Social Security Act 1991

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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).

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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.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Chapter 3—General provisions relating to payability and rates

Part 3.12A—Provisions for carer allowance and seniors health card income test

Division 1—Purpose of this Part

1157A Purpose of Part

(1) Division 2 of this Part describes the kind of benefits that can be assessable fringe benefits. Divisions 3 to 9 tell you how to work out the value of the assessable fringe benefits received by a person in a tax year. Division 10 deals with foreign currency conversions.

These provisions are necessary for the purposes of the carer allowance income test and the Seniors Health Card Income Test Calculator.

Note 1: For ***assessable fringe benefit*** see section 10A.

Note 2: A fringe benefit is one that is provided by an employer to an employee in respect of the employee's employment (see section 10A).

(2) Section 10A contains many of the definitions that are relevant to the provisions of this Part.

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Division 2—Benefits that may be assessable fringe benefits

1157B Benefits received in or outside Australia

This Part applies to a fringe benefit whether the benefit is received in or outside Australia.

1157C Car benefits

(1) A person (the ***employee***) receives a car benefit if:

(a) a car held by another person (the ***provider***):

(i) is applied to a private use by the employee or an associate of the employee; or

(ii) is taken under subsection (2), (3) or (4) to be available for the private use of the employee or an associate of the employee; and

(b) either:

(i) the provider is the employer, or an associate of the employer, of the employee; or

(ii) the car is applied or available in that way under an arrangement between:

(A) the provider or another person; and

(B) the employer or an associate of the employer.

(2) A car is taken, for the purposes of subsection (1), to be available at a particular time for the private use of the employee or an associate of the employee if:

(a) the car is held by a person who is:

(i) the employer; or

(ii) an associate of the employer; or

(iii) some other person with whom, or in respect of whom, the employer or associate has an arrangement relating to the use or availability of the car; and

(b) the car is garaged or kept at or near a place of residence of the employee or of an associate of the employee.

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(3) A car is taken, for the purposes of subsection (1), to be available at a particular time for the private use of the employee or an associate of the employee if:

(a) the car is held by a person who is:

(i) the employer; or

(ii) an associate of the employer; or

(iii) some other person with whom, or in respect of whom, the employer or associate has an arrangement relating to the use or availability of the car; and

(b) the car is not at business premises of:

(i) the employer; or

(ii) an associate of the employer; or

(iii) some other person with whom, or in respect of whom, the employer or associate has an arrangement relating to the use or availability of the car; and

(c) either:

(i) the employee is entitled to apply the car to a private use at that time; or

(ii) the employee is not performing the duties of his or her employment at that time and has custody or control of the car; or

(iii) an associate of the employee is entitled to use the car at that time; or

(iv) an associate of the employee has custody or control of the car at that time.

(4) For the purposes of subsection (3), if a prohibition on the use of a car, or on the application of a car for a private use, by a person is not consistently enforced, the person is taken to be entitled to use the car, or to apply the car to a private use, despite the prohibition.

(5) For the purposes of this section, a car that is let on hire to a person under a hire-purchase agreement is taken:

(a) to have been purchased by the person at the time when the person first took the car on hire; and

(b) to have been owned by the person at all material times.

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(6) A reference in this Part to a car held by a person (the ***provider***) does not include a reference to:

(a) a taxi let on hire to the provider; or

(b) a car let on hire to the provider under an agreement of a kind that is ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short-term basis.

(7) Paragraph (6)(b) does not apply if the car has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the car.

1157D Exempt car benefits

(1) Except in so far as section 1157C provides that the application or availability of a car held by a person is a car benefit, the application or availability of a car held by a person is exempt.

(2) A car benefit provided in respect of the employment of the employee is exempt if:

(a) the car is:

(i) a taxi, panel van or utility truck; or

(ii) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and

(b) the only private use of the car at a time when the benefit was provided was:

(i) work-related travel of the employee; and

(ii) other minor, infrequent and irregular private use by the employee or an associate of the employee.

(3) A car benefit provided in respect of the employment of the employee is exempt if the car was unregistered at all times when the car was held by the person who provided the car.

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1157E School fees benefits

Payment to recipient

(1) If:

(a) a person (the ***provider***) pays an amount to another person (the ***recipient***); and

(b) the amount is for fees for:

(i) tuition at primary or secondary level provided by a school; or

(ii) books or equipment provided by the school in relation to that tuition; and

(c) the tuition, books or equipment is provided to:

(i) a dependent child of the recipient or the recipient's partner; or

(ii) a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a jobseeker payment or a youth allowance;

the payment constitutes a school fees benefit provided by the provider to the recipient.

Note: For ***school*** see section 10A.

Payment to or on behalf of the school

(2) If:

(a) a person (the ***provider***) pays an amount to or on behalf of a school; and

(b) the amount is for fees for:

(i) tuition at primary or secondary level provided by the school; or

(ii) books or equipment provided by the school in relation to that tuition; and

(c) the tuition, books or equipment is provided to:

(i) a dependent child of a person (the ***recipient***) or the recipient's partner; or

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(ii) a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a jobseeker payment;

the payment constitutes a school fees benefit provided by the provider to the recipient.

Note: For ***school*** see section 10A.

Boarding fees

(3) For the purposes of subsections (1) and (2), if:

(a) a school is providing tuition at primary or secondary level to a dependent child of a person; and

(b) the child is boarding at the school;

the fees that are payable for the child to board at the school are taken to be fees for the tuition provided by the school to the child.

1157F Health insurance benefits

Payment to recipient

(1) If:

(a) a person (the ***provider***) pays an amount to another person (the ***recipient***); and

(b) the amount is for the cost of health insurance; and

(c) the health insurance covers:

(i) the recipient; or

(ii) the recipient's partner; or

(iii) a dependent child of the recipient or the recipient's partner; or

(iv) a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a jobseeker payment or a youth allowance;

the payment constitutes a health insurance benefit provided by the provider to the recipient.

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Payment to the health insurance fund

(2) If:

(a) a person (the ***provider***) pays an amount to a health insurance fund; and

(b) the amount is for the cost of health insurance; and

(c) the health insurance covers:

(i) a person (the ***recipient***); or

(ii) the recipient's partner; or

(iii) a dependent child of the recipient or the recipient's partner; or

(iv) a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a jobseeker payment;

the payment constitutes a health insurance benefit provided by the provider to the recipient.

1157G Loan benefits

(1) Subject to subsection (1A), if a person (the ***provider***) makes a loan to another person (the ***recipient***), the making of the loan constitutes a loan benefit provided by the provider to the recipient.

(1A) The making of the loan does not constitute a loan benefit provided by the provider to the recipient if:

(a) the provider is the Defence Force, or a body one of the objects or functions of which is making loans to employees of the Defence Force; and

(b) the recipient is an employee of the Defence Force.

Late payment of debt

(2) For the purposes of this section, if:

(a) a person (the ***debtor***) is under an obligation to pay or repay an amount (the ***principal amount***) to another person (the ***creditor***); and

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(b) the principal amount is not the whole or a part of the amount of a loan; and

(c) after the due date for payment or repayment of the principal amount, the whole or part of the principal amount remains unpaid;

the following provisions have effect:

(d) the creditor is taken, immediately after the due date, to have made a loan (the ***deemed loan***) of the principal amount to the debtor;

(e) at any time when the debtor is under an obligation to repay any part of the principal amount, the debtor is taken to be under an obligation to repay that part of the deemed loan;

(f) the deemed loan is taken to have been made:

(i) if interest accrues on so much of the principal amount as remains from time to time unpaid—at the rate of interest at which that interest accrues; or

(ii) in any other case—at a nil rate of interest.

(3) Subject to subsection (4), a loan is a ***deferred interest loan*** if interest is payable on the loan at a rate that exceeds nil.

(4) A loan is not a deferred interest loan if:

(a) the whole of the interest is due for payment within 6 months after the loan is made; or

(b) all of the following conditions are satisfied:

(i) interest on the loan is payable by instalments;

(ii) the intervals between instalments do not exceed 6 months;

(iii) the first instalment is due for payment within 6 months after the loan is made.

(5) For the purposes of this section, if a person (the ***provider***) makes a deferred interest loan (the ***principal loan***) to another person (the ***recipient***), the following provisions apply:

(a) the provider is taken, at the end of:

(i) the period of 6 months starting on the day on which the principal loan was made; and

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(ii) each subsequent period of 6 months;

to have made a loan (the ***deemed loan***) to the recipient;

(b) the amount of the loan is taken to be equal to the amount by which the interest (the ***accrued interest***) that has accrued on the principal loan in respect of the period exceeds the amount (if any) paid in respect of the accrued interest before the end of the period;

(c) if any part of the accrued interest becomes payable or is paid after the time when the deemed loan is taken to have been made, the deemed loan is to be reduced accordingly;

(d) the deemed loan is taken to have been made at a nil rate of interest.

(6) Paragraph (5)(a) only applies to a period of 6 months if the recipient is under an obligation during the whole of the period to repay the whole or a part of the principal loan.

(7) For the purposes of this Part, if no interest is payable in respect of a loan, a nil rate of interest is taken to be payable in respect of the loan.

1157H Exempt loan benefit

(3) The making of a loan is exempt if:

(a) the loan consists of an advance by the employer to the employee; and

(b) the loan is made for the sole purpose of enabling the employee to meet expenses incurred in performing the duties of his or her employment; and

(c) the amount of the loan is not substantially greater than the amount of those expenses that could reasonably be expected to be incurred by the employee; and

(d) the employee is required:

(i) to account to the employer for expenses met from the loan; and

(ii) to repay (whether by set-off or otherwise) any amount not so accounted for.

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(4) The making of a loan is exempt if:

(a) the loan consists of an advance by the employer to the employee; and

(b) the sole purpose of the making of the loan is to enable the employee to pay any of the following amounts payable by the employee in respect of accommodation:

(i) a rental bond;

(ii) a security deposit in respect of electricity, gas or telephone services;

(iii) any similar amount; and

(c) the employee is required to repay (whether by set-off or otherwise) the loan amount of the advance.

1157I Housing benefits

(1) The subsistence of a housing right granted by a person (the ***provider***) to another person (the ***recipient***) constitutes a housing benefit provided by the provider to the recipient.

(2) The payment of money or other valuable consideration by an employer directly or indirectly to an employee (other than an employee of the Defence Force) to enable or assist the employee to meet costs associated with a loan to which subsection (4) applies constitutes a housing benefit provided by the employer to the employee.

Note: For ***employee*** and ***employer*** see section 10A.

(3) The payment of money or other valuable consideration by an employer directly or indirectly to an employee of the Defence Force to meet costs associated with a loan to which subsection (4) applies does not constitute a housing benefit provided by the employer to the employee.

(4) This subsection applies to a loan made to, or used by, a person (whether in his or her own right or jointly with his or her partner) wholly:

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(a) 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

(b) 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

(c) 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

(d) to enable the person to acquire a prescribed interest in land on which there was a dwelling or a building containing a dwelling; or

(e) to enable the person to acquire a prescribed interest in a stratum unit in relation to a dwelling; or

(f) to enable the person to extend a building that:

(i) is a dwelling or contains a dwelling; and

(ii) 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 part of the building containing the dwelling, as the case may be; or

(g) if the person held a prescribed interest in a stratum unit in relation to a dwelling—to enable the person to extend the dwelling by adding a room or part of a room to the dwelling; or

(h) to enable the person to repay a loan that was made to, and used by, the person wholly for a purpose mentioned in paragraph (a) to (g).

Note 1: For ***dwelling*** see subsection 10A(7).

Note 2: For prescribed interest see subsections 10A(10) to (14).

Note 3: For ***stratum units*** see subsection 10A(8).

(5) The payment of money or other valuable consideration by an employer directly or indirectly to an employee to enable or assist the employee to meet costs associated with enjoying a housing

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right constitutes a housing benefit provided by the employer to the employee.

Note: For ***employee***, ***employer*** and ***housing right*** see section 10A.

(6) For the avoidance of doubt, subsection (5) does not apply to payments to which subsection (2) or (3) applies.

1157J Exempt housing benefits—live-in residential care workers

(1) If, during a period:

(a) the employer of an employee is:

(i) a government body; or

(ii) a registered religious institution; or

(iii) a company that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* and does not meet the description of the subtype of entity in column 2 of item 4of the table in subsection 25-5(5) of that Act; or

(iv) a company that is a not-for-profit entity and is not an ACNC type of entity;

whose activities consist of, or include, caring for mature persons or disadvantaged persons; and

(b) the duties of the employee's employment consist of, or consist principally of, caring for mature or disadvantaged persons; and

(c) in the performance of those duties, the employee lives, together with mature persons or disadvantaged persons, in residential premises of the employer; and

(d) the fact that the employee lives in those premises is directly related to the provision, in the course of the performance of the duties of the employee's employment, of care to the mature persons or disadvantaged persons living in those premises;

any benefit arising from the provision, during that period, of that accommodation to the employee or to the employee and a partner or dependent child of the employee who resides in those premises with the employee is exempt.

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(2) In this section:

residential premises means a house or hostel used exclusively for the provision of residential accommodation to:

(a) mature persons or disadvantaged persons and dependent children of mature persons or disadvantaged persons; and

(b) persons the duties of whose employment consist of, or consist principally of, caring for persons referred to in paragraph (a); and

(c) partners and children of persons referred to in paragraph (b).

1157JA Expense benefits

(1) A person (the ***employee***) receives an expense benefit if an amount is paid to, or on behalf of, the employee or a person connected with the employee by:

(a) an 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 is so paid in connection with an expense or expenses of a private nature that have been, or will or may be, incurred by the employee or person connected with the employee.

(2) The following are persons connected with the employee:

(a) a partner of the employee;

(b) a dependent child of the employee or of the employee's partner;

(c) a person who would be a dependent child of the employee or of the employee's partner if the person was not receiving a jobseeker payment.

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1157JB Exempt expense benefit

An amount paid as mentioned in subsection 1157JA(1) is exempt if:

(a) the amount is paid to reimburse expenses incurred in connection with the employee's employment; or

(b) the employee requires the amount to be applied in paying expenses related to the employee's employment.

1157JC Financial investment benefit

(1) A person (the ***employee***) receives a ***financial investment benefit*** if:

(a) an 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; or

(ii) the arranger or another person;

pays for, or reimburses the cost of, the acquisition of a financial investment by the employee or a person connected with the employee.

(2) The making by a person, for the benefit of another person, of contributions to a superannuation fund or an ATO small superannuation account does not constitute payment for the acquisition of a financial investment by the other person.

(3) The following are persons connected with the employee:

(a) a partner of the employee;

(b) a dependent child of the employee or of the employee's partner;

(c) a person who would be a dependent child of the employee or of the employee's partner if the person was not receiving a jobseeker payment.

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Division 3—Value of car fringe benefits

1157K Method of valuing car fringe benefits

(1) Subject to subsection (2), the value of a car fringe benefit is to be worked out in accordance with section 1157L.

(2) If a determination is in force under section 1157M, the value of a car fringe benefit is to be worked out in accordance with the determination.

1157L Value of car fringe benefits

(1) This is how to work out the value of a car fringe benefit:

Method statement

Step 1. Work out the engine capacity of the car and go to the relevant Part of the Car Fringe Benefits Value Table.

Step 2. Work out how old the car is and go to the appropriate row in the Table.

Step 3. Work out how many complete months in the appropriate tax year the person had or will have the car fringe benefit and go to the appropriate column in the Table: the number where that row and column intersect is the ***value of the car fringe benefit***.

Note: If the person is a member of a couple, the value of the car fringe benefit is to be halved in certain circumstances (see subsection (3)).

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(2) The following Table is to be used in working out the value of a car fringe benefit:

CAR FRINGE BENEFITS VALUE TABLE													
PART A—Car engine size up to 1600cc													
	car age	Period of use (completed months)											
item	(years)	1	2	3	4	5	6	7	8	9	10	11	12
1.	1	93.8	188	281	375	469	563	656	750	844	938	1031	1125
2.	2	83.6	168	252	336	420	504	588	672	756	840	923.8	1008
3.	3	74.2	148	223	297	371	445	520	594	668	742	816.4	890.6
4.	4	64.5	129	193	258	322	387	451	516	580	645	709	773.4
5.	5	54.7	109	164	219	273	328	383	438	492	547	601.6	656.3
6.	6	44.9	89.8	135	180	225	270	314	359	404	449	494.1	539.1
7.	7	35.2	70.3	105	141	176	211	246	281	316	352	386.7	421.9
8.	8	25.4	50.8	76.2	102	127	152	178	203	229	254	279.3	304.7
9.	9	15.6	31.3	46.9	62.5	78.1	93.8	109	125	141	156	171.9	187.5
10.	10+	5.86	11.7	17.6	23.4	29.3	35.2	41	46.9	52.7	58.6	64.45	70.31
PART B—Car engine size 1601cc to 2850cc													
11.	1	229	458	688	917	1146	1375	1604	1833	2063	2292	2521	2750
12.	2	210	422	633	844	1055	1266	1477	1688	1898	2109	2320	2531
13.	3	193	385	578	771	964	1156	1349	1542	1734	1927	2120	2313
14.	4	174	349	523	698	872	1047	1221	1396	1570	1745	1919	2094
15.	5	156	313	469	625	781	938	1094	1250	1406	1563	1719	1875
16.	6	138	276	414	552	690	828	966	1104	1242	1380	1518	1656
17.	7	120	240	359	479	599	719	839	958	1078	1198	1318	1438
18.	8	102	203	305	406	508	609	711	813	914	1016	1117	1219
19.	9	83.3	167	250	333	417	500	583	667	750	833	916.7	1000
20.	10+	65.1	130	195	260	326	391	456	521	586	651	716.1	781.3
PART C—Car engine size more than 2850cc													
21.	1	354	708	1063	1417	1771	2125	2479	2833	3188	3542	3896	4250
22.	2	327	656	984	1313	1641	1969	2297	2625	2953	3281	3609	3938
23.	3	302	604	906	1208	1510	1813	2115	2417	2719	3021	3323	3625
24.	4	276	552	828	1104	1380	1656	1932	2208	2484	2760	3036	3313
25.	5	250	500	750	1000	1250	1500	1750	2000	2250	2500	2750	3000
26.	6	224	448	672	896	1120	1344	1568	1792	2016	2240	2464	2688
27.	7	198	396	594	792	990	1188	1385	1583	1781	1979	2177	2375
28.	8	172	344	516	688	859	1031	1203	1375	1547	1719	1891	2063
29.	9	146	292	438	583	729	875	1021	1167	1313	1458	1604	1750
30.	10+	120	240	359	479	599	719	839	958	1078	1198	1318	1438

(3) If:

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

(b) the person's partner receives a car fringe benefit in the appropriate tax year; and

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(c) the person's and the partner's car fringe benefits relate to the same car;

the value of the car fringe benefit is to be halved.

1157M Minister may determine alternative method of valuing car fringe benefits

(1) The Minister may, by legislative instrument, determine an alternative method for valuing car fringe benefits.

(2) The determination:

(a) commences on the day after the day when it is registered in the Federal Register of Legislation under the *Legislation Act 2003*; and

(b) ceases to have effect 6 months after the day it commences, if it has not already been revoked.

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Division 4—Value of school fees fringe benefits

1157N Value of school fees fringe benefits

The value of a school fees fringe benefit is the amount of the payment that constitutes the school fees benefit.

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Division 5—Value of health insurance fringe benefits

1157O Value of health insurance fringe benefits

The value of a health insurance fringe benefit is the amount of the payment that constitutes the health insurance benefit.

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Division 6—Value of loan fringe benefits

1157P Method of valuing loan fringe benefits

(1) Subject to subsection (2), the value of a loan fringe benefit is to be worked out in accordance with section 1157Q.

(2) If a determination is in force under section 1157R, the value of a loan fringe benefit is to be worked out in accordance with the determination.

1157Q Value of loan fringe benefits

(1) This is how to work out the value of a loan fringe benefit:

Method statement

Step 1. Work out whether the loan is a housing loan or another type of loan.

Note: For ***housing loan*** see subsection 10A(9).

Step 2. Work out the notional rate of interest for the loan using subsection (2), (3) or (4).

Step 3. Work out the actual rate of interest for the loan in the appropriate tax year using subsection (5).

Step 4. Work out whether the actual rate of interest exceeds the notional rate of interest.

Step 5. If the actual rate of interest is equal to or exceeds the notional rate of interest, the value of the loan fringe benefit is nil.

Note: If the value of the loan fringe benefit is nil, you do not have to go any further in the Method statement.

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Step 6. If the actual rate of interest is less than the notional rate of interest, take the actual rate of interest away from the notional rate of interest.

Step 7. Work out the amount of the loan (both the principal and interest) that is outstanding in the appropriate tax year using subsection (6).

Step 8. Multiply the rate of interest obtained in Step 6 and the amount obtained in Step 7: the result is the ***interim value of the loan***.

Step 9. Work out how many complete weeks in the appropriate tax year the person had or will have the loan: the result is the ***number of allowable weeks***.

Step 10. Apply the formula:

$$\frac{\text{number of allowable weeks} \times \text{interim value of the loan}}{52}$$

Step 11. The amount obtained by applying the formula in Step 10 is the ***value of the loan fringe benefit***.

Note: If the person is a member of a couple, the value of the loan fringe benefit is to be halved in certain circumstances (see subsection (7)).

(2) The notional rate of interest for the tax year ending 30 June 1993 is:

(a) 10% for a housing loan; and

(b) 13.5% for any other loan.

(3) The notional rate of interest for the tax years ending 30 June 1994 and 30 June 1995 is:

(a) 6.95% for a housing loan; and

(b) 11.75% for any other loan.

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(4) The notional rate of interest for any subsequent tax year is the market rate of interest for 1 April in the preceding tax year.

(4A) For the purposes of subsection (4):

market rate of interest, for a particular day, means:

(a) for a housing loan—the lowest variable rate of interest for a housing loan; or

(b) for any other loan—the lowest variable rate of interest for any other loan;

that is available on that day from a bank which is one of 4 banks specified in a determination made, by legislative instrument, by the Minister.

(5) The actual rate of interest for the loan is:

(a) if the loan starts after 1 July in the appropriate tax year—the rate of interest that is payable under the loan on the day on which the loan starts; and

(b) in any other case—the rate of interest that is payable under the loan on 1 July in the appropriate tax year.

(6) The amount of the loan that is outstanding is:

(a) if the loan starts after 1 July in the appropriate tax year—the amount that is outstanding on the day on which the loan starts; and

(b) in any other case—the amount that is outstanding on 1 July in the appropriate tax year.

(7) If:

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

(b) the person's partner receives a loan fringe benefit in the appropriate tax year; and

(c) the person's and the partner's loan fringe benefits relate to the same loan;

the value of the loan fringe benefit obtained in Step 11 of the Method statement is to be halved.

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1157R Minister may determine alternative method of valuing loan fringe benefits

(1) The Minister may, by legislative instrument, determine an alternative method for valuing loan fringe benefits.

(2) The determination:

(a) commences on the day after the day when it is registered in the Federal Register of Legislation under the *Legislation Act 2003*; and

(b) ceases to have effect 6 months after the day it commences, if it has not already been revoked.

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Division 7—Value of housing fringe benefits

Subdivision A—Grants of housing rights

1157S Methods of valuing housing fringe benefits—grants of housing rights

(1) Subject to subsection (3), the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to a person who is not an employee of the Defence Force is to be worked out in accordance with section 1157T.

(2) Subject to subsection (3), the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to an employee of the Defence Force is to be worked out in accordance with section 1157TA.

(3) If:

(a) a determination is in force under section 1157U; and

(b) the determination applies to housing fringe benefits to which subsection 1157I(1) applies;

the value of a housing fringe benefit to which subsection 1157I(1) applies is to be worked out in accordance with the determination.

1157T Value of grants of housing rights—general

(1) This is how to work out the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to a person who is not an employee of the Defence Force:

Method statement

Step 1. Work out the location of the unit of accommodation and go to the appropriate row of the Housing Fringe Benefits Value Table.

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Step 2. Work out the type of accommodation and go to the appropriate column in the Table: the number where the row and column intersect is the ***weekly market rent*** of the unit of accommodation.

Note: If the person is a member of a couple, the weekly market rent is to be halved in certain circumstances (see subsection (4)).

Step 3. Work out how many complete weeks in the appropriate tax year the unit of accommodation was or will be available to the person.

Step 4. Multiply the weekly market rent of the unit of accommodation and the number of weeks obtained in Step 3: the result is the ***provisional value of the housing fringe benefit***.

Step 5. Work out the allowable rent for the unit of accommodation in the appropriate tax year using subsection (3).

Note: If the person is a member of a couple, the allowable rent is to be halved in certain circumstances (see subsection (4)).

Step 6. Take the allowable rent away from the provisional value of the housing fringe benefit: the result is the ***value of the housing fringe benefit***.

(2) The following Table is to be used in working out the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to a person who is not an employee of the Defence Force:

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Housing fringe benefits value table			
Location	**Type of accommodation**		
	House, flat or home unit		**Any other unit of accommodation**
	3 or more bedrooms	**1-2 bedrooms**	
Metropolitan	140	120	85
Non-metropolitan	100	90	70
Special housing	80	80	25
Outside Australia	140	120	85

Note 1: For ***unit of accommodation***, ***metropolitan location***, ***non-metropolitan location*** and ***special housing location*** see section 10A.

Note 2: A housing fringe benefit that is received outside Australia is to be valued (see section 1157B).

Note 3: For ***Australia*** see subsection 23(1).

(3) The allowable rent is the amount of rent that the Secretary is satisfied is payable for the unit of accommodation in the appropriate tax year by:

(a) if the person is not a member of a couple—the person; or

(b) if the person is a member of a couple—the person and the person's partner.

(4) If:

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

(b) the person's partner receives a housing fringe benefit in the appropriate tax year; and

(c) the person's and the partner's housing fringe benefits relate to the same unit of accommodation;

the weekly market rent obtained in Step 2 of the Method statement and the allowable rent obtained in Step 5 of the Method statement are both to be halved.

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1157TA Value of grants of housing rights—employees of the Defence Force

(1) This is how to work out the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to an employee of the Defence Force:

Method statement

Step 1. Work out the type of accommodation and go to the appropriate column in the Housing Fringe Benefits Value Table (Defence Force Employees): the number in the appropriate column is the ***weekly market rent*** of the unit of accommodation.

Note: If the person is a member of a couple, the weekly market rent is to be halved in certain circumstances (see subsection (4)).

Step 2. Work out how many complete weeks in the appropriate tax year the unit of accommodation was or will be available to the person.

Step 3. Multiply the weekly market rent of the unit of accommodation and the number of weeks obtained in Step 2: the result is the ***provisional value of the housing fringe benefit***.

Step 4. Work out the allowable rent for the unit of accommodation in the appropriate tax year using subsection (3).

Note: If a person is a member of a couple, the allowable rent is to be halved in certain circumstances (see subsection (4)).

Step 5. Take the allowable rent away from the provisional value of the housing fringe benefit: the result is the ***value of the housing fringe benefit***.

Note: For ***employee*** see section 10A.

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(2) The following Table is to be used in working out the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to an employee of the Defence Force:

Housing Fringe Benefits Value Table (Defence Force Employees)		
Type of accommodation		
House, flat or home unit		**Any other unit of accommodation**
3 or more bedrooms	**1-2 bedrooms**	
80	80	25

Note 1: For ***employee*** see section 10A.

Note 2: For ***unit of accommodation*** see section 10A.

Note 3: A housing fringe benefit that is received outside Australia is to be valued (see section 1157B).

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

(3) The allowable rent is the amount of rent that the Secretary is satisfied is payable for the unit of accommodation in the appropriate tax year by:

(a) if the person is not a member of a couple—the person; or

(b) if the person is a member of a couple—the person and the person's partner.

(4) If:

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

(b) the person's partner receives a housing fringe benefit in the appropriate tax year; and

(c) the person's and the partner's housing fringe benefits relate to the same unit of accommodation;

the weekly market rent obtained in Step 1 of the Method statement and the allowable rent obtained in Step 4 of the Method statement are both to be halved.

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Subdivision B—Payments associated with loans

1157TB Method of valuing housing fringe benefits—payments associated with loans

(1) Subject to subsection (2), the value of a housing fringe benefit to which subsection 1157I(2) applies is to be worked out in accordance with section 1157TC.

(2) If:

(a) a determination is in force under section 1157U; and

(b) the determination applies to housing fringe benefits to which subsection 1157I(2) applies;

the value of a housing fringe benefit to which subsection 1157I(2) applies is to be worked out in accordance with the determination.

1157TC Value of payments associated with loans

The value of a housing fringe benefit to which subsection 1157I(2) applies is the amount of the payment that constitutes the housing benefit.

Subdivision C—Payments associated with enjoying housing rights

1157TD Methods of valuing housing fringe benefits—payments associated with enjoying housing rights

(1) Subject to subsection (3), the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to a person who is not an employee of the Defence Force is to be worked out in accordance with section 1157TE.

(2) Subject to subsection (3), the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to an employee of the Defence Force is to be worked out in accordance with section 1157TF.

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(3) If:

(a) a determination is in force under section 1157U; and

(b) the determination applies to housing fringe benefits to which subsection 1157I(5) applies;

the value of a housing fringe benefit to which subsection 1157I(5) applies is to be worked out in accordance with the determination.

1157TE Value of payments associated with enjoying housing rights—general

(1) This is how to work out the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to a person who is not an employee of the Defence Force:

Method statement

Step 1. Work out the location of the unit of accommodation and go to the appropriate row of the Housing Fringe Benefits Value Table.

Step 2. Work out the type of accommodation and go to the appropriate column in the Table: the number where the row and column intersect is the ***weekly market rent*** of the unit of accommodation.

Note: If the person is a member of a couple, the weekly market rent is to be halved in certain circumstances (see subsection (4)).

Step 3. Work out how many complete weeks in the appropriate tax year the unit of accommodation was or will be available to the person.

Step 4. Multiply the weekly market rent of the unit of accommodation and the number of weeks obtained in Step 3: the result is the ***provisional value of the housing fringe benefit***.

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Step 5. Work out the allowable rent for the unit of accommodation in the appropriate tax year using subsection (3).

Note: If a person is a member of a couple, the allowable rent is to be halved in certain circumstances (see subsection (4)).

Step 6. Work out the amount the employer paid or will pay by way of the housing fringe benefits in respect of the unit of accommodation in the appropriate tax year: the result is the ***employer subsidy***.

Step 7. Work out the amount (if any) by which the allowable rent exceeds the employer subsidy: the result is the ***employee contribution***.

Note: If the employer subsidy equals or exceeds the allowable rent, the employee contribution is nil.

Step 8. Take the employee contribution away from the provisional value of the housing fringe benefit: the result is the ***value of the housing fringe benefit***.

(2) The following Table is to be used in working out the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to a person who is not an employee of the Defence Force:

Housing fringe benefits value table

Location	**Type of accommodation**		
	House, flat or home unit		**Any other unit of accommodation**
	3 or more bedrooms	**1-2 bedrooms**	
Metropolitan	140	120	85
Non-metropolitan	100	90	70
Special housing	80	80	25
Outside Australia	140	120	85

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Note 1: For ***unit of accommodation***, ***metropolitan location***, ***non-metropolitan location*** and ***special housing location*** see section 10A.

Note 2: A housing fringe benefit that is received outside Australia is to be valued (see section 1157B).

Note 3: For ***Australia*** see subsection 23(1).

(3) The allowable rent is the amount of rent that the Secretary is satisfied is payable for the unit of accommodation in the appropriate tax year by:

(a) if the person is not a member of a couple—the person; or

(b) if the person is a member of a couple—the person and the person's partner.

(4) If:

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

(b) the person's partner receives a housing fringe benefit in the appropriate tax year; and

(c) the person's and the partner's housing fringe benefits relate to the same unit of accommodation;

the weekly market rent obtained in Step 2 of the Method statement and the allowable rent obtained in Step 5 of the Method statement are both to be halved.

1157TF Value of payments associated with enjoying housing rights—employees of the Defence Force

(1) This is how to work out the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to an employee of the Defence Force:

Method statement

Step 1. Work out the type of accommodation and go to the appropriate column in the Housing Fringe Benefits Value Table (Defence Force Employees): the number in the appropriate column is the ***weekly market rent*** of the unit of accommodation.

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Note: If the person is a member of a couple, the weekly market rent is to be halved in certain circumstances (see subsection (4)).

Step 2. Work out how many complete weeks in the appropriate tax year the unit of accommodation was or will be available to the person.

Step 3. Multiply the weekly market rent of the unit of accommodation and the number of weeks obtained in Step 2: the result is the ***provisional value of the housing fringe benefit***.

Step 4. Work out the allowable rent for the unit of accommodation in the appropriate tax year using subsection (3).

Note: If a person is a member of a couple, the allowable rent is to be halved in certain circumstances (see subsection (4)).

Step 5. Work out the amount the employer paid or will pay by way of the housing fringe benefits in respect of the unit of accommodation in the appropriate tax year: the result is the ***employer subsidy***.

Step 6. Work out the amount (if any) by which the allowable rent exceeds the employer subsidy: the result is the employee contribution.

Note: If the employer subsidy equals or exceeds the allowable rent, the employee contribution is nil.

Step 7. Take the employee contribution away from the provisional value of the housing fringe benefit: the result is the ***value of the housing fringe benefit***.

(2) The following Table is to be used in working out the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to an employee of the Defence Force:

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Housing Fringe Benefits Value Table (Defence Force Employees)		
Type of accommodation		
House, flat or home unit		Any other unit of accommodation
3 or more bedrooms	1-2 bedrooms	
80	80	25

Note 1: For ***employee*** see section 10A.

Note 2: For ***unit of accommodation*** see section 10A.

Note 3: A housing fringe benefit that is received outside Australia is to be valued (see section 1157B).

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

(3) The allowable rent is the amount of rent that the Secretary is satisfied is payable for the unit of accommodation in the appropriate tax year by:

(a) if the person is not a member of a couple—the person; or

(b) if the person is a member of a couple—the person and the person's partner.

(4) If:

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

(b) the person's partner receives a housing fringe benefit in the appropriate tax year; and

(c) the person's and the partner's housing fringe benefits relate to the same unit of accommodation;

the weekly market rent obtained in Step 1 of the Method statement and the allowable rent obtained in Step 4 of the Method statement are both to be halved.

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Subdivision D—Alternative methods of valuing housing fringe benefits

1157U Minister may determine alternative method of valuing housing fringe benefits

(1) The Minister may, by legislative instrument, determine an alternative method for valuing housing fringe benefits.

(1A) A determination under subsection (1) may apply to all housing fringe benefits or only to specified kinds of housing fringe benefits.

(2) The determination:

(a) commences on the day after the day when it is registered in the Federal Register of Legislation under the *Legislation Act 2003*; and

(b) ceases to have effect 6 months after the day it commences, if it has not already been revoked.

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Division 8—Value of expense fringe benefit

1157UA Value of expense fringe benefits

The value of an expense fringe benefit is the amount of the payment that constitutes the expense benefit.

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Division 9—Value of financial investment fringe benefit

1157UB Value of financial investment fringe benefit

The value of a financial investment fringe benefit is the value of the financial investment benefit that constitutes the financial investment fringe benefit when the financial investment benefit is received.

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Division 10—Foreign currency rates

1157V Foreign currency rates

(1) If:

(a) it is necessary, for the purposes of this Part, to work out an amount or value of a fringe benefit; and

(b) the amount or value of the benefit is expressed in a foreign currency;

the amount or value in Australian currency is to be worked out using the market exchange rate for 1 July in the appropriate tax year.

(2) If there is no market exchange rate for 1 July in the appropriate tax year (for example, because of a national public holiday), the market exchange rate to be used is the market exchange rate that applied on the last working day immediately before that 1 July.

(3) For the purposes of this section, the market exchange rate of a foreign currency is the on-demand airmail buying rate for that currency available at the Commonwealth Bank of Australia.

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Part 3.13—Imprisonment

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

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

(a) in gaol; or

(b) undergoing psychiatric confinement because the person has been charged with an offence.

Note 1: For ***in gaol*** see subsection 23(5).

Note 2: For ***psychiatric confinement*** see subsections 23(8) and (9).

1159 Payment may be redirected to dependent partner or child

(1) If:

(a) a social security pension (other than pension PP (single)) is not payable to a person on a pension payday because of section 1158; and

(b) the person's partner is dependent on the person;

the Secretary may authorise the payment of all or some of the instalment that would otherwise have been payable to the person to be paid to:

(c) the partner; or

(d) someone else for the benefit of the partner.

(2) If:

(a) a social security pension (other than pension PP (single)) is not payable to a person on a pension payday because of section 1158; and

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(b) a young person is dependent on the person;

the Secretary may authorise the payment of all or some of the instalment that would otherwise have been payable to the person to be paid to:

(c) the young person; or

(d) someone else for the benefit of the young person.

1159A Person not qualified for some concession cards when in gaol or in psychiatric confinement following criminal charge

(1) A person is not qualified under section 1061ZG or 1061ZO for a seniors health card or health care card on a day on which the person is:

(a) in gaol; or

(b) undergoing psychiatric confinement because the person has been charged with an offence.

Note 1: For ***in gaol*** see subsection 23(5).

Note 2: For ***psychiatric confinement*** see subsections 23(8) and (9).

(2) This section has effect despite sections 1061ZG and 1061ZO.

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Part 3.14—Compensation recovery

Division 1—General

1160 General effect of Part

(1) This Part operates in certain specified circumstances to do one or more of the following:

(a) reduce a person's compensation affected payment;

(b) render a person's compensation affected payment not payable;

(c) require the repayment of some or all of a person's compensation affected payment;

because of the receipt of compensation by the person or the person's partner.

(2) This Part applies whether or not there is any connection between the circumstances that give rise to the person's qualification for the compensation affected payment and the circumstances that give rise to the receipt of compensation by the person or the person's partner.

1161 Application of Part

(1) Subject to subsections (2) to (6A), payments of a compensation affected payment are affected under this Part if:

(a) whether the compensation was received before or after the commencement of this Part, the compensation affected payment is:

(i) a jobseeker payment in relation to which the recipient of the payment is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act; or

(iii) a sickness benefit under the 1947 Act; or

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(iv) a rehabilitation allowance under the 1947 Act payable in place of sickness benefit under the 1947 Act; or

(b) in the case of any other kind of compensation affected payment, the compensation was received on or after 1 May 1987 and the claim for the compensation affected payment was made on or after 1 May 1987.

(2) This Part applies to a pension PP (single) if:

(a) the compensation was received on or after 20 March 1992; and

(b) the claim for the pension was made on or after 20 March 1992.

(3) This Part applies to carer payment if:

(a) the compensation was received on or after 1 January 1993; and

(b) the claim for the carer payment was made on or after 1 January 1993.

(6) This Part applies to age pension if:

(a) the compensation was received on or after 20 March 1997; and

(b) the person's provisional commencement day or start day for the age pension is on or after 20 March 1997.

(6A) Subject to section 1161A, this Part applies to a compensation affected payment to which paragraph (l) or (m) of the definition of that expression in subsection 17(1) applies if:

(a) the compensation is received on or after 1 July 2004; and

(b) either:

(i) if the compensation affected payment to which that paragraph applies is one in respect of which a claim must be made for a person to be qualified for the payment—a claim is made for the payment on or after 1 July 2004; or

(ii) if the compensation affected payment to which that paragraph applies is not one in respect of which a claim

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must be made for a person to be qualified for the payment—the compensation affected payment is received on or after 1 July 2004.

1161A Application of Part to supplementary compensation affected payments

(1) For the purposes of this section:

(a) a reference to a supplementary compensation affected payment is a reference to a compensation affected payment to which paragraph (l) or (m) of the definition of ***compensation affected payment*** in subsection 17(1) applies; and

(b) a supplementary compensation affected payment relates to any allowance, supplement, pension or payment of a kind that, in the applicable paragraph of the definition of ***compensation affected payment*** in subsection 17(1), is labelled as the underlying compensation affected payment.

(2) Except as mentioned in this section, this Part does not apply to a supplementary compensation affected payment.

(3) If:

(a) as a result of the operation of section 1169, any underlying compensation affected payment to which a supplementary compensation affected payment relates was not payable in relation to the day on which the supplementary compensation affected payment was received; or

(b) as a result of the operation of section 1173 or 1174, the rate of any underlying compensation affected payment to which a supplementary compensation affected payment relates was reduced to nil in relation to the day on which the supplementary compensation affected payment was received; or

(c) the following conditions are satisfied:

(i) the rate of any of the compensation affected payments that would have been made as mentioned in subparagraph 1181(1)(b)(ii) or (2)(d)(ii) or 1184A(2)(c)(ii) or (3)(d)(ii) is nil;

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(ii) the compensation affected payment is an underlying compensation affected payment to which a supplementary compensation affected payment relates;

(iii) the underlying compensation affected payment was made in relation to the day on which the supplementary compensation affected payment was received; or

(d) an adverse determination mentioned in subsection 1184I(1) has the effect that:

(i) any underlying compensation affected payment to which a supplementary compensation affected payment relates is cancelled or suspended in relation to the day on which the supplementary compensation affected payment was received; or

(ii) the rate of any underlying compensation affected payment to which a supplementary compensation affected payment relates is reduced to nil in relation to the day on which the supplementary compensation affected payment was received;

then:

(e) in any case—the supplementary compensation affected payment is not payable; and

(f) if paragraph (d) applies—for the purposes of subsection 1184I(1), the amount of the supplementary compensation affected payment is taken to be an amount that the person in relation to whom it was made is liable to pay to the Commonwealth because of the determination.

(4) If:

(a) any of:

(i) the payments of the compensation affected payment mentioned in paragraph 1179(b); or

(ii) the compensation affected payments mentioned in paragraph 1184A(1)(a);

is an underlying compensation affected payment to which a supplementary compensation affected payment relates; and

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(b) the underlying compensation affected payment was made in relation to the day on which the supplementary compensation affected payment was received;

then the sum mentioned in that paragraph is increased by the amount of the supplementary compensation affected payment.

(5) If:

(a) the rate of any of the compensation affected payments that would have been made as mentioned in subparagraph 1181(1)(b)(ii) or (2)(d)(ii) or 1184A(2)(c)(ii) or (3)(d)(ii) is nil; and

(b) the compensation affected payment is an underlying compensation affected payment to which a supplementary compensation affected payment relates; and

(c) the underlying compensation affected payment was made in relation to the day on which the supplementary compensation affected payment was received;

then the difference mentioned in paragraph 1181(1)(b) or (2)(d) or 1184A(2)(c) or (3)(d) is increased by the amount of the supplementary compensation affected payment.

(6) If a compensation affected payment that would have been reduced as mentioned in subsection 1184A(4):

(a) would have been reduced to nil; and

(b) is an underlying compensation affected payment to which a supplementary compensation affected payment relates; and

(c) was received in relation to the day on which the supplementary compensation affected payment was received;

then the recoverable amount mentioned in subsection 1184A(4) is increased by the amount of the supplementary compensation affected payment, but only to the extent that the sum of all increases under this subsection in relation to the periodic compensation payments does not exceed the sum of the amounts of those payments.

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1162 Part to bind Crown

This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

1163 Interpretation

(1) In a provision of this Part (other than section 1164), a reference to the payment or receipt of periodic compensation payments includes a reference to the payment or receipt, as the case may be, of arrears of periodic compensation payments.

(2) A reference in this Part to periodic compensation payments is a reference to:
  (a) a periodic compensation payment; or
  (b) if 2 or more periodic compensation payments relate to the same period, those payments.

(3) In this Part, a reference to a person's partner receiving or claiming a compensation affected payment includes a reference to the partner receiving or claiming a compensation affected pension within the meaning of the Veterans' Entitlements Act.

1164 Certain lump sums to be treated as though they were received as periodic compensation payments

If:
  (a) a person was entitled to periodic compensation payments under a law of a State or Territory; and
  (b) the person's entitlement to the periodic payments was converted under the law of the State or Territory into an entitlement to a lump sum; and
  (c) the lump sum was calculated by reference to a period;

this Part applies to the person as if:
  (d) the person had not received:
    (i) the lump sum; or

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(ii) if the lump sum was to be paid in instalments—any of the instalments; and

(e) the person had received in each fortnight during the period a periodic compensation payment equal to:

$$\frac{\text{Lump sum amount}}{\text{Number of fortnights in the period}}$$

where:

lump sum amount is the amount of the lump sum referred to in paragraph (b);

number of fortnights in the period is the number of whole fortnights in the period referred to in paragraph (c).

1165 Effect of certain State and Territory laws

If:

(a) a law of a State or Territory provides for the payment of compensation; and

(b) the law includes a provision to the effect that a person's compensation under the law is to be or may be reduced or cancelled if the person is qualified for or receives payments under this Act;

this Act applies as if the person had received under the law the compensation that the person would have received under the law if the provision referred to in paragraph (b) had not been enacted.

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Division 2—Enforcement of compensation rights

1166 Secretary may require person to take action to obtain compensation

(1) If:

(a) a person receives or claims a compensation affected payment; and

(b) the person or the person's partner is, or, in the Secretary's opinion, may be, entitled to compensation; and

(c) the person or the partner:

(i) has taken no action to claim or obtain the compensation; or

(ii) has taken no action that the Secretary considers reasonable to claim or obtain the compensation;

the Secretary may require the person or the partner to take the action specified by the Secretary.

(2) The action specified by the Secretary is to be the action that the Secretary considers reasonable to enable the person to claim or obtain the compensation.

(3) Even though a person has entered into an agreement to give up the person's right to compensation, the Secretary may form the opinion that the person may be entitled to compensation if the Secretary is satisfied that the agreement is void, ineffective or unenforceable.

(4) For the purposes of subsection (3), a person enters into an agreement to give up the person's right to compensation if the person:

(a) enters into an agreement to waive the person's right to compensation; or

(b) enters into an agreement to withdraw the person's claim for compensation.

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1167 Failure to comply with a requirement to take action to obtain compensation

(1) If the Secretary, under section 1166, requires a person who receives or claims a compensation affected payment to take action to claim or obtain compensation, the compensation affected payment is not payable to the person or is not to be granted, as the case may be, unless the person complies with the requirement.

(2) If the Secretary requires the partner of a person who receives or claims a compensation affected payment to take action to claim or obtain compensation, the compensation affected payment is not payable to the person or is not to be granted, as the case may be, unless the partner complies with the requirement.

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Division 3—Receipt of compensation

1168 Application

A provision of this Division that refers to a person receiving or claiming a compensation affected payment and receiving a lump sum compensation payment has effect regardless of whether the lump sum compensation payment was received before or after the person received or claimed the compensation affected payment.

1169 Compensation affected payment not payable during lump sum preclusion period

(1) If:

(a) a person receives or claims a compensation affected payment; and

(b) the person receives a lump sum compensation payment;

the compensation affected payment is not payable to the person in relation to any day or days in the lump sum preclusion period.

(2) In this section:

lump sum compensation payment does not include a lump sum payment:

(a) to which section 1164 applies; or

(b) that relates only to arrears of periodic compensation payments.

1170 Lump sum preclusion period

(1) Subject to subsection (2), if a person receives both periodic compensation payments and a lump sum compensation payment, the lump sum preclusion period is the period that:

(a) begins on the day following the last day of the periodic payments period or, where there is more than one periodic payments period, the day following the last day of the last periodic payments period; and

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(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(2) If a person chooses to receive part of an entitlement to periodic compensation payments in the form of a lump sum, the lump sum preclusion period is the period that:

(a) begins on the first day on which the person's periodic compensation payment is a reduced payment because of that choice; and

(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(3) If neither of subsections (1) and (2) applies, the lump sum preclusion period is the period that:

(a) begins on the day on which the loss of earnings or loss of capacity to earn began; and

(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(4) The number of weeks in the lump sum preclusion period in relation to a person is the number worked out using the formula:

$$\frac{\text{Compensation part of lump sum}}{\text{Income cut-out amount}}$$

(5) If the number worked out under subsection (4) is not a whole number, the number is to be rounded down to the nearest whole number.

1171 Deemed lump sum payment arising from separate payments

(1) If:

(a) a person receives 2 or more lump sum payments in relation to the same event that gave rise to an entitlement of the person to compensation (the ***multiple payments***); and

(b) at least one of the multiple payments is made wholly or partly in respect of lost earnings or lost capacity to earn;

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the following paragraphs have effect for the purposes of this Act and the Administration Act:

(c) the person is taken to have received one lump sum compensation payment (the ***single payment***) of an amount equal to the sum of the multiple payments;

(d) the single payment is taken to have been received by the person:

(i) on the day on which he or she received the last of the multiple payments; or

(ii) if the multiple payments were all received on the same day, on that day.

(2) A payment is not a lump sum payment for the purposes of paragraph (1)(a) if it relates exclusively to arrears of periodic compensation.

1172 Lump sum compensation not counted as ordinary income

If an amount of a compensation affected payment is not payable to a person under section 1169 because the person has received a lump sum compensation payment, that lump sum compensation payment is not to be regarded as ordinary income of either the person or the person's partner (if any) for the purposes of a provision of this Act, other than point 1071A-4.

1173 Effect of periodic compensation payments on rate of person's compensation affected payment

(1) If:

(a) a person receives periodic compensation payments; and

(b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and

(c) the person receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;

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the rate of the person's compensation affected payment in relation to that day or those days is reduced in accordance with subsection (2).

(2) The person's daily rate of compensation affected payment is reduced by the amount of the person's daily rate of periodic compensation.

