in order to qualify for carer payment.

Cessation of constant personal care in order to undertake paid work

(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 paid work; and

(c) the cessation does not exceed a total of 100 hours over a 4 week period;

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 paid work

(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 paid work; and

(c) the cessation does not exceed a total of 100 hours over a 4 week period;

the person does not cease to be qualified for the carer payment merely because of the cessation.

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198AD Qualification—wife pension and carer allowance recipient

A woman is qualified for a carer payment if:

(a) immediately before 20 March 2020, the woman was receiving a wife pension under Part 2.4; and

(b) immediately before 20 March 2020, the woman was receiving carer allowance under Part 2.19; and

(c) on and after 20 March 2020, the woman continuously receives carer allowance under Part 2.19; and

(d) the woman is not otherwise qualified for a carer payment.

Note: The effect of paragraph (c) is that once the woman stops receiving carer allowance, the woman will not be able to again qualify for a carer payment under this section.

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.

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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.

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;

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(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.

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(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;
    (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.

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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

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(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 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).

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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

(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).

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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).

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:

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(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 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

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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;

(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

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(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 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.

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(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:

(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.

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(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:

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(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;

(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.

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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:

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(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;

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.

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(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;

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.

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(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;

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.

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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.

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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;

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.

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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.

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.

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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:

(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

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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.

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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.

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.

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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 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:

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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 (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 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.

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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:

(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.

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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.

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.

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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.

Pre-pension year

(5) In this section:

pre-pension year, in relation to a carer, means:

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(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:
(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.

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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.

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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.

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.

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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:

(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.

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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;

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.

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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

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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 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

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(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:

(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).

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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

(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:

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(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).

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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).

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:

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(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

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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:

$$(\text{MBR} \times 2) + (\$639.60 \times \text{FPC})$$

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

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(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

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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

(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.

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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

(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:

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(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 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

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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.

(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;

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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 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.

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:

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(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:
(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

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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.

(7) 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 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:

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(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)

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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).

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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).

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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:

$$\frac{\left(\text{Partnered MBR} + \text{Pension supplement}\right)}{26} \times 7$$

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

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(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.

(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

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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
  (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:

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(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

(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 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.

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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

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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.

Subdivision D—Death of recipient

246 Death of recipient

(1) If:

(a) a person is receiving carer payment; 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 death of a person qualified for bereavement payments under Subdivision B see section 241.

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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.

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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.

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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.

Authorised Version C2025C00595 registered 03/11/2025

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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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:

Energy assistance payment		
Item	**Person's situation on 20 June 2017**	**Amount of one-off energy assistance payment**
1	Not a member of a couple	$75
2	Partnered	$62.50

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Section 301

Energy assistance payment		
Item	**Person's situation on 20 June 2017**	**Amount of one-off energy assistance payment**
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.

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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.

Energy assistance payment		
Item	**Person's situation on 2 April 2019**	**Amount of one-off energy assistance payment**
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.

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Part 2.6B—2020 economic support payments

Division 1—First 2020 economic support payment

304 First 2020 economic support payment

Qualification for payment

(1) A person is qualified for a first 2020 economic support payment if subsection 308(2), (3) or (4) applies to the person on a day in the period:
   (a) starting on 12 March 2020; and
   (b) ending on 13 April 2020.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:
   (a) a first 2020 economic support payment under the ABSTUDY Scheme; or
   (b) a first 2020 economic support payment under Division 1 of Part 9 of the Family Assistance Act; or
   (c) a first 2020 economic support payment under Division 1 of Part IIIH of the Veterans' Entitlements Act;

is paid to a person, no payment under this section can be paid to the person.

305 Amount of first 2020 economic support payment

The amount of a person's first 2020 economic support payment under this Division is $750.

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Division 2—Second 2020 economic support payment

306 Second 2020 economic support payment

Qualification for payment

(1) A person is qualified for a second 2020 economic support payment if:

(a) subsection 308(2), (3) or (4) applies to the person on 10 July 2020; and

(b) the person does not receive COVID-19 supplement in respect of 10 July 2020.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:

(a) a second 2020 economic support payment under the ABSTUDY Scheme; or

(b) a second 2020 economic support payment under Division 2 of Part 9 of the Family Assistance Act; or

(c) a second 2020 economic support payment under Division 2 of Part IIIH of the Veterans' Entitlements Act;

is paid to a person, no payment under this Division can be paid to the person.