(3) The reference in subsection (2) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

(4) If:

(a) a person receives periodic compensation payments; and

(b) at the time of the event that gave rise to the entitlement of the person to compensation, the person was qualified for, and was receiving, a compensation affected payment; and

(c) the person receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;

the periodic compensation payments are to be treated as ordinary income of the person for the purposes of this Act.

1174 Effect of periodic compensation payments on rate of partner's compensation affected payment

(1) If:

(a) a person receives periodic compensation payments; and

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

(c) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and

(d) the person is qualified for a compensation affected payment in relation to a day or days in the periodic payments period but, solely because of the operation of this Part, does not, or would not, receive the payment; and

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(e) the person's partner receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;

the amount (if any) by which the daily rate of periodic compensation payable to the person exceeds the daily rate of the compensation affected payment for which the person is qualified in relation to a day or days in the periodic payments period (the ***excess amount***) is to be treated as ordinary income of the person's partner for the purpose of the calculation of the amount of the compensation affected payment referred to in paragraph (e).

(2) The reference in subsection (1) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

(3) For the purposes of subsection (1):

(a) the amount that would, apart from this section, be the amount of the partner's ordinary income in relation to the day or days referred to in paragraph (1)(e) is to be increased by the excess amount; and

(b) the increased amount is to be taken to be the amount of the partner's ordinary income in relation to that day or those days, as the case may be.

1175 Rate reduction under both income/assets test and this Part

If the rate of a person's compensation affected payment is reduced under this Part, the reduction applies to the person's rate as reduced under the ordinary income test Module or the assets test Module of the relevant Rate Calculator.

1176 Periodic compensation not counted as ordinary income

If an instalment of a compensation affected payment payable to a person is reduced under section 1173 because of the receipt of periodic compensation payments, those payments are not to be

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regarded as ordinary income of the person for the purposes of a provision of this Act, other than point 1071A-4.

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Division 4—Recoverable amounts

Subdivision A—Preliminary

1177 Interpretation

If:

(a) a person is liable to make a compensation payment to another person; or

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

then, for the purposes of this Division, in relation to the person to whom the compensation is payable or is to be paid, the following paragraphs have effect:

(c) a reference to the lump sum preclusion period is a reference to the period that would represent the lump sum preclusion period if the compensation were paid in accordance with the liability or determination;

(d) a reference to the periodic payments period is a reference to the period that would represent the periodic payments period if the compensation were paid in accordance with the liability or determination.

Subdivision B—Recovery from recipient of compensation affected payment

1178 Repayment of amount where both lump sum and payments of compensation affected payment have been received

(1) If:

(a) a person receives a lump sum compensation payment; and

(b) the person receives payments of a compensation affected payment in relation to a day or days in the lump sum preclusion period;

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the Secretary may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.

(2) The amount to be specified in the notice is the recoverable amount under section 1179.

1179 The section 1178 recoverable amount

The recoverable amount under this section is equal to the smaller of the following amounts:

(a) the compensation part of the lump sum compensation payment;

(b) the sum of the payments of the compensation affected payment made to the person in relation to a day or days in the lump sum preclusion period.

1180 Repayment where both periodic compensation payments and payments of compensation affected payment have been received

(1) If:

(a) a person receives periodic compensation payments; and

(b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and

(c) the person receives payments of a compensation affected payment in relation to a day or days in the periodic payments period; and

(d) the payments referred to in paragraph (c) have not been reduced to nil as a result of the operation of section 1173;

the Secretary may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.

(2) The amount to be specified in a notice for the purpose of subsection (1) is the recoverable amount under section 1181.

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1181 The section 1180 recoverable amount

(1) Subject to subsection (2), the recoverable amount under this section is equal to the smaller of the following amounts:

(a) the sum of the periodic compensation payments;

(b) the difference between:

(i) the sum of the compensation affected payments made to the person in relation to a day or days in the periodic payments period; and

(ii) the sum of the compensation affected payments that would have been made to the person in relation to any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of section 1173.

(2) If:

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

(b) the person's partner receives a compensation affected payment in relation to a day or days in the periodic payments period;

the recoverable amount under this section is equal to the smaller of the following amounts:

(c) the sum of the periodic compensation payments;

(d) the difference between:

(i) the sum of the compensation affected payments made to the person and the person's partner in relation to a day or days in the periodic payments period; and

(ii) the sum of the compensation affected payments that would have been made to the person and the person's partner in relation to any such day or days had those payments been made at the rates to which the payments were reduced as a result of the operation of sections 1173 and 1174.

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Subdivision C—Recovery from compensation payers and insurers

1182 Secretary may send preliminary notice to potential compensation payer or insurer

(1) If:

(a) a person (the ***claimant***) makes a claim against another person (the ***potential compensation payer***) for compensation; and

(b) the claimant claims a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the potential compensation payer that the Secretary may wish to recover an amount from the potential compensation payer.

(2) If:

(a) a person (the ***claimant***) makes a claim against a person (the ***potential compensation payer***) for compensation; and

(b) the claimant claims a compensation affected payment for a day or days in the periodic payments period or the lump sum preclusion period, as the case may be; and

(c) an insurer, under a contract of insurance, may be liable to indemnify the potential compensation payer against any liability arising from the claim for compensation;

the Secretary may give written notice to the insurer that the Secretary may wish to recover an amount from the insurer.

(3) A notice must contain:

(a) a statement of the potential compensation payer's or insurer's obligation under section 1183; and

(b) a statement of the effect of section 1184D so far as it relates to the notice.

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1183 Potential compensation payer or insurer must notify Secretary of liability

(1) If a person (the ***potential compensation payer***):

(a) is given a notice under subsection 1182(1) in relation to a person; and

(b) whether before or after receiving the notice, the potential compensation payer becomes liable to pay compensation to the person;

the potential compensation payer must give written notice to the Secretary of the liability within 7 days after:

(c) becoming liable; or

(d) receiving the notice;

whichever happens later.

Penalty: Imprisonment for 12 months.

(2) If an insurer:

(a) is given a notice under subsection 1182(2) in relation to a claim by a person; and

(b) whether before or after receiving the notice, the insurer becomes liable to indemnify the potential compensation payer, either wholly or partly, in relation to the claim;

the insurer must give written notice to the Secretary of the liability within 7 days after:

(c) becoming liable; or

(d) receiving the notice;

whichever happens later.

Penalty: Imprisonment for 12 months.

(3) Strict liability applies to:

(a) an element of an offence against subsection (1) that a notice is a notice under subsection 1182(1); and

(b) an element of an offence against subsection (2) that a notice is a notice under subsection 1182(2).

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1184 Secretary may send recovery notice to compensation payer or insurer

(1) If:

(a) a person (the ***compensation payer***):

(i) is liable to pay compensation to a person (a ***claimant***); or

(ii) where the compensation payer is an authority of a State or Territory, has determined that a payment by way of compensation is to be made to a claimant; and

(b) the claimant has received a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the compensation payer that the Secretary proposes to recover from the compensation payer the amount specified in the notice.

(2) If:

(a) an insurer is liable, under a contract of insurance, to indemnify a compensation payer against any liability arising from a person's claim for compensation; and

(b) the person has received a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the insurer that the Secretary proposes to recover from the insurer the amount specified in the notice.

(3) If a compensation payer or insurer is given notice under subsection (1) or (2), as the case may be, the compensation payer or insurer is liable to pay to the Commonwealth the amount specified in the notice.

(4) The amount to be specified in the notice is the recoverable amount under section 1184A.

(5) A notice under this section must contain a statement of the effect of section 1184D so far as it relates to such a notice.

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(6) This section applies to an amount payable by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

1184A The section 1184 recoverable amount

(1) If a person receives compensation affected payments in relation to a day or days in a lump sum preclusion period, the recoverable amount under this section is equal to the smallest of the following amounts:

(a) the sum of all compensation affected payments made to the person that relate to a day or days in a lump sum preclusion period;

(b) the compensation part of the lump sum payment;

(c) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;

(d) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.

(2) Subject to subsection (4), if:

(a) a person receives compensation affected payments in relation to a day or days in a periodic payments period; and

(b) either:

(i) the person is not a member of a couple; or

(ii) the person's partner neither receives nor claims a compensation affected payment in relation to any day in the periodic payments period;

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the recoverable amount under this section is equal to the smallest of the following amounts:

(c) the difference between:

(i) the sum of all compensation affected payments made to the person that relate to a day or days in a periodic payments period; and

(ii) the sum of all compensation affected payments that would have been made to the person in relation to any such day or days had those payments been reduced in accordance with section 1173;

(d) the sum of the amounts of the periodic compensation payments;

(e) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;

(f) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.

(3) Subject to subsection (4), if:

(a) the person claiming compensation is a member of a couple; and

(b) compensation affected payments received by the person were received in relation to a day or days in a periodic payments period; and

(c) the person's partner receives a compensation affected payment in relation to a day or days in the periodic payments period;

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the recoverable amount under this section is equal to the smallest of the following amounts:

(d) the difference between:

(i) the sum of all compensation affected payments made to the person and the person's partner in relation to a day or days in the periodic payments period; and

(ii) the sum of all compensation affected payments that would have been made to the person and the person's partner in relation to any such day or days had those payments been reduced as a result of the operation of section 1173 or 1174;

(e) the sum of the amounts of the periodic compensation payments;

(f) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;

(g) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.

(4) If:

(a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was qualified for, and was receiving, a compensation affected payment; and

(b) the person or the person's partner received or claimed a compensation affected payment in relation to a day or days in the periodic payments period;

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the recoverable amount is the amount determined by the Secretary to be the total amount by which the person's, or the person's partner's, compensation affected payment in relation to a day or days in the periodic payments period would have been reduced if a determination had been made under Division 7 of Part 3 of the Administration Act because of point 1064-E3, 1066A-F2A, 1067G-H25, 1067L-D24, 1068-G8A, 1068A-E13 or 1068B-D21 of this Act.

1184B Preliminary notice or recovery notice suspends liability to pay compensation

(1) If a compensation payer has been given a notice under section 1182 or 1184 in relation to the compensation payer's liability, or possible liability, to pay compensation, the compensation payer is not liable to pay that compensation while the notice has effect.

(2) If an insurer has been given a notice under section 1182 or 1184 in relation to the insurer's liability, or possible liability, to indemnify a compensation payer against a liability arising from a claim for compensation:

(a) the insurer is not liable to so indemnify the compensation payer; and

(b) the compensation payer is not liable to pay that compensation;

while the notice has effect.

1184C Compensation payer's or insurer's payment to Commonwealth discharges liability to compensation claimant

(1) Payment to the Commonwealth of an amount that a compensation payer is liable to pay under section 1184 in relation to a person operates, to the extent of the payment, as a discharge of the compensation payer's liability to pay compensation to the person.

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(2) Payment to the Commonwealth of an amount that an insurer is liable to pay under section 1184 in relation to a person operates, to the extent of the payment, as a discharge of:

(a) the insurer's liability to the compensation payer; and

(b) the compensation payer's liability to pay compensation to the person.

1184D Offence to make compensation payment after receiving preliminary notice or recovery notice

(1) If a person (the ***potential compensation payer***) has been given a notice under section 1182 or 1184 in relation to the payment of compensation to a person, the potential compensation payer must not make the compensation payment to the person.

Penalty: Imprisonment for 12 months.

(1A) Subsection (1) does not apply if:

(a) in the case of a notice under section 1182—the Secretary has given the potential compensation payer written notice that the notice under section 1182 is revoked; or

(b) in the case of a notice under section 1184—the potential compensation payer has paid to the Commonwealth the amount specified in the notice; or

(c) the Secretary has given the potential compensation payer written permission to pay the compensation.

(2) If an insurer has been given a notice under section 1182 or 1184 in relation to the insurer's liability to indemnify a compensation payer, the insurer must not make any payment to the compensation payer in relation to that liability.

Penalty: Imprisonment for 12 months.

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

(a) in the case of a notice under section 1182—the Secretary has given the insurer written notice that the notice under section 1182 is revoked; or

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(b) in the case of a notice under section 1184—the insurer has paid to the Commonwealth the amount specified in the notice; or

(c) the Secretary has given the insurer written permission to pay the amount.

(3) Strict liability applies to an element of an offence against subsection (1) or (2) that:

(a) a notice is a notice under section 1182; or

(b) a notice is a notice under section 1184.

1184E Liability of compensation payer or insurer to pay the Commonwealth if there is a contravention of section 1184D

(1) A compensation payer or insurer who contravenes section 1184D is, in addition to being liable under that section, liable to pay to the Commonwealth:

(a) if the contravention relates to a notice under section 1182—an amount determined by the Secretary; or

(b) if the contravention relates to a notice under section 1184—the recoverable amount specified in the notice.

(2) The amount determined by the Secretary under paragraph (1)(a) must not be more than the smallest of the amounts worked out:

(a) if the person is not a member of a couple—under subsection 1184A(1), (2) or (4), as the case requires; or

(b) if the person is a member of a couple—under subsection 1184A(1), (2), (3) or (4), as the case requires.

(3) This section applies in relation to a payment by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

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Division 5—Recoverable debts

1184F Debts resulting from notices under section 1178 or 1180

If the Secretary gives a person a notice under section 1178 or 1180 determining that the person is liable to pay to the Commonwealth the amount specified in the notice, the amount so specified is a debt due by the person to the Commonwealth.

1184G Debts resulting from notices under section 1184

If the Secretary gives a person a notice under section 1184 that the Secretary proposes to recover a specified amount from the person, the specified amount is a debt due by the person to the Commonwealth.

1184H Debts resulting from contravention of section 1184D

(1) An amount payable by a compensation payer under section 1184E is a debt due by the compensation payer to the Commonwealth.

(2) An amount payable by an insurer under section 1184E is a debt due by the insurer to the Commonwealth.

1184I Compensation arrears debts

(1) If an adverse determination is made in relation to a person because of point 1064-E3, 1066A-F2A, 1067G-H25, 1067L-D24, 1068-G8A, 1068A-E13 or 1068B-D21, the amount that the person is liable to pay to the Commonwealth because of the determination is a debt due by the person to the Commonwealth.

(2) In this section:

adverse determination means a determination under section 79, 80, 81 or 82 of the Administration Act.

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Division 6—Miscellaneous

1184J Secretary may give recovery notice either to compensation payer or to insurer but not to both

(1) The Secretary is not to give a notice to an insurer under section 1184 about a matter if there is a notice to a compensation payer under section 1184 in force in relation to the same matter.

(2) The Secretary is not to give a notice to a compensation payer under section 1184 about a matter if there is a notice to an insurer under section 1184 in force in relation to the same matter.

1184K Secretary may disregard some payments

(1) For the purposes of this Part, the Secretary may treat the whole or part of a compensation payment as:

(a) not having been made; or

(b) not liable to be made;

if the Secretary thinks it is appropriate to do so in the special circumstances of the case.

(2) If:

(a) a person or a person's partner receives or claims a compensation affected payment; and

(b) the person receives compensation; and

(c) the set of circumstances that gave rise to the claim for compensation is not related to the set of circumstances that gave rise to the person's or the person's partner's receipt of, or claim for, the compensation affected payment;

the fact that those 2 sets of circumstances are unrelated does not alone constitute special circumstances for the purposes of subsection (1).

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1184L Application to review compensation decision—disability support pension

(1) This section applies if a person claims a disability support pension and:

(a) the Secretary decides under section 1167 that the pension is not to be granted or is not payable; or

(b) the Secretary decides under section 1169 that the pension is not payable; or

(c) the Secretary decides that, if the person were qualified for the pension, the rate of the pension would be reduced to nil under section 1173.

(2) If:

(a) an application referred to in section 142 of the Administration Act is made for ART review of that decision; and

(b) at the time of the application, the Secretary has not taken the necessary steps to satisfy himself or herself whether the person is qualified for the disability support pension; and

(c) the person who claimed the disability support pension requests the Secretary, in writing, to take those steps;

the Secretary must take those steps as soon as practicable after the request is made.

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Part 3.15—Self-employment programs

1186 General effect of Part

This Part adjusts the social security pension or benefit rate of a person who is receiving or whose partner is receiving, payments under a self-employment program.

1187 Reduction in rate of payments under this Act if recipient or partner also receiving payments under a self-employment program

(1) If:

(a) an instalment of:

(ia) age pension; or

(i) disability support pension; or

(iii) carer payment; or

(iv) parenting payment; or

(vi) special needs pension;

is payable to a person during an instalment period; and

(b) a payment under a self-employment program is payable to the person during that instalment period;

the rate of the payment referred to in paragraph (a) is to be reduced under this Part.

(1A) If:

(a) a payment of:

(ii) jobseeker payment; or

(iv) special benefit;

is payable to a person during an instalment period; and

(b) a payment under a self-employment program is payable to the person during that instalment period;

the rate of the payment referred to in paragraph (a) is to be reduced under this Part.

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(2) If:

(a) an instalment of:

(ia) age pension; or

(i) disability support pension;

is payable to a person during an instalment period; and

(b) a payment under a self-employment program is payable to the person during that instalment period; and

(c) an instalment of carer payment in respect of the person is payable to the person's partner during an instalment period;

the rate of the partner's payment is to be reduced under this Part.

1188 Rate reduction under this Part

(1) Subject to subsection (2), if a person's rate of payment under this Act is to be reduced under this Part because of a payment under a self-employment program (a ***self-employment program payment***), the amount of rate reduction is to be equal to the amount of the self-employment program payment.

(2) If:

(a) a person's rate of payment under this Act is to be reduced under this Part because of a self-employment program payment; and

(b) the person's partner's rate of payment under this Act is also to be reduced under this Part (see subsection 1187(2)) because of the self-employment program payment;

the amount of rate reduction for both the person and the person's partner is to be equal to 50% of the amount of the self-employment program payment.

(3) A person's rate of payment under this Act is not to be reduced below nil under subsection (1) or (2).

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Part 3.16—Indexation and adjustment of amounts

Division 1—Preliminary

1189 Analysis of Part

This Part provides for:

(a) the indexation, in line with CPI (Consumer Price Index) increases, of the amounts in column 2 of the CPI Indexation Table at the end of section 1191; and

(aa) the indexation of the maximum basic rates for certain social security pensions using the Pensioner and Beneficiary Living Cost Index; and

(c) the adjustment of other amounts in line with the increases in the amounts indexed.

1190 Indexed and adjusted amounts

The following table sets out:

(a) each amount that is to be indexed or adjusted under this Part; and

(b) the abbreviation used in this Part for referring to that amount; and

(c) the provision or provisions in which that amount is to be found.

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Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Maximum basic rates		
1.	Maximum basic rates for a social security pension payable to a person who is partnered or for pension PP (single) (except disability support pension payable to a person who is under 21 and has no dependent children)	pension MBR	[Pension Rate Calculator A—point 1064-B1—Table B—item 2—column 3] [Pension Rate Calculator B—point 1065-B1—Table B—item 2—column 3] [Pension PP (Single) Rate Calculator—point 1068A-B1]
1AAA.	Maximum basic rates for a social security pension that are to be worked out by reference to the maximum basic rates for a social security pension payable to a person who is partnered	single pension rate MBR	[Pension Rate Calculator A—point 1064-B1—Table B—items 1, 3, 4 and 5—column 3] [Pension Rate Calculator B—point 1065-B1—Table B—items 1, 3, 4 and 5—column 3]
1AA.	Combined couple rate of pension supplement	PS rate	[subsection 20A(1)]
1AB.	Combined couple rate of minimum pension supplement	PS minimum rate	[subsection 20A(2)]

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Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
1AC.	Pension supplement basic amount	PS basic rate	[each item of the table in subsection 20A(5)]
1B.	Maximum basic rates for disability support pension payable to person who is under 21 and has no dependent children	DSP (under 21 and no child) MBR	[Pension Rate Calculator D—point 1066A-B1—Table B—column 3—all amounts] [Pension Rate Calculator E—point 1066B-B1—Table B—column 3—all amounts]
2.	Maximum basic rates for a social security benefit payable to a person who is over 21, is a member of a couple or has a dependent child	benefit MBR (ordinary)	[Benefit Rate Calculator B—point 1068-B1—Table B—column 3A—all amounts] [Benefit Rate Calculator B—point 1068-B1—Table B—column 3B—all amounts] [Benefit PP (Partnered) Rate Calculator—point 1068B-C2—Table C—column 3—all amounts]
3A.	Maximum basic rate for youth allowance	YA MBR	[Youth Allowance Rate Calculator—point 1067G-B2—Table BA—column 3—all amounts] [Youth Allowance Rate Calculator—point 1067G-B3—Table BB—column 3—all amounts] [Youth Allowance Rate Calculator—point 1067G-B4—Table BC—column 3—all amounts]

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Section 1190

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
3B.	Maximum basic rate for austudy payment	AP MBR	[Austudy Payment Rate Calculator—point 1067L-B2—Table BA—column 3—all amounts] [Austudy Payment Rate Calculator—point 1067L-B3]
4.	Additional child amounts (for dependent children for calculating a person's international agreement portability rate)	additional child amounts	Section 14A of the *Social Security (International Agreements) Act 1999*
	Youth disability supplement		
4A.	Youth disability supplement payable to a disability support pensioner who is under 21 or to a recipient of youth allowance who is under 22	youth disability supplement	[Pension Rate Calculator D—point 1066A-C1—the annual rate] [Pension Rate Calculator E—point 1066B-C1—the annual rate] [Youth Allowance Rate Calculator—point 1067G-D1—the fortnightly rate]
	Child amounts		
15.	Rate of carer allowance	CA rate	[subsection 974(2)]
16.	Rate of double orphan pension calculated under subsection 1010(1)	DOP rate	[section 1010]

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Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
17.	**Rent assistance** Maximum rent assistance for social security payments	MRA	[Part 3.7—section 1070L—Table—column 4—items 1, 2, 5, 6, 7, 8, 9 and 10] [Part 3.7—section 1070M—Table—column 3—amount] [Part 3.7—sections 1070N and 1070P—Table—column 4—items 1, 2, 5, 6, 7, 8, 9 and 10] [Part 3.7—section 1070Q—Table—column 4—items 1, 2, 4, 5, 6 and 7] [Part 3.7—section 1070R—Table—column 4—items 1, 3, 4, 5 and 6]
18.	Rent threshold amount	RTA	[Part 3.7—sections 1070L and 1070N to 1070R—Table—formulas in column 3—all amounts deducted from fortnightly rent] [Part 3.7—section 1070M—Table—formula in column 2—amount deducted from fortnightly rent] [Part 3.7—subsection 1070T(1)—amount]

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Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Income free area		
20.	Ordinary income free area for social security pension	pension free area	[Pension Rate Calculator A—point 1064-E4—Table E-1—column 3—all amounts] [Pension Rate Calculator D—point 1066A-F3—Table F-1—column 3—all amounts] [Pension PP (Single) Rate Calculator—point 1068A-E14—Table E—column 2]
20AA.	Ordinary income free area for youth allowance and austudy payment	YA and austudy ordinary income free area	[Youth Allowance Rate Calculator—paragraphs 1067G-H29(a) and (aa)] [Austudy Payment Rate Calculator—point 1067L-D28]
	YA and austudy range reduction boundary		
20AB.	Dollar amount of boundary between lower and upper range reduction for ordinary income reduction	YA and austudy range reduction boundary	[Youth Allowance Rate Calculator—paragraphs 1067G-H32(a) and (b) and 1067G-H33(a) and (b)] [Austudy Payment Rate Calculator—points 1067L-D31 and 1067L-D32]
20A.	Income ceiling for care receiver	CP income ceiling	[Subsection 198A(1)]

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Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Student income bank balance limit		
21.	Student income bank balance limit	student income bank balance limit	[Youth Allowance Rate Calculator—point 1067G-J3—method statement—step 3—paragraph (a)] [Austudy Payment Rate Calculator—point 1067L-E2—method statement—step 3—paragraph (a)]
	Assets value limits		
24.	Assets value limit for social security pension (other than pension PP (single)) for homeowner who is not a member of a couple	pension "single" homeowner AVL	[Pension Rate Calculator A—point 1064-G3—Table G-1—column 3A—item 1] [Pension Rate Calculator D—point 1066A-H3—Table H-1—column 3A—item 1]
25.	assets value limit for social security pension (other than pension PP (single)) for non-homeowner who is not a member of a couple	pension "single" non-homeowner AVL	[Pension Rate Calculator A—point 1064-G3—Table G-1—column 3B—item 1] [Pension Rate Calculator D—point 1066A-H3—Table H-1—column 3B—item 1]

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Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
26.	assets value limit for social security pension for homeowner who is a member of a couple	pension "partnered" homeowner AVL	[Pension Rate Calculator A—point 1064-G3—Table G-1—column 3A—items 2 and 3] [Pension Rate Calculator D—point 1066A-H3—Table H-1—column 3A—items 2 and 3]
27.	assets value limit for social security pension for non-homeowner who is a member of a couple	pension "partnered" non-homeowner AVL	[Pension Rate Calculator A—point 1064-G3—Table G-1—column 3B—items 2 and 3] [Pension Rate Calculator D—point 1066A-H3—Table H-1—column 3B—items 2 and 3]
27A.	Assets value limit for care receiver	CP AVL	[Subsections 198D(1), (1A), (1C), (1DA) and (1E)]
27B.	Assets value hardship limits for care receiver	CP HAVL	[Subsections 198N(2), (3) and (4)—all amounts]
28.	Assets value limit for pension PP (single) and social security benefit for homeowner who is not a member of a couple	benefit "single" homeowner AVL	[paragraph 547C(b)] [paragraph 573B(a)] [subsection 611(2)—Table—column 3A—item 1] [subsection 733(3)—Table—column 3A—item 1] [subsection 500Q(2)—table—column 3—item 1]

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Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
29.	Assets value limit for pension PP (single) and social security benefit for non-homeowner who is not a member of a couple	benefit "single" non-homeowner AVL	[paragraph 547C(c)] [paragraph 573B(b)] [subsection 611(2)—Table—column 3B—item 1] [subsection 733(3)—Table—column 3B—item 1] subsection 500Q(2)—table—column 3—item 2]
30.	Assets value limit for social security benefit for homeowner who is partnered (partner getting neither pension nor benefit)	benefit "partnered" (item 2) homeowner AVL	[paragraph 547C(d)] [paragraph 573B(c)] [subsection 611(2)—Table—column 3A—item 2] [subsection 733(3)—Table—column 3A—item 2] [subsection 500Q(3)—Table—Column 3A—item 1]
31.	Assets value limit for social security benefit for non-homeowner who is partnered (partner getting neither pension nor benefit)	benefit "partnered" (item 2) non-homeowner AVL	[paragraph 547C(e)] [paragraph 573B(d)] [subsection 611(2)—Table—column 3B—item 2] [subsection 733(3)—Table—column 3B—item 2] [subsection 500Q(3)—Table—Column 3B—item 1]
32.	Assets value limit for social security benefit for homeowner who is partnered (partner getting pension or benefit)	benefit "partnered" (item 3) homeowner AVL	[subsection 611(2)—Table—column 3A—item 3] [subsection 733(3)—Table—column 3A—item 3] [subsection 500Q(3)—Table—Column 3A—item 2]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
33.	Assets value limit for social security benefit for non-homeowner who is partnered (partner getting pension or benefit)	benefit "partnered" (item 3) non-homeowner AVL	[subsection 611(2)—Table—column 3B—item 3] [subsection 733(3)—Table—column 3B—item 3] [subsection 500Q(3)—Table—Column 3B—item 2]
34.	Assets value limit for some illness separated special residents	special illness separated special resident AVL	[paragraph 1152(5)(g)] [paragraph 1153(3)(e)] [paragraph 1154(2)(f)]
35.	Assets value limit of special disability trust (see section 1209Y)	special disability trust AVL	[subsection 1209Y(3)]
36.	exempt funeral investment threshold	exempt funeral investment threshold	[paragraph 19E(1)(b)]
	Income limits		
36A.	seniors health card income limit	seniors health card income limit	[Point 1071-12—table—column 3—all amounts]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Pension bonus		
37.	Pension supplement component for pension bonus	Pension supplement component for pension bonus	[subsection 93H(4)—all amounts]
	Permissible child earnings		
40.	Amount that child who is not in full-time education and under 16 can earn from employment without ceasing to be a dependent child	permissible child earnings limit (child aged under 16 years)	[paragraph 5(3)(c)]
40A.	Amount that a young person who has turned 16, but not 22, can earn in a financial year without ceasing to be a student child, dependent child or secondary pupil child	Permissible child earnings limit (child aged 16 to 21 years)	[paragraphs 5(1A)(b) and (4)(b) and 5F(b)]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
44.	**Pharmaceutical allowance** Rate of pharmaceutical allowance for a person who is receiving a social security pension and is not a member of a couple	Pension PA "single" rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—item 1] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—item 1] [Pension PP (Single) Rate Calculator—point 1068A-C7]
45.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and is not a member of a couple	Benefit PA "single" rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—item 1]
46.	Rate of pharmaceutical allowance for a person who is receiving a social security pension and has a partner	Pension PA "partnered" (item 2) rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—item 2] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—item 2]
47.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and who has a partner	Benefit PA "partnered" (item 2) rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—item 2] [Benefit PP (Partnered) Rate Calculator—point 1068B-E8—Table E—column 3—item 1]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
48.	Rate of pharmaceutical allowance for a person who is receiving a social security pension and is a member of an illness separated or respite care couple	Pension PA "illness separated or respite care" rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—items 3 and 4] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—items 3 and 4]
49.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and is a member of an illness separated or respite care couple	Benefit PA "illness separated or respite care" rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—items 4 and 5] [Benefit PP (Partnered) Rate Calculator—point 1068B-E8—Table E—column 3—items 2 and 3]
49A.	Rate of pharmaceutical allowance for a person who is receiving a social security pension and has a partner who is getting a service pension	Pension PA "partnered" (item 5) rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—item 5] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—item 5]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
49B.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and has a partner who is getting a service pension	Benefit PA "Partnered (partner getting service pension)" rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—item 6] [Benefit PP (Partnered) Rate Calculator—point 1068B-E8—Table—column 3—item 4]
49C.	Rate of pharmaceutical allowance for a person: (a) who is receiving a social security pension; and (b) is a member of a couple; and (c) whose partner is in gaol	Pension PA "partnered" (item 6) rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—item 6] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—item 6]
49D.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and has a partner who is in gaol	Benefit PA "partnered" (item 7) rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—item 7] [Benefit PP (Partnered) Rate Calculator—point 1068B-E8—Table E—column 3—item 5]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
49E.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is not a member of a couple	PA (YA/AP) single rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 1—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 1—column 3]
49F.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered	PA (YA/AP) partnered (item 49F) rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 2—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 2—column 3]
49G.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is a member of an illness separated couple or a respite care couple	PA (YA/AP) (item 49G) rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—items 3 and 4—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—items 3 and 4—column 3]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
49H.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered (partner getting service pension)	PA (YA/AP) (item 49H) rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 5—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 5—column 3]
49J.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered (partner in gaol)	PA (YA/AP) (item 49J) rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 6—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 6—column 3]
50.	Rate of telephone allowance for a person who is not a member of a couple	TA “single” rate	[section 1061S—Table—column 3—item 1]
51.	Rate of telephone allowance for a person with a partner where the partner is getting neither pension nor benefit	TA “partnered” (item 3) rate	[section 1061S—Table—column 3—item 3]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
52.	Rate of telephone allowance for a person with a partner where the partner is getting pension or benefit but not getting telephone allowance	TA "partnered" (item 4) rate	[section 1061S—Table—column 3—item 4]
53.	Rate of telephone allowance for a person with a partner where the partner is getting pension or benefit and getting telephone allowance	TA "partnered" (item 5) rate	[section 1061S—Table—column 3—item 5]
54.	Rate of telephone allowance for a member of an illness separated or respite care couple	TA "partnered" (item 6) rate	[section 1061S—Table—column 3—item 6]
55.	Rate of telephone allowance for a person with a partner where the partner is not getting veterans supplement or MRCA supplement	TA "partnered" (item 7) rate	section 1061S—Table—column 3—item 7

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
56.	Rate of telephone allowance for a person with a partner where the partner is getting veterans supplement or MRCA supplement	TA "partnered" (item 8) rate	section 1061S—Table—column 3—item 8
56AA.	Rate of telephone allowance for a person with a partner where the partner is in gaol	TA "partnered" (item 9) rate	section 1061S—Table—column 3—item 9
56AB.	Increased rate of telephone allowance for a person who is not a member of a couple and has home internet	TA (internet) "single" rate	section 1061SA—Table—column 3—item 1
56AC.	Increased rate of telephone allowance for a person with a partner where the partner is getting neither pension nor benefit and the person has home internet	TA (internet) "partnered" (item 3) rate	section 1061SA—Table—column 3—item 3

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
56AD.	Increased rate of telephone allowance for a person with a partner where the partner is getting pension or benefit but not getting telephone allowance and the person has home internet	TA (internet) "partnered" (item 4) rate	section 1061SA—Table—column 3—item 4
56AE.	Increased rate of telephone allowance for a person with a partner where the partner is getting pension or benefit and getting telephone allowance at the increased rate and the person has home internet	TA (internet) "partnered" (item 5) rate	section 1061SA—Table—column 3—item 5
56AF.	Increased rate of telephone allowance for a member of an illness separated or respite care couple and the person has home internet	TA (internet) "partnered" (item 6) rate	section 1061SA—Table—column 3—item 6

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
56AG.	Increased rate of telephone allowance for a person with a partner where the partner is not getting veterans supplement or MRCA supplement and the person has home internet	TA (internet) "partnered" (item 7) rate	section 1061SA—Table—column 3—item 7
56AH.	Increased rate of telephone allowance for a person with a partner where the partner is getting veterans supplement or MRCA supplement and the person has home internet	TA (internet) "partnered" (item 8) rate	section 1061SA—Table—column 3—item 8
56AI.	Increased rate of telephone allowance for a person with a partner where the partner is in gaol and the person has home internet	TA (internet) "partnered" (item 9) rate	section 1061SA—Table—column 3—item 9

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
56AJ.	Increased rate of telephone allowance for a person with a partner where the partner is getting pension or benefit and getting telephone allowance at the standard rate and the person has home internet	TA (internet) "partnered" (item 10) rate	section 1061SA—Table—column 3—item 10
56A.	Rate of utilities allowance for a person who is not a member of a couple	UA "single" rate	[section 1061TB—Table—column 3—item 1]
56B.	Rate of utilities allowance for a member of an illness separated couple	UA "partnered" (item 2) rate	[section 1061TB—Table—column 3—item 2]
56C.	Rate of utilities allowance for a member of a respite care couple	UA "partnered" (item 3) rate	[section 1061TB—Table—column 3—item 3]
56D.	Rate of utilities allowance for a member of a temporarily separated couple	UA "partnered" (item 4) rate	[section 1061TB—Table—column 3—item 4]

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Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Mobility allowance		
57.	mobility allowance for a person qualified under section 1035	MA rate (standard)	[subsection 1044(1)]
58.	mobility allowance for a person qualified under section 1035A	MA rate (increased)	[subsection 1044(1A)]
	Deeming thresholds		
63.	Deeming threshold for a person who is not a member of a couple	Deeming threshold individual	Subsection 1081(1)
64.	Deeming threshold for a pensioner couple	Deeming threshold pensioner couple	Subsection 1081(2)
	Attribution threshold		
65.	Primary production attribution threshold	Primary production attribution threshold	Section 1208U
	Maximum transitional pension rates		
66.	Maximum transitional pension rates	Maximum transitional pension rates	Subparagraph 146(4)(a)(i) of Schedule 1A

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Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Amounts related to scholarships		
67.	threshold amount	scholarship threshold amount	subsection 8(8AB)
69.	relocation scholarship payment amount	relocation scholarship payment amount	subsections 592L(1), (3) and (4)
	Student start-up loans		
69A.	student start-up loan amount	student start-up loan amount	section 1061ZVBD
	Essential medical equipment payment		
70.	essential medical equipment payment	EMEP	section 917G

Note: Indexing the PS minimum rate will also result in the indexation of the rate of quarterly pension supplement (see section 1061VB).

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Division 2—CPI indexation

1191 CPI Indexation Table

(1) An amount referred to in the following CPI Indexation Table below is to be indexed under this Division on each indexation day for the amount, using the reference quarter and base quarter for the amount and indexation day and rounding off to the nearest multiple of the rounding amount:

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Maximum basic rates				
1.	pension MBR	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$2.60
1A.	PS rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2009)	$5.20

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
1B.	PS minimum rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2009)	$5.20
1C.	PS basic rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than December quarter 2008)	$2.60
2.	benefit MBR (ordinary)	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$0.10

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
3.	benefit MBR (junior or intermediate)	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1986)	$0.10
3A.	YA MBR	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1997)	$0.10
3B.	AP MBR	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1997)	$0.10

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Child amounts				
4.	additional child amounts	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1999)	$2.60
9.	CA rate	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1988)	$0.10
10.	DOP rate	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1988)	$0.10

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
11.	**Rent assistance** MRA	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$0.20
12.	RTA	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$0.20
	Income free areas				
14.	pension free area	1 July	March	most recent March quarter before reference quarter	$52.00

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
14AA.	YA and austudy ordinary income free area	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2011)	$1.00
	YA and austudy range reduction boundary				
14AB.	YA and austudy range reduction boundary	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2011)	$1.00
14A.	CP income ceiling	1 January	June	most recent June quarter before reference quarter	not applicable —see subsection 1194(3A)

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
15.	student income bank balance limit	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2011)	$100.00
	Assets value limits				
18.	pension "single" homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
19.	pension "partnered" homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
20.	pension "partnered" non-homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
20A.	CP AVL	1 January	June	most recent June quarter before reference quarter	$250.00
20B.	CP HAVL	1 January	June	most recent June quarter before reference quarter	$250.00
21.	benefit "single" homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
22.	benefit "partnered" (item 3) homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
23.	benefit "partnered" (item 3) non-homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
25.	special disability trust AVL	1 July	December	most recent December quarter before reference quarter	$250.00
26.	exempt funeral investment threshold	1 July	December	most recent December quarter before reference quarter	$250.00
	Income limits				
26A.	seniors health card income limit	20 September	June	highest June quarter before reference quarter (but not earlier than June quarter 2013)	$1.00

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Pension bonus				
27.	Pension supplement component for pension bonus	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2008)	$2.60
	Permissible child earnings				
28.	permissible child earnings limit (child aged under 16 years)	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1986)	$0.05
28A.	Permissible child earnings limit (child aged 16 to 21 years)	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1986)	$0.05

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Pharmaceutical allowance				
31.	Benefit PA "partnered" (item 2) rate	1 January	September	highest September quarter before reference quarter (but not earlier than September quarter 1991)	$0.10
32.	Benefit PA "Partnered (partner getting service pension)" rate	1 January	September	highest September quarter before reference quarter (but not earlier than September quarter 1991)	$0.10
33.	TA "single" rate	20 September	June	most recent June quarter before reference quarter	$0.80

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
33AAA.	TA (internet) "single" rate	20 September	June	most recent June quarter before reference quarter	$0.80
33AAB.	TA (internet) "partnered" (item 10) rate	20 September	June	most recent June quarter before reference quarter	$0.80
33AA.	UA "single" rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1991)	$0.40
33AB.	UA "partnered" (item 2) rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1991)	$0.40

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
33AC.	UA "partnered" (item 3) rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1991)	$0.40
33AD.	UA "partnered" (item 4) rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1991)	$0.40
33A.	PA (YA/AP) partnered (item 49F) rate PA (YA/AP) (item 49H) rate	1 January	September	highest September quarter before reference quarter (but not earlier than Sept quarter 1997)	$0.10

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Mobility allowance				
34.	MA rate (standard)	1 January	June	highest June quarter before the reference quarter (but not earlier than June 1991 quarter)	$0.10
34A.	MA rate (increased)	1 January	June	highest June quarter before the reference quarter (but not earlier than June 2006 quarter)	$0.10
	Deeming thresholds				
35.	Deeming threshold individual	1 July	March	highest March quarter before reference quarter (but not earlier than March 1994 quarter)	$200.00

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
36.	Deeming threshold pensioner couple	1 July	March	highest March quarter before reference quarter (but not earlier than March 1994 quarter)	$200.00
	Primary production attribution threshold				
37.	Primary production attribution threshold	1 July	December	Most recent December quarter before reference quarter	$250.00
	Maximum transitional pension rates				
38.	Maximum transitional pension rates	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2008)	$2.60

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Amounts related to scholarships				
39.	scholarship threshold amount	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2009)	$1.00
41.	relocation scholarship payment amount	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2009)	$1.00
	Student start-up loans				
41A.	student start-up loan amount	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2016)	$1.00

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Essential medical equipment payment				
42.	EMEP	1 July	December	highest December quarter before reference quarter (but not earlier than the December quarter of 2011)	$1.00

Highest quarter

(2) A reference in the CPI Indexation Table to the highest of a group of quarters is a reference to the quarter in that group that has the highest index number.

1192 Indexation of amounts

(1) If an amount is to be indexed under this Division on an indexation day, this Act has effect as if the indexed amount were substituted for that amount on that day.

(2) This is how to work out the indexed amount for an amount that is to be indexed under this Division on an indexation day:

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Method statement

Step 1. Use section 1193 to work out the indexation factor for the amount on the indexation day.

Step 2. Work out the current figure for the amount immediately before the indexation day.

Step 3. Multiply the current figure by the indexation factor: the result is the ***provisional indexed amount***.

Step 4. Use section 1194 to round off the provisional indexed amount: subject to Division 3, the result is the indexed amount. (The indexed amount (including one replaced under Division 3) may be increased under section 1195 in certain cases.)

Note: For ***current figure*** see subsection 20(1).

(4AB) The first indexation of the amounts to which item 14AAA of the CPI Indexation Table in subsection 1191(1) relates is to take place on 1 July 2015.

(4AC) Amounts under item 14AAA of the CPI Indexation Table in subsection 1191(1) are not to be indexed on 1 July of the first financial year beginning on or after the day this subsection commences and on 1 July of the next 2 financial years.

(5) The first indexation of rent assistance under items 11 and 12 of the CPI Indexation Table in subsection 1191(1) (being those items as substituted by the *Social Security Amendment (Further Simplification) Act 2004*) is to take place on 20 September 2004.

(5AAA) The amount under item 14 of the CPI Indexation Table in subsection 1191(1), to the extent to which that item relates to the amount in column 2 of Table E in point 1068A-E14 of the Pension PP (Single) Rate Calculator, is not to be indexed on 1 July of the first financial year beginning on or after the day this subsection commences and on 1 July of the next 2 financial years.

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(5AAB) Amounts under items 14AA, 14AB and 15 of the CPI Indexation Table in subsection 1191(1) are not to be indexed on 1 January of the first calendar year beginning on or after the day this subsection commences and on 1 January of the next 2 calendar years.

(5AB) Amounts under items 21, 22 and 23 of the CPI Indexation Table in subsection 1191(1) are not to be indexed on 1 July 2015 and 1 July 2016.

(5A) The first indexation of an amount under item 25 of the CPI Indexation Table in subsection 1191(1) is to take place on 1 July 2007.

(5B) The first indexation of amounts under item 26A of the CPI Indexation Table in subsection 1191(1) is to take place on 20 September 2014.

(5BB) For the purposes of working out the indexed amount for the seniors health card income limit on 20 September 2023, the current figure for the seniors health card income limit immediately before that day is taken to be:

(a) for an amount covered by column 3 of item 1, 3, 4 or 5 of the table in point 1071-12—$90,000; or

(b) for an amount covered by column 3 of item 2 of the table in point 1071-12—$72,000.

(5C) For the purposes of working out the indexed amount for pension "single" homeowner AVL on 1 July 2017, the current figure for pension "single" homeowner AVL immediately before that day is taken to be $250,000.

(5D) For the purposes of working out the indexed amount for pension "partnered" homeowner AVL on 1 July 2017, the current figure for pension "partnered" homeowner AVL immediately before that day is taken to be $187,500.

(5E) For the purposes of working out the indexed amount for pension "partnered" non-homeowner AVL on 1 July 2017, the current figure for pension "partnered" non-homeowner AVL immediately before that day is taken to be $287,500.

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(5F) For the purposes of working out the indexed amount for benefit "single" homeowner AVL on 1 July 2017, the current figure for benefit "single" homeowner AVL immediately before that day is taken to be $250,000.

(5G) For the purposes of working out the indexed amount for benefit "partnered" (item 3) homeowner AVL on 1 July 2017, the current figure for benefit "partnered" (item 3) homeowner AVL immediately before that day is taken to be $187,500.

(5H) For the purposes of working out the indexed amount for benefit "partnered" (item 3) non-homeowner AVL on 1 July 2017, the current figure for benefit "partnered" (item 3) non-homeowner AVL immediately before that day is taken to be $287,500.

(7) The first indexation of amounts under items 35 and 36 of the CPI Indexation Table in subsection 1191(1) is to take place on 1 July 1997.

(8B) The student start-up loan amount (see item 41A of the CPI Indexation Table in subsection 1191(1)) is not to be indexed on 1 January 2016.

1193 Indexation factor

(1) Subject to subsections (2) and (3), the indexation factor for an amount that is to be indexed under this Division on an indexation day is:

$$\frac{\text{index number for most recent reference quarter}}{\text{index number for base quarter}}$$

worked out to 3 decimal places.

Note: For ***reference quarter*** and ***base quarter*** see the CPI Indexation Table in section 1191.

(2) If an indexation factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the indexation factor is to be increased by 0.001.

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(3) If an indexation factor worked out under subsections (1) and (2) would be less than 1, the indexation factor is to be increased to 1.

1194 Rounding off indexed amounts

(1) If a provisional indexed amount is a multiple of the rounding base, the provisional indexed amount becomes the indexed amount.

Note 1: For ***provisional indexed amount*** see Step 3 in subsection 1192(2).

Note 2: For ***rounding base*** see the CPI Indexation Table in section 1191.

(2) Subject to subsections (3), (6) and (7) if a provisional indexed amount is not a multiple of the rounding base, the indexed amount is the provisional indexed amount rounded up or down to the nearest multiple of the rounding base.

(3) Subject to subsections (3A), (6) and (7), if a provisional indexed amount is not a multiple of the rounding base but is a multiple of half the rounding base, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of the rounding base.

(3A) If a provisional indexed amount for CP income ceiling is not a multiple of $1.00, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of $1.00.

(6) If a provisional indexed amount for a pharmaceutical allowance rate is not a multiple of 10 cents, the indexed amount is the provisional indexed amount rounded down to the nearest multiple of 10 cents.

(7) If a provisional indexed amount for a telephone allowance rate is not a multiple of 80 cents, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of 80 cents.

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1195 Certain indexed amounts to be increased in line with increases in Male Total Average Weekly Earnings

(1) For the purposes of this section:

(a) a ***category A amount*** is the annual rate specified in point 1068A-B1; and

(b) a ***category B amount*** is an amount specified as set out below:

(i) point 1064-B1—Table B—item 2—column 3;

(ii) point 1065-B1—Table B—item 2—column 3.

(2) If:

(a) a category A amount is to be indexed under this Division on an indexation day; and

(b) 25% of the annualised MTAWE figure for whichever of the following quarters is applicable:

(i) if the indexation day is a 20 March—the most recent December quarter;

(ii) if the indexation day is a 20 September—the most recent June quarter;

exceeds the indexed amount for the category A amount;

then:

(c) the indexed amount for the category A amount is to be increased by an amount equal to the excess; and

(d) if the indexed amount for the category A amount (as increased under paragraph (c)) is not a multiple of $2.60, the indexed amount (as increased under paragraph (c)) is to be further increased by rounding up to the next highest multiple of $2.60.

(2A) If:

(a) a category B amount is to be indexed under this Division on an indexation day; and

(b) 50% of the combined couple benchmark for that indexation day exceeds the indexed amount for the category B amount;

then:

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(c) the indexed amount for the category B amount is to be increased by an amount equal to the excess; and

(d) if the indexed amount for the category B amount (as increased under paragraph (c)) is not a multiple of $2.60, the indexed amount (as increased under paragraph (c)) is to be further increased by rounding up to the next highest multiple of $2.60.

(2B) For the purposes of this section, the ***combined couple benchmark***, for an indexation day, is 41.76% of the annualised MTAWE figure for whichever of the following quarters is applicable:

(a) if the indexation day is a 20 March—the most recent December quarter;

(b) if the indexation day is a 20 September—the most recent June quarter.

(3) For the purposes of this section, the ***annualised MTAWE figure*** for a quarter is 52 times the amount set out for the reference period in the quarter under the headings "Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL" in a document published by the Australian Statistician entitled "Average Weekly Earnings, States and Australia".

(4) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes the amount referred to in subsection (3):

(a) under differently described headings (the ***new headings***); or

(b) in a document entitled otherwise than as described in subsection (3) (the ***new document***);

then the ***annualised MTAWE figure*** is to be calculated in accordance with subsection (3) as if the references to:

(c) "Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL"; or

(d) "Average Weekly Earnings, States and Australia";

were references to the new headings and/or the new document, as the case requires.

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(5) For the purposes of this section, the ***reference period*** in a particular quarter is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

(6) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes an amount in substitution for a particular amount previously published by the Australian Statistician, the publication of the later amount is to be disregarded for the purposes of this section.

(7) In this section:

December quarter means a quarter ending on 31 December.

June quarter means a quarter ending on 30 June.

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Division 3—Social security pension indexation using Pensioner and Beneficiary Living Cost Index

1196 Social security pension indexation using Pensioner and Beneficiary Living Cost Index

(1) This section applies to the amount (the ***starting amount***) referred to in column 2 of item 1 of the table in subsection 1191(1), except to the extent that it covers the maximum basic rate for pension PP (single).

(2) If the indexed amount for the starting amount, worked out under section 1192 on an indexation day and disregarding section 1195 and this Division, is less than the living cost amount worked out on that indexation day using the following method statement, then that indexed amount is taken to be an amount equal to that living cost amount:

Method statement	
Step 1.	Use section 1197 to work out the living cost indexation factor on that indexation day.
Step 2.	Work out the current figure for the starting amount immediately before that indexation day.
Note:	For ***current figure*** see subsection 20(1).
Step 3.	Multiply the current figure by the living cost indexation factor: the result is the ***provisional living cost amount***.
Step 4.	Use section 1198 to round off the provisional living cost amount: the result is the ***living cost amount***.

Note 1: If the indexed amount for the starting amount, worked out under section 1192, is taken to be an amount equal to that living cost amount, there may be a further increase of that replaced indexed amount under section 1195.

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Note 2: On and after 20 March 2013, the indexation of certain amounts may be affected by Division 8.

1197 Living cost indexation factor

(1) Subject to subsections (5) and (6), the living cost indexation factor on an indexation day is:

$$\frac{\text{Living cost index number for reference quarter}}{\text{Living cost index number for base quarter}}$$

worked out to 3 decimal places.

Definitions

(2) For the purposes of this section, the ***living cost index number***, in relation to a quarter, is the All Groups Pensioner and Beneficiary Living Cost Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

(3) For the purposes of this section, the ***reference quarter*** is:
  (a) if the indexation day is a 20 March—the most recent December quarter before the indexation day; and
  (b) if the indexation day is a 20 September—the most recent June quarter before the indexation day.

(4) For the purposes of this section, the ***base quarter*** is the June or December quarter that:
  (a) is a quarter before the reference quarter; and
  (b) has the highest living cost index number.

Rounding

(5) If a living cost indexation factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, that indexation factor is to be increased by 0.001.

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(6) If a living cost indexation factor worked out under subsections (1) and (5) would be less than 1, that indexation factor is to be increased to 1.

Publication of substituted living cost index numbers

(7) Subject to subsection (8), if at any time (whether before or after the commencement of this section) the Australian Statistician publishes a living cost index number for a quarter in substitution for a living cost index number previously published by the Australian Statistician for that quarter, the publication of the later living cost index number is to be disregarded for the purposes of this section.

Change to index reference period

(8) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the index reference period for the Pensioner and Beneficiary Living Cost Index, regard is to be had, for the purposes of applying this section after the change takes place, only to living cost index numbers published in terms of the new index reference period.

1198 Rounding off amounts

(1) If a provisional living cost amount is a multiple of $2.60, the provisional living cost amount becomes the living cost amount.

(2) Subject to subsection (3), if a provisional living cost amount is not a multiple of $2.60, the living cost amount is the provisional living cost amount rounded up or down to the nearest multiple of $2.60.

(3) If a provisional living cost amount is not a multiple of $2.60 but is a multiple of $1.30, the living cost amount is the provisional living cost amount rounded up to the nearest multiple of $2.60.

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Division 4—Adjustment of other rates

1198A Adjustment of single pension rate MBR amounts

(1) This Act has effect as if, on 20 March (an ***indexation day***) and 20 September (an ***indexation day***) each year, the adjusted single pension amount were substituted for each single pension rate MBR amount (see item 1AAA of the table in section 1190).

(2) For the purposes of this section, the adjusted single pension amount is worked out as follows:

Method statement

Step 1. Work out the amount substituted for the amount specified in column 3 of item 2 of Table B in point 1064-B1 on that indexation day under section 1192.

Step 2. Multiply the amount worked out at step 1 by 2.

Step 3. Work out 66.33% of the amount worked out at step 2.

Step 4. Round the amount worked out at step 3 to the nearest multiple of $2.60 (rounding up if necessary): the result is the ***adjusted single pension amount***.

1198B Adjustment of disability support pension (under 21) MBRs

This Act (and any other Act that refers to this Act) has effect as if, on 1 January each year, the amount worked out by applying the formula:

$$\text{YA MBR} \times 26$$

to an amount identified in column 2 of an item in the following table were substituted for the amount identified in column 3 of the item.

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Adjustment of DSP (under 21) MBR table		
Column 1 **Item**	**Column 2** **YA MBR amount**	**Column 3** **corresponding DSP (under 21) MBR amount**
	Youth Allowance Rate Calculator—point 1067G-B3—Table BB	**Pension Rate Calculator D—point 1066A-B1—Table B and Pension Rate Calculator E—Point 1066B-B1—Table B**
3	column 3—item 1	column 3—item 1
4	column 3—item 5	column 3—items 2, 4, 5 and 6
5	column 3—item 2	column 3—item 3

1198C Adjustment of youth disability supplement

(1) This Act (and any other Act that refers to this Act) has effect as if, on 1 January each year, the amount worked out using the following formula was substituted for the amount of the rate of the youth disability supplement under Module C of Pension Rate Calculator D or Module C of Pension Rate Calculator E:

CA rate × 26

where:

CA rate is the current figure, as at that 1 January, for the CA rate.

Note: For ***current figure*** see subsection 20(1).

(2) This Act (and any other Act that refers to this Act) has effect as if, on 1 January each year, the current figure, as at that 1 January, was substituted for the amount of the rate of the youth disability supplement under Module D of the Youth Allowance Rate Calculator.

Note: For ***current figure*** see subsection 20(1).

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1203 Adjustment of pension "single non-homeowner" AVL

This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the pension "single" non-homeowner AVL:

$$\text{"single" homeowner AVL} + 2 \times \left[\text{"partnered" non-homeowner AVL} - \text{"partnered" homeowner AVL} \right]$$

where:

"partnered" homeowner AVL is the current figure, as at that 1 July, for the pension "partnered" homeowner AVL.

"partnered" non-homeowner AVL is the current figure, as at that 1 July, for the pension "partnered" non-homeowner AVL.

"single" homeowner AVL is the current figure, as at that 1 July, for the pension "single" homeowner AVL.

1204 Adjustment of benefit AVLs

(1) This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the benefit "single" non-homeowner AVL:

$$\text{Benefit "single" homeowner AVL} + 2 \times \left[\text{Benefit "partnered" (item 3) non-homeowner AVL} - \text{Benefit "partnered" (item 3) homeowner AVL} \right]$$

where:

benefit "partnered" (item 3) homeowner AVL is the current figure, as at that 1 July, for the benefit "partnered" (item 3) homeowner AVL.

benefit "partnered" (item 3) non-homeowner AVL is the current figure, as at that 1 July, for the benefit "partnered" (item 3) non-homeowner AVL.

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benefit "single" homeowner AVL is the current figure, as at that 1 July, for the benefit "single" homeowner AVL.

(2) This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the benefit "partnered" (item 2) homeowner AVL:

$$2 \times \text{Benefit "partnered" (item 3) homeowner AVL}$$

where:

benefit "partnered" (item 3) homeowner AVL is the current figure, as at that 1 July, for the benefit "partnered" (item 3) homeowner AVL.

(3) This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the benefit "partnered" (item 2) non-homeowner AVL:

$$2 \times \text{Benefit "partnered" (item 3) non-homeowner AVL}$$

where:

benefit "partnered" (item 3) non-homeowner AVL is the current figure, as at that 1 July, for the benefit "partnered" (item 3) non-homeowner AVL.

1205 Adjustment of special illness separated special resident AVL

This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for each special illness separated special resident AVL:

$$\frac{\text{pension "partnered" homeowner AVL} + \text{pension "partnered" non-homeowner AVL}}{2}$$

where:

pension "partnered" homeowner AVL is the current figure, as at that 1 July, for the pension "partnered" homeowner AVL.

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pension "partnered" non-homeowner AVL is the current figure, as at that 1 July, for the pension "partnered" non-homeowner AVL.

1206A Adjustment of certain pharmaceutical allowance rates

(1) This Act has effect as if, on 1 January each year, there were substituted for:

(a) the Pension PA "partnered" (item 2) rate; and

(b) the Pension PA "partnered" (item 5) rate;

the amount worked out by using the formula:

$$\text{Benefit PA "partnered" (item 2) rate} \times 26$$

where:

Benefit PA "partnered" (item 2) rate is the current figure, as at that 1 January, for the Benefit PA "partnered" (item 2) rate.

Note 1: For ***current figure*** see subsection 20(1).

Note 2: The Benefit PA "partnered" (item 2) rate is indexed on each 1 January (see the CPI Indexation Table in section 1191—item 31).

(2) This Act has effect as if, on 1 January each year, there were substituted for:

(a) the Pension PA "single" rate; and

(b) the Pension PA "illness separated or respite care" rate; and

(c) the Pension PA "partnered" (item 6) rate;

the amount worked out by using the formula:

$$\text{Benefit PA "partnered" (item 2) rate} \times 52$$

where:

Benefit PA "partnered" (item 2) rate is the current figure, as at that 1 January, for the Benefit PA "partnered" (item 2) rate.

Note 1: The formula reflects the Benefit PA "partnered" (item 2) rate being multiplied by 26 to convert to a yearly amount and then being multiplied by 2 to convert from "partnered" to "single rate".

Note 2: For ***current figure*** see subsection 20(1).

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Note 3: The Benefit PA "partnered" (item 2) rate is indexed on each 1 January (see the CPI Indexation Table in section 1191—item 31).

(3) This Act has effect as if, on 1 January each year, there were substituted for:

(a) the Benefit PA "single" rate; and

(b) the Benefit PA "partnered" (item 7) rate; and

(c) the Benefit PA "illness separated or respite care" rate;

the amount worked out by using the formula:

$$\text{Benefit PA "partnered" (item 2) rate} \times 2$$

where:

Benefit PA "partnered" (item 2) rate is the current figure, as at that 1 January, for the Benefit PA "partnered" (item 2) rate.

Note 1: For ***current figure*** see subsection 20(1).

Note 2: The Benefit PA "partnered" (item 2) rate is indexed on each 1 January (see the CPI Indexation Table in section 1191—item 31).

(4) This Act has effect as if, on 1 January each year, there were substituted for:

(a) the PA (YA/AP) single rate; and

(b) the PA (YA/AP) (item 49G) rate; and

(c) the PA (YA/AP) (item 49J) rate;

the amount worked out by using the formula:

$$\text{PA (YA/AP) partnered (item 49F) rate} \times 2$$

where:

PA (YA/AP) partnered (item 49F) rate means the current figure, as at that 1 January, for the PA (YA/AP) partnered (item 49F) rate.

Note 1: For ***current figure*** see subsection 20(1).

Note 2: The PA (YA/AP) partnered (item 49F) rate is indexed on each 1 January (see the CPI Indexation Table in section 1191—item 33A).

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1206B Adjustment of certain telephone allowance rates

(1) This Act has effect as if, on 20 September each year, there were substituted for:

(a) the TA "partnered" (item 4) rate; and

(b) the TA "partnered" (item 6) rate; and

(c) the TA "partnered" (item 7) rate; and

(d) TA "partnered" (item 9) rate;

the amount of the current figure, as at 20 September, for the TA "single rate".

Note 1: For ***TA "partnered" (item 4) rate***, ***TA "partnered" (item 6) rate***, ***TA "partnered" (item 7) rate*** and ***TA "partnered" (item 9) rate*** see items 52, 54, 55 and 56AA of the Indexed and Adjusted Amounts Table in section 1190.

Note 2: For ***current figure*** see subsection 20(1).

Note 3: For ***TA "single" rate*** see item 50 of the Indexed and Adjusted Amounts Table in section 1190.

(2) This Act has effect as if, on 20 September each year, there were substituted for:

(a) the TA "partnered" (item 3) rate; and

(b) the TA "partnered" (item 5) rate; and

(c) the TA "partnered" (item 8) rate;

the amount worked out using the following formula:

$$\frac{\text{TA "single" rate}}{2}$$

where:

TA "single" rate is the current figure, as at 20 September, for the TA "single" rate.

Note 1: For ***TA "partnered" (item 4) rate***, ***TA "partnered" (item 6) rate*** and ***TA "partnered" (item 7) rate*** see items 52, 54 and 55 of the Indexed and Adjusted Amounts Table in section 1190.

Note 2: For ***TA "single" rate*** see item 50 of the Indexed and Adjusted Amounts Table in section 1190.

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Note 3: For ***current figure*** see subsection 20(1).

(3) This Act has effect as if, on 20 September each year, there were substituted for:

(a) the TA (internet) "partnered" (item 4) rate; and

(b) the TA (internet) "partnered" (item 6) rate; and

(c) the TA (internet) "partnered" (item 7) rate; and

(d) the TA (internet) "partnered" (item 9) rate; and

the amount of the current figure, as at 20 September, for the TA (internet) "single" rate.

Note 1: For ***TA (internet) "partnered" (item 4) rate***, ***TA (internet) "partnered" (item 6) rate***, ***TA (internet) "partnered" (item 7) rate*** and ***TA (internet) "partnered" (item 9) rate*** see items 56AD, 56AF, 56AG and 56AI of the Indexed and Adjusted Amounts Table in section 1190.

Note 2: For ***current figure*** see subsection 20(1).

Note 3: For ***TA (internet) "single" rate*** see item 56AB of the Indexed and Adjusted Amounts Table in section 1190.

(4) This Act has effect as if, on 20 September each year, there were substituted for:

(a) the TA (internet) "partnered" (item 3) rate; and

(b) the TA (internet) "partnered" (item 5) rate; and

(c) the TA (internet) "partnered" (item 8) rate;

the amount worked out using the following formula:

$$\frac{\text{TA (internet) "single" rate}}{2}$$

where:

TA (internet) "single" rate is the current figure, as at 20 September, for the TA (internet) "single" rate.

Note 1: For ***TA (internet) "partnered" (item 3) rate***, ***TA (internet) "partnered" (item 5) rate*** and ***TA (internet) "partnered" (item 8) rate*** see items 56AC, 56AE and 56AH of the Indexed and Adjusted Amounts Table in section 1190.

Note 2: For ***TA (internet) "single" rate*** see item 56AB of the Indexed and Adjusted Amounts Table in section 1190.

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Note 3: For ***current figure*** see subsection 20(1).

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Part 3.16A—Advance payment deductions

1206H Advance payment deduction

(1) Subject to subsection (2) and section 1206L, an advance payment deduction is to be made from the rate of a social security entitlement that is payable to a person if:

(a) the person has received an advance payment, or an instalment of an advance payment, of that social security entitlement or of another social security entitlement that was previously payable to the person; and

(b) the person has not yet repaid the whole of the advance payment or instalment; and

(c) the amount of the advance payment or instalment that has not been repaid is not a debt under subsection 1224E(1).

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

(2) An advance payment deduction is not to be made from a person's rate on:

(a) the payday on which the advance payment is paid; or

(b) the payday on which the first instalment of the advance payment is paid;

as the case requires.

1206J Amount of advance payment deduction—basic calculation

Subject to sections 1206K, 1206L, 1206M and 1206N, the advance payment deduction for an advance payment of a social security entitlement is worked out by dividing the full amount of the advance payment by 13.

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1206K Person may request larger advance payment deduction

(1) Subject to subsection (2) and sections 1206L, 1206M and 1206N, a person's advance payment deduction is increased to a larger amount if the person asks the Secretary in writing for the advance payment deduction to be the larger amount.

(2) Subsection (1) does not apply if the Secretary is satisfied that the person would suffer severe financial hardship if the advance payment deduction were the larger amount.

1206L Reduction of advance payment deduction in cases of severe financial hardship

Reduction

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

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

Review of reduction

(2) At any time while the determination is in force, the Secretary may:
   (a) vary the determination so as to require to be deducted from the person's rate an advance payment deduction larger than the deduction (if any) previously applying under the

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determination, but smaller than the deduction applying immediately prior to the determination; or

(b) revoke the determination;

but only if the Secretary is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.

Variation or revocation in writing

(3) A variation or revocation of a determination must be in writing.

1206M The final advance payment deduction

Final advance payment deduction not to exceed unpaid amount

(1) If an advance payment deduction that would otherwise be deducted from a person's rate exceeds the part of the advance payment that the person has not yet repaid (by previous deductions under this Part or otherwise), the amount of that advance payment deduction equals the part that the person has not yet repaid.

Example:

Facts: Assume that, in the example at the end of section 1206J, Anne has requested that the advance payment deduction be the larger amount of $55 (see section 1206K), so that the advance payment of $450 will be repaid sooner.

Application: If $55 is deducted from Anne's fortnightly rate of benefit, $440 will have been repaid after 8 successive fortnights, leaving $10 unpaid. Under section 1206M, the final advance payment deduction will be $10.

This section subject to section 1206N

(2) This section has effect subject to section 1206N.

1206N Provisional payment rate insufficient to cover advance payment deduction

(1) If the provisional payment rate referred to in the relevant Rate Calculator is less than the advance payment deduction would be

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apart from this subsection, the advance payment deduction is taken to be equal to the provisional payment rate.

(2) If:

(a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and

(b) the provisional payment rate worked out for the person using Pension Rate Calculator A in accordance with Step 1 of the Method statement in point 1065-A1 in Pension Rate Calculator B is less than the advance payment deduction would be apart from this subsection;

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

(3) If:

(a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and

(b) the maximum payment rate for the person worked out in Step 4 of that Method statement is less than the advance payment deduction would be apart from this subsection;

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

(4) If:

(a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and

(b) the provisional payment rate worked out for the person using Pension Rate Calculator D in accordance with Step 1 of the Method statement in point 1066B-A1 in Pension Rate Calculator E is less than the advance payment deduction would be apart from this subsection;

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

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(5) If:

(a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and

(b) the maximum payment rate for the person worked out in Step 5 of that Method statement is less than the advance payment deduction would be apart from this subsection;

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

1206P Rounding of amounts

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

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Part 3.16B—Special employment advance deductions

1206Q Special employment advance deduction

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

(a) the person has received a special employment advance or an instalment of a special employment advance; and

(b) the person has not yet repaid the whole of the special employment advance or instalment; and

(c) the amount of the special employment advance or instalment that has not been repaid is not a debt under section 1224EA.

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

(2) A special employment advance deduction may be made from a person's rate on:

(a) if the special employment advance is paid as a lump sum—the payday next following the day on which the lump sum is paid; or

(b) if the special employment advance is paid by instalments—the payday next following the day on which the last instalment of the special employment advance is paid;

or on any later payday.

1206R Amount of special employment advance deduction—basic calculation

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

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1206S Person may request larger special employment advance deduction

(1) Subject to subsection (2) and sections 1206T, 1206U and 1206V, a person's special employment advance deduction is increased to a larger amount if the person asks the Secretary in writing for the special employment advance deduction to be the larger amount.

(2) Subsection (1) does not apply if the Secretary is satisfied that the person would suffer severe financial hardship if the special employment advance deduction were the larger amount.

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

(1) Subject to subsection (2) and sections 1206U and 1206V, if:

(a) a person applies in writing to the Secretary for a special employment advance deduction to be decreased, or to be stopped, because of severe financial hardship; and

(b) the Secretary is satisfied that:

(i) the person's circumstances are exceptional and could not reasonably have been foreseen at the time of the person's claim for the special employment advance; and

(ii) the person would suffer severe financial hardship if the special employment advance deduction that would otherwise apply were to continue;

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

(2) At any time while the determination is in force, the Secretary may:

(a) vary the determination so as to require to be deducted from the person's rate a special employment advance deduction larger than the deduction (if any) previously applying under the determination, but smaller than the deduction applying immediately before the determination; or

(b) revoke the determination;

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but only if the Secretary is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.

(3) A variation or revocation of a determination must be in writing.

1206U The final special employment advance deduction

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

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

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

(1) If the provisional payment rate referred to in the relevant Rate Calculator is less than the special employment advance deduction would be apart from this subsection, the special employment advance deduction is taken to be equal to the provisional payment rate.

(2) If:

(a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and

(b) the provisional payment rate worked out for the person using Pension Rate Calculator A in accordance with Step 1 of the Method statement in point 1065-A1 in Pension Rate Calculator B is less than the special employment advance deduction would be apart from this subsection;

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

(3) If:

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(a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and

(b) the maximum payment rate for the person worked out in Step 4 of that Method statement is less than the special employment advance deduction would be apart from this subsection;

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

(4) If:

(a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and

(b) the provisional payment rate worked out for the person using Pension Rate Calculator D in accordance with Step 1 in the Method statement in point 1066B-A1 in Pension Rate Calculator E is less than the special employment advance deduction would be apart from this subsection;

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

(5) If:

(a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and

(b) the maximum payment rate for the person worked out in Step 5 of that Method statement is less than the special employment advance deduction would be apart from this subsection;

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

1206W Rounding of amounts

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

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Part 3.18—Means test treatment of private companies and private trusts

Division 1—Introduction

1207 Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system for the attribution to individuals of the assets and income of private companies and private trusts (sections 1207Y and 1208E).
- Attribution starts on 1 January 2002.
- For an asset or income to be attributed to an individual:
    - (a) the company must be a designated private company or the trust must be a designated private trust (sections 1207N and 1207P); and
    - (b) the company must be a controlled private company in relation to the individual or the trust must be a controlled private trust in relation to the individual (sections 1207Q and 1207V); and
    - (c) the individual must be an attributable stakeholder of the company or trust (section 1207X).
- A company or trust will be a controlled private trust or a controlled private company if the individual passes a control test or a source test.

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- An individual will not be an attributable stakeholder of a trust if the trust is a concessional primary production trust in relation to the individual.
- The asset deprivation rules and the income deprivation rules are modified if attribution happens.

1207A Definitions

In this Part, unless the contrary intention appears:

actively involved with a primary production enterprise has the meaning given by section 1207J.

actual transfer, in relation to property or services, means a transfer of the property or services other than a transfer that is taken to have been made because of subsection 1207H(1), (3) or (4).

adjusted net primary production income (in Division 11) has the meaning given by section 1209.

adjusted net value (in Division 11) has the meaning given by section 1208Z.

arm's length amount, in relation to an actual transfer of property or services to a company or a trust, means the amount that the company or trust could reasonably be expected to have been required to pay to obtain the property or the services concerned from the transferor under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

asset attribution percentage has the meaning given by section 1207X.

associate has the meaning given by section 1207C.

attributable stakeholder has the meaning given by section 1207X.

attribution period has the meaning given by section 1208D.

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business partnership means a partnership within the meaning of the *Income Tax Assessment Act 1997*.

child: without limiting who is a child of a person for the purposes of this Part, each of the following is the ***child*** of a person:

(a) an adopted child, step-child or foster-child of the person;

(b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

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

concessional primary production trust has the meaning given by section 1208U.

constituent document, in relation to a company, means:

(a) the memorandum and articles of association of the company; or

(b) any rules or other documents constituting the company or governing its activities.

control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

controlled private company has the meaning given by section 1207Q.

controlled private trust has the meaning given by section 1207V.

decision-making principles means decision-making principles under section 1209E.

derivation period has the meaning given by section 1208C.

designated private company has the meaning given by section 1207N.

designated private trust has the meaning given by section 1207P.

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director includes any person (by whatever name called) occupying the position of a director of a company.

entity means any of the following:

(a) an individual;
(b) a company;
(c) a trust;
(d) a business partnership;
(e) a corporation sole;
(f) a body politic.

group includes:

(a) one entity alone; or
(b) a number of entities, even if they are not in any way associated with each other or acting together.

income attribution percentage has the meaning given by section 1207X.

interest in a share has the meaning given by section 1207U.

majority voting interest, in relation to a company, has the meaning given by section 1207E.

primary production enterprise means a business in Australia that consists of primary production.

property includes money.

relative, in relation to a person, has the meaning given by section 1207B.

scheme means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

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(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

services includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a benefit, right, privilege, service or facility that is, or is to be, provided under:

(a) an arrangement for or in relation to:
  (i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
  (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
  (iii) the conferring of benefits, rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
(b) a contract of insurance; or
(c) an arrangement for or in relation to the lending of money.

share includes stock.

spouse includes, in relation to a person who is a member of a couple (as defined by section 4), the other member of the couple.

subsidiary has the same meaning as in the *Corporations Act 2001*.

sufficiently influenced, in relation to a company, has the meaning given by section 1207D.

transfer:

(a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise) or provide; and
(b) in relation to services—includes allow, confer, give, grant, perform or provide.

trust means a person in the capacity of trustee or, as the case requires, a trust estate.

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

underlying transfer, in relation to a transfer of property or services to an entity, means:

(a) if that transfer was an actual transfer—the actual transfer; or

(b) if that transfer was taken to have been made because of subsection 1207H(1)—the actual transfer referred to in that subsection; or

(c) if that transfer was taken to have been made because of subsection 1207H(3)—the actual transfer referred to in paragraph 1207H(3)(b); or

(d) if that transfer was taken to have been made because of subsection 1207H(4)—the actual transfer referred to in paragraph 1207H(4)(c).

voting power has the meaning given by section 1207S.

1207B Relatives

(1) For the purposes of this Part, a ***relative***, in relation to a person (the ***first person***), means any of the following:

(a) the spouse of the first person;

(b) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the first person;

(c) the spouse of a person covered by paragraph (b);

(d) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the spouse of the first person;

(e) the spouse of a person covered by paragraph (d);

(f) a child of a person covered by any of the preceding paragraphs.

(2) For the purposes of this section, if one person is the child of another person because of the definition of ***child*** in section 1207A,

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relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

1207C Associates

(1) For the purposes of this Part, in determining:

(a) whether a trust is a designated private trust; or

(b) whether a company is a controlled private company in relation to an individual; or

(c) whether a trust is a controlled private trust in relation to an individual; or

(d) whether a trust is a concessional primary production trust in relation to an individual;

the following are ***associates*** of an individual:

(e) a relative of the individual;

(f) an entity who, in matters relating to the trust or company:

(i) acts, or is accustomed to act; or

(ii) under a contract or an arrangement or understanding (whether formal or informal), is intended or expected to act;

in accordance with the directions, instructions or wishes of:

(iii) the individual; or

(iv) the individual and another entity who is an associate of the individual because of another paragraph of this subsection;

(g) an entity that is a declared associate of the individual (see subsection (2));

(h) a business partner of the individual or a business partnership in which the individual is a business partner;

(i) if a business partner of the individual is an individual—the spouse or a child of that business partner;

(j) a trustee of a trust, where:

(i) the individual; or

(ii) another entity that is an associate of the individual because of another paragraph of this subsection;

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benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts;

(k) a company, where the company is sufficiently influenced by:
  (i) the individual; or
  (ii) another entity that is an associate of the individual because of another paragraph of this subsection; or
  (iii) another company that is an associate of the individual because of another application of this paragraph; or
  (iv) 2 or more entities covered by the preceding subparagraphs;

(l) a company, where a majority voting interest in the company is held by:
  (i) the individual; or
  (ii) the entities that are associates of the individual because of any of the preceding paragraphs of this subsection; or
  (iii) the individual and the entities that are associates of the individual because of any of the preceding paragraphs of this subsection.

Declared associate

(2) The Secretary may, by legislative instrument, determine that each entity included in a specified class of entities is taken to be a ***declared associate*** of an individual for the purposes of this section.

(3) A determination under subsection (2) has effect accordingly.

1207D When a company is sufficiently influenced by an entity

For the purposes of this Part, a company is ***sufficiently influenced*** by an entity or entities if the company, or its directors:

(a) are accustomed or under an obligation (whether formal or informal); or

(b) might reasonably be expected;

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to act in accordance with the directions, instructions or wishes of the entity or entities.

1207E Majority voting interest in a company

For the purposes of this Part, an entity or entities hold a ***majority voting interest*** in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

1207F Entitled to acquire

For the purposes of this Part, an entity is ***entitled to acquire*** anything that the entity is absolutely or contingently entitled to acquire, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

1207G Transfer of property or services

(1) A reference in this Part to the ***transfer of property or services to a trust*** includes a reference to the transfer of such property or services by way of the creation of the trust.

(2) For the purposes of this Part, if an entity acquires property that did not previously exist, the property is taken to have existed immediately before the acquisition and to have been transferred by the entity who created the property.

(3) For the purposes of this Part, property or services are taken to have been transferred to an entity if the property or services have been applied for the benefit of, or in accordance with the directions of, the entity.

(4) Without limiting the generality of subsection (3), a reference in that subsection to the ***application of property or services for the benefit of an entity*** includes a reference to the application of

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property or services in the discharge, in whole or in part, of a debt due by the entity.

1207H Constructive transfers of property or services to an entity

(1) For the purposes of this Part, if an entity (the ***prime entity***) causes another entity to actually transfer property or services to a third entity, the prime entity is taken to have transferred the property or services (instead of the other entity).

(2) Subsection (1) does not limit the operation of subsection (3).

(3) If, under a scheme:

(a) an entity (the ***scheme entity***) actually transfers property or services to another entity; and

(b) property or services are actually transferred to a third entity at a particular time otherwise than by the scheme entity;

the Secretary may, for the purposes of this Part, treat the property or services mentioned in paragraph (b) as having been transferred by the scheme entity to the third entity (instead of by any other entity) at that time to such extent as the Secretary considers reasonable.

(4) If:

(a) an individual transfers property or services to an entity (the ***interposed entity***), being a company, a business partnership or a trust; and

(b) a winding-up event occurs in relation to the interposed entity; and

(c) an actual transfer of property or services is made to another entity (the ***ultimate transferee***) at a particular time as a consequence of the interposed entity being wound-up or ceasing to exist;

the Secretary may, for the purposes of this Part, treat the property or services mentioned in paragraph (c) as having been transferred by the individual to the ultimate transferee (instead of by any other entity) at that time to such extent as the Secretary considers reasonable.

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(5) For the purposes of this section, each of the following events is a ***winding-up event*** in relation to a company:
  (a) the company passes a resolution for its winding-up;
  (b) an order is made for the winding-up of the company;
  (c) any similar event.

(6) For the purposes of this section, a ***winding-up event*** occurs in relation to a business partnership if the business partnership ceases to exist for the purposes of the *Income Tax Assessment Act 1997*.

(7) For the purposes of this section, a ***winding-up event*** occurs in relation to a trust if:
  (a) the trust commences to be wound-up; or
  (b) the trust ceases to exist for the purposes of the *Income Tax Assessment Act 1997*.

1207J Active involvement with a primary production enterprise

For the purposes of this Part, an individual is taken to have been ***actively involved with a primary production enterprise*** if, and only if, the individual:
  (a) has contributed a significant part of his or her labour to the development of the enterprise; or
  (b) has undertaken educational studies or training in a field that, in the opinion of the Secretary, is relevant to the development or management of the enterprise.

1207K Power to veto decisions of a trustee

For the purposes of this Part, if the decisions of a trustee are subject to the consent of an entity, the entity is taken to be able to veto the decisions of the trustee.

1207L Extra-territorial operation

(1) This Part extends to acts, omissions, matters and things outside Australia.

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(2) Disregard subsection (1) in determining whether a provision of this Act (other than this Part) extends to acts, omissions, matters and things outside Australia.

1207M Application to things happening before commencement

The use of the present tense in a provision of this Part does not imply that the provision does not apply to things happening before the commencement of this Part.

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Division 2—Designated private companies

1207N Designated private companies

(1) For the purposes of this Part, a company is a ***designated private company*** at a particular time if:

(a) the company satisfies at least 2 of the following conditions in relation to the last financial year that ended before that time:

(i) the consolidated revenue for the financial year of the company and its subsidiaries is less than $25 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(a) of the *Corporations Act 2001*;

(ii) the value of the consolidated gross assets at the end of the financial year of the company and its subsidiaries is less than $12.5 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(b) of the *Corporations Act 2001*;

(iii) the company and its subsidiaries have fewer than 50, or any other number prescribed by regulations made for the purposes of paragraph 45A(2)(c) of the *Corporations Act 2001*, employees at the end of the financial year; or

(b) the company came into existence after the end of the last financial year that ended before that time; or

(c) the company is a declared private company (see subsection (2));

and the company is not an excluded company (see subsection (5)).

Declared private company

(2) The Secretary may, by legislative instrument, determine that each company included in a specified class of companies is a ***declared private company*** for the purposes of this section.

(3) A determination under subsection (2) has effect accordingly.

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Excluded companies

(5) The Secretary may, by legislative instrument, declare that each company included in a specified class of companies is an ***excluded company*** for the purposes of this section.

(6) A declaration under subsection (5) has effect accordingly.

Definitions

(8) In this section:

consolidated revenue has the same meaning as in section 45A of the *Corporations Act 2001*.

financial year, in relation to a company, means:

(a) a period of 12 months beginning on 1 July; or

(b) if some other period is the company's tax year—that other period.

value of consolidated gross assets has the same meaning as in section 45A of the *Corporations Act 2001*.

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Division 3—Designated private trusts

1207P Designated private trusts

(1) For the purposes of this Part, a trust is a ***designated private trust*** unless:

(a) all of the following conditions are satisfied:

(i) the trust is a fixed trust;

(ii) the units in the trust are held by 50 or more persons;

(iii) the trust was not created, continued in existence or operated under a scheme that was entered into or carried out for the sole or dominant purpose of enabling any individual or individuals to avoid the application of this Part and/or Division 11A of Part IIIB of the Veterans' Entitlements Act; or

(b) the trust is a complying superannuation fund (see subsection (3)); or

(c) the trust is an excluded trust (see subsection (4)).

(2) For the purposes of subparagraph (1)(a)(ii), an individual and his or her associates are taken to be one person.

Complying superannuation funds

(3) For the purposes of this section, a fund is a ***complying superannuation fund*** at a particular time if:

(a) that time occurs during a particular tax year of the fund; and

(b) under section 45 of the *Superannuation Industry (Supervision) Act 1993*, the fund is a complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997* in relation to that tax year.

Excluded trusts

(4) The Secretary may, by legislative instrument, declare that each trust included in a specified class of trusts is an ***excluded trust*** for the purposes of this section.

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(5) The declaration has effect accordingly.

Definitions

(7) In this section:

fixed trust means a trust where persons have fixed entitlements to all of the income and corpus of the trust.

income means income within the ordinary meaning of that expression.

unit, in relation to a trust, includes a beneficial interest, however described, in the property or income of the trust.

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Division 4—Controlled private companies

1207Q Controlled private companies

(1) For the purposes of this Part, a company is a ***controlled private company*** in relation to an individual if the company is a designated private company and:

(a) the individual passes the ***control test*** set out in subsection (2); or

(b) the individual passes the ***source test*** set out in subsection (3).

Control test

(2) For the purposes of this section, an individual ***passes the control test*** in relation to a company if:

(a) the aggregate of:

(i) the direct voting interests in the company that the individual holds; and

(ii) the direct voting interests in the company held by associates of the individual;

is 50% or more; or

(b) the aggregate of:

(i) the direct control interests in the company that the individual holds; and

(ii) the direct control interests in the company held by associates of the individual;

is 15% or more; or

(c) the company is sufficiently influenced by:

(i) the individual; or

(ii) an associate of the individual; or

(iii) 2 or more entities covered by the preceding subparagraphs; or

(d) the individual (either alone or together with associates) is in a position to exercise control over the company.

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Source test

(3) For the purposes of this section, an individual ***passes the source test*** in relation to a company if:

(a) the individual has transferred property or services to the company after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and

(b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer.

No double counting

(4) In calculating the aggregate referred to in paragraph (2)(a), a direct voting interest held because of subsection 1207R(2) is not to be counted under subparagraph (2)(a)(i) to the extent to which it is calculated by reference to a direct voting interest in the company that is taken into account under subparagraph (2)(a)(ii).

(5) In calculating the aggregate referred to in paragraph (2)(b), a direct control interest held because of subsection 1207T(4) is not to be counted under subparagraph (2)(b)(i) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under subparagraph (2)(b)(ii).

1207R Direct voting interest in a company

(1) An entity holds a ***direct voting interest*** in a company at a particular time equal to the percentage of the voting power in the company that the entity is in a position to control at that time.

(2) If:

(a) an entity holds a direct voting interest (including a direct voting interest that is taken to be held because of one or more previous applications of this subsection) in a company (the ***first level company***); and

(b) the first level company holds a direct voting interest in another company (the ***second level company***);

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the entity is taken to hold a direct voting interest in the second level company equal to the percentage worked out using the formula:

First level percentage × Second level percentage

where:

first level percentage means the percentage of the direct voting interest held by the entity in the first level company.

second level percentage means the percentage of the direct voting interest held by the first level company in the second level company.

1207S Voting power

(1) A reference in this Division to the ***voting power*** in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
   (a) the making of distributions of capital or profits of the company to its shareholders;
   (b) the constituent document of the company;
   (c) any variation of the share capital of the company;
   (d) any appointment of a director of the company.

(2) A reference in this Division to ***control of the voting power*** in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
   (a) whether or not having legal or equitable force; and
   (b) whether or not based on legal or equitable rights.

(3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this section.

(4) If a company:
   (a) is limited both by shares and by guarantee; or

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(b) does not have a share capital;

this section has effect as if the members or policy holders of the company were shareholders in the company.

1207T Direct control interest in a company

(1) An entity holds a ***direct control interest*** in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the entity holds an interest at that time.

(2) An entity also holds a ***direct control interest*** in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.

(3) An entity also holds a ***direct control interest*** in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.

(4) If:

(a) an entity holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subsection) in a company (the ***first level company***); and

(b) the first level company holds the same type of direct control interest in another company (the ***second level company***);

the entity is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

First level percentage × Second level percentage

where:

first level percentage means the percentage of the direct control interest held by the entity in the first level company.

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second level percentage means the percentage of the direct control interest held by the first level company in the second level company.

1207U Interest in a share

(1) This section applies for the purpose of working out the percentage of a company's total paid-up share capital in which an entity holds an interest.

(2) Subject to this section, for the purposes of this Division, an entity holds an ***interest in a share*** if the entity has any legal or equitable interest in the share.

(3) For the purposes of this Division, an entity is taken to hold an ***interest in a share*** if:

(a) the entity has entered into a contract to purchase the share; or

(b) the entity has a right (otherwise than because of having an interest under a trust) to have the share transferred to the entity or to the entity's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

(c) the entity has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

(d) the entity is otherwise entitled to acquire the share or an interest in the share; or

(e) the entity is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.

(4) Subsection (3) does not, by implication, limit subsection (2).

(5) An entity is taken to hold an ***interest in a share*** even if the entity holds the interest in the share jointly with another entity.

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(6) For the purpose of determining whether an entity holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.

(7) An interest in a share is not to be disregarded only because of:
   (a) its remoteness; or
   (b) the manner in which it arose; or
   (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

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Division 5—Controlled private trusts

1207V Controlled private trusts

(1) For the purposes of this Part, a trust is a ***controlled private trust*** in relation to an individual if the trust is a designated private trust and:

(a) the individual passes the ***control test*** set out in subsection (2); or

(b) the individual passes the ***source test*** set out in subsection (3).

Control test

(2) For the purposes of this section, the individual ***passes the control test*** in relation to a trust if:

(a) the individual, or an associate of the individual (other than an associate covered by paragraph 1207C(1)(j)), is the trustee, or any of the trustees, of the trust; or

(b) a group in relation to the individual was able to remove or appoint the trustee, or any of the trustees, of the trust; or

(c) a group in relation to the individual was able to vary the trust deed or to veto the decisions of the trustee; or

(ca) it could reasonably be expected that the trustee of the trust would make an application of the corpus or income of the trust to the individual if the individual could not meet his or her reasonable costs of living (within the meaning of subsection 19C(5)); or

(d) the aggregate of:

(i) the beneficial interests in the corpus or income of the trust held by the individual (whether directly or indirectly); and

(ii) the beneficial interests in the corpus or income of the trust held by associates of the individual (whether directly or indirectly);

is 50% or more; or

(da) either or both of the following apply:

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(i) the individual is eligible to receive an application of the corpus or income of the trust;

(ii) one or more of the individual's associates are eligible to receive an application of the corpus or income of the trust;

and the aggregate number of entities covered by subparagraphs (i) and (ii) is 50% or more of the total number of entities eligible to receive an application of the corpus or income of the trust; or

(e) a group in relation to the individual had the power (by means of the exercise by the group of any power of appointment or revocation or otherwise) to obtain, with or without the consent of any other entity, the beneficial enjoyment of the corpus or income of the trust; or

(f) a group in relation to the individual was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust; or

(g) a group in relation to the individual was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (e) or (f); or

(h) a trustee of the trust was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the individual.

(2A) For the purposes of paragraph (2)(da), an entity is eligible to receive an application of the corpus or income of the trust if the trustee of the trust has a discretion to make an application of the corpus or income of the trust to the entity.

(2B) For the purposes of applying paragraph (2)(da) at a particular time, subparagraph (2)(da)(i) is taken to apply at that particular time to the individual if the individual was eligible to receive an application of the corpus or income of the trust at any time during:

(a) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or

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(b) the preceding financial year.

(2C) For the purposes of applying paragraph (2)(da) at a particular time, subparagraph (2)(da)(ii) is taken to apply at that particular time to an entity that is an associate of the individual at that particular time if:

(a) the entity was eligible to receive an application of the corpus or income of the trust at any time during:

(i) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or

(ii) the preceding financial year; and

(b) the entity was an associate of the individual at the time the entity was so eligible.

(2D) For the purposes of applying paragraph (2)(da) at a particular time, in working out the total number of entities eligible to receive an application of the corpus or income of the trust, take into account an entity that was eligible to receive an application of the corpus or income of the trust at any time during:

(a) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or

(b) the preceding financial year.

(2E) No paragraph of subsection (2) limits any other paragraph of that subsection.

Source test

(3) For the purposes of this section, an individual ***passes the source test*** in relation to a trust if:

(a) the individual has transferred property or services to the trust after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and

(b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer.

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Group

(4) A reference in this section to a ***group*** in relation to an individual is a reference to:

(a) the individual acting alone; or

(b) an associate of the individual acting alone; or

(c) the individual and one or more associates of the individual acting together; or

(d) 2 or more associates of the individual acting together.

Income

(5) In this section:

income means income within the ordinary meaning of that expression.

1207W Interest in a trust

(1) For the purposes of this Division, if an entity:

(a) has entered into a contract to purchase a beneficial interest in the corpus or income of a trust; or

(b) has a right, otherwise than by reason of holding an interest in a trust, to have such an interest transferred to the entity or to the entity's order (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or

(c) has the right to acquire such an interest under an option (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or

(d) is otherwise entitled to acquire such an interest;

the entity is taken to hold that interest in the trust.

(2) An entity is taken to hold an interest in the corpus or income of a trust even if the entity holds the interest jointly with another entity.

(3) An interest in the corpus or income of a trust is not to be disregarded only because of:

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(a) its remoteness; or
(b) the manner in which it arose; or
(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

(4) In this section:

income means income within the ordinary meaning of that expression.

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Division 6—Attributable stakeholders and attribution percentages

1207X Attributable stakeholder, asset attribution percentage and income attribution percentage

Company

(1) For the purposes of this Part, if a company is a controlled private company in relation to an individual:

(a) the individual is an ***attributable stakeholder*** of the company unless the Secretary otherwise determines; and

(b) if the individual is an attributable stakeholder of the company—the individual's ***asset attribution percentage*** in relation to the company is:

(i) 100%; or

(ii) if the Secretary determines a lower percentage in relation to the individual and the company—that lower percentage; and

(c) if the individual is an attributable stakeholder of the company—the individual's ***income attribution percentage*** in relation to the company is:

(i) 100%; or

(ii) if the Secretary determines a lower percentage in relation to the individual and the company—that lower percentage.

Trust

(2) For the purposes of this Part, if:

(a) a trust is a controlled private trust in relation to an individual; and

(b) the trust is not a concessional primary production trust in relation to the individual (see section 1208U);

then:

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(c) the individual is an ***attributable stakeholder*** of the trust unless the Secretary otherwise determines; and

(d) if the individual is an attributable stakeholder of the trust—the individual's ***asset attribution percentage*** in relation to the trust is:

(i) 100%; or

(ii) if the Secretary determines a lower percentage in relation to the individual and the trust—that lower percentage; and

(e) if the individual is an attributable stakeholder of the trust—the individual's ***income attribution percentage*** in relation to the trust is:

(i) 100%; or

(ii) if the Secretary determines a lower percentage in relation to the individual and the trust—that lower percentage.

(2A) The only ***attributable stakeholder*** of a special disability trust is the principal beneficiary of the trust.

Note 1: For ***special disability trust***, see section 1209L.

Note 2: For ***principal beneficiary*** of a special disability trust, see subsection 1209M(1).

Determinations

(3) A determination under this section is to be in writing.

(4) A determination under this section has effect accordingly.

(5) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

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Division 7—Attribution of income of controlled private companies and controlled private trusts

1207Y Attribution of income

(1) For the purposes of this Act, if:

(a) during a particular derivation period of a company or trust, the company or trust derives an amount that is ordinary income; and

(b) an individual is an attributable stakeholder of the company or a trust throughout the attribution period that relates to the derivation period of the company or trust; and

(c) the attribution period begins on or after 1 January 2002; and

(d) if that amount:

(i) had been derived by the individual instead of by the company or trust; and

(ii) in the case of income accounted for on an accrual basis as mentioned in subsection (5)—had been so derived by the individual on a cash basis;

that amount would have been ordinary income of the individual; and

(e) that amount is not excluded income (see subsection (2));

then, in addition to any other ordinary income of the individual, the individual is taken to receive, during that attribution period, ordinary income at an annual rate equal to the individual's income attribution percentage of the amount worked out using the formula:

$$\frac{\text{Amount referred to in paragraph (a)}}{\text{Number of days in the derivation period}} \times 365$$

Note: For attribution of the income of a special disability trust, see section 1209V.

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Excluded income

(2) The Secretary may, by writing, determine that, for the purposes of the application of subsection (1) to a specified individual and a specified company or trust, a specified amount is ***excluded income***.

(3) A determination under subsection (2) has effect accordingly.

(4) In making a determination under subsection (2), the Secretary must comply with any relevant decision-making principles.

Accrual v. cash accounting

(5) If the income of a company or trust is accounted for on an accrual basis for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*, the ordinary income of the company or trust is accounted for on an accrual basis for the purposes of this section.

(6) If the income of a company or trust is accounted for on a cash basis for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*, the ordinary income of the company or trust is accounted for on a cash basis for the purposes of this section.

1207Z No double counting of attributed income

(1) If:

(a) a company makes a distribution of capital or profits of the company to a particular shareholder of the company; and

(b) the shareholder is an individual; and

(c) the individual is an attributable stakeholder of the company;

the Secretary may, by writing:

(d) determine that, for the purposes of this Act, the ordinary income of the individual does not include the amount or value distributed to the individual; or

(e) determine that, for the purposes of this Act, the ordinary income of the individual does not include so much of the amount or value distributed to the individual as is specified in the determination.

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(2) If:

(a) a trust:

(i) makes a distribution (whether in money or in other property) to a particular beneficiary of the trust; or

(ii) credits an amount to a particular beneficiary of the trust; and

(b) the beneficiary is an individual; and

(c) the individual is an attributable stakeholder of the trust;

the Secretary may, by writing:

(d) determine that, for the purposes of this Act, the ordinary income of the individual does not include the amount distributed or credited to the individual; or

(e) determine that, for the purposes of this Act, the ordinary income of the individual does not include so much of the amount distributed or credited to the individual as is specified in the determination.

(3) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

(4) This section is to be disregarded for the purposes of paragraph 1207Y(1)(d).

1208 Ordinary income of a company or trust

(1) For the purposes of this Division, the ordinary income of a company or trust is to be worked out as if:

(a) exempt lump sums were not excluded from the definition of ***ordinary income*** in subsection 8(1); and

(b) each reference in section 8 to a person included a reference to a company or trust; and

(c) the following provisions had not been enacted:

(i) subsection 8(7A);

(ii) subsection 8(8);

(iii) subsection 8(11);

(iv) Part 3.10.

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(2) Paragraphs (1)(a) and (c) have effect subject to paragraph 1207Y(1)(d).

(3) A reference in this Division to the ordinary income of a company or trust is a reference to the company's or trust's gross ordinary income from all sources calculated without any reduction, other than a reduction under section 1208A or 1208B.

1208A Ordinary income from a business—treatment of trading stock

(1) For the purposes of this Division, if:

(a) a company or trust carries on a business; and

(b) the value of all the trading stock on hand at the end of a derivation period is greater than the value of all the trading stock on hand at the beginning of that derivation period;

the company's or trust's ordinary income for that derivation period in the form of profits from the business is to include the amount of the difference in values.

(2) For the purposes of this Division, if:

(a) a company or trust carries on a business; and

(b) the value of all the trading stock on hand at the end of a derivation period is less than the value of all the trading stock on hand at the beginning of that derivation period;

the company's or trust's ordinary income for that derivation period in the form of profits from the business is to be reduced by the amount of the difference in values.

1208B Permissible reductions of business and investment income

(1) For the purposes of this Division, if a company or trust carries on a business or holds an investment, the company's or trust's ordinary income from the business or investment is to be reduced by:

(a) losses and outgoings that relate to the business or investment and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and

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(b) amounts that relate to the business or investment and can be deducted in respect of plant (within the meaning of the *Income Tax Assessment Act 1997*) under Division 40 of that Act; and

(c) amounts that relate to the business or investment and are allowable deductions under any other provision of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

(2) However, the rule in subsection (1) does not apply to:

(a) an ineligible deduction (see subsection (3)); or

(b) an ineligible amount (see subsection (4)); or

(c) an ineligible part of a deduction (see subsection (5)).