307 Amount of second 2020 economic support payment

The amount of a person's second 2020 economic support payment under this Division is $750.

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Division 3—Eligibility

308 Eligibility

(1) This section applies for the purposes of subsection 304(1) and paragraph 306(1)(a).

Receipt of certain benefits

(2) Subject to subsection (5) of this section, this subsection applies to a person on a day if the person receives one of the following benefits in respect of that day:

(a) age pension;
(b) disability support pension;
(c) wife pension;
(d) carer payment;
(e) bereavement allowance;
(f) widow B pension;
(g) widow allowance;
(h) parenting payment;
(i) youth allowance;
(j) austudy payment;
(k) newstart allowance;
(l) jobseeker payment;
(m) sickness allowance;
(n) special benefit;
(o) partner allowance;
(p) carer allowance;
(q) double orphan pension.

Note: References to youth allowance, newstart allowance and jobseeker payment include references to farm household allowance: see section 93 of the *Farm Household Support Act 2014*.

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Qualified for seniors health card

(3) Subject to subsection (5) of this section, this subsection applies to a person on a day if:

(a) the person makes a claim for a seniors health card under Division 1 of Part 3 of the Administration Act on or before that day; and

(b) the person does not withdraw that claim on or before that day; and

(c) the person is qualified for the card on that day.

Qualified for pensioner concession card

(4) Subject to subsection (5) of this section, this subsection applies to a person on a day if the person is qualified for a pensioner concession card on that day.

Residence requirement

(5) Subsection (2), (3) or (4) does not apply to a person on a day if the person does not reside in Australia on that day.

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Part 2.6C—Additional economic support payments

Division 1—Additional economic support payment 2020

309 Additional economic support payment 2020

Qualification for payment

(1) A person is qualified for an additional economic support payment 2020 if:

(a) subsection 313(2), (3) or (4) applies to the person on 27 November 2020; and

(b) the person is residing in Australia on 27 November 2020.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:

(a) an additional economic support payment 2020 under Division 1 of Part 10 of the Family Assistance Act; or

(b) an additional economic support payment 2020 under Division 1 of Part IIIJ of the Veterans' Entitlements Act;

is paid to a person, no payment under this Division can be paid to the person.

310 Amount of additional economic support payment 2020

The amount of a person's additional economic support payment 2020 under this Division is $250.

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Division 2—Additional economic support payment 2021

311 Additional economic support payment 2021

Qualification for payment

(1) A person is qualified for an additional economic support payment 2021 if:

(a) subsection 313(2), (3) or (4) applies to the person on 26 February 2021; and

(b) the person is residing in Australia on 26 February 2021.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:

(a) an additional economic support payment 2021 under Division 2 of Part 10 of the Family Assistance Act; or

(b) an additional economic support payment 2021 under Division 2 of Part IIIJ of the Veterans' Entitlements Act;

is paid to a person, no payment under this Division can be paid to the person.

312 Amount of additional economic support payment 2021

The amount of a person's additional economic support payment 2021 under this Division is $250.

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Division 3—Eligibility

313 Eligibility

(1) This section applies for the purposes of paragraphs 309(1)(a) and 311(1)(a).

Social security payments

(2) This subsection applies to a person on a day if:
  (a) the following apply:
    (i) the person receives age pension, disability support pension or carer payment in respect of that day;
    (ii) the person does not receive a payment under a prescribed educational scheme in respect of that day; or
  (b) the following apply:
    (i) the person receives carer allowance in respect of that day;
    (ii) the person does not receive an income support payment in respect of that day;
    (iii) the person does not receive a payment under a prescribed educational scheme in respect of that day; or
  (c) the following apply:
    (i) person receives double orphan pension in respect of that day;
    (ii) the person does not receive an income support payment in respect of that day;
    (iii) the person does not receive a payment under a prescribed educational scheme in respect of that day.

Seniors health card

(3) This subsection applies to a person on a day if:
  (a) the following apply:
    (i) the person is the holder of a seniors health card on that day;

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(ii) the person does not receive a payment under a prescribed educational scheme in respect of that day; or

(b) the following apply:

(i) the person makes a claim for a seniors health card under Division 1 of Part 3 of the Administration Act on or before that day;

(ii) the claim is pending on that day;

(iii) the person is qualified for the card on that day;

(iv) the person does not receive a payment under a prescribed educational scheme in respect of that day.