(3) The Secretary may, by legislative instrument, determine that a specified deduction is an ***ineligible deduction*** for the purposes of this section.

(4) The Secretary may, by legislative instrument, determine that a specified amount is an ***ineligible amount*** for the purposes of this section.

(5) The Secretary may, by legislative instrument, determine that a specified part of a specified deduction is an ***ineligible part*** of the deduction for the purposes of this section.

(6) A determination under subsection (3), (4) or (5) has effect accordingly.

1208C Derivation periods

(1) For the purposes of this Part:

(a) if a company or trust was in existence throughout a tax year of the company or trust—the tax year is a ***derivation period*** of the company or trust; and

(b) if a company or trust was in existence during a part of a tax year of the company or trust—that part of the tax year is a ***derivation period*** of the company or trust.

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(2) Subsection (1) has effect subject to subsection (3).

(3) The Secretary may, by writing, determine that, for the purposes of the application of this Division to a specified individual and a specified company or trust, a specified period is a ***derivation period*** of the company or trust.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Secretary must comply with any relevant decision-making principles.

(6) To avoid doubt, for the purposes of the application of this Division to a particular individual and a particular company or trust, it is not necessary that the individual be an attributable stakeholder of the company or trust throughout a derivation period of the company or trust.

(7) A derivation period may begin or end before the commencement of this Part.

1208D Attribution periods

(1) The Secretary may, by writing, determine that, in the event that a specified individual is an attributable stakeholder of a specified company or trust at a specified time (the ***start time***):

(a) a period beginning at the start time and ending at whichever is the earlier of the following times:

(i) the later time specified in the determination;

(ii) the time when the individual ceases to be an attributable stakeholder of the company or trust;

is an attribution period for the purposes of the application of this Part to the individual and the company or trust; and

(b) that attribution period relates to a specified derivation period of the company or trust.

(2) A determination under subsection (1) has effect accordingly.

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(3) The Secretary must ensure that, if an individual is an attributable stakeholder of a company or of a trust at a particular time on or after 1 January 2002, that time is included in an attribution period.

(4) An attribution period may, but is not required to, overlap (in whole or in part) the derivation period to which it relates.

(5) An attribution period does not have to be of the same length as the derivation period to which it relates.

(6) Attribution periods do not have to be of the same length.

(7) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

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Division 8—Attribution of assets of controlled private companies and controlled private trusts

1208E Attribution of assets

(1) For the purposes of this Act, if:

(a) an individual is an attributable stakeholder of a company or trust at a particular time on or after 1 January 2002; and

(b) at that time, the company or trust owns a particular asset (whether alone or jointly or in common with another entity or entities); and

(c) if, at that time, that asset had been owned by the individual instead of by the company or trust, the value of the asset would not be required to be disregarded by any express provision of this Act; and

(d) at that time, the asset is not an excluded asset (see subsection (2));

there is to be included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of the asset referred to in paragraph (b).

Note: For attribution of the assets of a special disability trust, see section 1209Y.

Excluded assets

(2) The Secretary may, by writing, determine that, for the purposes of the application of subsection (1) to a specified individual and a particular company or trust, a specified asset is an ***excluded asset***.

(3) A determination under subsection (2) has effect accordingly.

(4) In making a determination under subsection (2), the Secretary must comply with any relevant decision-making principles.

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1208F When attributed asset is unrealisable

(1) For the purposes of this Act, if:

(a) an individual is an attributable stakeholder of a company or trust at a particular time on or after 1 January 2002; and

(b) at that time, the company or trust owns a particular asset (whether alone or jointly or in common with another entity or entities); and

(c) under section 1208E, there is included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of the asset held by the company or trust;

the amount referred to in paragraph (c) is taken not to be an unrealisable asset of the individual unless the asset referred to in paragraph (b) is an unrealisable asset of the company or trust.

(2) For the purposes of this section, in determining whether an asset is an unrealisable asset of a company or trust, ignore any limitation or restriction:

(a) in the constituent document of the company or the trust deed of the trust, as the case requires; or

(b) under a scheme that was entered into or carried out for the sole or dominant purpose of enabling any individual or individuals to avoid the application of this section and/or section 52ZZS of the Veterans' Entitlements Act.

(3) For the purposes of this section, in determining whether an asset is an unrealisable asset of a company or trust, subsections 11(12) and (13) have effect as if each reference in those subsections to a person included a reference to a company or trust.

1208G Effect of charge or encumbrance on value of assets

Charge or encumbrance relating to a single asset

(1) For the purposes of the application of this Division (other than this section) to a particular individual and a particular company or trust, if:

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(a) there is a charge or encumbrance over a particular asset of the company or trust; and

(b) the charge or encumbrance relates exclusively to that asset;

the value of the asset is to be reduced by the value of the charge or encumbrance.

(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a company or trust to the extent that:

(a) the charge or encumbrance is a collateral security; or

(b) the charge or encumbrance was given for the benefit of an entity other than the company or trust; or

(c) the value of the charge or encumbrance is excluded under subsection (6).

Charge or encumbrance relating to 2 or more assets

(3) For the purposes of the application of this Division (other than this section) to a particular individual and a particular company or trust, if:

(a) there is a charge or encumbrance over a particular asset (the ***first asset***) of the company or trust; and

(b) the charge or encumbrance relates to the first asset and one or more other assets of the company or trust;

the value of the first asset is to be reduced by the amount worked out using the formula:

$$\text{Value of the charge or encumbrance} \times \frac{\text{Value of the first asset}}{\text{Total value of the first asset and the other assets}} \times \frac{\text{Total value of attributable assets subject to the charge or encumbrance}}{\text{Total value of assets subject to the charge or encumbrance}}$$

(4) Subsection (3) does not apply to a charge or encumbrance over an asset of the company or trust to the extent that:

(a) the charge or encumbrance was given for the benefit of an entity other than the company or trust; or

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(b) the value of the charge or encumbrance is excluded under subsection (6).

(5) If (apart from this section), under section 1208E, there is included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of an asset held by the company or trust, the asset held by the company or trust is an ***attributable asset*** for the purposes of subsection (3).

Exclusion

(6) The Secretary may, by writing, determine that, for the purposes of the application of this section to a specified individual and a specified company or trust, the whole or a specified part of a specified charge or encumbrance over one or more of the assets of the company or trust is excluded for the purposes of paragraphs (2)(c) and (4)(b).

(7) A determination under subsection (6) has effect accordingly.

(8) In making a determination under subsection (6), the Secretary must comply with any relevant decision-making principles.

1208H Effect of unsecured loan on value of assets

(1) For the purposes of the application of this Division to a particular individual and a particular company or trust, if:

(a) the company or trust is the borrower under a loan; and

(b) the loan is not secured by a charge or encumbrance over one or more of the assets of the company or trust;

the Secretary may, by writing, determine that the value of a specified asset of the company or trust is to be reduced by the whole, or a specified part, of the amount of the loan.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

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1208J Value of company's or trust's assets etc.

(1) For the purposes of this Division, the value of a company's or trust's assets, or of a charge or encumbrance on such assets, is to be worked out as if:

(a) each reference in sections 11 and 11A to a person included a reference to a company or trust; and

(b) Division 1 of Part 3.12 (other than section 1122) had not been enacted.

(2) Paragraph (1)(b) has effect subject to paragraph 1208E(1)(c).

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Division 9—Modification of asset deprivation rules

1208K Individual disposes of asset to company or trust

(1) If:

(a) an individual transfers property to a company or trust on or after 1 January 2002; and

(b) either:

(i) as a result of the transfer, the individual became an attributable stakeholder of the company or trust; or

(ii) at the time of the transfer, the individual was an attributable stakeholder of the company or trust; and

(c) the transfer amounts to a disposal by the individual of an asset of the individual;

the Secretary may, by writing, determine that Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) apply to that disposal as if:

(d) the amount of the disposition were nil; or

(e) the amount of the disposition were reduced by the amount specified in the determination.

(2) In making a decision under this section, the Secretary must comply with any relevant decision-making principles.

1208L Disposal of asset by company or trust

(1) If:

(a) an individual is an attributable stakeholder of a company or trust; and

(b) the company or trust disposes of an asset of the company or trust;

Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) apply, and are taken to have applied, as if:

(c) the individual had disposed of an asset of the individual; and

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(d) the amount of the disposition referred to in paragraph (c) were equal to the individual's asset attribution percentage of the amount of the disposition referred to in paragraph (b).

(2) Subsection (1) has effect subject to subsection (3).

Secretarial determinations

(3) The Secretary may, by writing:
(a) determine that the disposal of a specified asset is exempt from subsection (1); or
(b) determine that subsection (1) has effect, in relation to the disposal of a specified asset, as if the reference in paragraph (1)(d) to the individual's asset attribution percentage were a reference to such lower percentage as is specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Secretary must comply with any relevant decision-making principles.

General disposal

(6) For the purposes of subsection (1), a company or trust ***disposes*** of assets of the company or trust if:
(a) on or after 1 January 2002, the company or trust, or an attributable stakeholder of the company or trust, engages in a course of conduct that directly or indirectly:
(i) destroys all or some of the company's or trust's assets; or
(ii) disposes of all or some of the company's or trust's assets; or
(iii) diminishes the value of all or some of the company's or trust's assets; and
(b) one of the following subparagraphs is satisfied:

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(i) the company or trust receives no consideration in money or money's worth for the destruction, disposal or diminution;

(ii) the company or trust receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;

(iii) the Secretary is satisfied that the purpose, or the dominant purpose, of the company, trust or stakeholder in engaging in that course of conduct was to obtain a social security advantage for an attributable stakeholder of the company or trust (who may be the first-mentioned stakeholder) or for a relative of an attributable stakeholder of the company or trust; and

(c) in the case of a company—the disposal is not by way of making a distribution of capital or profits of the company to a shareholder of the company; and

(d) in the case of a trust—the disposal is not by way of:

(i) making a distribution (whether in money or in other property) to a beneficiary of the trust; or

(ii) crediting an amount to a beneficiary of the trust.

(7) If a company or trust disposes of assets as mentioned in subsection (6), the amount of the disposition is:

(a) if the company or trust 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 company or trust 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

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(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 company or trust in respect of the destruction, disposal or diminution.

Disposal by way of distribution

(8) For the purposes of subsection (1), if a company makes a distribution of capital or profits of the company to a shareholder of the company on or after 1 July 2000:

(a) the company is taken to have disposed of an asset of the company; and

(b) the amount of the disposition is equal to the amount or value distributed to the shareholder.

(9) For the purposes of subsection (1), if a trust:

(a) makes a distribution (whether in money or in other property) to a beneficiary of the trust on or after 1 July 2000; or

(b) credits an amount to a beneficiary of the trust on or after 1 July 2000;

then:

(c) the trust is taken to have disposed of an asset of the trust; and

(d) the amount of the disposition is equal to the amount or value distributed or credited to the beneficiary.

Obtaining a social security advantage

(10) For the purposes of this section, an entity has a purpose of obtaining a social security advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:

(i) a social security pension;

(ii) a social security benefit;

(iii) a service pension;

(iv) income support supplement;

(v) a veteran payment; or

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(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
  (i) a social security pension;
  (ii) a social security benefit;
  (iii) a service pension;
  (iv) income support supplement;
  (v) a veteran payment; or
(c) ensuring that the individual would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

1208M Individual ceases to be an attributable stakeholder of a company or trust

If:
(a) an individual ceases to be an attributable stakeholder of a company or trust on or after 1 January 2002; and
(b) immediately before the cessation, the company or trust owned a particular asset (whether alone or jointly or in common with another entity or entities);

Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect as if:
(c) the individual had disposed of an asset of the individual; and
(d) the amount of the disposition referred to in paragraph (c) were equal to the individual's asset attribution percentage of the value of the asset referred to in paragraph (b), worked out immediately before the cessation.

1208N Individual disposes of asset to company or trust before 1 January 2002—individual is attributable stakeholder

(1) If:
(a) an individual has transferred property to a company or trust before 1 January 2002; and
(b) the transfer amounts to a disposal by the individual of an asset of the individual; and

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(c) apart from this section:

(i) under Division 2 of Part 3.12 or sections 198F to 198MA (inclusive), as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place; and

(ii) that 5-year period ends after 1 January 2002; and

(d) the individual is an attributable stakeholder of the company or trust on 1 January 2002;

the Secretary may, by writing, determine that:

(e) in a case where the individual's asset attribution percentage is 100%—Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect, in relation to the disposal of the asset referred to in paragraph (b), as if a reference in that Division or those sections to the period of 5 years that starts on the day on which the disposition took place were a reference to the period:

(i) beginning on the day on which the disposition took place; and

(ii) ending immediately before 1 January 2002; or

(f) in a case where the individual's asset attribution percentage is less than 100%—Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect on and after 1 January 2002, in relation to the disposal of the asset referred to in paragraph (b), as if the amount of the disposition were reduced by:

(i) the individual's asset attribution percentage as at 1 January 2002; or

(ii) if a higher percentage is specified in the determination—that higher percentage.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

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1208P Individual disposes of asset to company or trust before 1 January 2002—individual's spouse is attributable stakeholder

(1) If:

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of an asset of the individual; and

(c) apart from this section:

(i) under Division 2 of Part 3.12 or sections 198F to 198MA (inclusive), as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place; and

(ii) that 5-year period ends after 1 January 2002; and

(d) the individual's spouse is an attributable stakeholder of the company or trust on 1 January 2002;

the Secretary may, by writing, determine that:

(e) in a case where the spouse's asset attribution percentage is 100%—Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect, in relation to the disposal of the asset referred to in paragraph (b), as if a reference in that Division or those sections to the period of 5 years that starts on the day on which the disposition took place were a reference to the period:

(i) beginning on the day on which the disposition took place; and

(ii) ending immediately before 1 January 2002; or

(f) in a case where the spouse's asset attribution percentage is less than 100%—Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect on and after 1 January 2002, in relation to the disposal of the asset referred to in paragraph (b), as if the amount of the disposition were reduced by the spouse's asset attribution percentage as at 1 January 2002.

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(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

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Division 10—Modification of income deprivation rules

1208Q Individual disposes of ordinary income to company or trust

(1) If:

(a) an individual transfers property to a company or trust on or after 1 January 2002; and

(b) either:

(i) as a result of the transfer, the individual became an attributable stakeholder of the company or trust; or

(ii) at the time of the transfer, the individual was an attributable stakeholder of the company or trust; and

(c) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(d) if the ordinary income is income from an asset—the course of conduct that constituted the disposition of the income did not also constitute a disposition of the asset;

the Secretary may, by writing, determine that Division 3 of Part 3.10 applies, and is taken to have applied, to the disposal referred to in paragraph (c) as if:

(e) the amount of the disposition were nil; or

(f) the amount of the disposition were reduced by the amount specified in the determination.

(2) In making a decision under this section, the Secretary must comply with any relevant decision-making principles.

1208R Disposal of income by company or trust

(1) If:

(a) an individual is an attributable stakeholder of a company or trust; and

(b) the company or trust disposes of ordinary income of the company or trust; and

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(c) if that income had been income of the individual instead of the company or trust, the income would have been ordinary income of the individual; and

(d) if the ordinary income is income from an asset—the course of conduct that constituted the disposition of the income did not also constitute a disposition of the asset;

Division 3 of Part 3.10 applies, and is taken to have applied, as if:

(e) the individual had disposed of ordinary income of the individual; and

(f) the amount of the disposition referred to in paragraph (e) were equal to the individual's income attribution percentage of the amount of the disposition referred to in paragraph (b).

(2) Subsection (1) has effect subject to subsection (3).

Secretarial determinations

(3) The Secretary may, by writing:

(a) determine that the disposal of specified ordinary income is exempt from subsection (1); or

(b) determine that subsection (1) has effect, in relation to the disposal of specified ordinary income, as if the reference in paragraph (1)(f) to the individual's income attribution percentage were a reference to such lower percentage as is specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Secretary must comply with any relevant decision-making principles.

General disposal

(6) For the purposes of subsection (1), a company or trust ***disposes*** of ordinary income of the company or trust if:

(a) on or after 1 January 2002, the company or trust, or an attributable stakeholder of the company or trust, engages in a course of conduct that directly or indirectly:

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(i) destroys the source of the income; or
(ii) disposes of the income or the source of the income; or
(iii) diminishes the income; and

(b) one of the following subparagraphs is satisfied:
(i) the company or trust receives no consideration in money or money's worth for the destruction, disposal or diminution;
(ii) the company or trust receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;
(iii) the Secretary is satisfied that the purpose, or the dominant purpose, of the company, trust or stakeholder in engaging in that course of conduct was to obtain a social security advantage for an attributable stakeholder of the company or trust (who may be the first-mentioned stakeholder) or for a relative of an attributable stakeholder of the company or trust; and

(c) in the case of a company—the disposal is not by way of making a distribution of capital or profits of the company to a shareholder of the company; and

(d) in the case of a trust—the disposal is not by way of:
(i) making a distribution (whether in money or in other property) to a beneficiary of the trust; or
(ii) crediting an amount to a beneficiary of the trust.

(7) If a company or trust disposes of ordinary income as mentioned in subsection (6), the amount of the disposition is:

(a) if the company or trust receives no consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution; or

(b) if the company or trust receives consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution less the part (if any) of the consideration that

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the Secretary considers to be fair and reasonable in all the circumstances of the case.

Obtaining a social security advantage

(8) For the purposes of this section, an entity has a purpose of obtaining a social security advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:
(i) a social security pension;
(ii) a social security benefit;
(iii) a service pension;
(iv) income support supplement;
(v) a veteran payment; or

(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
(i) a social security pension;
(ii) a social security benefit;
(iii) a service pension;
(iv) income support supplement;
(v) a veteran payment; or

(c) ensuring that the individual would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

Ordinary income

(9) In this section:

ordinary income, in relation to a company or trust, has the same meaning as in Division 7.

1208S Individual disposes of income to company or trust before 1 January 2002—individual is attributable stakeholder

(1) If:

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(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(c) apart from this section, under Division 3 of Part 3.10, as a result of the disposition referred to in paragraph (b), a particular amount is included in the individual's ordinary income; and

(d) the individual is an attributable stakeholder of the company or trust on 1 January 2002;

the Secretary may, by writing, determine that:

(e) in a case where the individual's income attribution percentage is 100%—Division 3 of Part 3.10 has effect on or after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were nil; or

(f) in a case where the individual's income attribution percentage is less than 100%—Division 3 of Part 3.10 has effect on and after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were reduced by:

(i) the individual's income attribution percentage as at 1 January 2002; or

(ii) if a higher percentage is specified in the determination—that higher percentage.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

1208T Individual disposes of income to company or trust before 1 January 2002—individual's spouse is attributable stakeholder

(1) If:

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(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(c) apart from this section, under Division 3 of Part 3.10, as a result of the disposition referred to in paragraph (b), a particular amount is included in the individual's ordinary income; and

(d) the individual's spouse is an attributable stakeholder of the company or trust on 1 January 2002;

the Secretary may, by writing, determine that:

(e) in a case where the spouse's income attribution percentage is 100%—Division 3 of Part 3.10 has effect on or after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were nil; or

(f) in a case where the spouse's income attribution percentage is less than 100%—Division 3 of Part 3.10 has effect on and after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were reduced by the spouse's income attribution percentage as at 1 January 2002.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

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Division 11—Concessional primary production trusts

1208U Concessional primary production trusts

(1) For the purposes of this Part, a trust is a ***concessional primary production trust*** in relation to an individual at a particular time (the ***test time***), if:

(a) at the test time, the trust is a controlled private trust in relation to the individual; and

(b) at the test time, either:

(i) the trust carries on a primary production enterprise (the ***first primary production enterprise***); or

(ii) the trust makes an asset available to another entity, the other entity carries on a primary production enterprise (the ***first primary production enterprise***), and the asset is used by the other entity wholly or principally for the purposes of carrying on the first primary production enterprise; and

(c) at the test time, more than 70% of the net value of the assets of the trust (excluding the net value of the principal home of the individual if that principal home is owned by the trust) relates to assets used wholly or principally for the purposes of carrying on a primary production enterprise; and

(d) at the test time, the sum of:

(i) the total adjusted net value of assets that are owned or controlled by the individual and used wholly or principally for the purposes of carrying on a primary production enterprise; and

(ii) the total adjusted net value of assets that are owned or controlled by the individual's spouse and used wholly or principally for the purposes of carrying on a primary production enterprise;

is less than the primary production attribution threshold (as defined by subsection (6)); and

(e) if:

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(i) the individual or the individual's spouse had adjusted net primary production income for the last tax year that ended before the test time; and

(ii) the individual or the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year first referred to in subparagraph (i); and

(iii) the individual or the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year first referred to in subparagraph (ii);

the average of the following amounts is less than the amount specified in clause 38N of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (subject to any indexation under Schedule 4 to that Act):

(iv) the total adjusted net primary production income of the individual and the individual's spouse for the tax year referred to in subparagraph (i);

(v) the total adjusted net primary production income of the individual and the individual's spouse for the tax year first referred to in subparagraph (ii);

(vi) the total adjusted net primary production income of the individual and the individual's spouse for the tax year first referred to in subparagraph (iii); and

(f) if:

(i) neither the individual nor the individual's spouse had adjusted net primary production income for the last tax year that ended before the test time; or

(ii) neither the individual nor the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year referred to in subparagraph (i); or

(iii) neither the individual nor the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year referred to in subparagraph (ii);

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the Secretary, by writing, determines that this paragraph applies to the individual and the trust; and

(g) at the test time, the individual is not actively involved with the first primary production enterprise; and

(h) at the test time, an eligible descendant of the individual is actively involved with the first primary production enterprise; and

(i) if, at the test time, the individual is able to appoint the trustee, or any of the trustees, of the trust—there is a provision of the trust deed to the effect that that ability may only be exercised:

(i) if the trustee concerned dies, resigns or becomes subject to a legal disability; or

(ii) in accordance with a statutory law relating to the appointment of trustees; and

(j) if, at the test time, the individual is able to veto or direct the decisions of the trustee—there is a provision of the trust deed to the effect that that ability may only be exercised:

(i) in relation to the sale of land used for the purposes of carrying on the first primary production enterprise; or

(ii) in relation to the sale of fishing rights or timber rights used for the purposes of carrying on the first primary production enterprise; or

(iii) in accordance with a statutory law relating to the appointment of trustees; and

(k) at the test time, there is a provision of the trust deed to the effect that neither the individual, nor the individual's spouse, is, or is capable of becoming, the trustee, or any of the trustees, of the trust; and

(l) at the test time, a group in relation to the individual is not able to vary a provision covered by paragraph (i), (j) or (k); and

(m) at the test time, neither the individual, nor the individual's spouse, is able to vary the trust deed; and

(n) at the test time, neither the individual, nor the individual's spouse:

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(i) benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts; or

(ii) receives any remuneration or other benefits from the trust otherwise than in the capacity of beneficiary of the trust.

(2) For the purposes of the application of paragraphs (1)(e) and (f) to a particular tax year, a person is the ***individual's spouse*** if, and only if:

(a) the person was the spouse of the individual at any time during the tax year; and

(b) the person is the spouse of the individual at the test time.

(3) In making a determination under paragraph (1)(f), the Secretary must comply with any relevant decision-making principles.

(3A) For the purposes of paragraph (1)(h), an ***eligible descendant***, in relation to a person, is:

(a) a child, step-child or adopted child of the person or of a partner of the person; or

(b) a descendant in direct line of a child described in paragraph (a); or

(c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).

(4) Paragraph (1)(n) does not apply to any of the following benefits:

(a) food that:

(i) is derived from the first primary production enterprise; and

(ii) is for the personal consumption of the individual or the individual's spouse;

(b) residential accommodation for the individual or the individual's spouse, where that accommodation is the principal home of the individual;

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(c) if paragraph (b) applies—water, fuel, gas or electricity for use in that residential accommodation;

(d) any other non-cash benefit that is minor and provided on a basis that is infrequent and irregular.

(5) Subparagraph (1)(n)(ii) has effect subject to section 1208V.

(6) For the purposes of this section, the ***primary production attribution threshold*** is $750,000.

(7) A reference in this section to a ***group*** in relation to an individual is a reference to:

(a) the individual acting alone; or

(b) an associate of the individual acting alone; or

(c) the individual and one or more associates of the individual acting together; or

(d) 2 or more associates of the individual acting together.

1208V Individual ceases to be an attributable stakeholder of trust—receipt of remuneration or other benefits from trust during asset deprivation period

(1) For the purposes of this section, if:

(a) an individual ceases to be an attributable stakeholder of a trust on or after 1 January 2002; and

(b) immediately after the cessation, the trust was a concessional primary production trust in relation to the individual; and

(c) under section 1208M, as a result of the cessation, Division 2 of Part 3.12 and sections 198F to 198MA (inclusive) have effect as if the individual had disposed of an asset of the individual; and

(d) under Division 2 of Part 3.12 or sections 198F to 198MA (inclusive), as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place;

then:

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(e) the period referred to in paragraph (d) is the ***asset deprivation period*** in relation to the individual and the trust; and

(f) throughout the asset deprivation period, the trust is a ***special primary production trust*** in relation to the individual; and

(g) each one of the 5 years that constitutes the asset deprivation period is an ***asset deprivation year*** in relation to the individual and the trust.

(2) If:

(a) a trust (the ***first trust***) is a special primary production trust in relation to an individual; and

(b) the individual and/or the individual's spouse received one or more benefits (the ***first benefits***) from the trust during a period that is an asset deprivation year (the ***first asset deprivation year***) in relation to the individual and the trust;

subparagraph 1208U(1)(n)(ii) does not apply to the first benefits, so long as the sum of the following amounts is less than the amount specified in clause 38N of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (subject to any indexation under Schedule 4 to that Act):

(c) the total of the amount or value of the first benefits;

(d) if:

(i) another trust is a special primary production trust in relation to the individual; and

(ii) the asset deprivation period in relation to the individual and that other trust overlaps, in whole or in part, the first asset deprivation year; and

(iii) the individual and/or the individual's spouse received one or more benefits (the ***second benefits***) from that other trust during the period of the overlap;

the total of the amount or value of the second benefits;

(e) if:

(i) another trust is a special primary production trust in relation to the individual's spouse; and

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(ii) the asset deprivation period in relation to the individual's spouse and that other trust overlaps, in whole or in part, the first asset deprivation year; and

(iii) the individual's spouse and/or the individual received one or more benefits (the ***third benefits***) from that other trust during the period of the overlap;

the total of the amount or value of the third benefits.

(3) Subsection (2) does not apply to any of the following benefits:

(a) food that:

(i) is derived from the first primary production enterprise referred to in section 1208U; and

(ii) is for the personal consumption of the individual or the individual's spouse;

(b) residential accommodation for the individual or the individual's spouse, where that accommodation is the principal home of the individual;

(c) if paragraph (b) applies—water, fuel, gas or electricity for use in that residential accommodation;

(d) any other non-cash benefit that is minor and provided on a basis that is infrequent and irregular.

(4) In this section:

benefit, in relation to a trust, means any remuneration or other benefit received from the trust otherwise than in the capacity of beneficiary of the trust.

1208W Net value of asset

(1) For the purposes of this Division, the ***net value*** of an asset is the value of the asset, without any reduction other than a reduction under subsection (2).

(2) The Secretary may, by writing, determine that the value of a specified asset is to be reduced by the whole or a specified part of a specified liability.

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(3) A determination under this section has effect accordingly.

(4) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

1208X Value of entity's assets

For the purposes of this Division, the value of an entity's assets is to be worked out as if:

(a) each reference in sections 11 and 11A to a person included a reference to an entity; and

(b) Division 1 of Part 3.12 (other than section 1122) had not been enacted.

1208Y When asset is controlled by an individual

(1) For the purposes of this Division, an asset is ***controlled*** by an individual if, and only if:

(a) all of the following conditions are satisfied:

(i) the asset is owned by a company;

(ii) the company is a controlled private company in relation to the individual;

(iii) no determination is in force under subsection (2) in relation to the asset and the individual; or

(b) all of the following conditions are satisfied:

(i) the asset is owned by a trust;

(ii) the trust is a controlled private trust in relation to the individual;

(iii) no determination is in force under subsection (2) in relation to the asset and the individual; or

(c) both:

(i) the asset is owned by a business partnership; and

(ii) the individual is a partner in the partnership.

(2) If the asset is owned by a company or trust, the Secretary may, by writing, determine that, for the purposes of this Division, the asset is taken not to be controlled by the individual.

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(3) In making a determination under subsection (2), the Secretary must comply with any relevant decision-making principles.

1208Z Adjusted net value of asset

(1) For the purposes of this Division, the ***adjusted net value*** of an asset owned by an individual is 100% of the net value of the asset.

(2) For the purposes of this Division, the ***adjusted net value*** of an asset controlled by an individual is:

(a) if the entity that owns the asset is a company and the company is a controlled private company in relation to the individual:

(i) 100% of the net value of the asset; or

(ii) if the Secretary, by writing, determines a lower percentage in relation to the individual and the asset—that lower percentage of the net value of the asset; or

(b) if the entity that owns the asset is a trust and the trust is a controlled private trust in relation to the individual:

(i) 100% of the net value of the asset; or

(ii) if the Secretary, by writing, determines a lower percentage in relation to the individual and the asset—that lower percentage of the net value of the asset; or

(c) if the entity that owns the asset is a business partnership—the individual's share of the net value of the asset.

(3) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

1209 Adjusted net primary production income

(1) For the purposes of this Division, the ***adjusted net primary production income*** of an individual for a particular tax year is the sum of:

(a) if the individual carried on a primary production enterprise throughout that tax year—100% of the net income of that primary production enterprise for that tax year; and

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(b) if a company carried on a primary production enterprise throughout that tax year and the company was a controlled private company in relation to the individual throughout that tax year:
  (i) 100% of the net income of that primary production enterprise for that tax year; or
  (ii) if the Secretary, by writing, determines a lower percentage in relation to the individual and the enterprise—that lower percentage of the net income of that primary production enterprise for that tax year; and

(c) if a trust carried on a primary production enterprise throughout that tax year and the trust was a controlled private trust in relation to the individual throughout that tax year:
  (i) 100% of the net income of that primary production enterprise for that tax year; or
  (ii) if the Secretary, by writing, determines a lower percentage in relation to the individual and the enterprise—that lower percentage of the net income of that primary production enterprise for that tax year; and

(d) if:
  (i) a business partnership carried on a primary production enterprise throughout that tax year; and
  (ii) the individual was a partner in the partnership throughout that tax year;

the individual's share of the net income of that primary production enterprise for that tax year.

(2) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

1209A Net income of a primary production enterprise

(1) For the purposes of this Division, if an entity carries on a primary production enterprise during a tax year of the entity, the ***net income*** of that primary production enterprise for that tax year is the entity's gross ordinary income from the carrying on of that

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enterprise calculated without any reduction, other than a reduction under section 1209B or 1209C.

(2) For the purposes of this Division, the net income of a primary production enterprise is to be worked out as if:

(a) exempt lump sums were not excluded from the definition of ***ordinary income*** in subsection 8(1); and

(b) each reference in section 8 to a person included a reference to an entity; and

(c) the following provisions had not been enacted:

(i) subsection 8(7A);

(ii) subsection 8(8);

(iii) subsection 8(11);

(iv) Part 3.10.

1209B Net income from a primary production enterprise—treatment of trading stock

(1) For the purposes of this Division, if:

(a) an entity carries on a primary production enterprise; and

(b) the value of all the trading stock on hand at the end of a tax year is greater than the value of all the trading stock on hand at the beginning of that tax year;

the entity's income for that tax year in the form of profits from the enterprise is to include the amount of the difference in values.

(2) For the purposes of this Division, if:

(a) an entity carries on a primary production enterprise; and

(b) the value of all the trading stock on hand at the end of a tax year is less than the value of all the trading stock on hand at the beginning of that tax year;

the entity's income for that tax year in the form of profits from the enterprise is to be reduced by the amount of the difference in values.

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1209C Permissible reductions of income from carrying on a primary production enterprise

(1) For the purposes of this Division, if an entity carries on a primary production enterprise, the entity's income from the primary production enterprise is to be reduced by:

(a) losses and outgoings that relate to the primary production enterprise and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and

(b) amounts that relate to the primary production enterprise and can be deducted in respect of plant (within the meaning of the *Income Tax Assessment Act 1997*) under Division 40 of that Act; and

(c) amounts that relate to the primary production enterprise and are allowable deductions under any other provision of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

(2) However, the rule in subsection (1) does not apply to:

(a) an ineligible deduction (see subsection (3)); or

(b) an ineligible amount (see subsection (4)); or

(c) an ineligible part of a deduction (see subsection (5)).

(3) The Secretary may, by legislative instrument, determine a specified deduction is an ***ineligible deduction*** for the purposes of this section.

(4) The Secretary may, by legislative instrument, determine that a specified amount is an ***ineligible amount*** for the purposes of this section.

(5) The Secretary may, by legislative instrument, determine that a specified part of a specified deduction is an ***ineligible part*** of the deduction for the purposes of this section.

(6) A determination under subsection (3), (4) or (5) has effect accordingly.

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Division 12—Anti-avoidance

1209D Anti-avoidance

(1) If:

(a) one or more entities enter into, commence to carry out, or carry out, a scheme; and

(b) it would be concluded that the entity, or any of the entities, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of obtaining a social security advantage for an individual (who may be the entity or one of the entities);

the Secretary may, by writing, make any or all of the following determinations:

(c) a determination that this Part has, and is taken always to have had, effect as if the individual were an attributable stakeholder of a specified company or trust at a specified time or during a specified period;

(d) a determination that this Part has, and is taken always to have had, effect as if a specified asset were owned by a specified company or trust at a specified time or during a specified period;

(e) a determination that this Part has, and is taken always to have had, effect as if specified income had been derived by a specified company or trust at a specified time or during a specified period.

(2) A determination under subsection (1) has effect accordingly.

Obtaining a social security advantage

(3) For the purposes of this section, an entity has a purpose of obtaining a social security advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:

(i) a social security pension;

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(ii) a social security benefit;
(iii) a service pension;
(iv) income support supplement;
(v) a veteran payment; or

(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
(i) a social security pension;
(ii) a social security benefit;
(iii) a service pension;
(iv) income support supplement;
(v) a veteran payment; or

(c) ensuring that the individual would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

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Division 13—Decision-making principles

1209E Decision-making principles

The Secretary may, by legislative instrument, formulate principles (***decision-making principles***) to be complied with by him or her in making decisions under:

(a) section 1207X; or
(b) subsection 1207Y(2); or
(c) section 1207Z, 1208C or 1208D; or
(d) subsection 1208E(2); or
(e) subsection 1208G(6) or 1208H(1); or
(f) section 1208K; or
(g) subsection 1208L(3), 1208N(1) or 1208P(1); or
(h) section 1208Q; or
(i) subsection 1208R(3), 1208S(1) or 1208T(1); or
(j) paragraph 1208U(1)(f); or
(k) section 1208W; or
(l) subsection 1208Y(2); or
(m) section 1208Z or 1209.

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Division 14—Information management

1209F Transitional period

For the purposes of this Division, the ***transitional period*** is the period:

(a) beginning on the commencement of this Part; and

(b) ending immediately before 1 January 2002.

1209G Information-gathering powers

In determining the scope of the power conferred on the Secretary during the transitional period by section 192 of the *Social Security (Administration) Act 1999* to require the giving of information, or the production of a document, it is to be assumed that:

(a) section 1207 (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 1207Y (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in the notice imposing the requirement, were a derivation period of the company or trust; and

(ii) a period specified in the notice imposing the requirement were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 1207Y(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 1208C and 1208D had not been enacted; and

(c) section 1208E (attribution of assets) had effect as if the reference in paragraph 1208E(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

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1209H Secretary may obtain tax information

(1) If the Secretary has reason to believe that the Commissioner of Taxation has information (other than a tax file number) that may be relevant to the operation of this Part, the Secretary may, by written notice given to the Commissioner of Taxation, require the Commissioner of Taxation to give to the Secretary any such information.

(2) If the Secretary has reason to believe that the relationship (whether direct or indirect) between:

(a) a particular trust; and

(b) a particular individual or an associate of a particular individual;

may be relevant to the operation of this Part, the Secretary may, by written notice given to the Commissioner of Taxation, require the Commissioner of Taxation to give to the Secretary the tax file number of the trust.

(3) The Commissioner of Taxation must comply with a requirement under subsection (1) or (2).

(4) Subsections (1) and (2) do not, by implication, limit a power conferred by:

(a) paragraph 16(4)(e) or (eb) of the *Income Tax Assessment Act 1936*; or

(b) section 192 or 195 of the *Social Security (Administration) Act 1999*.

(5) A tax file number provided to the Secretary under subsection (2) may only be used for the following purposes:

(a) to detect cases in which amounts of social security payments have been paid when they should not have been paid;

(b) to verify, in respect of persons who have made claims for social security payments, the qualification of those persons for those payments;

(c) to establish whether the rates at which social security payments are being, or have been, paid are, or were, correct.

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(6) In determining the scope of a power conferred during the transitional period by subsection (1), (2) or (5), it is to be assumed that:

(a) section 1207 (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 1207Y (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the Commissioner of Taxation by the Secretary, were a derivation period of the company or trust; and

(ii) a period specified in a written notice given to the Commissioner of Taxation by the Secretary were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 1207Y(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 1208C and 1208D had not been enacted; and

(c) section 1208E (attribution of assets) had effect as if the reference in paragraph 1208E(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

1209J Disclosure of tax information

In determining the scope of the power conferred on a person (the ***tax official***) during the transitional period by paragraph 16(4)(e) or (eb) of the *Income Tax Assessment Act 1936* to communicate information for the purpose of the administration of any law of the Commonwealth relating to pensions, allowances or benefits, it is to be assumed that:

(a) section 1207 (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

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(b) section 1207Y (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the tax official by the Secretary, were a derivation period of the company or trust; and

(ii) a period specified in a written notice given to the tax official by the Secretary were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 1207Y(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 1208C and 1208D had not been enacted; and

(c) section 1208E (attribution of assets) had effect as if the reference in paragraph 1208E(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

1209K Disclosure of tax file number information

In determining the scope of paragraph 202(hb) of the *Income Tax Assessment Act 1936*, and sections 8WA and 8WB of the *Taxation Administration Act 1953*, during the transitional period, it is to be assumed that:

(a) section 1207 (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 1207Y (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the Commissioner of Taxation by the Secretary, were a derivation period of the company or trust; and

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(ii) a period specified in a written notice given to the Commissioner of Taxation by the Secretary were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 1207Y(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 1208C and 1208D had not been enacted; and

(c) section 1208E (attribution of assets) had effect as if the reference in paragraph 1208E(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

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Part 3.18A—Private financial provision for certain people with disabilities

Division 1—Special disability trusts

1209L What is a *special disability trust*?

A trust is a ***special disability trust*** if the following requirements of this Division are complied with:

(a) the beneficiary requirements (see section 1209M);
(b) the trust purpose requirements (see section 1209N);
(c) the trust deed requirements (see section 1209P);
(d) the trustee requirements (see section 1209Q);
(e) the trust property requirements (see section 1209R);
(ea) the trust expenditure requirements, if any (see section 1209RA);
(f) the reporting requirements (see section 1209S);
(g) the audit requirements (see section 1209T).

Note: The Secretary may waive one or more requirements in certain circumstances (see section 1209U).

1209M Beneficiary requirements

Single beneficiary rule

(1) The trust must have no more than one beneficiary (the ***principal beneficiary***), not including any residuary beneficiary.

Impairment or disability conditions

(2) If the principal beneficiary has reached 16 years of age:
(a) the beneficiary must:
(i) have an impairment that would qualify the person for disability support pension; or

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(ii) be receiving invalidity service pension under Part III of the Veterans' Entitlements Act; or

(iii) be receiving income support supplement under the Veterans' Entitlements Act on the grounds of permanent incapacity; and

(b) the beneficiary must:

(i) have a disability that would, if the person had a sole carer, qualify the carer for carer payment or carer allowance; or

(ii) be living in an institution, hostel or group home in which care is provided for people with disabilities, and for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the Secretary under subsection (3); and

(c) the beneficiary must have a disability as a result of which either:

(i) he or she is not working, and has no likelihood of working, for more than 7 hours a week for a wage that is at or above the relevant minimum wage; or

(ii) he or she is working for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.

Note: For ***relevant minimum wage***, see subsection 23(1).

(3) The Secretary may, by legislative instrument, nominate an agreement for the purpose of subparagraph (2)(b)(ii).

(4) If the principal beneficiary is under 16 years of age, subsection (4A) must apply to him or her.

(4A) This subsection applies if:

(a) the principal beneficiary is a person with a severe disability or a severe medical condition; and

(b) another person (the ***carer***) has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the principal beneficiary; and

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(c) a treating health professional has certified in writing that, because of that disability or condition:
(i) the principal beneficiary 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 carer has certified in writing that the principal beneficiary will require the same care, or an increased level of care, to be provided to him or her in the future.

Living beneficiary rule

(5) A trust stops being a special disability trust when the principal beneficiary dies.

Single trust rule

(6) A trust is not a special disability trust for a particular principal beneficiary if, at the time of its creation, there is already another trust in existence for that person that is:
(a) a special disability trust; or
(b) a special disability trust within the meaning of the Veterans' Entitlements Act.

1209N Trust purpose requirements

Primary purpose—care and accommodation for principal beneficiary

(1) Subject to this section, the primary purpose of the trust during the lifetime of the principal beneficiary, as provided by the trust deed for the trust, must be to meet reasonable care and accommodation needs of the beneficiary.

Note: The provision of care and accommodation for the principal beneficiary is also dealt with at section 1209R.

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Other purposes

(2) The trust may have other purposes that are:

(a) both ancillary to the primary purpose and necessary or desirable to facilitate the achievement of that purpose; or

(b) primarily for the benefit of the principal beneficiary.

Note 1: A particular purpose may be covered by both of paragraphs (2)(a) and (b).

Note 2: The application of the income and assets of the trust for purposes (other than the primary purpose) that are primarily for the benefit of the principal beneficiary is dealt with by section 1209RA.

Guidelines relating to purposes

(3) If guidelines are made under subsection (4) then, for the purposes of this section:

(a) the reasonable care and accommodation needs of a principal beneficiary of a special disability trust must be decided in accordance with the guidelines if they deal with those needs; and

(b) purposes, other than the primary purpose of a special disability trust, that are primarily for the benefit of the principal beneficiary of a trust must be decided in accordance with the guidelines if they deal with those other purposes.

(4) The Secretary may, by legislative instrument, make guidelines for deciding either or both of the following for the purposes of this section:

(a) what are, and what are not, reasonable care and accommodation needs for beneficiaries of trusts;

(b) what are, and what are not, trusts' purposes, other than the primary purpose described in subsection (1), that are primarily for the benefit of beneficiaries of the trusts.

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1209P Trust deed requirements

Compliance with determination

(1) If a determination is made under subsection (2), the trust deed for the trust must comply with the determination.

(2) The Secretary may, by legislative instrument, determine one or more of the following:
   (a) the form of the trust deed required for a special disability trust;
   (b) provisions which must be included in the trust deed;
   (c) the form of those provisions;
   (d) provisions which cannot be included in the trust deed.

Contravention of trust deed

(3) A person must not contravene a provision of the trust deed that is required by this section to be included in the deed (whether or not the provision is required to be included in any particular form).

1209Q Trustee requirements

(1) A trustee of the trust who is an individual must:
   (a) be an Australian resident; and
   (b) not have been convicted at any time (including a time before the commencement of this section) of any of the following offences:
      (i) an offence of dishonest conduct against, or arising out of, a law of the Commonwealth, a State, a Territory or a foreign country;
      (ii) an offence against, or arising out of, this Act, the Administration Act or the Veterans' Entitlements Act; and
   (c) not have been disqualified at any time (including a time before the commencement of this section) from managing corporations under the *Corporations Act 2001*.

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(2) In addition, if a trustee of the trust is a corporation, subsection (1) applies to each director of the trustee.

1209R Trust property requirements

(1) The assets of the trust must not include any asset transferred to the trust by the principal beneficiary of the trust, or the principal beneficiary's partner, unless:

(a) the transferred asset is all or part of a bequest, or of a superannuation death benefit; and

(b) the transferor received the bequest or superannuation death benefit not more than 3 years before transferring the transferred asset.

(2) The assets of the trust must not include any compensation received by or on behalf of the principal beneficiary.

(3) The trust must not be used to pay an immediate family member, or a child, of the principal beneficiary for the provision to the beneficiary of:

(a) care services; or

(b) services for the repair or maintenance of the beneficiary's accommodation.

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

(4) The trust must not be used to purchase or lease property from an immediate family member, or a child, of the principal beneficiary, even if the property is to be used for the beneficiary's accommodation.

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

(5) In this section:

child of a principal beneficiary means:

(a) a natural child, adopted child or step-child of the beneficiary; or

(b) someone who is a child of the beneficiary within the meaning of the *Family Law Act 1975*.

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property includes:

(a) a right to accommodation for life in a residence; and

(b) a life interest in a residence.

1209RA Trust expenditure requirements

Limit on expenditure for purposes other than primary purpose

(1) If:

(a) a determination has been made under subsection (3); and

(b) the trust has one or more purposes, other than its primary purpose described in subsection 1209N(1), that are primarily for the benefit of the principal beneficiary;

the total value of the income and assets of the trust applied for those other purposes in a financial year must not exceed the value specified in the determination for that year.

Instruments fixing limits and purposes to be taken into account

(2) If guidelines are made under paragraph 1209N(4)(b), the question whether a purpose for which income and assets of a trust have been applied is one of the other purposes described in subsection (1) must be decided in accordance with the guidelines.

Note: Paragraph 1209N(4)(b) provides for guidelines for deciding what are, and what are not, trusts' purposes, other than the primary purpose described in subsection 1209N(1), that are primarily for the benefit of beneficiaries of the trusts.

(3) The Secretary may, by legislative instrument, determine the total value of income and assets of a special disability trust that may be applied in a specified financial year for purposes, other than the primary purpose described in subsection 1209N(1), that are primarily for the benefit of the principal beneficiary of the trust.

1209S Reporting requirements

(1) The trustees of the trust must, on or before 31 March each year, give the Secretary written financial statements about the trust in

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relation to the financial year ending on 30 June in the previous year.

(2) The financial statements must be prepared by:
  (a) if a determination is made under subsection (4) that requires such financial statements to be prepared by a person with stated qualifications—such a person; or
  (b) whether or not such a determination is made—a person approved by the Secretary for the purpose.

(3) If a determination is made under subsection (4) that requires financial statements to include information of a stated kind, the financial statements must include information of that kind.

(4) The Secretary may, by legislative instrument, make determinations for the purposes of this section.

1209T Audit requirements

Trustee duties

(1) The trustees of the trust must, within a reasonable time after receiving a request under subsection (3):
  (a) cause an audit of the trust to be carried out in relation to the period mentioned in subsection (2); or
  (b) if, at the time of the request for the audit, an audit (the ***earlier requested audit***) of the trust had already been carried out, or was being carried out, for the purpose of this section in relation to that period—give a copy of the report of the earlier requested audit to the person making the request.

Audit period

(2) The audit must relate to:
  (a) the financial year ending on the 30 June last preceding the request; or
  (b) if a determination is made under subsection (7) that provides for a different period—that period.

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Who may request audit

(3) The following persons may request an audit of the trust for the purposes of this section:
  (a) the principal beneficiary;
  (b) an immediate family member of the principal beneficiary;
  (c) a person who is, under the law of the Commonwealth, a State or a Territory, the legal guardian or financial administrator of the principal beneficiary;
  (d) a person who is otherwise acting as the principal beneficiary's guardian on a long-term basis;
  (e) the Secretary.

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

Copies of audit report

(4) If an audit report for a trust is given to the trustees for the purpose of subsection (1), the trustees must, within a reasonable time, give a copy of the report to:
  (a) the person requesting the audit; and
  (b) if the guardian or administrator mentioned in paragraph (3)(c) did not request the audit—the guardian or administrator; and
  (c) if the Secretary did not request the audit—the Secretary.

Auditor qualifications and required information

(5) The audit must be prepared by:
  (a) if a determination is made under subsection (7) that requires such audits to be prepared by a person with stated qualifications—such a person; or
  (b) whether or not such a determination is made—a person approved by the Secretary for the purpose.

(6) If a determination is made under subsection (7) that requires audits requested under this section to include information of a stated kind, the audit must include information of that kind.

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(7) The Secretary may, by legislative instrument, make determinations for the purposes of this section.

1209U Waiver of contravention of this Division

(1) A contravention of a requirement of this Division concerning a particular matter, in relation to a trust that would be a special disability trust if it were not for the contravention, does not prevent the trust being a special disability trust if:

(a) the Secretary, by written notice (a ***waiver notice***) to the trustees, waives the requirement as it concerns that matter; and

(b) in a case where the waiver notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the time or times (if any) stated in the waiver notice.

(2) A waiver notice has effect, subject to any conditions mentioned in paragraph (1)(b):

(a) from:

(i) the time of the contravention; or

(ii) if the waiver notice states a time for the start of its period of effect that is after the time of the contravention—the stated time; and

(b) if the waiver notice states a time for the end of its period of effect—until the stated time.

(3) If guidelines are made under subsection (4), a decision in relation to giving a waiver notice to the trustees of the trust must be made in accordance with the guidelines.

(4) The Secretary may, by legislative instrument, make guidelines for deciding any or all of the following:

(a) whether or not to give waiver notices to trustees of trusts;

(b) what conditions to include in waiver notices;

(c) the periods during which waiver notices are to have effect.

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Division 2—Income of special disability trusts

1209V Attribution of income

(1) For the purposes of this Act, an amount of income that a special disability trust derives is taken not to be income received by any individual.

Note: For ***special disability trust***, see section 1209L.

(2) This section has effect despite Division 7 of Part 3.18 and any other provisions of this Act.

1209X Income amounts from special disability trusts

An income amount that the principal beneficiary of a special disability trust receives is not income of the beneficiary for the purposes of this Act to the extent that consideration for the income amount was provided by a distribution from the trust.

Note 1: For ***income amount***, see section 8.

Note 2: For ***special disability trust***, see section 1209L.

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Division 3—Assets of special disability trusts

1209Y Attribution of assets

(1) For the purposes of this Act, the assets of a special disability trust are not to be included in the assets of the principal beneficiary of the trust.

Note: For ***special disability trust***, see section 1209L.

(2) However, this section does not apply to the extent that the value of the assets owned by the trust exceeds the trust's asset value limit.

(3) The ***asset value limit*** of a special disability trust is $500,000.

Note: This amount is indexed annually on 1 July (see sections 1191 to 1194).

(4) For the purposes of subsection (2), disregard the value of any right or interest of the trust in the principal home of the principal beneficiary of the trust.

Note: For ***principal home***, see subsections 11(5) to (7).

(5) This section has effect despite Division 8 of Part 3.18 and any other provisions of this Act.

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Division 4—Transfers to special disability trusts

1209Z Effect of certain transfers to special disability trusts

(1) If a person transfers an asset (the ***transferred asset***) to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 1123) if:

(a) the person is an immediate family member of the principal beneficiary of the trust; and

(b) the person, or the person's partner:

(i) is receiving a social security pension and has reached pension age; or

(ii) is receiving a service pension and has reached pension age within the meaning of the Veterans' Entitlements Act; or

(iii) is receiving income support supplement and has reached qualifying age within the meaning of section 5Q of the Veterans' Entitlements Act; or

(iv) is receiving a veteran payment and has reached pension age; and

(c) the person receives no consideration, and is not entitled to any consideration, for the transfer; and

(d) the transfer is unconditional; and

(e) the value of the transferred asset does not exceed $500,000; and

(f) in a case where there has already been a transfer to which this section has applied (an ***exempt transfer***), by that person or any other person, to the trust or any other special disability trust that had the same principal beneficiary—the sum of:

(i) the values of all of the assets transferred, by exempt transfers that have already been made, to the trust or any other special disability trust that had the same principal beneficiary; and

(ii) the value of the transferred asset;

does not exceed $500,000.

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Note 1: For ***special disability trust***, see section 1209L.

Note 2: For ***immediate family member***, see subsection 23(1).

Note 3: For ***pension age*** (except for the purposes of subparagraph (1)(b)(ii) of this section), see subsections 23(5A) to (5D).

Note 4: For ***social security pension***, ***service pension*** and ***income support supplement***, see subsection 23(1).

(2) This section has effect subject to sections 1209ZA and 1209ZD.

(3) In this section:

other special disability trust includes a special disability trust within the meaning of the Veterans' Entitlements Act.

value, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

1209ZA The effect of exceeding the $500,000 limit

(1) If section 1209Z would apply to a transfer of an asset except for the fact that the value of the transferred asset exceeds $500,000, that section does not prevent the transfer from being a disposal or disposition of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess.

(2) If:

(a) section 1209Z would apply to a transfer of an asset but for the fact that the sum of:

(i) the values of all of the exempt transfers that have already been made to the trust or any other special disability trust that had the same principal beneficiary; and

(ii) the value of the transferred asset;

exceeds $500,000; and

(b) that sum would not exceed $500,000 if the value of the transferred asset were disregarded;

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that section does not prevent the transfer from being a disposal of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess referred to in paragraph (a).

(3) This section has effect subject to section 1209ZD.

(4) In this section:

other special disability trust includes a special disability trust within the meaning of the Veterans' Entitlements Act.

value, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

1209ZB Transfers by the immediate family members prior to reaching pension age etc.

(1) If:

(a) an immediate family member of the principal beneficiary of a special disability trust transfers an asset to the trust; and

(b) at the time of the transfer, neither the immediate family member nor the partner of the immediate family member is a person who:

(i) is receiving a social security pension and has reached pension age; or

(ii) is receiving a service pension and has reached pension age within the meaning of the Veterans' Entitlements Act; or

(iii) is receiving income support supplement and has reached qualifying age within the meaning of section 5Q of the Veterans' Entitlements Act; or

(iv) is receiving a veteran payment and has reached pension age;

the immediate family member is taken for the purposes of this Division only to transfer the asset to the trust at the earliest time at which subparagraph (b)(i), (ii), (iii) or (iv) applies to the immediate family member or partner.

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

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Note 2: For ***special disability trust***, see section 1209L.

Note 3: For ***pension age*** (except for the purposes of subparagraph (1)(b)(ii) of this section), see subsections 23(5A) to (5D).

Note 4: For ***social security pension***, ***service pension*** and ***income support supplement***, see subsection 23(1).

(2) However, if under subsection (1) transfers of assets to the trust by different immediate family members are taken to have been made on the same day, the transfers are taken to have been made on that day in the order in which they would have been taken to be made but for this Division.

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

(3) This section does not affect the operation of Part 3.12 or any other provision of this Act outside of this Division.

1209ZC Transfers by principal beneficiaries or partners

(1) If a person transfers an asset to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 1123) if:

(a) the person is the principal beneficiary of the trust, or the principal beneficiary's partner; and

(b) the person receives no consideration, and is not entitled to any consideration, for the transfer; and

(c) the transfer is unconditional.

Note 1: For ***special disability trust*** see section 1209L.

Note 2: Section 1209R limits the circumstances in which the principal beneficiary or the principal beneficiary's partner can transfer assets to the trust.

(2) This section has effect subject to section 1209ZD.

1209ZD Cessation of special disability trusts

(1) If:

(a) a special disability trust ceases to exist or ceases to be a special disability trust; and

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(b) a person had transferred an asset to the trust during the period of 5 years immediately preceding the cessation; and

(c) section 1209Z, 1209ZA or 1209ZC applied to the transfer;

then the transfer is taken, after the cessation, to be a disposal or disposition of the asset that occurred at the time of the transfer.

(2) The amount of the disposal or disposition is taken to be the amount worked out using the formula:

$$\left(\text{Asset value} \times \frac{\text{Final value of trust assets}}{\text{Initial value of trust assets}} \right) + \text{Subsection 1209ZA(2) amount}$$

where:

asset value means:

(a) if section 1209Z or 1209ZC applied to the transfer—the value of the asset at the time of the transfer; or

(b) if subsection 1209ZA(1) applied to the transfer—$500,000; or

(c) if subsection 1209ZA(2) applied to the transfer—the difference between the value of the asset at the time of the transfer and the amount that was taken under that subsection to be the amount of the disposal or disposition of the asset.

final value of trust assets means the value of all of the assets of the trust at the time of the cessation.

initial value of trust assets means the value of all of the assets of the trust at the time of the transfer.

subsection 1209ZA(2) amount means the amount (if any) that was taken under subsection 1209ZA(2) to be the amount of the disposal or disposition of the asset.

(3) If the special disability trust ceases to exist, or ceases to be a special disability trust, because the principal beneficiary dies, the value of the asset at the time of the transfer is taken for the purposes of this section to be the value of so much (if any) of the

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asset as has not been returned to the person who had transferred the asset to the trust.

(4) This section does not affect the application of section 1209Z, 1209ZA or 1209ZC to the transfer prior to the cessation.

1209ZE Effect of this Division

This Division (other than section 1209ZB) has effect despite Division 2 of Part 3.12 and any other provisions of this Act.

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Part 3.19—Miscellaneous

1210 Application of income and assets test reductions and of compensation reductions for income tax purposes

(1) If:

(a) the rate of a person's social security payment is increased under Part 3.7 (rent assistance) and/or one or more of the following Modules of the Rate Calculator:

(i) the pension supplement Module (the ***PS Module***) (if any);

(ia) the energy supplement Module (the ***ES Module***);

(ii) the pharmaceutical allowance Module (the ***PA Module***) (if any); and

(b) that rate is to be reduced under:

(i) the income test Module or the assets test Module of the Rate Calculator; or

(ii) section 1173 (compensation reductions);

the reduction is to be applied as follows (in descending order):

Item	Component of the rate
1	all of the rate apart from any increase mentioned in paragraph (a)
2	the portion of the person's pension supplement amount (if any) equal to: (a) if the Rate Calculator produces an annual rate—the person's pension supplement basic amount; and (b) if the Rate Calculator produces a fortnightly rate—1/26 of the person's pension supplement basic amount
3	(a) if an election by the person under subsection 1061VA(1) is in force—any remaining portion of the person's pension supplement amount; or (b) otherwise—any remaining portion of the person's pension supplement amount to the extent to which it exceeds the person's minimum pension supplement amount
4	the amount of any increase under Part 3.7

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Item	Component of the rate
4A	the amount of any increase under the ES Module
5	the person's minimum pension supplement amount
6	the amount of any increase under the PA Module

Note 1: For table item 4A, the amount will be nil if quarterly energy supplement is payable to the person (for example, see point 1064-C2). See also subsection (2A).

Note 2: Table item 5 will not apply if an election by the person under subsection 1061VA(1) is in force, as the rate would have already been reduced to nil.

(2) For the purposes of subsection (1):

(a) disregard table items 2, 3 and 5 if the person's rate is increased under the PA Module (if any) of the Rate Calculator; and

(b) disregard table item 6 if the person's rate is increased under the PS Module (if any) of the Rate Calculator.

(2A) If:

(a) quarterly energy supplement is payable to a person; and

(b) if quarterly energy supplement were not payable to the person:

(i) the rate (the ***main rate***) of the person's social security payment would be increased under the ES Module of the Rate Calculator; and

(ii) the main rate would be reduced as described in paragraph (1)(b); and

(c) the social security payment:

(i) is not a social security pension; or

(ii) is a disability support pension to which subsection 1066A(1) or 1066B(1) applies; or

(iii) if the person has not reached pension age—is a pension PP (single);

the reduction is to be applied to the components mentioned in items 5 and 6 of the table in subsection (1) only to the extent that the amount of the reduction (after it is applied to the components

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mentioned in items 1 to 4) exceeds the amount of the increase mentioned in subparagraph (b)(i) of this subsection.

(3) If:

(a) the rate (the ***main rate***) of a person's social security payment is increased under the PS Module of the Rate Calculator; and

(b) that rate is to be reduced as described in paragraph (1)(b); and

(c) an election by the person under subsection 1061VA(1) is in force;

the person's quarterly pension supplement is reduced to the same extent (if any) that the component of the main rate that would correspond to the person's minimum pension supplement amount would be reduced under subsection (1) were the election not in force.

Note: The reduction will be disregarded unless the person's quarterly pension supplement is reduced to nil (see subsection 43(5A) of the Administration Act).

(3A) If:

(a) quarterly energy supplement is payable to a person; and

(b) if quarterly energy supplement were not payable to the person:

(i) the rate (the ***main rate***) of the person's social security payment would be increased under the ES Module of the Rate Calculator; and

(ii) the main rate would be reduced as described in paragraph (1)(b);

the person's quarterly energy supplement is reduced to the same extent (if any) that the component of the main rate that would correspond to the person's energy supplement would be reduced under subsection (1) were quarterly energy supplement not payable to the person.

Note: The reduction may be disregarded unless the main rate would be reduced to nil (see subsection 43(5B) of the Administration Act).

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(4) The following table sets out details of the Modules relevant to subsection (1):

Relevant Modules						
	Pension Rate Calculator	**PS Module**	**PA Module**	**ES Module**	**Income test Module**	**Assets test Module**
1	Pension Rate Calculator A, section 1064	BA	none	C	E	G
3	Pension Rate Calculator D, section 1066A	none	D	BA	F	H
4	Youth Allowance Rate Calculator, section 1067G	none	C	BA	H	none
5	Austudy Payment Rate Calculator, section 1067L	BA	C	BB	D	none
6	Benefit Rate Calculator B, section 1068	BA	D	C	G	none
7	Pension PP (Single) Rate Calculator, section 1068A	BA	C	BB	E	none
8	Benefit PP (partnered) Rate Calculator, section 1068B	DA	E	DB	D	none

1210A Effect of nil rate of pension etc.

(1) If, in relation to a day:

(a) a person is qualified for a social security pension or benefit; and

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(b) the pension or benefit rate in relation to that day would be nil;

then, for the purposes of Part 2A.1, the person is not to be taken to be receiving the pension or benefit on that day.

(2) The circumstance that a person is qualified for a social security pension or benefit in relation to a day is not to be taken into account for the purpose of determining the qualification of the person for a concession card if the pension or benefit is not payable to the person in relation to that day.

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Chapter 4—International agreements and portability

Part 4.2—Overseas portability

Division 1—Preliminary

1211 Social Security (International Agreements) Act overrides Part

If the *Social Security (International Agreements) Act 1999* applies to the payment of a social security payment to a person, this Part does not apply to the payment to the person.

1212 Meaning of terms used in this Part

In this Part:

allegation authority means:

(a) the Greek Australian Workers' Welfare Association of NSW; or

(b) the Commission of Enquiry established by Letters Patent of 9 February 1984 and 16 August 1984 to investigate matters known as the Greek conspiracy.

Australian resident disability support pensioner means a person who qualifies for disability support pension only because he or she is an Australian resident.

claim, in relation to a social security payment, includes a claim that is taken to have been made under a provision of the *Social Security (Administration) Act 1999*.

eligible medical treatment, in relation to a person, means medical treatment of a kind that is not available to the person in Australia.

Reserve service means attending a training camp as a member of any of the following:

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(a) the Naval Reserve; or
(b) the Army Reserve; or
(c) the Air Force Reserve.

severely impaired disability support pensioner means a person in respect of whom the Secretary has made a determination under subsection 1218AAA(1).

terminally ill overseas disability support pensioner means a person who qualifies for disability support pension because all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

1212A Meaning of *acute family crisis*

For the purposes of this Part, a person's absence is for the purpose of attending to an ***acute family crisis*** at a particular time if the Secretary is satisfied that the absence is, at that time:

(a) for the purpose of visiting a family member who is critically ill; or
(b) for the purpose of visiting a family member who is hospitalised with a serious illness; or
(c) for a purpose relating to the death of a family member; or
(d) for a purpose relating to a life-threatening situation (other than an illness referred to in paragraph (a) or (b)) that:
    (i) is facing a family member; and
    (ii) is beyond the control of the family member.

1212B Meaning of *humanitarian purpose*

For the purposes of this Part, a person's absence is for a ***humanitarian purpose*** at a particular time if the Secretary is satisfied that the absence is, at that time:

(a) for the purpose of involvement in custody proceedings, criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person) or other legal proceedings; or

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(b) for purposes relating to the adoption of a child by the person; or

(c) for a purpose specified in the regulations for the purposes of this paragraph.

1212C Meaning of *temporary absence*

For the purposes of this Part, a person's absence from Australia is temporary if, throughout the absence, the person does not cease to reside in Australia (within the meaning of subsection 7(3)).

1212D Part does not affect need for qualification

For the avoidance of doubt, nothing in this Part confers a right on a person to continue to be paid a social security payment if the person is not qualified for the payment (even if the person's failure to qualify is related to the absence).

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Division 2—Portability of social security payments

Subdivision A—Basic portability provisions

1213 Persons to whom Division applies

This Division applies to a person during a period (the ***period of absence***) throughout which the person is continuously absent from Australia, if:

(a) immediately before the period of absence commenced, the person was receiving a social security payment (the ***payment***) mentioned in column 2 of the table at the end of section 1217; or

(b) during the period of absence, the person's claim for such a payment is granted under the *Social Security (Administration) Act 1999*.

1214 Some payments generally portable with no time limit

(1) If the person's maximum portability period for the payment is an unlimited period, the person's right to continue to be paid the payment throughout the period of absence is not affected merely by the absence.

Note 1: Section 1217 defines the person's ***maximum portability period*** for the payment.

Note 2: However, the person's rate of payment may be affected after 26 weeks—see Division 3.

(2) This section is subject to section 1220.

1215 Some payments generally portable with time limit

(1) If the person's maximum portability period for the payment is not an unlimited period, the following rules apply:

(a) throughout the person's portability period for the payment, the person's right to continue to be paid the payment is not affected merely by the absence;

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(b) throughout so much (if any) of the period of absence as occurs after the end of the person's portability period for the payment, the payment is not payable to the person.

Note: Section 1217 defines the person's ***maximum portability period*** and ***portability period*** for the payment.

(2) This section is subject to Subdivision B of this Division (which contains exceptions) and section 1220.

1216 Amounts added to rate

(1) During the period of absence, rent assistance, incentive allowance and pharmaceutical allowance are not to be added to the person's rate under Chapter 3 after whichever of the following times applies:

(a) if the person's maximum portability period for the payment is an unlimited period—26 weeks after the period of absence commenced;

(b) otherwise—the end of the person's portability period for the payment.

(2) If:

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

(b) the Secretary is satisfied that the person is unable to return to Australia before the end of the 26 weeks mentioned in paragraph (1)(a) because of an event referred to in subsection (3);

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks.

(3) The events are the following:

(a) a serious accident involving the person or a family member of the person;

(b) a serious illness of the person or a family member of the person;

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(c) the hospitalisation of the person or a family member of the person;
(d) the death of a family member of the person;
(e) the person's involvement in custody proceedings in the country in which the person is located;
(f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
(g) robbery or serious crime committed against the person or a family member of the person;
(h) a natural disaster in the country in which the person is located;
(i) a public health crisis affecting Australia or the country in which the person is located or both;
(j) political or social unrest in the country in which the person is located;
(k) industrial action in the country in which the person is located;
(l) a war in the country in which the person is located.

(4) The Secretary must not make a determination under subsection (2) unless:
(a) the event occurred or began during the period of absence; and
(b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating in, the event.

(5) If the Secretary determines another number (the ***new number***) of weeks under subsection (2), then, immediately after that determination is made, a reference to a number of weeks in paragraph (1)(a), and each reference to a number of weeks in subsection (2), is taken to be a reference to that new number.

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1217 Meaning of *maximum portability period*, *allowable absence* and *portability period*

Meaning of maximum portability period

(1) The person's ***maximum portability period*** for the payment is the period referred to in column 5 of the table at the end of this section (the ***table***) that is applicable to:
  (a) the payment (as specified in column 2 of the table); and
  (b) the class of persons to which the person belongs (as specified in column 3 of the table).

Meaning of allowable absence

(2) The person's absence is an allowable absence in relation to the payment at a particular time if, at that time:
  (a) it is an absence specified in column 4 of the item in the table at the end of this section that is applicable to the payment and the person; and
  (b) except where an unlimited absence is specified in column 5 of the item or a provision of Subdivision B applies, the absence does not:
    (i) exceed the period specified in column 5 of that item; or
    (ii) in the case of item 2—cause the total number of days (whether consecutive or not) of the person's temporary absence from Australia in the last 12 months to exceed 28, ignoring days in accordance with that item.

Meaning of portability period if unlimited maximum portability period

(3) If the person's maximum portability period for the payment is an unlimited period, the person's ***portability period*** for the payment, in relation to the period of absence, is an unlimited period beginning at the commencement of the period of absence.

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Meaning of portability period if maximum portability period limited

(4) If the person's maximum portability period for the payment is not an unlimited period, the person's ***portability period*** for the payment, in relation to the period of absence, is the period:

(a) beginning at the commencement of the period of absence; and

(b) ending at the earlier of the following times:

(i) the first time during the period of absence at which the absence is not an allowable absence in relation to the payment;

(ii) the end of the period that is the person's maximum portability period for the payment.

Note: People will be required (under the *Social Security (Administration) Act 1999*) to notify changes in circumstance.

Portability of social security payments

Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
1	Age pension	All persons	Any absence	Unlimited period

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Portability of social security payments

Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
2	Disability support pension	Australian resident disability support pensioner	Any temporary absence, except for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose	A total of 28 days (whether consecutive or not) of temporary absence from Australia for any purpose in the last 12 months, ignoring days on which the person was not receiving disability support pension (but see also sections 1218AAA, 1218AA, 1218AB, 1218, 1218C and 1218D)
2AA	Disability support pension	Australian resident disability support pensioner	Temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose	4 weeks (but see also sections 1218AAA, 1218AA, 1218AB, 1218, 1218C and 1218D)

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Portability of social security payments

Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
2A	Disability support pension	Severely impaired disability support pensioner	Any absence	Unlimited period
3	Disability support pension	Terminally ill overseas disability support pensioner	Any absence	Unlimited period
6	Carer payment	All persons	Any temporary absence	6 weeks (but see also section 1218)
11	Parenting payment	All persons	Any temporary absence	6 weeks (but see also sections 1218 and 1218B)
12	Youth allowance	Person other than person undertaking full-time study	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	6 weeks (but see also section 1218BA)

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Portability of social security payments

Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
13	Youth allowance	Person undertaking full-time study	A temporary absence for either of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis	6 weeks (but see also section 1218)
14	Austudy payment	All persons	A temporary absence for either of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis	6 weeks (but see also sections 1218 and 1218BA)
15	Jobseeker payment	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	6 weeks

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Portability of social security payments				
Column 1 **Item**	**Column 2** **Payment**	**Column 3** **Person**	**Column 4** **Absence**	**Column 5** **Maximum portability period**
19	Special benefit	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	6 weeks
21	Carer allowance	All persons	Any temporary absence	6 weeks
22	Mobility allowance	All persons	Any temporary absence	6 weeks
23	Telephone allowance	All persons	Any temporary absence	6 weeks

Subdivision B—Exceptions to Subdivision A rules

1218AAA Unlimited portability period for disability support pension—severely impaired disability support pensioner

(1) The Secretary may make a written determination that a particular person's maximum portability period for disability support pension is an unlimited period, if all of the following circumstances (the ***qualifying circumstances***) exist:

(a) the person is receiving disability support pension;

(b) the Secretary is satisfied that the person's impairment is a severe impairment (within the meaning of subsection 94(3B));

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(c) the Secretary is satisfied that the person will have that severe impairment for at least the next 5 years;

(d) the Secretary is satisfied that, if the person were in Australia, the severe impairment would prevent the person from performing any work independently of a program of support (within the meaning of subsection 94(4)) within the next 5 years.

(2) The Secretary must not make a determination under subsection (1) in relation to a person who is outside Australia unless the Secretary is satisfied that:

(a) the person is unable to return to Australia because of either of the following events:

(i) a serious accident involving the person;

(ii) the hospitalisation of the person; and

(b) the person's portability period for disability support pension had not ended at the time the event occurred.

(3) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.

(4) A determination under subsection (1) is not a legislative instrument.

(5) In this section:

work means work:

(a) that is 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.

1218AA Unlimited portability period for disability support pension—terminally ill overseas disability support pensioner

(1) The Secretary may determine that a particular person's maximum portability period for disability support pension is an unlimited

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period, if all of the following circumstances (the ***qualifying circumstances***) exist:

(a) the person is severely disabled (see subsection 23(4B)); and

(b) the person is receiving disability support pension; and

(c) the person is terminally ill; and

(d) the person's absence from Australia is or will be permanent; and

(e) the purpose of the person's absence is:

(i) to be with or near a family member of the person (see subsection 23(14)); or

(ii) to return to the person's country of origin.

(2) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.

(3) If the Secretary revokes the determination, this Part has effect after the revocation as if:

(a) the person's maximum portability period for the pension were worked out under whichever one of items 2, 2AA and 2A of the table in section 1217 applies; and

(b) if the person was absent from Australia at the time of the revocation—the person's absence started on the revocation; and

(c) if item 2 of the table in section 1217 applies—the person had not been absent from Australia at any time in the 12 months before the revocation.

1218AB Extended portability period for disability support pension

(1) The Secretary may, by written determination, extend the person's portability period for disability support pension if all of the following circumstances (the ***qualifying circumstances***) exist:

(a) the person is severely disabled (see subsection 23(4B));

(b) the person is receiving disability support pension;

(c) the person is wholly or substantially dependent on a family member of the person (see subsection 23(14));

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(d) the Secretary is satisfied that the person will be living with the family member of the person throughout the period of absence;

(e) the family member of the person is engaged in employment in Australia for an employer immediately before the start of the period of absence;

(f) the Secretary is satisfied that the family member of the person will be engaged in employment outside Australia for that employer throughout the period of absence.

(2) If the Secretary extends a person's portability period under subsection (1), the person's portability period for disability support pension, for the purposes of this Part, is the extended period.

(3) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.

(4) A determination under subsection (1) is not a legislative instrument.

1218 Exception—full-time students outside Australia for purposes of Australian course

(1) This section applies if, immediately before the period of absence commenced:

(a) the person was undertaking full-time study as part of a course of education at an educational institution; and

(b) the person was receiving disability support pension, carer payment, parenting payment, youth allowance or austudy payment.

(2) The person's right to continue to be paid disability support pension, carer payment, parenting payment, youth allowance or austudy payment is not affected merely by the person's absence throughout so much of the period of absence as is for the purpose of undertaking studies that form part of the course of education.

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(3) If the person returns to Australia for a period of 6 weeks or less, the return is taken not to affect the continuity of the period of absence.

(4) The Secretary may, by legislative instrument, make principles that must be complied with when deciding how much of a period of absence is for the purpose of undertaking studies that form part of a course of education.

1218A Exception—Reserve service

(1) This section applies if, immediately before the period of absence commenced, the person was receiving parenting payment, youth allowance, austudy payment or jobseeker payment.

(2) The person's right to continue to be paid the payment is not affected merely by the person's absence throughout so much of the period of absence as is for the purpose of undertaking Reserve service.

1218B Exception—waiting period in Australia before parenting payment is portable

(1) If:

(a) immediately before the period of absence commenced, the person was receiving parenting payment; and

(b) at a time not more than 6 weeks before the period of absence commenced, parenting payment had ceased to be payable to the person because:

(i) the person's portability period for parenting payment in relation to another period of absence ended; or

(ii) another absence had ceased to be an allowable absence for parenting payment;

parenting payment is not payable to the person during the period of absence.

(2) This section is subject to section 1218.

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1218BA Exception—new apprentices

(1) This section applies if, immediately before the period of absence commenced, the person was receiving youth allowance on the basis of section 540AA applying (about new apprentices) or austudy payment on the basis of section 568AA applying (about new apprentices).

(2) The person's right to continue to be paid youth allowance or austudy payment is not affected merely by the person's absence throughout so much of the period of absence as is for the purpose of undertaking the person's full-time apprenticeship, traineeship or trainee apprenticeship.

(3) The Secretary may, by legislative instrument, make principles that must be complied with when deciding how much of a period of absence is for the purpose of undertaking a full-time apprenticeship, traineeship or trainee apprenticeship.

1218C Extension of person's portability period—general

(1) The Secretary may extend the person's portability period for the payment if the Secretary is satisfied that the person is unable to return to Australia because of any of the following events:

(a) a serious accident involving the person or a family member of the person;

(b) a serious illness of the person or a family member of the person;

(c) the hospitalisation of the person or a family member of the person;

(d) the death of a family member of the person;

(e) the person's involvement in custody proceedings in the country in which the person is located;

(f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);

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(g) robbery or serious crime committed against the person or a family member of the person;
(h) a natural disaster in the country in which the person is located;
(i) political or social unrest in the country in which the person is located;
(j) industrial action in the country in which the person is located;
(k) a war in the country in which the person is located.

(2) The Secretary must not extend the person's portability period under subsection (1) unless:
(a) the event occurred or began during the period of absence; and
(b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating in the event.

(3) If the Secretary extends a person's portability period under subsection (1), the person's portability period for the payment, for the purposes of this Part, is the extended period.

1218D Extension of person's portability period—life-saving medical treatment overseas

(1) The Secretary may extend the person's portability period for the payment if the Secretary is satisfied that, under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*, financial assistance is payable in respect of the person's absence from Australia.

(2) If the Secretary extends a person's portability period under subsection (1), the person's portability period for the payment, for the purposes of this Part, is the extended period.

1220 No portability where claim based on short residence

(1) If:
(a) a person is an Australian resident; and
(b) the person ceases to be an Australian resident; and

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(c) the person again becomes an Australian resident; and

(d) within the period of 2 years after the person again becomes an Australian resident, the person is granted, or is transferred to:

(i) an age pension; or

(ii) a disability support pension; and

(e) after the pension is granted, or the person is transferred to the pension, but before the end of that period of 2 years, the person leaves Australia; and

(f) financial assistance is not payable in respect of the person's absence from Australia under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*;

a pension based on that claim is not payable to the person during any period during which the person is outside Australia.

(2) If:

(a) a person resides in an area that is, at the time of residence, an external Territory; and

(b) the person has never before resided in Australia; and

(c) the person then arrives in Australia; and

(d) within the period of 2 years after the person arrives in Australia, the person is granted, or is transferred to:

(i) an age pension; or

(ii) a disability support pension; and

(e) after the pension is granted, or the person is transferred to the pension, but before the end of that period of 2 years, the person leaves Australia; and

(f) financial assistance is not payable in respect of the person's absence from Australia under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*;

a pension based on that claim is not payable to the person during any period during which the person is outside Australia.

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(4) For the purposes of the application of this section in relation to a particular social security payment, a person who has a qualifying residence exemption for that payment is taken:

(a) to be an Australian resident; or

(b) to reside in an area that is, at the time of residence, an external Territory;

as the context requires.

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Division 3—Rate of portable pensions

1220A Proportionality—age pension rate

(1) A person's rate of age pension is to be calculated using the Pension Portability Rate Calculator at the end of section 1221 if:

(a) the person has been continuously absent from Australia, throughout a period (the ***period of absence***) of more than 26 weeks; and

(b) either:

(i) immediately before the period of absence commenced, the person was receiving the age pension; or

(ii) during the period of absence, the person's claim for the age pension is granted under the *Social Security (Administration) Act 1999*.

(1A) If:

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

(b) the Secretary is satisfied that the person is unable to return to Australia before the end of the 26 weeks mentioned in paragraph (1)(a) because of an event referred to in subsection (1B);

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks.

(1B) The events are the following:

(a) a serious accident involving the person or a family member of the person;

(b) a serious illness of the person or a family member of the person;

(c) the hospitalisation of the person or a family member of the person;

(d) the death of a family member of the person;

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(e) the person's involvement in custody proceedings in the country in which the person is located;
(f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
(g) robbery or serious crime committed against the person or a family member of the person;
(h) a natural disaster in the country in which the person is located;
(i) a public health crisis affecting Australia or the country in which the person is located or both;
(j) political or social unrest in the country in which the person is located;
(k) industrial action in the country in which the person is located;
(l) a war in the country in which the person is located.

(1C) The Secretary must not make a determination under subsection (1A) unless:
(a) the event occurred or began during the period of absence; and
(b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating, in the event.

(1D) If the Secretary determines another number (the ***new number***) of weeks under subsection (1A), then, immediately after that determination is made, a reference to a number of weeks in paragraph (1)(a), and each reference to a number of weeks in subsection (1A), is taken to be a reference to that new number.

(2) Subsection (1) does not apply to a woman if, immediately before 20 March 2020, subsection 1221(1) did not apply to the woman because of subsection 1221(2).

(3) Subsection (1) does not apply to a woman if, immediately before 20 March 2020, subsection 796(2) did not apply to the woman because of subsection 796(4).

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(4) Subsection (1) does not apply to a woman if:
(a) immediately before 20 March 2020, the woman was receiving a widow B pension mentioned in subclause 128A(2) of Schedule 1A; and
(b) immediately before 20 March 2020, subclause 128A(5) of Schedule 1A applied to the woman in relation to that pension.

(5) Subsection (1) does not apply to a woman 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, clause 128 of Schedule 1A applied to the woman in relation to that pension.

1220B Proportionality—disability support pension rate for a severely disabled person

(1) The rate of disability support pension for a person for whom an unlimited maximum portability period for the pension has been determined under section 1218AAA or 1218AA is to be calculated using the Pension Portability Rate Calculator at the end of section 1221 if:
(a) the person has been continuously absent from Australia, throughout a period (the ***period of absence***) of more than 26 weeks; and
(b) either:
(i) immediately before the period of absence commenced, the person was receiving the disability support pension; or
(ii) during the period of absence, the person's claim for the disability support pension is granted under the *Social Security (Administration) Act 1999*.

(1A) If:
(a) the Secretary is satisfied that the person's absence from Australia is temporary; and

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(b) the Secretary is satisfied that the person is unable to return to Australia before the end of the 26 weeks mentioned in paragraph (1)(a) because of an event referred to in subsection (1B);

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks.

(1B) The events are the following:

(a) a serious accident involving the person or a family member of the person;

(b) a serious illness of the person or a family member of the person;

(c) the hospitalisation of the person or a family member of the person;

(d) the death of a family member of the person;

(e) the person's involvement in custody proceedings in the country in which the person is located;

(f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);

(g) robbery or serious crime committed against the person or a family member of the person;

(h) a natural disaster in the country in which the person is located;

(i) a public health crisis affecting Australia or the country in which the person is located or both;

(j) political or social unrest in the country in which the person is located;

(k) industrial action in the country in which the person is located;

(l) a war in the country in which the person is located.

(1C) The Secretary must not make a determination under subsection (1A) unless:

(a) the event occurred or began during the period of absence; and

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(b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating in, the event.

(1D) If the Secretary determines another number (the ***new number***) of weeks under subsection (1A), then, immediately after that determination is made, a reference to a number of weeks in paragraph (1)(a), and each reference to a number of weeks in subsection (1A), is taken to be a reference to that new number.

(2) Subsection (1) does not apply to a person if the person became qualified to receive the disability support pension because the person became unable to work or permanently blind while the person was an Australian resident.

1221 Pension Portability Rate Calculator

This section sets out the Pension Portability Rate Calculator for the purposes of this Part.

Pension Portability Rate Calculator

Module A—Overall rate calculation process

Overall rate calculation process

1221-A1 This is how to calculate a person's portability rate:

Method statement

Step 1. Work out the period of the person's Australian working life residence using Module B: the result is called the ***residence period***.

Step 2. Use the person's residence period to work out the person's ***residence factor*** using Module C below.

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Step 3.	Work out the rate that would be the person's pension or allowance rate if this Rate Calculator did not apply to the person: the result is called the person's ***notional domestic rate***.
Step 4.	Multiply the person's notional domestic rate by the person's residence factor: the result is the person's portability rate.

Limit in portability rate

1221-A2 If a person's portability rate as calculated under point 1221-A1 would exceed the rate (the ***notional rate***) that would be the person's notional domestic rate under that point if the person had a residence factor of 1, the person's portability rate is the rate that equals the notional rate.

Former recipients of widow B pension

1221-A3 If:

(a) immediately before 20 March 2020, a woman was receiving a widow B pension under Part 2.8; and

(b) the woman had become qualified for the widow B pension because of the woman's partner's death; and

(c) on a day on or after 20 March 2020, the woman's rate of age pension is worked out as mentioned in section 1220A; and

(d) on that day, that partner's period of Australian working life residence (immediately before that partner's death) exceeds the woman's period of Australian working life residence on that day; and

(e) on that day, the woman is not a member of a couple;

then, for the purposes of working out that rate of age pension, the woman's period of Australian working life residence is taken to be equal to that partner's period of Australian working life residence (immediately before that partner's death).

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Former recipients of wife pension

1221-A4 If immediately before 20 March 2020:

(a) either:

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

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

(b) the woman was a member of a couple; and

(c) the rate of the woman's wife pension was required to be worked out having regard to the woman's period of Australian working life residence; and

(d) the woman's period of Australian working life residence was taken to be equal to the period of Australian working life residence of the woman's partner;

then, for a day on or after 20 March 2020, the woman's period of Australian working life residence is taken to be equal to the period of Australian working life residence of the woman's partner if the following apply on that day:

(e) the woman is a member of that same couple;

(f) the woman's rate of age pension is worked out as mentioned in section 1220A.

Module B—Australian working life residence

Working life

1221-B1 For the purposes of this Module, a person's working life is the period beginning when the person turns 16 and ending when the person reaches pension age.

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

Australian working life residence (general)

1221-B2 Subject to points 1221-B3 and 1221-B4, a person's ***period of Australian working life residence*** as at a particular time is the number of months in the period, or the aggregate of the periods,

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during the person's working life during which the person has, up to that time, been an Australian resident.

Note: For the method of calculating the number of months in the period see points 1221-B3 and 1221-B4 below.

Calculation of number of months

1221-B3 If a person's period of Australian working life residence would, apart from this point, be a number of whole months, the period is to be increased by one month.

1221-B4 If a person's period of Australian working life residence would, apart from this point, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

Module C—Residence factor

Residence factor (period of Australian working life residence 35 years or more)

1221-C1 If a person's period of Australian working life residence is 420 months (35 years) or more, the person's residence factor is 1.

Note: If a person's residence factor is 1, the person's pension will be payable outside Australia at the full domestic rate.

Residence factor (period of Australian working life residence under 35 years)

1221-C2 If a person's period of Australian working life residence is less than 420 months (35 years), the person's residence factor is:

$$\frac{\text{Person's period of Australian working life residence}}{420}$$

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Chapter 5—Overpayments and debt recovery

Part 5.1—Effect of Chapter

1222 General effect of Chapter

(1) This Chapter provides the methods for recovery by the Commonwealth of:

(a) debts owed to the Commonwealth under Part 5.2; and

(b) debts owed to the Commonwealth under section 1135; and

(ba) debts owed to the Commonwealth under Parts 3AA and 3B of the Administration Act; and

(c) overpayments under certain other Acts or schemes; and

(ca) debts incurred under other Acts for failing to repay part or all of overpayments referred to in paragraph (c); and

(d) debts under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*.

(2) The methods of recovery available for the various types of debt are set out in the following table:

Recovery methods table

Column 1 Item	Column 2 Debt	Column 3 Means	Column 4 Provision
1	1135 (pension loan debt)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
2	1223 (debt arising under this Act)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234

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Section 1222

Recovery methods table

Column 1 Item	Column 2 Debt	Column 3 Means	Column 4 Provision
3	1223AA (debt arising from prepayment)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4	1223AB (debt arising from ART stay order)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4A	1223ABB (debts in respect of child disability assistance)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4B	1223ABC (debts in respect of carer supplement for 2009)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4C	1223ABD (debts in respect of carer supplement for 2010 and later years)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4D	1223ABE (debts in respect of relocation scholarship payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4E	1223ABF (debts in respect of student start-up loans)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4F	1223ABG (debts in respect of one-off energy assistance payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234

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Recovery methods table

Column 1 Item	Column 2 Debt	Column 3 Means	Column 4 Provision
4G	1223ABH (debts in respect of 2019 one-off energy assistance payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4H	1223ABI (debts in respect of first 2020 economic support payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4J	1223ABJ (debts in respect of second 2020 economic support payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4K	1223ABK (debts in respect of additional economic support payment 2020)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
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Note: An additional 10% penalty is payable in some cases: see section 1228B.

(3) If a person:

(a) has received an overpayment under certain other Acts or schemes; or

(b) has incurred a debt under another Act (whether before or after the commencement of this paragraph) for failing to repay part or all of such an overpayment;

the amount of the overpayment or debt may be recoverable by means of deductions from the person's social security payment.

Note: For deductions see section 1231.

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Part 5.2—Amounts recoverable under this Act

1222A Debts due to the Commonwealth

If an amount has been paid by way of social security payment, or by way of fares allowance under the *Social Security (Fares Allowance) Rules 1998*, the amount is a debt due to the Commonwealth if, and only if:

(a) a provision of this Act, the 1947 Act, the *Social Security (Fares Allowance) Rules 1998* or the *Data-matching Program (Assistance and Tax) Act 1990* expressly provided that it was or expressly provides that it is, as the case may be; or; or

(b) the amount:

(i) should not have been paid; and

(ii) was paid before 1 January 1991; and

(iii) was not an amount to which subsection 245B(2) of the 1947 Act applied.

1223 Debts arising from lack of qualification, overpayment etc.

(1) Subject to this section, if:

(a) a social security payment is made; and

(b) a person who obtains the benefit of the payment was not entitled for any reason to obtain that benefit;

the amount of the payment is a debt due to the Commonwealth by the person and the debt is taken to arise when the person obtains the benefit of the payment.

(1AA) If a social security payment is made to, or as directed or authorised by, the person who is entitled to obtain the benefit of the payment, subsection (1) does not apply to any other person who afterwards obtains the benefit of the payment unless the other person obtained the benefit because of a mistake made by the first person in connection with the giving of the direction or authorisation.

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(1AB) Without limiting by implication the circumstances to which paragraph (1)(b) applies apart from this subsection, a person who obtained the benefit of a social security payment is taken not to have been entitled to obtain the benefit if the payment should not have been made for any one or more of the following reasons:

(a) the payment was made to the person by mistake as a result of a computer error or an administrative error;

(b) the person for whose benefit the payment was intended to be made was not qualified to receive the payment;

(c) the payment was not payable;

(d) the payment was made as a result of a contravention of the social security law, a false statement or a misrepresentation;

(e) the payment was made in purported compliance with a direction or authority given by the person who was entitled to obtain the benefit of the payment but the direction or authority had been revoked or withdrawn before the payment was made;

(f) the payment was intended to be made for the benefit of someone else who died before the payment was made.

(1AC) If a social security payment was made by mistake as a result of a computer error or an administrative error, subsection (1) applies:

(a) whether or not the payment was made under a determination that had effect at the time when the payment was made; and

(b) whether or not a determination in relation to the payment could be made after that time with effect from and including that time.

(1AD) Subsection (1AC) does not apply if the social security payment was made when it should not have been made because of the occurrence of an event or a change in circumstances where the event or change had not been notified to the Secretary but no valid requirement for notification had been made under the social security law.

(1AE) If subsection (1AC) applies in respect of a social security payment:

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(a) Divisions 8, 9 and 10 of Part 3 of the *Social Security (Administration) Act 1999* are to be disregarded; and

(b) any determination made under section 79 or 80 of that Act to correct the error in the payment takes effect from the date stated in the determination; and

(c) the date so stated may be a date earlier than the date on which the determination is made.

(1AF) Except in the circumstances referred to in subsection (1AG), subsection (1) does not apply to a payment made under subsection 47(2) or 51(2) of the Administration Act.

(1AG) Subsection (1) applies to a payment made to a person under subsection 47(2) or 51(2) of the Administration Act if the person is released from gaol or psychiatric confinement on a day after the day that is the person's expected release day for the purposes of section 35 of the Administration Act.

Some carer payment overpayments are not debts

(1B) If:

(a) an amount has been paid to a person (the ***carer***) by way of carer payment because the carer was providing care for a care receiver or care receivers (as defined in subsection 197(1)); and

(b) the amount was paid on the basis that the carer was qualified for carer payment when the carer was not qualified:

(i) because an estimate of the income of the care receiver or any of the care receivers was an underestimate; or

(ii) because an assessment or amended assessment of the income of the care receiver or any of the care receivers had been amended as described in paragraph 198B(2)(b), (c) or (d); or

(iii) because of the occurrence, or the likelihood of the occurrence, of an event in respect of which the Department had not been informed in accordance with a requirement in a notice under section 70 of the Administration Act;

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the amount is not a debt due to the Commonwealth.

Some carer payment overpayments are debts if carer knew about care receiver's affairs

(1C) Despite subsection (1B), an amount described in subsection (1B) is a debt due to the Commonwealth if it was reasonable for the carer to know that:

(a) the estimate of the income was incorrect; or

(b) the assessment or amended assessment had been amended; or

(c) the Department should have been informed in respect of the event in accordance with the requirement in the notice;

as the case requires.

Some parenting payment overpayments are not debts

(2) If:

(a) an amount has been paid to a person by way of parenting payment; and

(b) the person is someone to whom paragraph 500(1)(ca) applies; and

(c) the amount was paid on the basis that the person was qualified for parenting payment when the person was not qualified only because the person failed to satisfy the employment pathway plan requirements that applied to the person;

the amount is not a debt due to the Commonwealth.

Amount calculated using non-income/assets tested add-on amount—no add-on amount payable

(7) If:

(a) an amount has been paid to a person by way of social security payment; and

(b) when the amount was calculated:

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(i) an amount of remote area allowance was added to the rate of the person's social security payment when no such amount should have been added; or

(ia) the rate of the person's social security benefit payment was increased by an amount of language, literacy and numeracy supplement when that rate should not have been so increased; or

(ii) if the person was receiving a job search allowance—the rate of the person's job search allowance was increased by an amount of job search training supplement when that rate should not have been so increased; or

(iv) if the person was receiving disability support pension, parenting payment, youth allowance or jobseeker payment—the rate of the person's disability support pension, parenting payment, youth allowance or jobseeker payment was increased by an approved program of work supplement when that rate should not have been so increased;

each of the following amounts is a debt due to the Commonwealth:

(c) the amount of remote area allowance;

(ca) the amount of language, literacy and numeracy supplement;

(f) the amount of approved program of work supplement.

Some parenting payment supplements are not debts

(7A) Despite subsection (7), if:

(a) an amount has been paid to a person by way of parenting payment; and

(b) the person is someone to whom paragraph 500(1)(ca) applies; and

(c) when the amount was calculated, the rate of the person's parenting payment was increased by an amount (a ***supplement amount***) of approved program of work supplement; and

(d) the amount of parenting payment was paid on the basis that the person was qualified for parenting payment when the person was not qualified only because the person failed to

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satisfy the employment pathway plan requirements that applied to the person;

the supplement amount is not a debt due to the Commonwealth.

Amount calculated using incorrect non-income/assets tested add-on amount—add-on amount payable

(8) If:

(a) an amount (the ***received amount***) has been paid to a person by way of social security payment; and

(b) when the received amount was calculated:

(i) an amount of remote area allowance was added to the rate of the person's social security payment that was greater than the amount that should have been added; or

(ii) if the person was receiving a job search allowance—the rate of the person's job search allowance was increased by an amount of job search training supplement that was greater than the amount by which it should have been so increased; or

(iii) if the person was receiving a newstart allowance—the rate of the person's newstart allowance was increased by an amount of newstart training allowance that was greater than the amount by which it should have been so increased;

the difference between the received amount and the amount of social security payment that would have been paid to the person if the amount had been calculated by using the correct amount of remote area allowance, job search training supplement or newstart training supplement (as the case may be) is a debt due to the Commonwealth.

(9) In this section, unless the contrary intention appears, a reference to a social security payment includes a reference to a part of a social security payment.

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1223A Debt resulting from commutation of asset-test exempt income stream contrary to subsection 9A(2), 9B(2) or 9BA(2)

(1) If:

(a) a person is provided with an asset-test exempt income stream for a period beginning on the first day in respect of which an income stream payment was made to the person and ending on the last day in respect of which an income stream payment was made to the person; and

(b) during the whole or any part of that period an amount has been paid to the person by way of an income support payment; and

(c) the whole or any part of the income stream is commuted contrary to the contract or governing rules under which the income stream was provided on the commencement day of the income stream; and

(d) the amount that has been paid to the person by way of a social security income support payment for that period is more than the amount that would have been payable to the person for that period had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period;

an amount worked out under subsection (2) is a debt due to the Commonwealth.

(2) The amount for the purposes of subsection (1) is an amount equal to the difference between the amount that has been paid to the person by way of a social security income support payment during the period worked out under subsection (3) and the amount that would have been paid to the person by way of social security income support payment had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period.

(3) The period for the purposes of subsection (2) is the period that:

(a) began on:

(i) the day 5 years before the income stream was commuted; or

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(ii) the commencement day of the income stream; or
(iii) 20 September 2001;
whichever is the latest; and

(b) ended when the income stream was commuted.

(4) For the purpose of working out the asset value of the income stream had the income stream not been an asset-test exempt income stream for the period referred to in subsection (2), it is to be assumed that the income stream was asset tested from the commencement day and the asset value of the income stream is depleted in accordance with the formula specified in subsection 1119(4).

(5) This section does not apply to an income stream in relation to which a determination under subsection 9A(5), 9B(4) or 9BA(11) is in force.

(6) Subject to subsection (7), if:

(a) an asset-test exempt income stream (the ***old income stream***) is commuted, in whole or in part; and

(b) part, but not the whole, of the payment resulting from the commutation of the old income stream (the ***commutation payment***) is transferred directly to the purchase of another asset-test exempt income stream (the ***new income stream***);

the following paragraphs have effect for the purposes of this section:

(c) the new income stream is taken to have the same commencement day as:
(i) the old income stream; or
(ii) if the old income stream was one of a succession of asset-test exempt income streams—the first income stream in that succession;

(d) if the old income stream was not one of a succession of asset-test exempt income streams, income stream payments made under the old income stream are taken to have been made under the new income stream;

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(e) if the old income stream was one of a succession of asset-test exempt income streams, income stream payments made under any of the income streams in that succession are taken to have been, at the time when they were made, payments under the new income stream.

(7) Subsection (6) does not apply if the amount used in the purchase of the new income stream represents the whole of the commutation payment remaining after the use of part of the commutation payment in the payment of:

(a) a hardship amount; or

(b) superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the old income stream.

(8) Subject to subsection (9), if:

(a) the whole of an asset-test exempt income stream is commuted; and

(b) no part of the payment resulting from the commutation of the income stream is transferred directly to the purchase of another asset-test exempt income stream; and

(c) the commuted income stream was one of a succession of asset-test exempt income streams;

the following paragraphs have effect for the purposes of this section:

(d) the commuted income stream is taken to have had the same commencement day as the first income stream in that succession;

(e) income stream payments made under any of the income streams in that succession (other than the commuted income stream) are taken to have been, at the time when they were made, payments under the commuted income stream.