Pensioner concession card

(4) This subsection applies to a person on a day if:

(a) the person is qualified for a pensioner concession card on that day; and

(b) the person does not receive an income support payment in respect of that day; and

(c) the person does not receive a payment under a prescribed educational scheme in respect of that day.

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Part 2.6D—2022 cost of living payment

Division 1—2022 cost of living payment

314 2022 cost of living payment

Qualification for payment

(1) A person is qualified for a 2022 cost of living payment if:
  (a) subsection 316(2), (3) or (4) applies to the person on 29 March 2022; and
  (b) the person is residing in Australia on 29 March 2022.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:
  (a) a 2022 cost of living payment under the ABSTUDY Scheme; or
  (b) a 2022 cost of living payment under Division 1 of Part IIIK of the Veterans' Entitlements Act;

is paid to a person, no payment under this section can be paid to the person.

315 Amount of 2022 cost of living payment

The amount of a person's 2022 cost of living payment under this Division is $250.

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Division 2—Eligibility

316 Eligibility

(1) This section applies for the purposes of subsection 314(1).

Receipt of certain benefits

(2) This subsection applies to a person on a day if the person receives one of the following benefits in respect of that day:

(a) age pension;
(b) disability support pension;
(c) carer payment;
(d) parenting payment;
(e) youth allowance;
(f) austudy payment;
(g) jobseeker payment;
(h) special benefit;
(i) carer allowance;
(j) double orphan pension.

Note: References to youth allowance and jobseeker payment include references to farm household allowance: see section 93 of the *Farm Household Support Act 2014*.

Qualified for seniors health card

(3) This subsection applies to a person on a day if:

(a) the person makes a claim for a seniors health card under Division 1 of Part 3 of the Administration Act on or before that day; and
(b) the person does not withdraw that claim on or before that day; and
(c) the person is qualified for the card on that day.

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Qualified for pensioner concession card

(4) This subsection applies to a person on a day if the person is qualified for a pensioner concession card on that day.

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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 satisfies subsection (2A); and

(ca) in a case where the person is in a class of persons specified by legislative instrument under subsection (2)—the person satisfies subsection (2B); 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).

Note 2: If a person is claiming parenting payment under a scheduled international social security agreement, the requirements of this

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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).

Note 4: A person receiving parenting payment, and who receives employment services from a remote engagement program provider, may also qualify for a remote engagement program payment: see Part 2.13.

(2) For the purposes of paragraph (1)(ca), the Minister may, by legislative instrument, specify a class of persons.

(2A) A person satisfies this subsection if:

(a) the following apply:

(i) the person satisfies the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person; or

(b) the following apply:

(i) the person is, under Subdivision C of Division 2A of Part 3 of the Administration Act, not required to satisfy the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person would otherwise be willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person.

Note 1: For ***satisfies the employment pathway plan requirements***, see subsection 23(1).

Note 2: See Division 2B of Part 3 of the Administration Act for the circumstances in which paid work is unsuitable to be done by a person.

(2B) A person satisfies this subsection if:

(a) the following apply:

(i) the person satisfies the employment pathway plan requirements;

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(ii) if required by the Employment Secretary, the person satisfies the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person; or

(b) the following apply:

(i) the person is, under Subdivision C of Division 2A of Part 3 of the Administration Act, not required to satisfy the employment pathway plan requirements;

(ii) if required by the Employment Secretary, the person satisfies the Employment Secretary that the person would otherwise be willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person.

Note 1: For ***satisfies the employment pathway plan requirements***, see subsection 23(1).

Note 2: See Division 2B of Part 3 of the Administration Act for the circumstances in which paid work is unsuitable to be done by a person.

(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).

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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 14; 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:

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(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) 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:

Table—Assets value limits for person who is a member of a couple

Column 1	**Column 2**	**Column 3**	
Item	**Person's situation**	**Assets value limit**	
		Column 3A	**Column 3B**
		Either person or partner homeowner	**Neither person nor partner homeowner**
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

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(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.

500WA Ordinary waiting period

(1) Subject to subsections (2) and (4), 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.

(3) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

(4) If a person makes a claim for parenting payment during the period beginning on 1 April 2021 and ending at the end of 30 June 2021, then, despite subsection (1), the person is not subject to the whole of the ordinary waiting period.

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

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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;

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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 and jobseeker payment.

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:

(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;

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(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

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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(3) (person who is a member of a couple).

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

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Division 4—Rate of 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

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.

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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:

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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 representative of the deceased partner, except to the extent (if

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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.

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