(9) Subsection (8) does not apply if the whole of the payment resulting from the commutation of the income stream referred to in paragraph (8)(a) is used in the payment of:

(a) a hardship amount; or

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(b) superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of that income stream.

(10) For the purposes of this section:

(a) 2 or more asset-test exempt income streams constitute a succession of asset-test exempt income streams if each income stream (other than the first of those income streams to be provided) has been funded by means of the payment, or part of the payment, resulting from the commutation of another of those income streams; and

(b) an income stream is the first income stream in a succession of income streams if it is the first of those income streams to be provided.

(11) In this section:

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

1223AA Debts arising from prepayments and certain other payments

(1) If:

(a) a person has received a prepayment of a social security payment for a period; and

(b) the person fails to provide a statement under section 67 of the Administration Act in respect of the period;

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

(1A) If the Secretary is satisfied that, in the special circumstances of the case, it is appropriate to do so, the Secretary may determine in writing that subsection (1) does not apply to the prepayment.

(1B) If:

(a) a person has received a prepayment of a social security payment for a period; and

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(b) the amount of prepayment is more than the amount (if any) (the ***correct amount***) of social security payment that was payable to the person for the period; and

(c) subsection (1) does not apply to the prepayment;

the difference between the prepayment and the correct amount is a debt due to the Commonwealth.

(1BA) If:

(a) a person has, whether before or after the commencement of this subsection, received a payment (the ***received amount***) of a social security payment (other than parenting allowance) in respect of a period; and

(b) the received amount was calculated having regard to estimated income or anticipated changes of circumstances set out in a statement made in response to a notice under section 67, 68 or 69 of the Administration Act in respect of the period; and

(c) the person's actual income or the circumstances that actually occur are different from those estimated or anticipated; and

(d) the received amount is more than the amount (if any) of the social security payment (the ***correct amount***) that would have been paid to the person in respect of the period if the income or circumstances set out in the statement had been the person's actual income or the circumstances that actually occurred;

the difference between the received amount and the correct amount is a debt due to the Commonwealth.

Note: For ***recipient statement notice*** see subsection 23(1).

(1C) If:

(a) a payment has been made to a person under subsection 47(2) of the Administration Act; and

(b) immediately after the release of the person from gaol or psychiatric confinement:

(i) the person was not qualified for a crisis payment; or

(ii) although the person was qualified for a crisis payment, the payment was not payable to the person;

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

(1D) If:

(a) a payment has been made to a person under subsection 51(2) of the Administration Act; and

(b) immediately after the release of the person from gaol or psychiatric confinement:

(i) the person was not qualified for the social security pension or benefit claimed; or

(ii) although the person was qualified for the pension or benefit, the pension or benefit was not payable to the person;

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

(2) In this section:

prepayment means:

(a) a payment under section 408GG, 652, 722, 755 or 771KL of this Act as in force immediately before 20 March 2000; or

(b) a payment made in accordance with section 57 of the Administration Act.

1223AB Debts arising from ART stay orders

If:

(a) a person applies for ART review of a decision; and

(b) the ART makes an order under subsection 32(2) (ART may stay operation or implementation) of the ART Act; and

(c) as a result of the order, the amount that has in fact been paid to the person by way of social security payment is greater than the amount that was payable to the person;

the difference between the amount that was in fact paid to the person and the amount that was payable to the person is a debt due to the Commonwealth.

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1223ABAA Debts arising in respect of one-off payments to older Australians

(1) This section applies in relation to an individual who has been paid a payment (the ***relevant payment***) of:

(a) 2006 one-off payment to older Australians under Division 2 of Part 2.2B; or

(b) 2007 one-off payment to older Australians under Division 3 of Part 2.2B; or

(c) 2008 one-off payment to older Australians under Division 4 of Part 2.2B.

(2) If the individual qualified for the relevant payment because of subsection 93Y(2), 93ZA(2) or 93ZC(2), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the individual was receiving the payment referred to in paragraph 93Y(2)(b), 93ZA(2)(b) or 93ZC(2)(b).

(3) If the individual qualified for the relevant payment because of subsection 93Y(3), 93ZA(3) or 93ZC(3) and because of holding or having held a seniors health card, a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the person was granted the seniors health card.

(4) If the individual qualified for the relevant payment because of subsection 93Y(4), 93ZA(4) or 93ZC(4), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the individual was receiving the allowance referred to in paragraph 93Y(4)(a), 93ZA(4)(a) or 93ZC(4)(a).

(4A) For the purposes of this section, the ***relevant day*** in respect of a relevant payment is:

(a) for a payment of 2006 one-off payment to older Australians—9 May 2006; or

(b) for a payment of 2007 one-off payment to older Australians—8 May 2007; or

(c) for a payment of 2008 one-off payment to older Australians—13 May 2008.

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(5) If:

(a) after the relevant payment was made to the individual, a relevant determination in relation to the individual, at least so far as it relates to the relevant day or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before the relevant day, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(6) If:

(a) an individual qualified for the relevant payment because of subsection 93Y(3), 93ZA(3) or 93ZC(3) and because of having claimed a seniors health card; and

(b) the individual knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(c) but for that statement or information, the relevant payment would not have been paid to the individual;

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(7) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

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1223ABA Debts arising in respect of one-off payments to carers

(1) This section applies in relation to an individual (the ***recipient***) who has been paid a payment (the ***relevant payment***) of:

(a) one-off payment to carers (carer payment related); or
(b) one-off payment to carers (carer allowance related); or
(c) 2005 one-off payment to carers (carer payment related); or
(d) 2005 one-off payment to carers (carer service pension related); or
(e) 2005 one-off payment to carers (carer allowance related); or
(f) 2006 one-off payment to carers (carer payment related); or
(g) 2006 one-off payment to carers (wife pension related); or
(h) 2006 one-off payment to carers (partner service pension related); or
(i) 2006 one-off payment to carers (carer service pension related); or
(j) 2006 one-off payment to carers (carer allowance related); or
(k) 2007 one-off payment to carers (carer payment related); or
(l) 2007 one-off payment to carers (wife pension related); or
(m) 2007 one-off payment to carers (partner service pension related); or
(n) 2007 one-off payment to carers (carer service pension related); or
(o) 2007 one-off payment to carers (carer allowance related); or
(p) 2008 one-off payment to carers (carer payment related); or
(q) 2008 one-off payment to carers (wife pension related); or
(r) 2008 one-off payment to carers (partner service pension related); or
(s) 2008 one-off payment to carers (carer service pension related); or
(t) 2008 one-off payment to carers (carer allowance related).

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What determinations are relevant?

(2) If the relevant payment is a payment of one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment referred to in section 247 was paid.

(3) If the relevant payment is a payment of one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the, or an, instalment that satisfied paragraphs 992N(1)(a) and (b) was paid.

(3A) If the relevant payment is a payment of 2005 one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment referred to in section 249 of this Act was paid.

(3B) If the relevant payment is a payment of 2005 one-off payment to carers (carer service pension related), a ***relevant determination*** is a determination made under the *Veterans' Entitlements Act 1986* because of which the instalment referred to in section 251 of this Act was paid.

(3C) If the relevant payment is a payment of 2005 one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the, or an, instalment that satisfied paragraphs 992Q(1)(a) and (b) of this Act was paid.

(3CA) If the relevant payment is a payment of 2006 one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the instalment of carer payment referred to in section 253 of this Act was paid.

(3CB) If the relevant payment is a payment of 2006 one-off payment to carers (wife pension related), a ***relevant determination*** is:

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(a) a determination made under Part 3 of the Administration Act because of which the instalment of wife pension referred to in section 255 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 255 of this Act was paid.

(3CC) If the relevant payment is a payment of 2006 one-off payment to carers (partner service pension related), a ***relevant determination*** is:

(a) a determination made under the Veterans' Entitlements Act because of which the instalment of partner service pension referred to in section 257 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 257 of this Act was paid.

(3CD) If the relevant payment is a payment of 2006 one-off payment to carers (carer service pension related), a ***relevant determination*** is a determination made under the Veterans' Entitlements Act because of which the instalment of carer service pension referred to in section 259 of this Act was paid.

(3CE) If the relevant payment is a payment of 2006 one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 992T of this Act was paid.

(3CF) If the relevant payment is a payment of 2007 one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the instalment of carer payment referred to in section 261 of this Act was paid.

(3CG) If the relevant payment is a payment of 2007 one-off payment to carers (wife pension related), a ***relevant determination*** is:

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(a) a determination made under Part 3 of the Administration Act because of which the instalment of wife pension referred to in section 263 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 263 of this Act was paid.

(3CH) If the relevant payment is a payment of 2007 one-off payment to carers (partner service pension related), a ***relevant determination*** is:

(a) a determination made under the Veterans' Entitlements Act because of which the instalment of partner service pension referred to in section 265 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 265 of this Act was paid.

(3CI) If the relevant payment is a payment of 2007 one-off payment to carers (carer service pension related), a ***relevant determination*** is a determination made under the Veterans' Entitlements Act because of which the instalment of carer service pension referred to in section 267 of this Act was paid.

(3CJ) If the relevant payment is a payment of 2007 one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 992WA of this Act was paid.

(3CK) If the relevant payment is a payment of 2008 one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the instalment of carer payment referred to in section 269 of this Act was paid.

(3CL) If the relevant payment is a payment of 2008 one-off payment to carers (wife pension related), a ***relevant determination*** is:

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(a) a determination made under Part 3 of the Administration Act because of which the instalment of wife pension referred to in section 271 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 271 of this Act was paid.

(3CM) If the relevant payment is a payment of 2008 one-off payment to carers (partner service pension related), a ***relevant determination*** is:

(a) a determination made under the Veterans' Entitlements Act because of which the instalment of partner service pension referred to in section 273 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 273 of this Act was paid.

(3CN) If the relevant payment is a payment of 2008 one-off payment to carers (carer service pension related), a ***relevant determination*** is a determination made under the Veterans' Entitlements Act because of which the instalment of carer service pension referred to in section 275 of this Act was paid.

(3CO) If the relevant payment is a payment of 2008 one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 992WD of this Act was paid.

What is the relevant date?

(3D) The ***relevant date*** is:

(a) 11 May 2004, if the relevant payment is a payment of:

(i) one-off payment to carers (carer payment related); or

(ii) one-off payment to carers (carer allowance related); or

(b) 10 May 2005, if the relevant payment is a payment of:

(i) 2005 one-off payment to carers (carer payment related); or

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(ii) 2005 one-off payment to carers (carer service pension related); or

(iii) 2005 one-off payment to carers (carer allowance related); or

(c) 9 May 2006, if the relevant payment is a payment of:

(i) 2006 one-off payment to carers (carer payment related); or

(ii) 2006 one-off payment to carers (wife pension related); or

(iii) 2006 one-off payment to carers (partner service pension related); or

(iv) 2006 one-off payment to carers (carer service pension related); or

(v) 2006 one-off payment to carers (carer allowance related); or

(d) 8 May 2007, if the relevant payment is a payment of:

(i) 2007 one-off payment to carers (carer payment related); or

(ii) 2007 one-off payment to carers (wife pension related); or

(iii) 2007 one-off payment to carers (partner service pension related); or

(iv) 2007 one-off payment to carers (carer service pension related); or

(v) 2007 one-off payment to carers (carer allowance related); or

(e) 13 May 2008, if the relevant payment is a payment of:

(i) 2008 one-off payment to carers (carer payment related); or

(ii) 2008 one-off payment to carers (wife pension related); or

(iii) 2008 one-off payment to carers (partner service pension related); or

(iv) 2008 one-off payment to carers (carer service pension related); or

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(v) 2008 one-off payment to carers (carer allowance related).

Situation in which whole amount is a debt

(4) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to the relevant date or a period that includes the relevant date, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the recipient knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before the relevant date, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the recipient.

Situation in which part of amount is a debt

(5) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to the relevant date or a period that includes the relevant date, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the recipient knowingly made a false or misleading statement, or knowingly provided false information; and

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(c) had the change, revocation, setting aside or superseding occurred on or before the relevant date, the amount of the relevant payment would have been reduced;

the amount by which the relevant payment would have been reduced is a debt due to the Commonwealth by the recipient.

Other provisions under which debts arise generally do not apply in relation to one-off payment to carers

(6) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

1223ABAAA Debts arising in respect of economic security strategy payments

(1) If:

(a) an individual has been paid an economic security strategy payment; and

(b) after the payment was made to the individual, a determination in relation to the individual, at least so far as it relates to 14 October 2008 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the determination is one to which subsection (3) applies in relation to the payment; and

(d) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(e) had the change, revocation, setting aside or superseding occurred on or before 14 October 2008, the payment would not have been made;

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

(2) If:

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(a) an individual has been paid an economic security strategy payment; and

(b) after the payment was made to the individual, a determination in relation to the individual, at least so far as it relates to 14 October 2008 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the determination is one to which subsection (3) applies in relation to the payment; and

(d) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(e) had the change, revocation, setting aside or superseding occurred on or before 14 October 2008, the payment would have been reduced;

the amount by which the payment would have been reduced is a debt due to the Commonwealth by the individual.

(3) This subsection applies to:

(a) if the individual qualified for the payment because of subsection 900(2)—a determination made under Part 3 of the Administration Act because of which the individual was receiving a payment of a kind referred to in paragraph 900(2)(a); and

(b) if the individual qualified for the payment because of subsection 900(3)—a determination made under Part 3 of the Administration Act because of which the individual was receiving a payment of a kind referred to in paragraph 900(3)(b).

(4) If:

(a) an individual has been paid an economic security strategy payment; and

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(b) the individual qualified for the payment because of subsection 900(4) in relation to having claimed a seniors health card; and

(c) the individual knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) but for that statement or information, the payment would not have been paid to the individual;

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(5) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

1223ABAAB Debts arising in respect of training and learning bonuses etc.

(1) If:

(a) an individual has been paid a training and learning bonus or an education entry payment supplement; and

(b) after the payment was made to the individual, a determination in relation to the individual, at least so far as it relates to 3 February 2009 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the determination is one to which subsection (2) applies in relation to the payment; and

(d) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(e) had the change, revocation, setting aside or superseding occurred on or before 3 February 2009, the payment would not have been made;

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

(2) This subsection applies to:

(a) if the individual qualified for the payment because of paragraph 910(2)(a), (b), (c) or (d) of this Act—a determination made under Part 3 of the Administration Act because of which the individual was receiving a payment of a kind referred to in that paragraph; and

(b) if the individual qualified for the payment because of paragraph 910(2)(e) of this Act—a determination (however described) made under the ABSTUDY Scheme because of which the individual was receiving a payment of a kind referred to in that paragraph; and

(c) if the individual qualified for the payment because of paragraph 910(2)(f) of this Act—a determination (however described) made under the Veterans' Children Education Scheme because of which the individual was receiving a payment of a kind referred to in that paragraph; and

(d) if the individual qualified for the payment because of paragraph 910(2)(g) of this Act—a determination (however described) made under the Military Rehabilitation and Compensation Act Education and Training Scheme because of which the individual was receiving a payment of a kind referred to in that paragraph; and

(e) if the individual qualified for the payment because of subsection 910(4) of this Act—a determination made under Part 3 of the Family Assistance Administration Act because of which the individual was entitled to family tax benefit.

(3) If:

(a) the Secretary has paid a person's training and learning bonus to another person (the ***recipient***) under subsection 47C(3) or (4) of the Administration Act; and

(b) the reason why, or one of the reasons why, the Secretary decided to pay the bonus to the recipient was that the recipient made a particular statement or provided particular information; and

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(c) after the payment is made, the Secretary becomes satisfied that:
(i) the statement or information is false or misleading; and
(ii) the recipient made the statement, or provided the information, knowing that it was false or misleading; and
(iii) the bonus should have been paid to a person other than the recipient;

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

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

1223ABB Debts in respect of child disability assistance

(1) If:
(a) child disability assistance is paid to a person; and
(b) the assistance is paid because the person was paid an instalment of carer allowance in respect of a period that included a particular 1 July; and
(c) the 1 July component of the instalment, or any part of the 1 July component, becomes a debt due to the Commonwealth;

then:
(d) the amount of child disability assistance determined under subsection (2) or (3) is a debt due to the Commonwealth; and
(e) the debt is taken to have arisen when the amount was paid to the person.

(2) If all of the 1 July component of the instalment becomes a debt due to the Commonwealth, the amount of child disability assistance that is a debt due to the Commonwealth is the amount of assistance that was paid in respect of the eligible care receiver to whose care the instalment relates.

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(3) If only part of the 1 July component of the instalment becomes a debt due to the Commonwealth, the amount of child disability assistance that is a debt due to the Commonwealth is the difference between:

(a) the amount paid in respect of the eligible care receiver to whose care the instalment relates; and

(b) the amount applicable under subsection 992MD(2) for the eligible care receiver to whose care the instalment relates, based on the determination under subsection 981(1) that had effect in respect of the 1 July at the time the part of the 1 July component became a debt.

(4) In this section:

1 July component, of an instalment of carer allowance in respect of a period that includes a particular 1 July, means the amount of carer allowance in respect of that period that is applicable to the 1 July.

1223ABC Debts in respect of carer supplement for 2009

(1) This section applies if:

(a) carer supplement for 2009 is paid to a person; and

(b) after it is paid, a determination under Part 3 of the Administration Act or under the Veterans' Entitlements Act because of which any of the following instalments was paid is or was (however described) changed, revoked, set aside, or superseded by another determination:

(i) a qualifying instalment (see section 992X);

(iii) an instalment of partner service pension under the Veterans' Entitlements Act affecting the amount of the carer supplement paid; and

(c) the decision to change, revoke, set aside or supersede the earlier determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information.

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When the whole payment is a debt

(2) The amount of the carer supplement paid to the person is a debt due to the Commonwealth by the person if carer supplement for 2009 would not have been paid to the person had the change, revocation, setting aside or superseding occurred on or before 12 May 2009.

When part of the payment is a debt

(3) If the amount of carer supplement for 2009 paid to the person would have been reduced had the change, revocation, setting aside or superseding occurred on or before 12 May 2009, the amount by which the carer supplement paid to the person would have been reduced is a debt due to the Commonwealth by the person.

Limit on debts under this section

(4) The total of debts arising under this section in relation to the carer supplement paid to the person cannot exceed the amount of the carer supplement.

Most other provisions under which debts arise do not apply

(5) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments of carer supplement for 2009.

1223ABD Debts in respect of carer supplement for 2010 and later years

(1) This section applies if:

(a) carer supplement for 2010 or a later year is paid to a person; and

(b) a debt (the ***primary debt***) due to the Commonwealth by the person arises (under this Act or the Veterans' Entitlements Act) in connection with any of the following instalments that is equal to all of the instalment or, if the instalment is of carer allowance, all or part of the instalment:

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(i) a qualifying instalment (see section 992X);
(iii) an instalment of partner service pension under the Veterans' Entitlements Act affecting the amount of the carer supplement paid; and

(c) the carer supplement would not have been paid, or less carer supplement would have been paid, had the circumstances that gave rise to the primary debt not occurred.

(2) If the primary debt is equal to all of the instalment, an amount, equal to so much of the carer supplement as would not have been paid if the instalment had not been paid, is a debt due to the Commonwealth by the person.

Note: If the instalment is the only qualifying instalment, the debt will equal the amount of the carer supplement, because none of it would have been paid if the qualifying instalment had not been paid.

(3) If:

(a) the primary debt arises in connection with an instalment of carer allowance because of a failure to take account, or an error in taking account, of a determination under subsection 981(1); and

(b) the primary debt is equal to part of the instalment;

an amount, equal to so much of the carer supplement as would not have been paid if the failure or error had not occurred, is a debt due to the Commonwealth by the person.

Consolidation of debts under this section

(4) If, apart from this subsection, 2 or more debts would arise under either or both of subsections (2) and (3) in relation to the carer supplement, then, instead of those debts arising, there is a single debt that:

(a) is due to the Commonwealth by the person; and

(b) is equal to the lesser of:

(i) the sum of the debts that would arise apart from this subsection; and

(ii) the amount of the carer supplement.

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When debt is taken to arise under this section

(5) A debt is taken to have arisen under this section when the carer supplement was paid to the person.

1223ABE Debts in respect of relocation scholarship payments

Person does not start to undertake a course

(1) If a person:

(a) has received a relocation scholarship payment because the person is proposing to undertake an approved scholarship course; and

(b) does not start to undertake full-time study in an approved scholarship course;

then:

(c) the amount of the payment is a debt due to the Commonwealth; and

(d) the debt is taken to have arisen when the person received the payment.

However, this subsection does not apply if, in the Secretary's opinion, the person does not start to undertake full-time study in an approved scholarship course because of exceptional circumstances beyond the person's control.

Note: For ***approved scholarship course***, see section 592M.

Person not continuing to undertake a course

(2) If a person:

(a) has received a relocation scholarship payment because the person is proposing to undertake an approved scholarship course (the ***qualifying course***); and

(b) starts to undertake an approved scholarship course; and

(c) is not undertaking full-time study in an approved scholarship course at the end of 35 days after the qualifying course commences;

then:

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(d) the amount of the payment is a debt due to the Commonwealth; and

(e) the debt is taken to have arisen when the person received the payment.

Note: For ***approved scholarship course***, see section 592M.

(3) If a person:

(a) has received a relocation scholarship payment because the person is undertaking an approved scholarship course; and

(b) is not undertaking full-time study in an approved scholarship course at the end of 35 days after qualifying for the payment;

then:

(c) the amount of the payment is a debt due to the Commonwealth; and

(d) the debt is taken to have arisen when the person received the payment.

Note: For ***approved scholarship course***, see section 592M.

(4) Subsections (2) and (3) do not apply if, in the Secretary's opinion, the person is not undertaking full-time study in an approved scholarship course because of exceptional circumstances beyond the person's control.

1223ABF Debts in respect of student start-up loans

(1) If:

(a) a person is paid a student start-up loan for a qualification period; and

(b) the circumstances determined under subsection (2) apply to the person;

then:

(c) the amount of the loan is a debt due to the Commonwealth; and

(d) the debt is taken to have arisen when the person was paid the loan.

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(2) The Minister may, by legislative instrument, determine circumstances in which subsection (1) applies to a person who has not met, or who has ceased to meet, the condition in subparagraph 1061ZVBB(1)(a)(iii) or (2)(a)(iii).

(3) Subsection (1) does not apply to a person if, in the Secretary's opinion, the person did not meet, or ceased to meet, the condition in subparagraph 1061ZVBB(1)(a)(iii) or (2)(a)(iii) because of exceptional circumstances beyond the person's control.

1223ABG Debts in respect of one-off energy assistance payments

(1) If:

(a) after a one-off energy assistance payment under Part 2.6 is paid to a person, an underlying determination in relation to the person, at least so far as it relates to 20 June 2017 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before 20 June 2017, the one-off energy assistance payment would not have been paid;

the amount of the one-off energy assistance payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which age pension, disability support pension or pension PP (single) was payable to the person.

(3) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to one-off energy assistance payments under Part 2.6.

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1223ABH Debts in respect of 2019 one-off energy assistance payments

(1) If:

(a) after a one-off energy assistance payment under Part 2.6A is paid to a person, an underlying determination in relation to the person, at least so far as it relates to 2 April 2019 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before 2 April 2019, the one-off energy assistance payment would not have been paid;

the amount of the one-off energy assistance payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a benefit mentioned in subsection 302(2) of this Act was payable to the person.

(3) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to one-off energy assistance payments under Part 2.6A.

1223ABI Debts in respect of first 2020 economic support payments

(1) If:

(a) a first 2020 economic support payment under Division 1 of Part 2.6B is paid to a person; and

(b) after the first 2020 economic support payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

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(i) a day included in the period mentioned in subsection 304(1); or

(ii) a period that includes such a day;

is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before that day, the first 2020 economic support payment would not have been paid;

the amount of the first 2020 economic support payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a benefit mentioned in subsection 308(2) of this Act was payable to the person.

(3) If:

(a) a first 2020 economic support payment under Division 1 of Part 2.6B is paid to a person; and

(b) the person qualified for the payment because of subsection 308(3) applying to the person in relation to having made a claim for a seniors health card; and

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the first 2020 economic support payment would not have been paid to the person but for that statement or information;

the amount of the first 2020 economic support payment is a debt due to the Commonwealth by the person.

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(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to first 2020 economic support payments under Division 1 of Part 2.6B.

1223ABJ Debts in respect of second 2020 economic support payments

(1) If:

(a) a second 2020 economic support payment under Division 2 of Part 2.6B is paid to a person; and

(b) after the second 2020 economic support payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) 10 July 2020; or

(ii) a period that includes 10 July 2020;

is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before 10 July 2020, the second 2020 economic support payment would not have been paid;

the amount of the second 2020 economic support payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a benefit mentioned in subsection 308(2) of this Act was payable to the person.

(3) If:

(a) a second 2020 economic support payment under Division 2 of Part 2.6B is paid to a person; and

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(b) the person qualified for the payment because of subsection 308(3) applying to the person in relation to having made a claim for a seniors health card; and

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the second 2020 economic support payment would not have been paid to the person but for that statement or information;

the amount of the second 2020 economic support payment is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to second 2020 economic support payments under Division 2 of Part 2.6B.

1223ABK Debts in respect of additional economic support payment 2020

(1) If:

(a) an additional economic support payment 2020 under Division 1 of Part 2.6C is paid to a person; and

(b) after the payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) 27 November 2020; or

(ii) a period that includes 27 November 2020;

is or was (however described) changed, revoked, set aside or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before 27 November 2020, the additional economic support payment 2020 would not have been paid;

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the amount of the additional economic support payment 2020 is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a payment mentioned in subsection 313(2) of this Act was payable to the person.

(3) If:

(a) an additional economic support payment 2020 under Division 1 of Part 2.6C is paid to a person; and

(b) the person qualified for the payment because of subsection 313(3) applying to the person in relation to having made a claim for a seniors health card; and

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the additional economic support payment 2020 would not have been paid to the person but for that statement or information;

the amount of the additional economic support payment 2020 is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to an additional economic support payment 2020 under Division 1 of Part 2.6C.

1223ABL Debts in respect of additional economic support payment 2021

(1) If:

(a) an additional economic support payment 2021 under Division 2 of Part 2.6C is paid to a person; and

(b) after the payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) 26 February 2021; or

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(ii) a period that includes 26 February 2021;

is or was (however described) changed, revoked, set aside or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before 26 February 2021, the additional economic support payment 2021 would not have been paid;

the amount of the additional economic support payment 2021 is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a payment mentioned in subsection 313(2) of this Act was payable to the person.

(3) If:

(a) an additional economic support payment 2021 under Division 2 of Part 2.6C is paid to a person; and

(b) the person qualified for the payment because of subsection 313(3) applying to the person in relation to having made a claim for a seniors health card; and

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the additional economic support payment 2021 would not have been paid to the person but for that statement or information;

the amount of the additional economic support payment 2021 is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to an additional economic support payment 2021 under Division 2 of Part 2.6C.

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1223ABM Debts in respect of 2022 cost of living payment

(1) If:

(a) a 2022 cost of living payment under Division 1 of Part 2.6D is paid to a person; and

(b) after the 2022 cost of living payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) 29 March 2022; or

(ii) a period that includes 29 March 2022;

is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before 29 March 2022, the 2022 cost of living payment would not have been paid;

the amount of the 2022 cost of living payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a benefit mentioned in subsection 316(2) of this Act was payable to the person.

(3) If:

(a) a 2022 cost of living payment under Division 1 of Part 2.6D is paid to a person; and

(b) the person qualified for the payment because of subsection 316(3) applying to the person in relation to having made a claim for a seniors health card; and

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

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(d) the 2022 cost of living payment would not have been paid to the person but for that statement or information;

the amount of the 2022 cost of living payment is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to a 2022 cost of living payment under Division 1 of Part 2.6D.

1224 Debts relating to clean energy advances

(1) This section applies if:

(a) an individual is paid a clean energy advance; and

(b) after the advance is paid, one of the following events happens to a determination that directly or indirectly affects the payability or amount of the advance paid to the individual:

(i) the determination is changed, revoked or set aside;

(ii) the determination is superseded by another determination; and

(c) the event happens wholly or partly because the individual knowingly made a false or misleading statement or knowingly provided false information; and

(d) had the event happened on or before the day the advance was paid:

(i) the advance would not have been paid; or

(ii) the advance would have been reduced.

Note 1: Examples of determinations directly affecting the payability or amount of the clean energy advance are as follows:

(a) a determination relating to the person's qualification for the clean energy qualifying payment to which the advance related;

(b) the determination of the person's qualification for the clean energy advance.

Note 2: An example of a determination indirectly affecting the amount of the advance is a determination relating to a change in circumstances that results in the person qualifying for a further payment of the advance under an instrument made under section 914G.

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Creation and amount of debt

(2) The advance is a debt due to the Commonwealth by the individual if subparagraph (1)(d)(i) applies.

(3) The amount by which the advance would have been reduced is a debt due to the Commonwealth by the individual if subparagraph (1)(d)(ii) applies.

Relationship with other sections

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to clean energy advances.

1224A Debts relating to essential medical equipment payments

(1) This section applies if:

(a) an individual has been paid an essential medical equipment payment because of a determination made under Part 3 of the Administration Act; and

(b) after the payment was made to the individual, the determination is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the determination is or was made wholly or partly because the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(d) apart from that statement or information, the payment would not have been paid.

(2) An amount equal to the payment is a debt due to the Commonwealth by the individual.

(3) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

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1224AA Person other than payee obtaining payment of a cheque

If:

(a) an amount of a social security payment or an amount of fares allowance is paid by cheque; and

(b) a person other than the payee obtains possession of the cheque from the payee; and

(c) the cheque is not endorsed by the payee to the person; and

(d) the person obtains value for the cheque;

the amount of the cheque is a debt due by the person to the Commonwealth.

1224AB Joint and several liability for persons involved in contravention of Act

If:

(a) a person is liable to pay a debt because the person contravened a provision of this Act as in force immediately before 20 March 2000, or a provision of the social security law; and

(b) another person is convicted of an offence under section 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code* in relation to the contravention;

the persons referred to in paragraphs (a) and (b) are jointly and severally liable to pay the debt.

1224B Education entry payment debt

(1) If:

(a) an education entry payment is made to a person; and

(b) the person does not pay the enrolment fees for the course in relation to which the education entry payment was made in the calendar year in respect of which the education entry payment was made;

the amount of the education entry payment so made is a debt due to the Commonwealth.

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(2) Subsection (1) does not apply to a person who is not required to pay the enrolment fees mentioned in paragraph (1)(b).

1224C Data-matching Program (Assistance and Tax) Acts debts

If:

(a) an amount has been paid to a person by way of a social security payment; and

(b) the amount is a debt due to the Commonwealth under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*;

the amount so paid is recoverable by the Commonwealth.

1224D Mobility allowance advance debts

(1) If:

(a) a person (the ***recipient***) has received mobility allowance advance; and

(b) the advance was paid because the recipient or another person:

(i) made a false statement or a false representation; or

(ii) failed or omitted to comply with a provision of the social security law or this Act as in force immediately before 20 March 2000; and

(c) the Secretary determines that the recipient's qualification for mobility allowance ceased on a particular day during the recipient's advance payment period;

the amount worked out under subsection (2) is a debt due to the Commonwealth.

(2) For the purposes of subsection (1), the amount of the recipient's debt is:

$$\frac{\text{amount of advance}}{13} \times \text{number of paydays}$$

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where:

amount of advance means the amount of mobility allowance advance paid to the recipient under section 1045.

number of paydays means the number of whole paydays in the period that starts on the day determined by the Secretary under paragraph (1)(c) and ends at the end of the recipient's advance payment period.

(3) In this section:

advance payment period for mobility allowance advance is the period of 26 weeks starting on the first payday for which it is practicable to pay the advance and adjust the mobility allowance payments of the recipient.

Note: Any reduction in the advance payment period under section 1044A is not taken into account for the purposes of this definition.

1224E Debts arising from advance payments of social security entitlements

(1) If:

(a) a person has received an advance payment of a social security entitlement (the ***first entitlement***) or an instalment of such an advance payment; and

(b) the first entitlement ceases to be payable to the person; and

(c) when the first entitlement ceases to be payable, the person has not repaid the whole of the advance payment or instalment; and

(d) the person does not receive another social security entitlement immediately after the first entitlement ceases to be payable;

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

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

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

If:

(a) a person has received a special employment advance of a special employment advance qualifying entitlement (the ***first entitlement***) or an instalment of such an advance; and

(b) the first entitlement ceases to be payable to the person; and

(c) when the first entitlement ceases to be payable, the person has not repaid the whole of the advance or instalment; and

(d) the person does not receive another special employment advance qualifying entitlement or benefit PP (partnered) immediately after the first entitlement ceases to be payable;

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

1227 Assurance of support debt

(1) If a person is liable to pay an assurance of support debt, the debt is a debt due to the Commonwealth.

(2) In this Chapter:

assurance of support debt means:

(a) a debt due and payable by a person to the Commonwealth, or a liability of a person to the Commonwealth, because of the operation of:

(i) subregulation 165(1) of the Migration (1989) Regulations as in force on or before 19 December 1991; or

(ii) regulation 164C of the Migration (1989) Regulations as in force after 19 December 1991 and before 1 February 1993; or

(iii) Part 5 of the Migration (1993) Regulations as in force on or after 1 February 1993; or

(iv) Division 2.7 of the *Migration Regulations 1994* as in force on or after 1 September 1994;

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in respect of the payment to another person of a social security payment of a kind mentioned in subregulation 2.38(1) of the *Migration Regulations 1994*; or

(b) a liability of a person to the Commonwealth because of the operation of section 1061ZZGG.

1227B Debts arising under Part 8 of the *Student Assistance Act 1973* as in force before 1 July 1998

If an amount that was a debt due to the Commonwealth under Part 8 of the *Student Assistance Act 1973* (as in force immediately before 1 July 1998) remained still due immediately before that day, that amount is a debt that is due to the Commonwealth under this Act.

1228 Overpayments arising under other Acts and schemes

(1) If:

(a) an amount has been paid to a person by way of a payment or payments to which subsection (2) applies; and

(b) the amount should not have been paid; and

(c) the person to whom the amount was paid is receiving a social security payment; and

(d) the person is qualified for the social security payment under this Act and the social security payment is payable to the person;

the amount is an overpayment that is recoverable by the Commonwealth by means of deductions.

Note: For ***deductions*** see section 1231.

(2) This subsection applies to:

(a) a payment of pension, veteran payment or allowance under the Veterans' Entitlements Act; or

(aa) a payment of family assistance within the meaning of the *A New Tax System (Family Assistance) Act 1999*; or

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(ab) a payment of compensation (within the meaning of the Military Rehabilitation and Compensation Act) under that Act; or

(b) a payment of pension or allowance under the *Seamen's War Pensions and Allowances Act 1940*; or

(c) a payment under:

(i) the AUSTUDY Scheme, being the scheme under Part 2 of the *Student Assistance Act 1973* as previously in force; or

(ii) the ABSTUDY Schooling Scheme; or

(iii) the ABSTUDY Tertiary Scheme (to the extent that it applies to full-time students); or

(iv) the Assistance for Isolated Children Scheme; or

(v) the Veterans' Children Education Scheme; or

(vi) the Post-Graduate Awards Scheme; or

(vii) the Adult Migrant Education Program Living Allowance; or

(viii) the Maintenance Allowance for Refugees; or

(ix) the English as a Second Language Allowance (to the extent that it applies to full-time students); or

(ca) an instalment of parental leave pay; or

(d) if the amount was paid to the person on or after 12 August 1988—a program included in the programs known as Labour Market Programs.

(2A) A debt referred to in paragraph (b) of the definition of ***student assistance overpayment*** in subsection 3(1) of the *Student Assistance Act 1973* is an overpayment that is recoverable by the Commonwealth by means of deductions.

(2B) A debt referred to in section 79 of the *Child Support (Registration and Collection) Act 1988* is an overpayment that is recoverable by the Commonwealth by means of deductions.

(3) If:

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(a) an amount was paid under the scheme administered by the Commonwealth known as Financial Case Management to, or for the benefit of, a person; and

(b) the amount should not have been paid; and

(c) the person is receiving a social security payment; and

(d) the person is qualified for the social security payment under this Act and the social security payment is payable to him or her;

the amount is an overpayment that is recoverable from the person by the Commonwealth by means of deductions.

Note: For ***deductions*** see section 1231.

1228A Comparable foreign payment debt recovery

(1) This section applies if:

(a) an amount (the ***social security amount***) was paid to a person by way of a social security payment in respect of a particular period; and

(b) another amount (the ***lump sum***) was paid as a lump sum:

(i) to the person; or

(ii) to the person's partner, if the person is a member of a couple;

by way of a payment of arrears of a comparable foreign payment in respect of that period; and

(c) assuming that the lump sum had been paid by way of periodical payments of the comparable foreign payment in respect of the period, the social security amount would have been reduced.

(2) The amount by which the social security amount would have been reduced is a debt due to the Commonwealth.

(3) Sections 1072A and 1073 do not apply to the person in respect of the lump sum.

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1228B Additional 10% penalty for understatement etc. of income

(1) An amount by way of penalty is added to a debt due to the Commonwealth under this Chapter by a person in relation to a social security payment if:

(a) at the time the payment was made, the person:

(i) had attained the minimum age for youth allowance as defined by section 543A; and

(ii) had not reached pension age; and

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

(b) the payment was:

(i) a social security benefit; or

(ii) a disability support pension; or

(v) a pension PP (single); and

(c) the debt arose wholly or partly because the person had:

(i) refused or failed to provide information in relation to the person's income from personal exertion; or

(ii) knowingly or recklessly provided false or misleading information in relation to the person's income from personal exertion;

when required, under a provision of the social security law, to provide information in relation to the person's income from personal exertion.

Note: For ***income from personal exertion*** see subsection 8(1).

(2) The amount added by way of penalty is an amount equal to 10% of so much of the debt as arose because the person refused or failed to provide the information or provided the false or misleading information.

(2A) To avoid doubt, the amount added by way of penalty is part of the debt.

(3) An amount worked out under subsection (2) must be rounded down to the nearest 5 cents.

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(4) This section does not apply if the Secretary is satisfied that the person had a reasonable excuse for refusing or failing to provide the information.

(5) This section does not apply in relation to a debt due to the Commonwealth under section 1229C.

1229 Notices in respect of debt

(1) If a debt by a person to the Commonwealth under the social security law has not been wholly paid, the Secretary must give the person a notice specifying:

(a) the date on which it was issued (the ***date of the notice***); and

(b) the reason the debt was incurred, including a brief explanation of the circumstances that led to the debt being incurred; and

(c) the period to which the debt relates; and

(d) the outstanding amount of the debt at the date of the notice; and

(e) the day on which the outstanding amount is due and payable; and

(ea) the effect of sections 1229A and 1229B; and

(f) that a range of options is available for repayment of the debt; and

(g) the contact details for inquiries concerning the debt.

(2) The outstanding amount of the debt is due and payable on the 28th day after the date of the notice.

(3) The Secretary may give more than one notice under subsection (1) in relation to a person and a debt of the person.

1229A Interest charge—no repayment arrangement in effect

(1) If:

(a) a notice is given to a person under subsection 1229(1) in relation to a debt; and

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(b) an amount (the ***unpaid amount***) of the debt remains unpaid at the end of the day (the ***due day***) on which the debt is due to be paid; and

(c) at the end of the due day, there is no arrangement in effect under section 1234 in relation to the debt;

then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 1229E and 1229F.

(2) The period starts at the beginning of the day after the due day and ends at the end of the earlier of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the unpaid amount;

(ii) interest charge on any of the unpaid amount;

(b) the day before the first day, after the due day, on which the person makes a payment under an arrangement under section 1234 in relation to the debt.

(3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the unpaid amount;

(b) the interest charge from previous days.

Note 1: For ***interest charge rate*** see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

1229B Interest charge—failure to comply with or termination of repayment arrangement

(1) If:

(a) an arrangement is in effect under section 1234 in relation to a person and a debt; and

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(b) the person fails to make a payment under the arrangement;

then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 1229E and 1229F.

(2) The period starts at the beginning of the day after the day (the ***due day***) on which the payment was required to be made under the arrangement and ends at the end of the earliest of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt;

(b) the day before the first day, after the due day, on which the person has paid all the payments that have so far become due and payable under the arrangement;

(c) the day before the day the arrangement is terminated under section 1234.

(3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the outstanding amount of the debt;

(b) the interest charge from previous days.

Note 1: For ***interest charge rate*** see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

Repayment arrangement is terminated

(4) If:

(a) an arrangement is in effect under section 1234 in relation to a person and a debt; and

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(b) the arrangement is then terminated under section 1234 on a day (the ***termination day***);

then:

(c) the following amounts (if any) are due and payable on the 14th day after the termination day:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt; and

(d) if, at the end of that 14th day, any of those amounts remains unpaid, the person is liable to pay, by way of penalty, interest charge, worked out under subsection (6), for each day in the period described in subsection (5).

Note: For exemptions, see sections 1229E and 1229F.

(5) The period starts at the beginning of the day after that 14th day and ends at the end of the earlier of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt;

(b) the day before the first day, after that 14th day, on which the person makes a payment under another arrangement under section 1234 in relation to the debt.

(6) The interest charge for a day in the period described in subsection (5) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the outstanding amount of the debt;

(b) the interest charge from previous days.

Note 1: For ***interest charge rate*** see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

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1229C Other rules for interest charge

When interest charge is due and payable

(1) The interest charge under section 1229A or 1229B for a day is due and payable to the Commonwealth at the end of that day.

Interest charge is a debt

(2) The interest charge under section 1229A or 1229B for a day is a debt due to the Commonwealth by the person.

Provisions that do not apply to interest charge debt

(3) Subsection 1229(1) does not apply in relation to the debt referred to in subsection (2) of this section.

1229D What is the *interest charge rate*?

(1) For the purposes of sections 1229A and 1229B, the ***interest charge rate*** for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.

(2) The ***base interest rate*** for a day depends on which quarter of the year the day is in. For each day in a quarter in column 1 of the table, it is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month in column 2 of the table.

Base interest rate

Item	Column 1 For days in this quarter:	Column 2 the monthly average yield of 90-day Bank Accepted Bills for this month applies:
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

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(3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in column 2 of the table in subsection (2) is not published by the Reserve Bank of Australia before the beginning of the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.

(4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

1229E Exemption from interest charge—general

(1) A person is not liable to pay interest charge under section 1229A or 1229B if on the day before the start of the period in respect of which the person would otherwise have been liable to pay that charge:

(a) the person is receiving a social security payment; or

(b) the person is receiving a payment of pension, veteran payment or allowance under the Veterans' Entitlements Act; or

(c) the person is receiving instalments of family tax benefit; or

(d) the person is receiving instalments under the ABSTUDY scheme (also known as the Aboriginal Study Assistance Scheme) that includes an amount identified as living allowance; or

(e) the person is receiving instalments under the Assistance for Isolated Children Scheme; or

(f) the circumstances determined in an instrument under subsection (2) apply in relation to the person.

(2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(f).

1229F Exemption from interest charge—Secretary's determination

(1) The Secretary may determine that interest charge is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt.

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(2) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:

(a) failing to enter into an arrangement under section 1234 to pay the outstanding amount of the debt; or

(b) having entered an arrangement, failing to make a payment in accordance with that arrangement.

(3) The determination may relate to a period before, or to a period that includes a period before, the making of the determination.

(4) The determination may be expressed to be subject to the person complying with one or more specified conditions.

(5) If the determination is expressed to be subject to the person complying with one or more specified conditions, the Secretary must give written notice of the determination to the person as soon as practicable after the determination is made.

(6) If:

(a) the determination is expressed to be subject to the person complying with one or more specified conditions; and

(b) the person contravenes a condition or conditions without reasonable excuse;

the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.

(7) The Secretary may cancel or vary the determination by written notice given to the person.

1229G Guidelines on interest charge provisions

The Minister may, by legislative instrument, determine guidelines relating to the operation of the provisions of this Part dealing with interest charge.

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1230 Debt from failure to comply with garnishee notice

(1) If:

(a) a person (in this section called the ***garnishee debtor***) is given a notice under section 1233 in respect of a debt due by another person (in this section called the ***original debtor***) under this Act or Part 3AA or 3B of the Administration Act; and

(b) the garnishee debtor fails to comply with the notice to the extent that he or she is capable of complying with it;

then the amount of the debt outstanding (worked out under subsection (2)) is recoverable from the garnishee debtor by the Commonwealth by means of:

(c) legal proceedings; or

(d) garnishee notice.

Note 1: For ***legal proceedings*** see section 1232.

Note 2: For ***garnishee notice*** see section 1233.

(2) The ***amount of the debt outstanding*** is the amount equal to:

(a) as much of the amount required by the notice under section 1233 to be paid by the garnishee debtor as the garnishee debtor was able to pay; or

(b) as much of the debt due by the original debtor at the time when the notice was given as remains due from time to time;

whichever is the lesser.

(3) If the Commonwealth recovers:

(a) the whole or part of the debt due by the garnishee debtor under subsection (1); or

(b) the whole or part of the debt due by the original debtor;

then:

(c) both debts are reduced by the amount that the Commonwealth has so recovered; and

(d) the amount specified in the notice under section 1233 is to be taken to be reduced by the amount so recovered.

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(3A) This section applies to an amount in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.

(4) In this section, ***person*** includes:
(a) the Commonwealth; and
(b) a State; and
(c) a Territory; and
(d) any authority of the Commonwealth or of a State or Territory.

1230A Debt from failure before 1 July 1991 to comply with garnishee notice under the 1947 Act

(1) If:
(a) a person (in this section called the ***garnishee debtor***) was given a notice under section 162 of the 1947 Act in respect of a debt due by another person (in this section called the ***original debtor***) under the 1947 Act; and
(b) the garnishee debtor failed to comply with the notice before 1 July 1991 to the extent that he or she was capable of complying with it;

then the amount of the debt outstanding (worked out under subsection (2)) is recoverable from the garnishee debtor by the Commonwealth by means of:
(c) legal proceedings; or
(d) garnishee notice.

Note 1: For ***legal proceedings*** see section 1232.

Note 2: For ***garnishee notice*** see section 1233.

(2) The amount of the debt outstanding is the amount equal to:
(a) as much of the amount required by the notice under section 162 of the 1947 Act to be paid by the garnishee debtor as the garnishee debtor was able to pay; or

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(b) as much of the debt due by the original debtor at the time when the notice was given as remains due from time to time;

whichever is the lesser.

(3) If the Commonwealth recovers:

(a) the whole or a part of the debt due by the garnishee debtor under subsection (1); or

(b) the whole or a part of the debt due by the original debtor;

then:

(c) both debts are reduced by the amount that the Commonwealth has so recovered; and

(d) the amount specified in the notice under section 162 of the 1947 Act is to be taken to be reduced by the amount so recovered.

(4) A reference in subsection (3) to the Commonwealth recovering the whole or a part of a debt includes a reference to the Commonwealth recovering, under the 1947 Act, the whole or a part of the debt.

(5) In this section:

person includes:

(a) the Commonwealth; and

(b) a State; and

(c) a Territory; and

(d) any authority of the Commonwealth, a State or Territory.

1230B Overseas application of provisions

Sections 1184F, 1184I, 1223, 1224AA, 1224AB, 1224D, 1227, 1227B, 1228 and 1228B extend to:

(a) acts, omissions, matters and things outside Australia, whether in a foreign country or not; and

(b) all persons irrespective of nationality or citizenship.

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1230C Methods of recovery of debt

(1) Subject to subsection (2), a debt due to the Commonwealth under this Act or Part 3AA or 3B of the Administration Act is recoverable by the Commonwealth by means of one or more of the following methods:

(a) if the person who owes the debt is receiving a social security payment—deductions from that person's social security payment;

(b) if, in respect of the debt, section 1234A applies to another person who is receiving a social security payment—deductions from that other person's social security payment;

(c) repayment by instalments under an arrangement entered into under section 1234;

(d) legal proceedings;

(e) garnishee notice.

(2) Subject to subsection (3), a debt due to the Commonwealth under this Act or Part 3AA or 3B of the Administration Act is recoverable by means of a method mentioned in paragraph (1)(d) or (e) only if the Commonwealth:

(a) has first sought to recover the debt by means of a method mentioned in paragraph (1)(a), (b) or (c); and

(b) can establish that the person who owes the debt:

(i) has failed to enter into a reasonable arrangement to repay the debt; or

(ii) after having entered into such an arrangement, has failed to make a particular payment in accordance with the arrangement.

(3) If the Secretary determines that the recovery of the debt by means of a method mentioned in paragraph (1)(a), (b) or (c) is not appropriate having regard to the circumstances of the case, paragraph (2)(a) does not apply in respect of the recovery of the debt.

(4) A debt due to the Commonwealth under section 1184G is recoverable by the Commonwealth by means of legal proceedings.

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(5) This section does not prevent the recovery of an assurance of support debt by the enforcement at any time of a security given in connection with the relevant assurance of support. It does not matter:

(a) whether or not the enforcement involves legal proceedings; or

(b) whether the enforcement occurs before or after seeking to recover the debt by means of another method described in this section.

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Part 5.3—Methods of recovery

1231AA Application of sections dealing with deductions

Sections 1231 and 1234A provide for debt recovery by deductions in the following situations:

(a) section 1231—debt recovery from person who incurred the debt;

(b) section 1234A—debt recovery by consent from person other than debtor.

1231 Deductions from debtor's pension, benefit or allowance

(1) Subject to subsection (2), each of the following:

(a) a debt under this Act as in force immediately before 20 March 2000;

(aaa) a debt under the social security law;

(b) an overpayment arising under an Act or scheme referred to in subsection 1228(2);

(ba) a debt incurred under another Act (whether before or after the commencement of this paragraph) for failing to repay part or all of an overpayment referred to in paragraph (b);

(bb) a debt described in subsection 1228(2A) or (2B);

(bc) an overpayment described in subsection 1228(3);

(c) a debt under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*;

(d) a debt or overpayment under the 1947 Act;

may be recovered by making deductions of amounts determined under subsection (1A):

(e) from any social security payments; or

(f) from any payments of arrears of social security payments; or

(g) partly from any social security payments and partly from any payments of arrears of social security payments.

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(1A) The Secretary is to determine the amount of a deduction that is to be made from a particular payment, and may determine an amount that would reduce the payment to nil if:

(a) the deduction is to be made from a social security payment that is pension bonus or from a payment of arrears of social security payments; or

(b) the deduction is to be made from a social security payment that is not pension bonus and the person to whom the payment would, apart from the deduction, be made has consented to the amount of the deduction being an amount that would reduce the payment to nil.

(1AA) However, the Secretary:

(a) must not make a determination that would reduce a payment to nil if the reduction to nil would result in the person being in severe financial hardship; and

(b) must not make a determination that would reduce (including reduce to nil) an economic security strategy payment, essential medical equipment payment or training and learning bonus, unless the person to whom the payment or bonus:

(i) is to be made; or

(ii) would, apart from the deduction, be made;

has requested that the Secretary determine under this section the amount of a deduction that is to be made from the payment or bonus; and

(c) must not make a determination that would reduce (including reduce to nil) a payment of a student start-up loan.

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

(2) The debt or overpayment must be deducted unless:

(a) the Secretary takes action under Part 5.4 (write off and waiver) in relation to the amount; or

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(b) the amount is recovered by the Commonwealth under:
(i) another provision of this Chapter; or
(ii) Part 4 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

1232 Legal proceedings

If a debt is recoverable by the Commonwealth by means of legal proceedings under:
(a) Part 5.2 of this Act; or
(b) the 1947 Act; or
(c) the *Social Security (Fares Allowance) Rules 1998*;
the debt is recoverable by the Commonwealth in a court of competent jurisdiction.

1233 Garnishee notice

(1) If a debt is recoverable from a person (in this section called the ***debtor***) by the Commonwealth under section 1230C of this Act, under the 1947 Act or under the *Social Security (Fares Allowance) Rules 1998*, the Secretary may by written notice given to another person:
(a) by whom any money is due or accruing, or may become due, to the debtor; or
(b) who holds or may subsequently hold money for or on account of the debtor; or
(c) who holds or may subsequently hold money on account of some other person for payment to the debtor; or
(d) who has authority from some other person to pay money to the debtor;
require the person to whom the notice is given to pay the Commonwealth:
(e) an amount specified in the notice, not exceeding the amount of the debt or the amount of the money referred to in the preceding paragraph that is applicable; or

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(f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied; or

(g) such percentage as is specified in the notice of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied.

(2) The time for making a payment in compliance with a notice under subsection (1) is such time as is specified in the notice, not being a time before the money concerned becomes due or is held or before the end of the period of 14 days after the notice is given.

(3) A person who fails to comply with a notice under subsection (1) commits an offence.

Penalty: Imprisonment for 12 months.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 1A: If a body corporate is convicted of the offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.

Note 2: See also section 1230 (consequence of failure to comply with notice under this section).

(3A) Subsection (3) applies only to the extent to which the person is capable of complying with the notice.

(3B) Strict liability applies to the element of an offence against subsection (3) that a notice is a notice under subsection (1).

(4) If the Secretary gives a notice to a person under subsection (1), the Secretary must give a copy of the notice to the debtor.

(5) A person who makes a payment to the Commonwealth in compliance with a notice under subsection (1) is to be taken to

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have made the payment under the authority of the debtor and of any other person concerned.

(6) If:

(a) a notice is given to a person under subsection (1) in respect of a debt due; and

(b) an amount is paid by another person in reduction or in satisfaction of the debt;

the Secretary must notify the first-mentioned person accordingly, and the amount specified in the notice is to be taken to be reduced by the amount so paid.

(7) If, apart from this subsection, money is not due or repayable on demand to a person unless a condition is fulfilled, the money is to be taken, for the purposes of this section, to be due or repayable on demand, as the case may be, even though the condition has not been fulfilled.

(7F) This section applies to money in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.

(8) In this section, ***person*** includes:

(a) the Commonwealth; and

(b) a State; and

(c) a Territory; and

(d) any authority of the Commonwealth or of a State or Territory.

1234 Arrangement for payment of debt

(1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with a person under which the person is to pay a debt, owed by the person to the Commonwealth, or the outstanding amount of such a debt, in a way set out in the arrangement.

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(1A) If a person is required to make a payment under an arrangement entered into under subsection (1) before the end of a particular day, the person must make that payment before the end of that day.

(2) An arrangement entered into under subsection (1) has effect, or is taken to have had effect, on and after the day specified in the arrangement as the day on which the arrangement commences (whether that day is the day on which the arrangement is entered into or an earlier or later day).

(3) If an arrangement entered into under subsection (1) does not specify a day as mentioned in subsection (2), it has effect on and after the day on which it is entered into.

(4) The Secretary may terminate or alter an arrangement entered into under subsection (1):
  (a) at the debtor's request; or
  (b) after giving 28 days' notice to the debtor of the proposed termination or alteration; or
  (c) without notice, if the Secretary is satisfied that the person has failed to disclose material information about his or her true capacity to repay the debt.

(5) In subsection (1):

debt means:
  (a) a debt recoverable by the Commonwealth under Part 5.2; or
  (b) a debt under the 1947 Act.

1234AA Recovery of amounts from financial institutions

(1) If:
  (a) a social security payment or social security payments are made to a financial institution for the credit of an account kept with the institution; and
  (b) the Secretary is satisfied that the payment or payments were intended to be made for the benefit of someone who was not

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the person or one of the persons in whose name or names the account was kept;

the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being the amount, or the sum of the amounts, of the social security payment or social security payments;

(d) the amount standing to the credit of the account when the notice is received by the institution.

(2) If:

(a) a social security payment or social security payments that are intended for the benefit of a person are made to a financial institution for the credit of an account that was kept with the institution by the person or by the person and one or more other persons; and

(b) the person died before the payment or payments were made;

the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being the amount, or the sum of the amounts, of the social security payment or social security payments;

(d) the amount standing to the credit of the account when the notice is received by the institution.

(2A) As soon as possible after issuing a notice under subsection (2), the Secretary must inform the deceased estate in writing of:

(a) the amount sought to be recovered from the deceased person's account; and

(b) the reasons for the recovery action.

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(3) A financial institution must comply with a notice given to it under subsection (1) or (2).

Penalty: 300 penalty units.

(4) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution proves that it was incapable of complying with the notice.

(5) If a notice is given to a financial institution under subsection (1) (payment made to wrong account) or under subsection (2) (death of person in whose name the account was kept) in respect of a social security payment or social security payments, any amount recovered by the Commonwealth from the institution in respect of the debt reduces any debt owed to the Commonwealth by any other person in respect of the social security payment or social security payments.

1234A Deductions by consent from social security payment of person who is not a debtor

(1) If:

(a) a person (in this section called the ***debtor***) incurs a debt under this Act, Part 3AA or 3B of the Administration Act, the *Student Assistance Act 1973* as in force before 1 July 1998, the *Data-matching Program (Assistance and Tax) Act 1990*, the 1947 Act, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010* or the *Social Security (Fares Allowance) Rules 1998* or incurred a debt under Part 8 of the *Student Assistance Act 1973* as in force before 1 July 1998; and

(b) another person (in this section called the ***consenting person***) is receiving, or is about to receive, a social security payment (other than a student start-up loan) under this Act; and

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(c) for the purpose of the recovery of the debt, the consenting person consents to the deduction of an amount from the consenting person's social security payment;

the Secretary may deduct the amount from the consenting person's social security payment.

(2) The debtor's debt is reduced by an amount equal to the amount deducted from the consenting person's social security payment.

(3) The consenting person may revoke the consent at any time.

1234B No time limit on debt recovery action

For the purposes of this Chapter, legal proceedings, or any action under a provision of this Chapter, for the recovery of a debt or overpayment may be commenced or taken at any time.

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Part 5.4—Non-recovery of debts

1235 Meaning of *debt*

In this Part, ***debt*** means:

(a) a debt recoverable by the Commonwealth under Part 5.2; or

(b) a debt under the 1947 Act; or

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

(d) a debt under the *Social Security (Fares Allowance) Rules 1998*.

Note: Overpayments under section 1228 are not debts for the purposes of Part 5.2.

1236 Secretary may write off debt

(1) Subject to subsection (1A), the Secretary may, on behalf of the Commonwealth, decide to write off a debt, for a stated period or otherwise.

(1A) The Secretary may decide to write off a debt under subsection (1) if, and only if:

(a) the debt is irrecoverable at law; or

(b) the debtor has no capacity to repay the debt; or

(c) the debtor's whereabouts are unknown after all reasonable efforts have been made to locate the debtor; or

(d) it is not cost effective for the Commonwealth to take action to recover the debt.

(1B) For the purposes of paragraph (1A)(a), a debt is taken to be irrecoverable at law if, and only if:

(b) there is no proof of the debt capable of sustaining legal proceedings for its recovery; or

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(c) the debtor is discharged from bankruptcy and the debt was incurred before the debtor became bankrupt and was not incurred by fraud; or

(d) the debtor has died leaving no estate or insufficient funds in the debtor's estate to repay the debt.

(1C) For the purposes of paragraph (1A)(b), if a debt is recoverable by means of:

(a) deductions from the debtor's social security payment; or

(b) deductions under section 84 of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or

(c) setting off under section 84A of that Act;

the debtor is taken to have a capacity to repay the debt unless recovery by those means would result in the debtor being in severe financial hardship.

(2) A decision made under subsection (1) takes effect:

(a) if no day is specified in the decision—on the day on which the decision is made; or

(b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

(3) Nothing in this section prevents anything being done at any time to recover a debt that has been written off under this section.

1236A Application

(1) Sections 1237, 1237A, 1237AA, 1237AAA, 1237AAB, 1237AAC, 1237AAD and 1237AAE apply to:

(a) debts arising on or after 1 January 1996; and

(b) the amounts of debts arising before 1 January 1996 that were outstanding at the start of that day.

(2) Section 1237AB applies to all debts, whenever incurred, owed to the Commonwealth and arising under this Act or under the *Social Security Act 1947*.

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1237 Power to waive Commonwealth's right to recover debt

Secretary's limited power to waive

(1) On behalf of the Commonwealth, the Secretary may waive the Commonwealth's right to recover the whole or a part of a debt from a debtor only in the circumstances described in section 1237A, 1237AA, 1237AAA, 1237AAB, 1237AAC, 1237AAD or 1237AB and, if the debt is an assurance of support debt, subject to section 1237AAE.

When waiver takes effect

(2) A waiver takes effect:
  (a) on the day specified in the waiver (whether that day is before, after or on the day on which the decision to waive is made); or
  (b) if the waiver does not specify when it takes effect—on the day on which the decision to waive is made.

Note: If the Secretary waives the Commonwealth's right to recover all or part of a debt, this is a permanent bar to recovery of the debt or part of the debt—the debt or part of the debt effectively ceases to exist.

1237A Waiver of debt arising from error

Administrative error

(1) Subject to subsection (1A), the Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

Note: Subsection (1) does not allow waiver of a part of a debt that was caused partly by administrative error and partly by one or more other factors (such as error by the debtor).

(1A) Subsection (1) only applies if:
  (a) the debt is not raised within a period of 6 weeks from the first payment that caused the debt; or

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(b) if the debt arose because a person has complied with a notification obligation, the debt is not raised within a period of 6 weeks from the end of the notification period;

whichever is the later.

Underestimating value of property

(2) If:

(a) a debt arose because the debtor or the debtor's partner underestimated the value of particular property of the debtor or partner; and

(b) the estimate was made in good faith; and

(c) the value of the property was not able to be easily determined when the estimate was made;

the Secretary must waive the right to recover the proportion of the debt attributable to the underestimate.

Proportion of a debt

(3) For the purposes of this section, a proportion of a debt may be 100% of the debt.

1237AA Waiver of debt relating to an offence

(1) If:

(a) a debtor has been convicted of an offence that gave rise to a proportion of a debt; and

(b) the court indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt;

the Secretary must waive the right to recover the proportion of the debt that arose in connection with the offence.

(2) For the purposes of this section, a proportion of a debt may be 100% of the debt.

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1237AAA Waiver of small debt

(1) The Secretary must waive the right to recover a debt if:
  (a) the debt is, or is likely to be, less than $200; and
  (b) it is not cost effective for the Commonwealth to take action to recover the debt.

(2) Subsection (1) does not apply if the debt is at least $50 and could be recovered by deductions under section 1231 from a social security payment of the debtor.

Note: Section 1237AAE limits the circumstances in which an assurance of support debt may be waived under this section, and the amount of the debt that may be waived.

1237AAB Waiver in relation to settlements

Settlement of civil action

(1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Settlement of proceedings before the ART

(2) If the Secretary has agreed to settle proceedings before the ART relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Waiver where at least 80% of debt recovered and debtor cannot pay more

(3) If:
  (a) the Commonwealth has recovered at least 80% of the original value of a debt from a debtor; and

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(b) the Commonwealth and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and

(c) the debtor cannot repay a greater proportion of the debt;

the Secretary must waive the remaining 20% or less of the value of the original debt.

Agreement for part-payment in satisfaction of outstanding debt

(4) If the Secretary and a debtor agree that the debtor's debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount less than the amount of the debt outstanding at the time of the agreement (the ***unpaid amount***), the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount.

Limits on agreement to accept part-payment in satisfaction of outstanding debt

(5) The Secretary must not make an agreement described in subsection (4) unless the Secretary is satisfied that the agreed amount is at least the present value of the unpaid amount if it is repaid in instalments of amounts, and at times, determined by the Secretary.

Formula for working out present value of unpaid amount

(6) For the purposes of subsection (5), the ***present value of the unpaid amount*** is the amount worked out in accordance with the following formula:

$$\frac{\text{annual repayment}}{\text{interest}} \times \left[1 - \frac{1}{\left(1 + \text{interest}\right)^{\text{repayment period}}}\right]$$

where:

annual repayment is the amount of the debt that the Secretary believes would be recovered under Part 5.3 in a year if subsection (4) did not apply in relation to the debt.

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interest is the annual rate of interest specified by the Minister by legislative instrument.

repayment period is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.

Example:

Facts: Bill owed a debt of $35,000 to the Commonwealth. After repaying $5,000 (leaving an unpaid amount of $30,000), he offers to make an immediate payment of a further $20,000 in full satisfaction of the debt. The Secretary is satisfied that Bill cannot repay a larger amount of the debt than this. The Secretary believes that $1,500 of the debt would be recovered under Part 5.3 in a year, at which rate it would take 20 years to repay the debt. The Minister has specified an interest rate of 5% a year for the purposes of subsection (6).

Application: The Secretary can accept Bill's offer and make an agreement with him as described in subsection (4), because the $20,000 is more than the present value of $30,000 repaid over 20 years at a 5% interest rate (which is

$$\$18,693.33 = (\$1{,}500 \div 0.05) \times \left(1 - \left(1 \div (1 + 0.05)^{20}\right)\right)$$

If the Secretary makes the agreement, the Secretary must waive $10,000 of the debt (the difference between the unpaid amount of $30,000 and the agreed amount of $20,000).

Note: Section 1237AAE limits the circumstances in which an assurance of support debt may be waived under this section, and the amount of the debt that may be waived.

1237AAC Waiver where debtor or debtor's partner would have been entitled to an allowance

Waiver if there was an unclaimed entitlement to family payment or family allowance

(1) If:

(a) a debt arises from overpayments made to the debtor; and

(b) the debtor or the debtor's partner does not claim family payment or family allowance for the period when the overpayments were made; and

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(c) an amount of family payment or family allowance would have been payable for the period when the overpayments were made if the debtor or the debtor's partner had lodged a claim;

the Secretary must waive the right to recover the debt to the extent set out in subsection (2).

(1A) If:

(a) a debt arises from overpayments to a youth allowance recipient (the ***debtor***); and

(b) the debtor would have been an FA child of another person for the period when the overpayments were made if the debtor had not been a youth allowance recipient; and

(c) an amount of family allowance would have been payable to the other person in respect of the debtor for the period when the overpayments were made if:

(i) the debtor had been an FA child of the other person for that period; and

(ii) the other person had lodged a claim;

the Secretary must waive the debt to the extent set out in subsection (2A).

Amount of debt Secretary must waive

(2) The Secretary must waive under subsection (1) the right to recover the amount of debt equal to the amount of family payment or family allowance that would have been payable to the debtor or the debtor's partner in the 3-year period ending on the day the overpayment is stopped if:

(a) the overpayments had not been made to the debtor; and

(b) the debtor or the debtor's partner had lodged a claim for the payment.

(2A) The Secretary must waive under subsection (1A) the right to recover the amount of debt equal to the amount of family allowance that would have been payable to the other person in the 3-year period ending on the day on which the overpayment is stopped if:

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(a) the debtor had been an FA child of the person; and
(b) the other person had lodged a claim for family allowance.

Reference to amount of family allowance is a reference to minimum rate plus guardian allowance and large family supplement

(3) For the purposes of subsections (2) and (2A):
(a) an amount of family allowance is the minimum standard family allowance rate plus any guardian allowance that is payable plus any large family supplement that is payable; and
(b) an amount of family allowance does not include multiple birth allowance.

Waiver if there was an unclaimed entitlement to parenting allowance or parenting payment

(4) If:
(a) a debt arises from overpayments to the debtor; and
(b) the Secretary is satisfied that the overpayments did not result wholly or partly from the debtor or another person knowingly:
(i) making a false statement or false representation; or
(ii) failing or omitting to comply with a provision of this Act or the 1947 Act; and
(c) the debtor or the debtor's partner did not claim parenting allowance or parenting payment for the period (the ***overpayment period***) when the overpayments were made; and
(d) an amount of parenting allowance or parenting payment would have been payable for that period if the debtor or the debtor's partner had lodged a claim;

the Secretary must waive the right to recover the debt to the extent set out in subsection (5).

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Waiver of amount equal to notional entitlement to parenting allowance or parenting payment (as the case requires)

(5) The Secretary must waive under subsection (4) the right to recover the amount of debt equal to the amount of parenting allowance or parenting payment (as the case requires) that would have been payable to the debtor or the debtor's partner during so much of the overpayment period as was not earlier than 3 years before the day on which the overpayment is stopped if:

(a) the overpayments had not been made to the debtor; and

(b) the debtor or the debtor's partner had lodged a claim for the allowance or payment (as the case requires).

Calculating the amount equal to notional entitlement to parenting allowance

(6) For the purposes of working out the amount of parenting allowance or parenting payment that would have been payable to the debtor or the debtor's partner, the rate of parenting allowance or parenting payment for the debtor or the debtor's partner:

(a) if the Secretary is satisfied that the rate would have been greater than the maximum basic component if parenting allowance or parenting payment had been claimed—is taken to have been that greater rate; or

(b) in any other case—is taken not to have exceeded the maximum basic component of parenting allowance specified at the relevant time in the Parenting Allowance Rate Calculator or the PP (Partnered) Rate Calculator (as the case requires).

1237AAD Waiver in special circumstances

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

(a) the debt did not result wholly or partly from the debtor or another person knowingly:

(i) making a false statement or a false representation; or

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(ii) failing or omitting to comply with a provision of this Act, the Administration Act or the 1947 Act; and

(b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and

(c) it is more appropriate to waive than to write off the debt or part of the debt.

Note 1: Section 1236 allows the Secretary to write off a debt on behalf of the Commonwealth.

Note 2: This section has effect subject to section 1237AAE in relation to an assurance of support debt.

1237AAE Extra rules for waiver of assurance of support debts

(1) This section affects waiver under some other provisions of this Part of an assurance of support debt in connection with an assurance of support given by one or more persons (the ***assurers***), by setting out extra rules limiting the circumstances in which waiver may occur and the extent of waiver.

(2) The Secretary may waive under section 1237AAD the right to recover all or part of the debt only if the Secretary is satisfied that the waiver is justified on grounds other than one or more of the assurers being unaware of the effect of section 1061ZZGG, or of regulations made under the *Migration Act 1958*, in connection with the assurance.

(3) If the Secretary has been given a security that meets the requirements of subsection 1061ZZGD(3) in connection with the assurance, the Secretary may waive under section 1237AAA, 1237AAB or 1237AAD the right to recover an amount of the debt that is not greater than the difference (if any) between:

(a) the debt; and

(b) the amount that can be:

(i) obtained by enforcing the security; and

(ii) applied to reduce the debt.

Note: An amount that can be obtained by enforcing the security cannot be applied to reduce the debt if it is applied to reduce another assurance of support debt connected with the assurance of support.

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(4) If 2 or more assurers are jointly and severally liable for the debt, the Secretary may waive under section 1237AAD the right to recover an amount of the debt that is not greater than the amount (which may be a nil amount) of the debt that the Secretary is satisfied cannot be recovered from any of the assurers.

(5) If subsections (3) and (4) apply, the Secretary may waive under section 1237AAD the right to recover an amount of the debt that is not greater than the amount (if any) of the debt that may be waived taking into account both of those subsections.

1237AB Secretary may waive debts of a particular class

(1) The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover debts arising under or as a result of this Act or Part 3AA or 3B of the Administration Act that are included in a class of debts specified, by legislative instrument, by the Minister.

(2) A decision under subsection (1) takes effect:
  (a) if no day is specified in the decision—on the day on which the decision is made; or
  (b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

(3) A legislative instrument under subsection (1) does not commence before the end of the period for disallowing the instrument.

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Part 5.5—Departure prohibition orders

Division 1—Secretary may make departure prohibition orders

1240 Secretary may make departure prohibition orders

(1) The Secretary may make an order (a ***departure prohibition order***) prohibiting a person from departing from Australia for a foreign country if:

(a) the person has one or more debts to the Commonwealth under the social security law; and

(b) there are not arrangements satisfactory to the Secretary for the one or more debts to be wholly paid; and

(c) the Secretary believes on reasonable grounds that it is desirable to make the order for the purpose of ensuring that the person does not depart from Australia for a foreign country without:

(i) having wholly paid the one or more debts; or

(ii) there being arrangements satisfactory to the Secretary for the one or more debts to be wholly paid.

Matters to be taken into account in making order

(2) Before making an order under this section, the Secretary must have regard to the following matters:

(a) the capacity of the person to pay the one or more debts;

(b) whether any action has been taken to recover any such debt, and the outcome of the recovery action;

(c) the length of time for which any such debt has remained unpaid after the day on which it became due and payable;

(d) such other matters as the Secretary considers appropriate.

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Form of order

(3) A departure prohibition order must be in a form approved by the Secretary.

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Division 2—Departure from Australia of debtors prohibited

1241 Departure from Australia of debtors prohibited

A person must not depart from Australia for a foreign country if:

(a) a departure prohibition order in respect of the person is in force, and the person knows that the order is in force, or is reckless as to whether the order is in force; and

(b) the person's departure is not authorised by a departure authorisation certificate, and the person knows that the departure is not authorised by such a certificate, or is reckless as to whether the departure is authorised by such a certificate.

Penalty: Imprisonment for 12 months.

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Division 3—Other rules for departure prohibition orders

1242 Notification requirements for departure prohibition orders

(1) This section applies if the Secretary makes a departure prohibition order in respect of a person.

Notifying person of order

(2) The Secretary must notify the person that the order has been made.

(3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after making the order.

Notifying other persons of order

(4) Unless the Secretary is satisfied that the person is an Australian citizen, the Secretary must give the Secretary of the Department administered by the Minister administering the *Migration Act 1958* a copy of the order, and information likely to facilitate identification of the person, for the purposes of administering that Act.

(5) The Secretary must also give a copy of the order, and information likely to facilitate identification of the person for the purposes of this Part, to such other persons as the Secretary considers appropriate in the circumstances, being persons declared in an instrument under subsection (6).

(6) The Secretary may, by legislative instrument, declare persons for the purposes of subsection (5).

(7) The Secretary must give a copy of the order or information under subsection (4) or (5) as soon as practicable after making the order.

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1243 Operation of departure prohibition order

(1) A departure prohibition order comes into force when it is made, and continues in force until it is revoked, or until it is set aside by a court.

Note: Division 5 deals with appeals to the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2) against the making of departure prohibition orders.

(2) However, a departure prohibition order in respect of a person is not in force during any period when a deportation order in respect of the person is in force under the *Migration Act 1958*.

1244 Revocation and variation of departure prohibition orders

(1) The Secretary must revoke a departure prohibition order in respect of a person if:

(a) the person no longer has any debts to the Commonwealth under the social security law; or

(b) there are arrangements satisfactory to the Secretary for the one or more debts the person has to the Commonwealth under the social security law to be wholly paid; or

(c) the Secretary is satisfied that the one or more debts the person has to the Commonwealth under the social security law are completely irrecoverable.

(2) The Secretary may revoke or vary a departure prohibition order in respect of a person if the Secretary considers it desirable to do so.

(3) A revocation or variation, under this section, of a departure prohibition order may be:

(a) on application by the person in a form approved by the Secretary; or

(b) on the Secretary's own initiative.

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1245 Notification requirements for revocations and variations

(1) If the Secretary revokes or varies a departure prohibition order in respect of a person, the Secretary must give notice of the revocation or variation to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order was given under subsection 1242(4) or (5).

(2) If:

(a) a person makes an application under paragraph 1244(3)(a) for the revocation or variation of a departure prohibition order; and

(b) the Secretary refuses to revoke or vary the order;

the Secretary must give notice of the refusal to the person.

(3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

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Division 4—Departure authorisation certificates

1246 Application for departure authorisation certificate

(1) A person in respect of whom a departure prohibition order is in force may apply for a certificate (a ***departure authorisation certificate***) authorising the person to depart from Australia for a foreign country.

(2) The application must be in a form approved by the Secretary.

1247 When Secretary must issue departure authorisation certificate

(1) This section applies if a person makes an application under section 1246 for a departure authorisation certificate.

(2) The Secretary must issue the departure authorisation certificate if the Secretary is satisfied:

(a) that, if the certificate is issued:

(i) it is likely that the person will depart from Australia and return to Australia within a period that the Secretary considers appropriate; and

(ii) it is likely that, within a period that the Secretary considers appropriate, the Secretary will be required by subsection 1244(1) to revoke the departure prohibition order in respect of the person; and

(b) that it is not necessary for the person to give security under section 1248 for the person's return to Australia.

(3) If the Secretary is not satisfied as mentioned in subsection (2), the Secretary must issue the departure authorisation certificate if:

(a) the person has given security under section 1248 for the person's return to Australia; or

(b) if the person is unable to give such security, the Secretary is satisfied:

(i) that the certificate should be issued on humanitarian grounds; or

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(ii) that refusing to issue the certificate will be detrimental to Australia's interests.

1248 Security for person's return to Australia

(1) A person may give such security as the Secretary considers appropriate by bond, deposit or any other means, for the person's return to Australia by such day as is agreed by the person and the Secretary and is specified in the departure authorisation certificate.

(2) The Secretary may substitute a later day for the day mentioned in subsection (1):

(a) on application by the person in a form approved by the Secretary; or

(b) on the Secretary's own initiative.

(3) The Secretary may refuse an application by a person to substitute a later day if:

(a) the person refuses to increase the value of the security already given to a level that the Secretary considers appropriate; or

(b) the person refuses to give such further security as the Secretary considers appropriate; or

(c) the Secretary considers that it would not be appropriate to substitute the later day.

1249 What departure authorisation certificate must authorise

(1) A departure authorisation certificate in respect of a person must authorise the departure of the person on or before the seventh day after a day specified in the certificate.

(2) The day specified in the certificate must be a day that is after the day on which the certificate is issued, but not more than 7 days after that day.

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1250 Notification requirements for departure authorisation certificates

(1) If the Secretary issues a departure authorisation certificate in respect of a person, the Secretary must, as soon as practicable, give a copy of the certificate to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 1242(4) or (5).

(2) If:

(a) a person makes an application under section 1246 for a departure authorisation certificate; and

(b) the Secretary refuses to issue the certificate;

the Secretary must give notice of the refusal to the person.

(3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after the refusal.

1251 Notification requirements for substituted days

(1) If, under section 1248, the Secretary substitutes a later day for a person's return to Australia, the Secretary must give notice of that decision to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 1242(4) or (5).

(2) If:

(a) a person makes an application under paragraph 1248(2)(a) to substitute a later day for the person's return to Australia; and

(b) the Secretary refuses the application;

the Secretary must give notice of the refusal to the person.

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(3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

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Division 5—Appeals and review in relation to departure prohibition orders and departure authorisation certificates

1252 Appeals to courts against making of departure prohibition orders

(1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2) against the making of the order.

(2) This section has effect subject to Chapter III of the Constitution.

1253 Jurisdiction of courts

The jurisdiction of a court under section 1252 must be exercised by a single Judge.

1254 Orders of court on appeal

A court hearing an appeal under section 1252 against the making of a departure prohibition order may, in its discretion:

(a) make an order setting aside the order; or

(b) dismiss the appeal.

1255 Review of decisions

(1) Applications may be made to the ART for review of a decision of the Secretary under section 1244, 1247 or 1248.

(2) Despite any provision of Parts 4 and 4A of the Administration Act, those Parts do not apply in relation to any decision of the Secretary under this Part.

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Division 6—Enforcement

1256 Powers of officers of Customs and members of the Australian Federal Police

(1) This section applies if an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, believes on reasonable grounds that:

(a) a person is about to depart from Australia for a foreign country; and

(b) a departure prohibition order in respect of the person is in force; and

(c) the person's departure is not authorised by a departure authorisation certificate.

(2) The officer or member may:

(a) take such steps as are reasonably necessary to prevent the person's departure, including, but not limited to, steps to prevent the person going on board, or to remove the person from, a vessel or aircraft in which the officer or member believes on reasonable grounds the departure will take place; and

(b) require the person to answer questions or produce documents to the officer or member for the purposes of working out whether:

(i) a departure prohibition order in respect of the person is in force; and

(ii) if such an order in respect of the person is in force—whether the person's departure is authorised by a departure authorisation certificate.

(3) A person commits an offence if:

(a) the person is subject to a requirement under paragraph (2)(b); and

(b) the person refuses or fails to comply with the requirement.

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Penalty: 30 penalty units.

(4) Subsection (3) does not apply if the person answers the question or produces the document to the extent that the person is capable of answering the question or producing the document.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

1257 Privilege against self-incrimination

(1) An individual is not excused from answering a question, or producing a document, under paragraph 1256(2)(b) on the ground that the answer to the question or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

(a) the answer given or document produced; and

(b) answering the question or producing the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or producing the document;

are not admissible in evidence against the individual in any criminal proceedings, other than proceedings under section 137.1 or 137.2 of the *Criminal Code* in relation to answering the question or producing the document.

1258 Production of authority to depart

(1) If:

(a) a departure prohibition order in respect of a person is in force; and

(b) the person is about to depart from Australia for a foreign country; and

(c) the person's departure is authorised by a departure authorisation certificate;

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an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, may request the person to give a copy of the certificate to the officer or member for inspection.

(2) A person commits an offence of strict liability if:

(a) an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, has made a request of the person under subsection (1); and

(b) the person refuses or fails to comply with the request.

Penalty for contravention of this subsection: 5 penalty units.

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Division 7—Interpretation

1259 Interpretation—departure from Australia for foreign country

A reference in this Part to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

1260 Meaning of *Australia*

(1) For the purposes of this Part, ***Australia***, when used in a geographical sense, includes the external Territories.

(2) For the purposes of this section:
  (a) the definition of ***external Territory*** in subsection 23(1) does not apply; and
  (b) ***external Territory*** has the meaning given by section 2B of the *Acts Interpretation Act 1901*.

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Chapter 6—Modification of social security law

1261 Simplified outline of this Chapter

The Minister may determine temporary modifications of the social security law in response to circumstances relating to the coronavirus known as COVID-19.

1262 Minister may determine modifications of social security law

(1) For any provision of the social security law covered by subsection (2), the Minister may, by legislative instrument, determine:

(a) that the provision is varied as specified in the determination; or

(b) that the provision does not apply; or

(c) that the provision does not apply and that another provision specified in the determination applies instead.

Note: Section 1263 deals with the period the determination is in force.

Provisions able to be modified

(2) For the purposes of subsection (1), the provisions are the following:

(a) subsection 23(4A) or (4AA);

(b) paragraph 500(1)(d) and subsections 500(3) and (4);

(c) section 500WA;

(d) section 500WB;

(e) section 500X;

(f) section 500Y;

(g) section 500Z;

(h) subsection 540BA(4);

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(i) section 549CA;
(j) section 549CB;
(k) section 549D;
(l) section 549E;
(m) section 553C;
(n) section 575D;
(o) section 575E;
(p) section 575EA;
(q) Part 2.12, in relation to working out whether a person is a member of a couple;
(r) subsection 593(8);
(s) section 620;
(t) section 621;
(u) section 623A;
(v) section 623B;
(w) section 633;
(x) subsection 654(3);
(y) section 739A;
(z) section 745M;
(za) section 1046;
(zb) Module H of the Youth Allowance Rate Calculator in section 1067G, in relation to working out the rate of youth allowance where neither section 540AA (about new apprentices) nor paragraph 541(1)(a) (about full-time study) applies;
(zc) Part 3.6, in relation to working out whether a person is a member of a couple for the purposes of working out the rate of jobseeker payment;
(zd) Module G of Benefit Rate Calculator B in section 1068, in relation to working out the rate of jobseeker payment;
(ze) section 1216;
(zf) Division 3 of Part 4.2;
(zg) clause 128 of Schedule 1A.

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Determination to be in response to COVID-19

(3) The Minister must be satisfied that a determination under subsection (1) is in response to circumstances relating to the coronavirus known as COVID-19.

Application of determination

(4) A determination under subsection (1) must be expressed to:
  (a) apply to all persons; or
  (b) apply to a specified class or specified classes of persons.

Determination may provide for things to have been done before commencement

(5) A determination under subsection (1) may provide that a person is taken to have done a specified thing on a day before the determination commences.

Determination has effect accordingly

(6) A determination under subsection (1) has effect accordingly.

Definitions

(7) In this section:

Minister means the Minister administering the *Social Security (International Agreements) Act 1999*.

1263 Period that determination is in force and variation and revocation

(1) Subject to subsection (5), a determination under subsection 1262(1) is in force for the period specified in the determination. That period must not end after:
  (a) 31 March 2021, unless paragraph (b) applies; or
  (b) if the determination modifies a provision covered by paragraph 1262(2)(a)—16 April 2021.

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(2) The period specified in a determination under subsection 1262(1) may be a period that starts before the day the determination is made.

Variation of determination

(3) The Minister may, by legislative instrument, vary a determination under subsection 1262(1).

(4) A variation may be expressed to commence on a day before the day the variation is made.

Revocation of determination

(5) The Minister may, by legislative instrument, revoke a determination under subsection 1262(1).

(6) A revocation takes effect on the day specified in the instrument of revocation, which must not be earlier than the day that instrument is made.

Definitions

(7) In this section:

Minister means the Minister administering the *Social Security (International Agreements) Act 1999*.

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Schedule 1A—Savings and transitional provisions

Part 1—General

1 Correspondence of pensions, benefits and allowances

(1) Subject to paragraph (2)(k), for the purposes of this Schedule, a pension, benefit or allowance under this Act and a pension, benefit or allowance under the 1947 Act that have the same name correspond to each other.

(2) For the purposes of this Schedule:

(a) a wife's pension under the 1947 Act and a wife pension under this Act correspond to each other; and

(b) a carer's pension under the 1947 Act and a carer pension under this Act correspond to each other; and

(c) a sole parent's pension under the 1947 Act and a sole parent pension under this Act correspond to each other; and

(e) a class B widow's pension under the 1947 Act and a widow B pension under this Act correspond to each other; and

(f) an age pension under the 1947 Act payable because of section 26 of that Act and a special needs age pension under this Act correspond to each other; and

(g) an invalid pension under the 1947 Act payable because of section 29 of that Act and a special needs invalid pension under this Act correspond to each other; and

(h) a wife's pension under the 1947 Act payable because of subsection 37(2) of that Act and a special needs wife pension under this Act correspond to each other; and

(i) a sole parent's pension under the 1947 Act payable because of subsection 46(1) of that Act and a special needs sole parent pension under this Act correspond to each other; and

(j) a class B widow's pension under the 1947 Act payable because of subclause 4(1) of Schedule 1B to that Act and a

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special needs widow B pension under this Act correspond to each other; and

(k) a job search allowance under the 1947 Act and a job search allowance under this Act in respect of a person who has not turned 18 correspond to each other; and

(l) an unemployment benefit under the 1947 Act in respect of a person who has not been in receipt of an old benefit or old benefits for longer than 12 months and a job search allowance under this Act correspond to each other; and

(m) an unemployment benefit under the 1947 Act in respect of a person who has been in receipt of an old benefit or old benefits for longer than 12 months and a newstart allowance under this Act correspond to each other; and

(n) a widowed person allowance under the 1947 Act and a bereavement allowance under this Act correspond to each other.

(3) In paragraphs (2)(l) and (m):

old benefit, in relation to a person, means:

(a) an unemployment benefit under the 1947 Act; or

(b) a job search allowance under the 1947 Act; or

(c) in the case of a person who, but for the abolition of the allowance formerly paid by the Department of Employment, Education and Training and known as the Formal Training Allowance, would have paid that allowance on 1 July 1991—

that allowance.

2 Correspondence of provisions

(1) If one provision of the 1947 Act and one provision of this Act have the same legal effect, the 2 provisions correspond to each other.

(2) If:

(a) one provision of the 1947 Act has a particular legal effect in relation to a number of payment types; and

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(b) a provision of this Act has that legal effect in relation to only one of those payment types;

the provisions correspond to each other for the purposes of applying this Schedule to that payment type.

(3) In this clause:

legal effect includes conferring the power to issue an instrument.

payment type means a pension, benefit or allowance.

2A References in other Acts and instruments to provisions of the 1947 Act

A reference in:

(a) a provision of a law of the Commonwealth or a Territory enacted before 1 July 1991 (whether or not the provision has come into operation); or

(b) an instrument or document;

to a provision of the 1947 Act is to be construed as a reference to the corresponding provision of the 1991 Act.

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Part 2—Savings and Transitional Provisions Applicable on the Transition from the 1947 Act to this Act

Division 4—Continuation of earlier savings provisions

28 Rent assistance—retirement village residents (changes introduced on 13 June 1989)

(1) If:

(a) immediately before 3 November 1988:

(i) a person was receiving a social security pension, social security benefit or family allowance supplement; and

(ii) the person's pension, benefit or allowance rate included an amount by way of rent assistance under the 1947 Act; and

(b) at all times since 3 November 1988:

(i) the person has been entitled to a social security pension, social security benefit or family allowance supplement; and

(ii) the person's principal home has been in a retirement village;

the person is to be taken not to be an ineligible homeowner or excluded homeowner for the purposes of this Act.

(2) If:

(a) immediately after 13 June 1989:

(i) a person was receiving a service pension; and

(ii) the person's pension rate included an amount by way of rent assistance because of the operation of subsection 31(1) of the *Social Security and Veterans' Affairs Legislation Amendment Act 1988*; and

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(b) after 13 June 1989, the person began to receive a social security pension, social security benefit or family allowance supplement under the 1947 Act or this Act; and

(c) subsection 31(1) of the *Social Security and Veterans' Affairs Legislation Amendment Act 1988* applied to the person at all times between 13 June 1989 and the person's commencing to receive the social security pension, social security benefit or family allowance supplement or would have applied to the person at all those times if the subsection had not been repealed; and

(d) at all times since the person commenced to receive the social security pension, social security benefit or family allowance supplement:

(i) the person has continued to receive a social security pension, social security benefit or family allowance supplement; and

(ii) the person's principal home has continued to be in the retirement village;

the person is to be taken not to be an ineligible homeowner or excluded homeowner for the purposes of this Act.

(3) If subclause (1) or (2) ceases to apply to the person, that subclause does not apply to the person again.

(4) If a person is entitled to rent assistance because of subclause (1) or (2), any amount that would (apart from this subclause) be payable to the person by way of rent assistance is to be reduced by the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 (whether or not the type or amount of payment payable to the person varies after that day because the person's circumstances change):

(a) a social security benefit;

(b) a social security pension;

(c) family payment under this Act as previously in force;

(ca) family allowance;

(d) non-benefit parenting allowance;

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(e) child disability allowance;
(ea) carer allowance;
(f) double orphan pension;
(g) mobility allowance;
(h) youth training allowance.

(5) Subclause (4) does not apply if:
(a) the person is entitled to rent assistance because of subclause (1) or (2); and
(b) the amount of rent assistance payable is worked out under clause 63.

(6) This clause ceases to apply (and cannot re-apply later) to a person if, as a result of the reduction required by subclause (4), no amount would be payable to the person by way of rent assistance.

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Part 3—Saving and Transitional Provisions Applicable after the Commencement of this Act

36 Incentive allowance (changes introduced on 12 November 1991)

(1) If:

(a) a person is qualified for incentive allowance immediately before 12 November 1991; and

(b) the person is receiving disability support pension on 12 November 1991 because of a determination referred to in clause 33;

the following provisions as in force immediately before 12 November 1991 continue to apply to the person:

(c) points 1064-J1 to 1064-J3 (Pension Rate Calculator A); and

(d) points 1065-F1 to 1065-F3 (Pension Rate Calculator B).

(2) If:

(a) a person was receiving incentive allowance immediately before 12 November 1991; and

(b) on or after 12 November 1991 the person ceases to be qualified for incentive allowance because the person undertakes vocational training or a rehabilitation program or obtains work; and

(c) within 2 years after so ceasing to be qualified, the person undertakes an activity that would have qualified him or her for incentive allowance had it been undertaken immediately before 12 November 1991;

the following provisions as in force immediately before 12 November 1991 apply to the person:

(d) points 1064-J1 to 1064-J3 (Pension Rate Calculator A); and

(e) points 1065-F1 to 1065-F3 (Pension Rate Calculator B).

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(3) If a person's rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2) the person's rate of disability support pension cannot include an amount for rent assistance.

(4) A person whose rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2) may elect, by written notice to the Secretary, to have the amount for incentive allowance excluded from the person's rate.

(4A) If:

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

(b) the person's partner is living with the person in their home; and

(c) the person's partner's rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2);

the person's rate of disability support pension cannot include an amount for rent assistance.

(5) If a person referred to in subclause (1) ceases to be qualified for incentive allowance on or after 12 November 1991, subclause (1) ceases to apply to the person and cannot apply to the person again.

63 Rent assistance (changes introduced on 20 March 1993)

(1) This clause applies to a person if:

(a) immediately before 20 March 1993:

(i) the person was receiving a social security pension, a social security benefit or additional family payment; and

(ii) the person's pension, benefit or payment rate included an amount by way of rent assistance; and

(b) this subclause has continued to apply to the person.

(2) If:

(a) a decision is made on or after 20 March 1993 that a person is entitled to rent assistance in respect of a period; and

(b) the period starts before 20 March 1993; and

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(c) the period continued until at least 19 March 1993;

the person is taken, for the purposes of this clause, to have been receiving rent assistance under this Act immediately before 20 March 1993.

(3) This clause applies to a person if:

(a) immediately before 20 March 1993, the person was receiving rent assistance under or because of the Veterans' Entitlements Act; and

(b) after that date, the person becomes entitled to be paid a social security pension, a social security benefit or additional family payment; and

(c) this subclause has continued to apply to the person.

(3A) Subject to subclauses (7), (8) and (9), if this clause applies to a person, the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate is the amount (the ***floor amount***) worked out using the formula:

preserved rent assistance – post-1995 increase

where:

preserved rent assistance is the amount worked out under subclause (4).

post-1995 increase is the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 or the later day (the ***application day***) this clause first applied to the person (whether or not the type or amount of payment payable to the person varies after 19 March 1996 or the application day because the person's circumstances change):

(a) a social security benefit;

(b) a social security pension;

(c) family payment under this Act as previously in force;

(ca) family allowance;

(d) non-benefit parenting allowance;

(e) child disability allowance;

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(ea) carer allowance;
(f) double orphan pension;
(g) mobility allowance;
(h) youth training allowance.

(4) For the purposes of subclause (3A), the ***preserved rent assistance*** is the amount by way of rent assistance that would be included in the person's pension, benefit or payment rate if:
(a) the person's pension, benefit or payment rate were neither income reduced nor assets reduced; and
(b) the amount by way of rent assistance were calculated under this Act as in force immediately before 20 March 1993.

(5) Subject to subclause (6), subclause (1) or (3) ceases to apply to a person if:
(a) the person ceases to receive a social security pension, social security benefit or additional family payment; or
(b) the person ceases to be qualified for rent assistance; or
(c) the Secretary considers that there is a significant change in the person's circumstances that would affect the amount of rent assistance that is payable to the person apart from this clause; or
(d) the amount of rent assistance that would be payable to the person if this clause applied is less than (or equal to) the amount of rent assistance that would otherwise be payable.

(6) If:
(a) subclause (1) or (3) ceases to apply to a person; and
(b) within 42 days, or such longer period as the Secretary determines, of that subclause ceasing to apply to the person, there is a change in the person's circumstances; and
(c) the Secretary considers that the change in the person's circumstances is so significant that subclause (1) or (3) should apply to the person;

the Secretary may determine that subclause (1) or (3) is to apply to the person from a specified date.

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(7) If:

(a) subclause (1) or (3) applies to a person; and

(b) the person becomes a member of a couple; and

(c) the person's partner is a person to whom subclause (1) or (3) applies;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate and the amount by way of rent assistance to be used to calculate the person's partner's pension, benefit or payment rate is not to fall below one-half of the person's floor amount or one-half of the person's partner's floor amount, whichever is the greater.

(8) If:

(a) subclause (1) or (3) applies to a person; and

(b) the person becomes a member of a couple; and

(c) the person's partner is a person to whom section 111 of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992* applies or would apply if it had not been repealed;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate is not to fall below one-half of the person's floor amount or one-half of the person's partner's floor amount, whichever is the greater.

(9) If:

(a) subclause (1) or (3) applies to a person; and

(b) the person becomes a member of a couple; and

(c) the person's partner is not a person to whom subclause (1) or (3) applies; and

(d) the person's partner is not a person to whom section 111 of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992* applies or would apply if it had not been repealed; and

(e) the person's partner is a person who is receiving a pension, benefit or additional family payment or a pension under Part III of the *Veterans' Entitlements Act 1986*;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or additional family payment rate and the

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amount by way of rent assistance to be used to calculate the rate of the person's partner's pension, benefit or additional family payment is not to fall below the person's floor amount.

(10) If:

(a) a person is receiving a social security pension or a social security benefit; and

(b) neither subclause (1) nor (3) applies to the person; and

(c) the person has become or becomes a member of a couple; and

(d) the person's partner is receiving a pension under the *Veterans' Entitlements Act 1986* and is a person to whom clause 5 of Schedule 5 to that Act applies;

the amount by way of rent assistance to be used to calculate the rate of the person's social security pension or social security benefit is not to fall below one-half of the amount that would be the person's partner's floor amount if subclause (1) or (3) applied to the partner.

74 Partner allowance for persons born on or before 1 July 1955 (changes made on 1 July 1995)

(1) If:

(a) a person was receiving partner allowance immediately before 1 July 1995; and

(b) the person was born on or before 1 July 1955;

the person need not satisfy paragraph 771HA(1)(h) in order to be qualified for partner allowance.

(2) If partner allowance ceases to be payable to a person referred to in subclause (1):

(a) that subclause ceases to apply to the person; and

(b) cannot apply to the person again.

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86 Transitional and saving provisions applicable to the amendments relating to the pension loans scheme

(1) If:

(a) a person has made a request to participate in the previous pension loans scheme; and

(b) Schedule 7 to the Amending Act commences before the first pension payday after the lodging of the request;

for the purposes of this clause, the person is to be treated as a person who is participating in the previous pension loans scheme.

(2) Subject to subclause (3), in relation to a person who is participating in the previous pension loans scheme, subsection 11(1), paragraph 23(11)(b), subsection 1118(1) and Division 4 of Part 3.12 of this Act, as in force immediately before the commencement of Schedule 7 to the Amending Act, continue to have effect as if the Amending Act had not been enacted.

(3) If a person who is participating in the previous pension loans scheme:

(a) is qualified to participate in the current pension loans scheme; and

(b) makes a request to participate in the current scheme;

and the Secretary is satisfied that the amount of any debt that would become payable by the person to the Commonwealth under the current scheme would be readily recoverable, the current scheme applies to the person on and after the first pension payday after the request is lodged.

(4) The debt owed by a person who was participating in the previous pension loans scheme and who is participating in the current pension loans scheme by operation of subclause (3) is, for the purposes of working out the debt owed by the person under the current scheme, to be added to the basic amount of debt accrued under the current scheme.

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(5) In this clause:

Amending Act means the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*.

current pension loans scheme means the pension loans scheme in operation under the provisions of this Act, as amended by the Amending Act.

previous pension loans scheme means the pension loans scheme in operation under the provisions of this Act, as in force immediately before the commencement of Schedule 7 to the Amending Act.

88 Saving: Determinations under repealed sections 1099E and 1099L

A determination in force under section 1099E or 1099L immediately before the commencement of this clause continues to have effect after that commencement as if:

(a) section 1084 of this Act, as in force immediately after the commencement of this clause, had been in force when the determination was made; and

(b) the determination had been made under that section as so in force; and

(c) any reference in the determination to section 1099B, 1099J or 1099K were a reference to sections 1076 to 1078 of this Act.

96A Application of revised Schedule 1B

(1) Subject to subclause (2), this Act, as amended by items 1, 2 and 4 of Schedule 16 of the amending Act, applies to claims lodged on or after the date of commencement of those items.

(2) Despite section 8 of the *Acts Interpretation Act 1901*, the amendments made by items 1, 2 and 4 of Schedule 16 to the amending Act, apply in relation to:

(a) all medical, psychiatric or psychological examinations attended, or reports required, under subsection 105(1) on or after the date of commencement of those items; and

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(b) all legal proceedings, applications for review of decisions, or determinations, to the extent that the proceedings, applications or determinations relate to, or involve, a medical, psychiatric or psychological examination referred to in paragraph (a).

(3) In this clause:

amending Act means the *Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Act 1997*.

103 Application provision: income maintenance periods

(1) This Act, as amended by Part 1 of Schedule 7 to the amending Act, applies in relation to leave payments that are received on or after 20 September 1997.

(2) For the purposes of this section, a person (the ***first person***) is taken to receive a leave payment if the payment is made to another person:

(a) at the direction of the first person or a court; or

(b) on behalf of the first person; or

(c) for the benefit of the first person; or

the first person waives or assigns the first person's right to receive the payment.

(3) In this section:

amending Act means the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996.*

leave payment includes payments in respect of sick leave, annual leave, maternity leave, and long service leave.

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105 Application and saving provisions: debts due to the Commonwealth and their recovery

(1) For the avoidance of doubt, and without affecting the operation of section 8 of the *Acts Interpretation Act 1901*, Part 2 of Schedule 18 to the amending Act does not:

(a) affect the operation of Part 5.2 or 5.3 of this Act before 1 October 1997; or

(b) extinguish the amount of any debt due to the Commonwealth arising before 1 October 1997 that was outstanding at the start of that day; or

(c) prevent the recovery, on or after 1 October 1997, of any such outstanding amount.

(2) Sections 1230C and 1236 of this Act, as amended by the amending Act, apply in relation to:

(a) debts arising on or after 1 October 1997; and

(b) the amounts of debts arising before that day that were outstanding at the start of that day.

(3) Section 1237A of this Act, as amended by the amending Act, applies in relation to debts arising before, on or after 1 October 1997.

(4) Despite section 8 of the *Acts Interpretation Act 1901*, if a legal proceeding or an application for review of a decision:

(a) relates to, or otherwise involves, a provision of Part 5.2, 5.3 or 5.4 of this Act; and

(b) is not finally determined before 1 October 1997;

the proceeding or application must, if continued, be determined as if it had been instituted on that day, and this Act, as amended by Schedule 18 to the amending Act, applies to the proceeding or application accordingly.

(5) In this clause:

amending Act means the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*.

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105A Parenting payment (changes introduced 20 March 1998)

Continuing effect of determinations etc. in force or effective before 20 March 1998

(1) If a determination, notice, statement or other instrument relating to sole parent pension or to parenting allowance was in force or had effect immediately before 20 March 1998, it continues in force on and after that date as if it had been made or given under this Act in relation to parenting payment.

Pending claims for sole parent pension or parenting allowance

(2) If:

(a) a person lodged a claim for sole parent pension or parenting allowance under this Act before 20 March 1998; and

(b) the claim was not determined before that date;

the claim has effect on and after that date as if it were a claim for parenting payment.

Claims made on or after 20 March 1998 in respect of periods before 20 March 1998—sole parent pension and parenting allowance

(3) If:

(a) a person lodges a claim for sole parent pension or parenting allowance on or after 20 March 1998; and

(b) the claim is made in respect of a period commencing before 20 March 1998;

the claim has effect as if it had been made immediately before 20 March 1998.

Claims made on or after 20 March 1998 in respect of periods before 20 March 1998—parenting payment

(4) If:

(a) a person lodges a claim for parenting payment on or after 20 March 1998; and

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(b) the claim is made in respect of a period commencing before 20 March 1998;

the claim has effect:

(c) as if it had been made immediately before 20 March 1998; and

(d) in the case of a person who was not a member of a couple at the beginning of the period in respect of which the claim is made—as if it were a claim for sole parent pension; and

(e) in the case of a person who was a member of a couple at the beginning of the period in respect of which the claim is made—as if it were a claim for parenting allowance.

Sole parent pension bereavement payment in respect of death of child

(5) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision A of Division 9 of Part 2.6; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.6 and 3.4 as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person.

Sole parent pension bereavement payment in respect of death of pensioner partner

(6) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision B of Division 9 of Part 2.6; and

(b) the period for which the person was qualified had not yet ended;

then:

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(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.6 and 3.2 as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person; and

(e) on the day after the end of the period referred to in paragraph (b), the person is taken to have made a claim for parenting payment.

Parenting allowance bereavement payment in respect of death of child

(7) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision B of Division 10 of Part 2.18; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.18 and 3.6A as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person.

Parenting allowance bereavement payment in respect of death of partner

(8) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision D or E of Division 10 of Part 2.18; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.18 and 3.6A as in force immediately before that date were still in force; and

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(d) subclause (1) (dealing with the continuing effect of determinations) does not apply to the person; and

(e) on the day after the end of the period referred to in paragraph (b), the person is taken to have made a claim for parenting payment.

Pending application for advance payment of sole parent pension

(9) If:

(a) a person lodged an application for an advance payment of sole parent pension under Part 2.22 before 20 March 1998; and

(b) the application was not determined before that date;

the application is taken, on and after that date, to be an application for an advance payment of pension PP (single).

Saving of certain SPP children

(10) If:

(a) sole parent pension was payable to a person who was not in Australia immediately before 20 March 1998 in relation to an SPP child; and

(b) parenting payment would, but for the operation of section 500F, 500G or 500H, be payable to the person on that date in relation to that child;

those sections do not apply to the person in relation to that child until one of the following events occurs:

(c) the child ceases to be a PP child of the person because of the operation of a provision other than section 500F, 500G or 500H;

(d) parenting payment ceases to be payable to the person;

(e) the person becomes a member of a couple;

(f) if the person was not an Australian resident on 20 March 1998—the person becomes an Australian resident;

(g) if the person was an Australian resident on 20 March 1998—the person returns to Australia.

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Application: income maintenance period rules

(11) The following provisions (dealing with income maintenance periods in relation to continuing employment) as in force on 20 March 1998 apply to a person in respect of a leave period commencing on or after 20 March 1998:

(a) point 1067-H5G;

(b) point 1067E-G6G;

(c) point 1068-G7AG.

(12) Subject to subclause (13), point 1068A-E4 (dealing with income maintenance periods in relation to terminated employment) as in force on 20 March 1998 applies to a person in respect of any leave payment received by the person on or after 20 March 1998.

(13) If:

(a) a determination applying an income maintenance period in relation to a person's claim for, or payment of, parenting allowance, a social security benefit or youth training allowance was in force on or after 20 September 1997; and

(b) pension PP (single) is payable to the person on or after 20 March 1998;

point 1068A-E4 applies to the person in respect of any leave payment received by the person on or after 20 September 1997.

Saving of certain recipients of sole parent pension and parenting allowance

(14) If:

(a) sole parent pension or parenting allowance was payable to a person immediately before 20 March 1998; and

(b) on 20 March 1998 the person would not, apart from this subclause, qualify for parenting payment because the person does not satisfy the requirements of paragraph 500(1)(d);

the person is taken, on and after 20 March 1998, to satisfy the requirements of paragraph 500(1)(d) until:

(c) parenting payment ceases to be payable to the person; or

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(d) the person satisfies the requirements of paragraph 500(1)(d) otherwise than by reason of this subclause.

Saving of certain other recipients of sole parent pension

(15) If:

(a) sole parent pension was payable to a person who was not in Australia immediately before 20 March 1998; and

(b) on or after 20 March 1998, the person would not, apart from this subclause, qualify for parenting payment because the person does not satisfy the requirements of either or both of paragraphs 500(1)(b) and (c);

the person is taken, on and after 20 March 1998, to satisfy the requirements of both those paragraphs until:

(c) parenting payment ceases to be payable to the person; or

(d) the person becomes a member of a couple; or

(e) if the person was not an Australian resident on 20 March 1998—the person becomes an Australian resident; or

(f) if the person was an Australian resident on 20 March 1998—the person returns to Australia.

(16) In relation to a person who is receiving parenting payment because of the application of subclause (15) and Part 4.2 of this Act, as in force immediately before 20 March 1998, apply to the person on and after 20 March 1998. These provisions apply to the person as if references to sole parent pension were references to pension PP (single).

Saving of persons receiving sole parent pension under scheduled international social security agreement

(17) If:

(a) a sole parent pension was payable to a person immediately before 20 March 1998 under a scheduled international social security agreement; and

(b) the person is not a member of a couple; and

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(c) on 20 March 1998, the person would qualify for parenting payment but for the operation of any of the following:

(i) paragraph 500(1)(b) or (c);

(ii) subparagraph 500(1)(d)(ii) to the extent it requires a person to have been in Australia for the period specified in that subparagraph;

(iii) section 500F, 500G or 500H;

then, on and after 20 March 1998:

(d) the provisions referred to in paragraph (c) do not apply to the person; and

(e) if parenting payment is payable to the person, it is taken to be payable to the person under the scheduled international social security agreement.

(18) Subclause (17) applies to a person until:

(a) parenting payment ceases to be payable to the person; or

(b) the person satisfies the provisions referred to in paragraph (17)(c).

115 Persons under 21 receiving newstart allowance or sickness allowance on 17 June 1997

(1) If:

(a) a person was, on 17 June 1997, under 21 years of age and a recipient of newstart allowance or sickness allowance; and

(b) the person did not cease to be, and was immediately before 1 July 1998, a recipient of newstart allowance or sickness allowance; and

(c) the person was, immediately before 1 July 1998, under 21 years of age;

then:

(e) the person is to continue to receive the newstart allowance or sickness allowance on and after that day; and

(f) subject to subclauses (2) and (3), Part 2.12 or 2.14 (as the case may be) as in force immediately before that day continues to apply to the person.

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(2) If, on or after 1 July 1998, the Secretary cancels or suspends:

(a) a person's newstart allowance under section 660I or 660IA; or

(b) a person's sickness allowance under section 728L or 728M;

a determination by the Secretary under section 660J or 728P (as the case may be) that the allowance is payable to the person does not have effect unless the determination is made within 6 weeks after the Secretary's decision to cancel or suspend the allowance.

(3) Newstart allowance or sickness allowance ceases to be payable to a person who has been receiving it because of subclause (1) if the person makes a claim for youth allowance and the claim is granted.

126 Application and transitional provisions relating to fares allowance

(1) Part 2.26 applies only in respect of claims for fares allowance made after the commencement of that Part for journeys made after that commencement.

(2) The *Social Security (Fares Allowance) Rules 1998* made under section 1061ZAAA as in force immediately before the commencement of Part 2.26 continue in force as if that section were still in force but apply only in respect of claims made, whether before or after that commencement, for journeys made before that commencement.

(3) If:

(a) a person has, before the commencement of Part 2.26, made a journey in a study year; and

(b) the person is eligible, under the Rules referred to in subclause (2), as they continue in force under that subclause (the ***continuing Rules***) for fares allowance in respect of the journey; and

(c) the person makes a claim under Part 2.26 for fares allowance in respect of a journey made, or to be made, after the commencement of that Part in the same study year;

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the claim is not to be determined until the person has made a claim under the continuing Rules in respect of the journey referred to in paragraph (a) and the claim has been finally dealt with in accordance with those Rules.

128 Saving provision—portability rules relating to rates of pension

(1) Despite the amendments of sections 1213A, 1215, 1216, 1220A, 1220B and 1221 of this Act made by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, if:

(a) a person was absent from Australia immediately before 20 September 2000; and

(b) at a time (the ***post-start time***) after 20 September 2000, the person had not returned to Australia for a continuous period of 26 weeks or more since 20 September 2000;

those provisions continue to apply to the person at the post-start time as if those amendments had not been made.

(1A) If:

(a) the Secretary is satisfied that the person's return to Australia is temporary; and

(b) the Secretary is satisfied that the person is unable to leave Australia before the end of the 26 weeks mentioned in paragraph (1)(b) because of an event referred to in subclause (1B);

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(b) is taken to be a reference to another number of weeks.

(1B) The events are the following:

(a) a serious accident involving the person or a family member of the person;

(b) a serious illness of the person or a family member of the person;

(c) the hospitalisation of the person or a family member of the person;

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(d) the death of a family member of the person;
(e) the person's involvement in custody proceedings in Australia;
(f) a legal requirement for the person to remain in Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
(g) robbery or serious crime committed against the person or a family member of the person;
(h) a natural disaster in Australia;
(i) a public health crisis affecting Australia or the country to which the person intends to return to or both.

(1C) The Secretary must not make a determination under subclause (1A) unless the event occurred or began during the period of return to Australia.

(1D) If the Secretary determines another number (the ***new number***) of weeks under subclause (1A), then, immediately after that determination is made, a reference to a number of weeks in paragraph (1)(b), and each reference to a number of weeks in subclause (1A), is taken to be a reference to that new number.

(2) However, the following provisions (as in force as if the amendments described in subclause (1) had not been made) do not continue to apply to the person at or after the first time the person is in Australia after the commencement of Schedule 6 to the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003*:
(a) section 1213A;
(b) section 1215;
(c) section 1216;
(d) section 1220B, so far as it relates to a pension other than age pension or bereavement allowance.

Note: If those provisions (as in force as if the amendments described in subclause (1) had not been made) do not continue to apply to the person at a particular time, the person is covered at that time by this Act as in force at that time.

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(3) To avoid doubt, Schedule 6 to the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003* does not affect section 1220B (as in force as if the amendments described in subclause (1) had not been made) so far as that section continues to apply because of that subclause.

128A Saving of certain pensions payable under 1986 Agreement between Australia and Italy

(1) In this clause:

1986 Agreement means the agreement made between the Government of Australia and the Government of the Republic of Italy on 23 April 1986.

(2) This subclause applies to a person if:
- (a) the person has become qualified to receive a disability support pension because of the 1986 Agreement; and
- (b) the person became qualified to receive the pension because he or she became unable to work or became permanently blind, as the case may be, while he or she was in Australia or was temporarily absent from Australia.

(3) Subject to subclause (4), this subclause applies to a person if:
- (a) on 8 May 1985, the person was either:
  - (i) an Australian resident; or
  - (ii) an absent resident within the meaning of the 1986 Agreement; and
- (b) the person left Australia before 1 January 1996; and
- (c) while absent from Australia, the person became eligible to receive a social security payment by virtue of the 1986 Agreement; and
- (d) the person commenced to receive that social security payment before 1 January 1996; and

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(e) immediately before 1 October 2000, the rate at which that social security payment was payable was worked out under subparagraph 1(b) of Article 8 of the 1986 Agreement; and

(f) the person has not returned to Australia on or after 1 October 2000 for a continuous period of 26 weeks.

(4) Subclause (3) ceases to apply to a person if the rate at which the social security payment would be payable to the person apart from this clause exceeds the rate at which the social security payment is payable to the person as a person to whom subclause (3) applies.

(5) In spite of any other provision of the social security law relating to the rate at which a disability support pension is payable, the rate at which such a pension is payable to a person to whom subclause (2) applies is the rate at which the pension would be payable to the person if:

(a) the person were an Australian resident; and

(b) the person were not entitled to have included in the rate of the pension:

(i) any amount representing:

(A) pharmaceutical allowance; or

(B) remote area allowance; or

(C) rent assistance; or

(ii) any amount similar to the amounts referred to in subparagraph (i).

(6) In spite of any other provision of the social security law relating to the rate at which a social security payment is payable, the rate at which such a payment is payable to a person to whom subclause (3) applies is the rate worked out according to subparagraph 1(b) of Article 8 of the 1986 Agreement.

130 Saving provision—other portability rules

Despite the amendments of this Act made by Part 1 of Schedule 1 to the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, other than:

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(a) the amendments mentioned in clause 128 of this Schedule; and

(b) the amendments of sections 1216B, 1218, 1218A, 1218B, 1218C and 1219; and

(c) the amendment of Module A of the Rate Calculator at the end of section 1221;

if:

(d) a person was absent from Australia immediately before 20 September 2000; and

(e) at a time (the ***post-start time***) after 20 September 2000, the person had not returned to Australia since 20 September 2000;

this Act continues to apply to the person at the post-start time as if the amendments (other than those mentioned in paragraphs (a) to (c)) had not been made.

131 Certain payments not recoverable

An amount paid to a person under this Act is not recoverable from the person if:

(a) the amount was not payable because the person, or the person's partner, had received a comparable foreign payment; and

(b) during the period beginning on 20 September 2000 and ending on 19 January 2001, the person gave notice to the Secretary of any comparable foreign payment which he or she had received or was receiving; and

(c) the amount was paid before the person gave notice as mentioned in paragraph (b); and

(d) before receiving that notice, the Secretary was unaware that the person, or the person's partner, had received or was receiving the comparable foreign payment.

132 Saving—ABSTUDY recipients

(1) If, immediately before 1 January 2001, a person was receiving:

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(a) a relevant pension; and
(b) a payment under a provision of the ABSTUDY Scheme made on the basis that the person was a full-time student;

this clause applies to the person.

(2) In spite of the amendments of this Act made by Schedule 1 to the *Family and Community Services (2000 Budget and Related Measures) Act 2000*:

(a) the person does not cease to be qualified for the relevant pension by reason only of those amendments; and
(b) if the person continues, on and after 1 January 2001, to receive the same payment under the ABSTUDY Scheme, that payment (except where it is a payment of a pensioner education supplement) is to be taken, for the purposes of this Act, to be income paid to, or on behalf of, the person.

(3) In this clause:

relevant pension means:

(a) age pension; or
(b) bereavement allowance; or
(c) carer payment; or
(d) disability support pension; or
(e) pension PP (single); or
(f) widow B pension; or
(g) wife pension.

133 Meaning of *Australian resident*

For the purposes of determining whether a person was an Australian resident at a time, or throughout a period, occurring before the commencement of item 2 of Schedule 1 to the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*:

(a) the definition of ***Australian resident*** at that time, or throughout that period, applies; and

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(b) that definition, as amended by the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*, does not apply.

134 Transitional and saving provisions—substitution of Part 3.14

(1) In this clause:

2001 amending Act means the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*.

new Act means this Act, as amended by the 2001 amending Act.

old Act means this Act, as in force immediately before 20 September 2001.

old lump sum preclusion period has the same meaning as in the old Act.

(2) Part 3.14 of the new Act has effect subject to this clause.

(3) Subject to subclause (9), if:

(a) before 20 September 2001, because of the operation of subsection 1165(1A) or (2AA) of the old Act, a social security payment had ceased to be payable to a person for a period; and

(b) if the provisions of the old Act had continued in force on and after 20 September 2001, the payment would not have become payable again until a time on or after that date;

then, on and after 20 September 2001, the new Act has effect as if:

(c) the new Act had been in operation when the social security payment ceased to be payable for the period; and

(d) the social security payment had so ceased because of the operation of subsection 1169(1) of the new Act.

(4) Subject to subclause (9), if:

(a) before 20 September 2001, because of the operation of a provision of the old Act specified in the table in

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subclause (8), the rate at which a social security payment was payable to a person was reduced for a period; and

(b) if the provisions of the old Act had continued in force on and after 20 September 2001, the payment would have continued to be payable at the reduced rate until a time on or after that date;

then, on and after 20 September 2001, the new Act has effect as if:

(c) the new Act had been in operation when the social security payment became payable at the reduced rate; and

(d) the social security payment had become so payable because of the operation of the corresponding provision of the new Act.

(5) If a notice to which this subclause applies was in effect immediately before 20 September 2001, the new Act has effect, on and after 20 September 2001, as if:

(a) the new Act had been in operation when the notice was given; and

(b) the notice had been given under the provision of the new Act that corresponds to the provision of the old Act under which the notice was given.

(6) Subclause (5) applies to the following notices:

(a) a notice under subsection 1166(1) of the old Act in relation to a recoverable amount calculated under subsection 1166(3), (4) or (4C) of that Act;

(b) a notice under subsection 1170(1) of the old Act in relation to a recoverable amount calculated under subsection 1170(3) or (4) of that Act;

(c) a notice under subsection 1172(1) of the old Act;

(d) a notice under subsection 1174(1) of the old Act in relation to a recoverable amount calculated under subsection 1174(6) of that Act;

(e) a notice under subsection 1177(1) of the old Act;

(f) a notice under subsection 1179(1) of the old Act in relation to a recoverable amount calculated under subsection 1179(6) of that Act.

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(7) If:

(a) before 20 September 2001, a person applied, under section 129, 142 or 179 of the Administration Act, for review of a decision made as a result of the operation of a provision of the old Act specified in column 2 of an item in the table in subclause (8); and

(b) the review was not determined before 20 September 2001;

then, on and after 20 September 2001, the review is to be determined in accordance with this Act, as in force when the decision was made.

(8) The provision of the new Act that corresponds, for the purposes of this clause, to the provision of the old Act specified in column 2 of an item of the following table is the provision specified in column 3 of the item.

Corresponding provisions

Column 1 Item	Column 2 Old Act provision	Column 3 Corresponding new Act provision
1	Subsection 1165(1A)	Subsection 1169(1)
2	Subsection 1165(2AA)	Subsection 1169(1)
3	Subsection 1166(1)	Subsection 1178(1)
4	Subsection 1168(1) (except to the extent that it operated in relation to a person's social security payment where the person's partner, but not the person, had received compensation)	Subsection 1173(1)
5	Subsection 1170(1)	Subsection 1180(1)
6	Subsection 1172(1)	Subsection 1182(1)
7	Subsection 1174(1)	Subsection 1184(1)
8	Subsection 1177(1)	Subsection 1182(2)

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Clause 134

Corresponding provisions

Column 1 Item	Column 2 Old Act provision	Column 3 Corresponding new Act provision
9	Subsection 1179(1)	Subsection 1184(2)
10	Section 1184	Section 1184K

(9) On and after 20 September 2001:

(a) the new Act has effect as if:

(i) it included provisions in the same terms as subsection 17(1) of the old Act to the extent that it defines ***average weekly earnings*** and subsections 1165(1) and (2), 1166(4A), 1174(4) and (5), and 1179(4) and (5) of the old Act; and

(ii) section 1169 of the new Act did not apply where the lump sum compensation payment was received before 20 March 1997; and

(b) for the purposes of the operation of paragraph (a), ***old lump sum preclusion period*** is taken to have the same meaning in the new Act as in the old Act; and

(c) for the purposes of the operation of paragraph (a), the lump sum preclusion period, for the purposes of the new Act, is the period that corresponds to the old lump sum preclusion period.

(10) If:

(a) a person received compensation before 1 January 1993; and

(b) the person's partner (the ***partner***) claimed or received carer pension before that date because the partner was caring for the person;

this Act, as it applied in relation to carer payment being received by the partner immediately before 20 September 2001, continues to apply in relation to carer payment received by the partner before, on or after 20 September 2001 because the partner was or is caring for the person.

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(11) If:

(a) before 20 September 2001, a person was given a notice under Subdivision B of Division 6 of Part 3, or Division 1 of Part 5, of the Administration Act; and

(b) the notice required the person:

(i) to inform the Department whether a specified event or change of circumstances had occurred; or

(ii) to give the Department a statement about a matter; or

(iii) to give information or produce a document; and

(c) the notice required the information or statement to be given within a specified period; and

(d) the person has failed to comply with the requirement of the notice;

any determination made under the Administration Act on or after 20 September 2001 as a result of the occurrence of an event or change of circumstances, or in connection with a matter, to which the notice related must be made in accordance with this Act as in force immediately before the end of the period referred to in paragraph (c).

135 Unlimited maximum portability period for disability support pension

(1) The Secretary may determine that a person's maximum portability period for disability support pension is an unlimited period if:

(a) at the commencement of this clause, the person is absent from Australia and receiving disability support pension; and

(b) under this Act as in force immediately before the commencement, that absence could not affect the person's right to continue to be paid the disability support pension throughout the period of that absence; and

(c) after the commencement, the person enters Australia but does not become an Australian resident again.

Note: The condition in paragraph (1)(b) may be met:

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(a) because the person was severely disabled (see subsection 1214(1) and item 2 of the table in subsection 1217(5) as those subsections were in force just before the commencement); or

(b) because clause 128 (as in force just before the commencement) applied to the person section 1213A as in force before its repeal by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*.

(2) The determination has effect for the purposes of Part 4.2 of this Act as it applies in relation to an absence after the person's entry, despite the repeal and substitution of items 2 and 3 of the table in section 1217 of this Act by the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003*.

136 Transitional definition of *deductible amount* (commencing 1 July 2007)

(1) This clause applies if:

(a) a person has received at least one payment from a defined benefit income stream before 1 July 2007, and is still receiving payments from the income stream; and

(b) the person receives income support payment in respect of a continuous period starting before, and ending on or after, the person's trigger day (see subsection (5)); and

(c) the amount of the income support payment received before the person's trigger day was affected by the deduction of a deductible amount (within the meaning of this Act or the Veterans' Entitlements Act, as the case requires, apart from this clause) from the amount of the payments payable to the person for a year under the income stream; and

(d) if the person's trigger day is after 1 July 2007—the income stream has not been partially commuted on or after 1 July 2007 and before the person's trigger day.

Note 1: If the income stream is wholly commuted, this clause will stop applying because the person will no longer be receiving payments from the income stream (see paragraphs (1)(a) and (d)).

Note 2: For the deduction of a deductible amount from amounts payable under certain defined benefit income streams, see sections 1099A and

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1099D of this Act and sections 46V and 46Y of the Veterans' Entitlements Act.

(2) Despite the amendment of this Act by Part 2 of Schedule 8 to the *Tax Laws Amendment (Simplified Superannuation) Act 2007*, for the purposes of working out the amount of any income support payment (other than a service pension or income support supplement) received by the person on or after the trigger day in respect of the remaining part of the period mentioned in paragraph (1)(b), the ***deductible amount***, in relation to the income stream for a year, is the greater of the following amounts:

(a) the deductible amount mentioned in paragraph (1)(c);

(b) the sum of the amounts that are the tax free components (worked out under subsections 307-125(4) to (7) of the *Income Tax (Transitional Provisions) Act 1997*) of the payments received from the income stream during the year.

(3) However, this clause stops applying to an income stream immediately after the time (if any) that the deductible amount in relation to the income stream is, under subclause (2), the amount mentioned in paragraph (2)(b).

(3A) If:

(a) this clause applies; and

(b) an amount (the ***transitional amount***) is worked out under subclause (2) in relation to a defined benefit income stream for a year starting on or after 1 January 2016; and

(c) that income stream is not a military defined benefit income stream; and

(d) that amount is worked out in relation to the operation of section 1099A or 1099D;

then, for the purposes of the operation of paragraph 1099A(2)(b) or 1099D(2)(b), the transitional amount is taken to be the deductible amount under subsection 1099A(1) or 1099D(1) in relation to that income stream for that year.

Note: The effect of this subclause is that the cap on the deductible amount under subsection 1099A(2) or 1099D(2) might apply.

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(4) For the purposes of this clause, without limiting paragraph (1)(b), if the form of a person's income support payment mentioned in paragraph (1)(b) changes during a period, the continuity of the period is not broken by the change.

Example: The form of a person's income support payment may change from one kind of payment (for instance, a service pension under the Veterans' Entitlements Act) to another (for instance, a social security pension under this Act).

(5) In this clause:

trigger day, for a person, means:

(a) if the person is under 60 years at the end of 30 June 2007—the day the person turns 60; or

(b) if the person is 60 years or over at the end of 30 June 2007—1 July 2007.

137 Application—general

Subject to clauses 138 and 140, the amendments made by items 1 to 16 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009* apply to claims for a carer payment made on or after the commencement of this clause.

138 Application—subsections 198AA(1) and (3)

Subsections 198AA(1) and (3) of this Act as amended by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009* apply to a person who:

(a) is receiving a carer payment immediately before 1 July 2009; or

(b) makes a claim for a carer payment on or after 1 July 2009.

139 Application—subsection 955(2)

Subsection 955(2) of this Act as amended by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009* applies to a person who:

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(a) is receiving carer allowance immediately before 1 July 2009; or

(b) makes a claim for a carer allowance on or after 1 July 2009.

139A Application—general

(1) Subject to clauses 139B and 141, the amendments made by items 1 to 68 and 76 to 77 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* apply to claims for a carer payment made on or after the commencement of this clause.

(2) Subject to clauses 139C and 143, the amendments made by items 69 to 75 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* apply to claims for special benefit made on or after the commencement of this clause.

139B Application—sections 198AAA and 198AB

The amendments made by items 9 and 10 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* apply to a person who:

(a) is receiving a carer payment immediately before 1 July 2009; or

(b) makes a claim for a carer payment on or after 1 July 2009.

139C Application—subsections 731J(2) and (6)

(1) Subsection 731J(2) of this Act as amended by Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* applies to a person who:

(a) is taken to satisfy the activity test under subsection 731J(1) of this Act immediately before 1 July 2009; or

(b) makes a claim for special benefit on or after 1 July 2009.

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(2) Subsection 731J(6) of this Act as amended by Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* applies to a person who:

(a) is taken to satisfy the activity test under subsection 731J(4) of this Act immediately before 1 July 2009; or

(b) makes a claim for special benefit on or after 1 July 2009.

139D Saving—principal beneficiary of a special disability trust

Despite the amendment made by item 79 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009*, this Act as in force immediately before the commencement of this clause continues to apply to a person who was a principal beneficiary (within the meaning of section 1209M of this Act) under 16 years of age immediately before that time.

140 Person whose carer payment was cancelled on or after 1 July 2008 and before 1 July 2010

Circumstances in which clause applies

(1) This clause applies if:

(a) a person (the ***carer***) received or receives a carer payment on or after 1 July 2008 for caring for one or more persons aged under 16; and

(b) the carer was or is qualified for the payment under paragraph 198(2)(b) or (c) of this Act (whether or not because of clause 141); and

(c) the payment was cancelled:

(i) with effect before the commencement of this clause; or

(ii) with effect on or after that commencement and before 1 July 2010; and

(d) on or after 1 July 2009 and before 1 July 2010, the carer makes a claim for a carer payment for caring for the same person or persons aged under 16.

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Claim may be assessed as if paragraphs 198(2)(b) and (c) had not been repealed

(2) In addition to being assessed against this Act as in force after the commencement of this clause, the carer's claim may be assessed as if paragraphs 198(2)(b) and (c) of this Act had not been repealed.

Note: The effect of subclause (2) is that the person may qualify for a carer payment under paragraph 198(2)(b) or (c) or section 197B, 197C or 197E.

(3) Subject to clause 141, if, because of subclause (2), the person is qualified for a carer payment under paragraph 198(2)(b) or (c) of this Act, this Act (as in force immediately before 1 July 2009) applies in relation to the person.

141 Saving—profoundly disabled child and disabled child

Profoundly disabled child and disabled child

(1) Subject to this clause, if a person was receiving a carer payment immediately before 1 July 2009 because the person was qualified for that payment under paragraph 198(2)(b) or (c) of this Act, this Act (as in force immediately before that time) continues to apply in relation to the person.

Remaining qualified for up to 3 months after child turns 16

(2) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009*, paragraph 197K(1)(a) of this Act applies to a person as if that paragraph included a reference to a person:

(a) who was qualified for a carer payment under either of the repealed paragraphs; and

(b) who:

(i) remains qualified for a carer payment because of subclause (1); or

(ii) becomes qualified for a carer payment because of subclause 140(3).

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Unlimited hospitalisation

(3) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009*, subsection 198AA(1) of this Act applies to a person as if that subsection included a reference to a person:
  (a) who was qualified for a carer payment under either of the repealed paragraphs; and
  (b) who:
    (i) remains qualified for a carer payment because of subclause (1); or
    (ii) becomes qualified for a carer payment because of subclause 140(3).

Automatic qualification for carer allowance

(4) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009*, section 954B of this Act applies to a person as if paragraph 954B(a) included a reference to a person:
  (a) who was qualified for a carer payment under either of the repealed paragraphs; and
  (b) who:
    (i) remains qualified for a carer payment because of subclause (1); or
    (ii) becomes qualified for a carer payment because of subclause 140(3).

142 Person whose special benefit was cancelled on or after 1 July 2008 and before 1 July 2010

Circumstances in which clause applies

(1) This clause applies if:
  (a) a person received or receives special benefit on or after 1 July 2008; and

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(b) while the person received or receives special benefit, the person was or is taken to satisfy the activity test under subsection 731J(1) of this Act because the person was or is caring for a child or children referred to in paragraph 198(2)(b) or (c) of this Act (whether or not because of clause 143); and

(c) the special benefit was cancelled:

(i) with effect before the commencement of this clause; or

(ii) with effect on or after that commencement and before 1 July 2010; and

(d) on or after 1 July 2009 and before 1 July 2010, the carer makes a claim for special benefit; and

(e) the person is caring for the same child or children aged under 16.

Claim may be assessed as if paragraphs 198(2)(b) and (c) had not been repealed

(2) In addition to being assessed against this Act as in force after the commencement of this clause, the person's claim may be assessed as if paragraphs 198(2)(b) and (c) of this Act had not been repealed.

Note: The effect of subclause (2) is that the person may be taken to satisfy the activity test under section 731HA, 731HB or 731J of this Act because the person is caring for the child or children.

(3) Subject to clause 143, if, because of subclause (2), the person is taken to satisfy the activity test under section 731J of this Act because the person is caring for the child or children, this Act (as in force immediately before 1 July 2009) applies in relation to the person.

143 Saving—profoundly disabled child and disabled child

Profoundly disabled child and disabled child

(1) Subject to this clause, if, immediately before 1 July 2009, a person was taken, under section 731J of this Act, to satisfy the activity test

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because the person met the qualification conditions for a carer payment for caring for a child or children referred to in paragraph 198(2)(b) or (c) of this Act, this Act (as in force immediately before that time) continues to apply in relation to the person.

Taken to satisfy the activity test for up to 3 months after child turns 16

(2) If:

(a) either:

(i) a person continues to be taken to satisfy the activity test in section 731J of this Act because of subclause (1) for caring for a child or children; or

(ii) a person starts to become taken to satisfy the activity test because of subclause 142(3) for caring for a child or children; and

(b) the child, or one of the children, turns 16; and

(c) the child has not been assessed and rated and given a score under the Adult Disability Assessment Tool; and

(d) apart from the child turning 16, the person would remain taken to satisfy the activity test;

the person continues to be taken to satisfy the activity test for 3 months after the child turns 16.

Unlimited hospitalisation—profoundly disabled child or disabled child

(3) Subsection 731J(2) of this Act as amended by Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* applies to a person who:

(a) continues to be taken to satisfy the activity test in section 731J of this Act because of subclause (1) for caring for a child or children; or

(b) starts to become taken to satisfy the activity test because of subclause 142(3) for caring for a child or children.

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144 Saving and transitional provisions for section 93H

Saving provision

(1) Section 93H, as in force before 20 September 2009, continues to apply to set a person's annual pension rate for the purposes of Division 6 of Part 2.2A if the start day for the age pension was before 20 September 2009.

Indexation of subsection 93H(4) amounts on 20 September 2009

(2) Part 3.16, as amended by Part 3 of Schedule 1 to the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009*, applies to the indexation on 20 September 2009, and later indexation days, of the amounts in subsection 93H(4).

145 Saving provision for income test taper rate for disability support pensioners under 21 without dependent children

(1) Point 1066A-F9, as in force before 20 September 2009, continues to apply to working out a person's rate of disability support pension under Pension Rate Calculator D in section 1066A if:

(a) the person was receiving disability support pension immediately before that day at a rate worked out under that Calculator; and

(b) the rate was worked out taking account of an ordinary income excess under point 1066A-F10 that was more than nil.

Note: This clause is relevant only if Pension Rate Calculator D in section 1066A continues to apply to working out the person's rate of disability support pension.

(2) Subclause (1) ceases to apply, and does not apply ever again, in relation to the person if:

(a) the person's rate of disability support pension under Pension Rate Calculator D in section 1066A for a day on or after 20 September 2009 is worked out taking account of an

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ordinary income excess under point 1066A-F10 that is nil or less; or

(b) Pension Rate Calculator D in section 1066A ceases to apply for working out the person's rate of disability support pension for a day on or after 20 September 2009; or

(c) the person ceases to receive disability support pension on or after 20 September 2009.

146 Transitional provision for rates of certain social security pensions on and after 20 September 2009

Application

(1) This clause applies if:

(a) on 19 September 2009 a person was receiving one of the following payments:

(i) age pension;

(ii) disability support pension;

(iv) carer payment;

(vii) special needs pension;

(viii) service pension (except carer service pension);

(ix) income support supplement; and

(b) either:

(i) the person continues (without a break) to receive one of those payments (whether or not of the same sort as the one the person received on that day); or

(ii) subclause (1A) applies to the person.

(1A) This subclause applies to a person if:

(a) a payment by the Thalidomide Australia Fixed Trust:

(i) is made to, or applied for the benefit of, the person as a beneficiary of the Trust; or

(ii) is made to, or applied for the benefit of, the person's partner as a beneficiary of the Trust; or

(iii) is made to the person or the person's partner in respect of a beneficiary of the Trust; and

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(b) subparagraph (1)(b)(i) applies to the person immediately before the payment is made; and

(c) the person receives any of the payments mentioned in paragraph (1)(a) at the commencement of item 4 of Schedule 4 to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Election Commitments and Other Measures) Act 2011*; and

(d) after that commencement, the person continues (without a break) to receive that payment, or any of the other payments referred to in paragraph (1)(a).

Purpose

(2) This clause has effect for the purposes of working out the rate of one of the social security pensions described in paragraph (1)(a) for the person for a day (the ***relevant day***) after 19 September 2009 under point 1064-A1 or 1065-A1, or under section 796 so far as one or more of those points are relevant because of that section.

Note: This clause does not make a person entitled to receive a social security pension if the person is not otherwise entitled to receive it.

Provisional annual payment rate

(3) The person's provisional annual payment rate is taken to be the amount worked out under subclause (4) if $^{1}/_{364}$ of that amount is greater than $^{1}/_{364}$ of the person's provisional annual payment rate apart from this clause.

Note: The provisional annual payment rate is an amount worked out under the method statement in point 1064-A1. Point 1064-A1 may be relevant of its own force or because of point 1065-A1 or section 796.

(4) The amount is the one that would be the provisional annual payment rate under the relevant point if:

(a) the maximum payment rate for the person were the total of:

(i) the amount worked out under whichever of subclauses 147(1), (2), (3) and (4) is relevant to the person; and

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(ia) the person's energy supplement (if any) (see subclause 149(5)); and

(ii) the amount (if any) per year calculated for the person under paragraph 1070A(b) (for rent assistance);

reduced, if subclause 147(1) or (2) is relevant to the person and an election by the person under subsection 1061VA(1) is in force, by the minimum pension supplement amount; and

(b) the amendments made by Schedules 6 and 7 to the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been made.

Note 1: The maximum payment rate is an amount used in point 1064-A1.

Note 2: Subclause 147(1) deals with a person in Australia who is not a member of a couple or is a member of an illness separated couple or respite care couple, or is partnered (partner in gaol).

Note 3: Subclause 147(2) deals with a person in Australia who is a member of a couple (but not a member of an illness separated couple or respite care couple, and not partnered (partner in gaol)).

Note 4: Subclause 147(3) deals with a person who has been outside Australia for more than 6 weeks and is not a member of a couple or is a member of an illness separated couple or respite care couple, or is partnered (partner in gaol).

Note 5: Subclause 147(4) deals with a person who has been outside Australia for more than 6 weeks and is a member of a couple (but not a member of an illness separated couple or respite care couple, and not partnered (partner in gaol)).

Note 6: The amount described in subparagraph (4)(a)(i) is indexed under sections 1191 to 1194 (CPI indexation) on and after 20 March 2010.

Limit on application of subclause (3)

(5) Subclause (3) does not apply for working out the rate of a social security pension of the person for the relevant day if the relevant day is after a day for which one of the following conditions was met:

(a) the amount worked out for the day under subclause (4) (in a previous application of this clause) was less than or equal to the person's provisional annual payment rate, apart from this

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clause, for a social security pension described in paragraph (1)(a);

(b) the amount worked out for the day under subclause 30(4) of Schedule 5 to the Veterans' Entitlements Act was less than or equal to the person's provisional payment rate for service pension (except carer service pension) apart from clause 30 of that Schedule;

(c) the amount worked out for the day under subclause 30(6) of Schedule 5 to the Veterans' Entitlements Act was less than or equal to the person's provisional payment rate for income support supplement apart from clause 30 of that Schedule.

(5A) However, subclause (5) does not prevent subclause (3) from applying for working out the rate of a social security pension of the person for the relevant day if:

(a) on the relevant day the person is a member of a couple, but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol); and

(b) on each day for which a condition in paragraph (5)(a), (b) or (c) was met, the person was a member of a respite care couple; and

(c) on a day before all the days described in paragraph (b):

(i) the person was a member of a couple, but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol); and

(ii) either subclause (3) affected the rate at which a social security pension was payable to the person or clause 30 of Schedule 5 to the Veterans' Entitlements Act affected the rate at which service pension or income support supplement was payable to the person.

Note: For ***member of a couple***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

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Clause 147

147 Amounts for subparagraph 146(4)(a)(i)

Single Australian resident in Australia

(1) For the purposes of subparagraph 146(4)(a)(i), work out the amount as follows, if, on the relevant day:

(a) the person's family situation is any of the following:

(i) not a member of a couple;

(ii) member of an illness separated couple;

(iii) member of a respite care couple;

(iv) partnered (partner in gaol); and

(b) the person is residing in Australia; and

(c) the person either:

(i) is in Australia; or

(ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Method statement

Step 1. Work out what each of the following amounts (described using the abbreviation used in Part 3.16 for the amount) would be on 20 September 2009, taking account of indexation (if any) under that Part on that day, if the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been enacted:

(a) the amount that would be the pension MBR for a person who is not a member of a couple assuming that section 1195 did not apply on 20 September 2009;

(b) pension supplement for a person who is not (and was not on 1 July 2000) a member of a couple;

(c) pension PA "single" rate;

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(d) TA (internet) "single" rate;

(e) UA "single" rate.

Step 2. Identify the greater of the amount described in paragraph (e) of step 1 and $525.20 (or either of them if they are the same).

Step 3. Add up all the amounts worked out under step 1 and the amount identified under step 2.

Step 4. If the result of step 3 is not a multiple of $2.60, round that result up to the next multiple of $2.60.

Note 1: For ***member of a couple***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: Subsection 7(3) is relevant to determining whether a person is residing in Australia.

Note 3: Section 1190 explains the abbreviations used in Part 3.16.

Partnered Australian resident in Australia

(2) For the purposes of subparagraph 146(4)(a)(i), work out the amount as follows, if, on the relevant day:

(a) the person is a member of a couple, but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol); and

(b) the person is residing in Australia; and

(c) the person either:

(i) is in Australia; or

(ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Method statement

Step 1. Work out what each of the following amounts (described using the abbreviation used in Part 3.16 for the amount)

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Clause 147

would be on 20 September 2009, taking account of indexation (if any) under that Part on that day, if the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been enacted:

(a) the amount that would be the pension MBR for a person who is a member of a couple (but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol)) assuming that section 1195 did not apply on 20 September 2009;

(b) pension supplement for a person who is (and was on 1 July 2000) a member of a couple (but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol));

(c) Pension PA "partnered" (item 2) rate;

(d) TA (internet) "partnered" (item 5) rate;

(e) half the UA "single" rate.

Step 2. Identify the greater of the amount described in paragraph (e) of step 1 and $262.60 (or either of them if they are the same).

Step 3. Add up all the amounts worked out under step 1 and the amount identified under step 2.

Step 4. If the result of step 3 is not a multiple of $2.60, round that result up to the next multiple of $2.60.

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: Subsection 7(3) is relevant to determining whether a person is residing in Australia.

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Note 3: Section 1190 explains the abbreviations used in Part 3.16.

Single person not covered by subclause (1)

(3) For the purposes of subparagraph 146(4)(a)(i), work out the amount as follows, if, on the relevant day:

(a) the person's family situation is any of the following:

(i) not a member of a couple;

(ii) member of an illness separated couple;

(iii) member of a respite care couple;

(iv) partnered (partner in gaol); and

(b) the person either:

(i) is not residing in Australia; or

(ii) is absent from Australia and has been so for a continuous period exceeding 6 weeks.

Method statement

Step 1. Work out what each of the following amounts (described using the abbreviation used in Part 3.16 for the amount) would be on 20 September 2009, taking account of indexation under that Part on that day, if the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been enacted:

(a) the amount that would be the pension MBR for a person who is not a member of a couple assuming that section 1195 did not apply on 20 September 2009;

(b) pension supplement for a person who is not (and was not on 1 July 2000) a member of a couple.

Step 2. Add up the amounts worked out under step 1.

Note 1: For ***member of a couple***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

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Clause 147

Note 2: Subsection 7(3) is relevant to determining whether a person is residing in Australia.

Note 3: Section 1190 explains the abbreviations used in Part 3.16.

Partnered person not covered by subclause (2)

(4) For the purposes of subparagraph 146(4)(a)(i), work out the amount as follows, if, on the relevant day:

(a) the person is a member of a couple, but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol); and

(b) the person either:

(i) is not residing in Australia; or

(ii) is absent from Australia and has been so for a continuous period exceeding 6 weeks.

Method statement

Step 1. Work out what each of the following amounts (described using the abbreviation used in Part 3.16 for the amount) would be on 20 September 2009, taking account of indexation under that Part on that day, if the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been enacted:

(a) the amount that would be the pension MBR for a person who is a member of a couple (but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol)) assuming that section 1195 did not apply on 20 September 2009;

(b) pension supplement for a person who is (and was on 1 July 2000) a member of a couple (but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol)).

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Step 2.	Add up the amounts worked out under step 1.

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: Subsection 7(3) is relevant to determining whether a person is residing in Australia.

Note 3: Section 1190 explains the abbreviations used in Part 3.16.

148 Rate of social security payments to partners of persons affected by clause 146

(1) This clause applies if clause 146 applies to a person who is a member of a couple and that clause affects the rate at which a social security pension is payable to the person.

(2) In working out the amount of a social security payment payable to a partner of the person, assume that the social security pension payable to the person is payable at the rate at which it would be payable if clause 146 had not been enacted.

149 Payment and income tax consequences of receiving social security pension at rate affected by clause 146

Application

(1) This clause applies if clause 146 affects the rate at which a social security pension is payable to a person.

Purpose

(2) The purpose of this clause is to ensure that the person is treated appropriately in relation to the payment, and income taxation, of the pension by modifying the operation of the social security law (and thus affecting the related income tax law) in relation to the person and the pension.

Note: This clause does not modify the operation of subsection 20A(4), which provides for working out the person's minimum pension supplement amount.

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Clause 149

Pension supplement amount

(3) The social security law applies in relation to the person's pension as if the amount described in subparagraph 146(4)(a)(i), as affected by any indexation and any relevant reduction described in paragraph 146(4)(a), were an amount added under the pension supplement Module of the relevant Pension Rate Calculator (and therefore used to work out the rate of the pension).

Note 1: One effect of subclause (3) is that the amount is the person's pension supplement amount (as defined in subsection 23(1)).

Note 2: If that amount exceeds the person's pension supplement basic amount (as affected by subclause (4)), other effects of subclause (3) include the following:

(a) the excess being tax-exempt pension supplement under subsection 20A(6) of this Act;

(b) Part 2.25C (Quarterly pension supplement) of this Act applying, which may affect timing of payment of some of the pension under the Administration Act;

(c) the possibility of the minimum amount of fortnightly instalments of the pension being affected under section 43 of the Administration Act;

(d) telephone allowance not being payable because of section 1061R of this Act;

(e) utilities allowance not being payable because of section 1061T of this Act.

Note 3: Yet another effect of subclause (3) is that section 1210 will affect the operation of reductions of the maximum payment rate because of the income test and assets test.

Pension supplement basic amount

(4) The social security law applies in relation to the person's pension as if:

(a) each reference in the table in subsection 20A(5) to $507 were a reference to $14,814.80; and

(b) the reference in the table in subsection 20A(5) to $423.80 were a reference to $12,373.40.

Note 1: This affects the person's pension supplement basic amount.

Note 2: The provisions for indexing amounts in the table in subsection 20A(5) apply to the higher figures mentioned in this subclause.

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Energy supplement

(5) If subclause 147(1) or (2) is relevant to the person, the social security law applies in relation to the person's pension as if:

(a) the energy supplement Module of the relevant Pension Rate Calculator were the same as Module C of Pension Rate Calculator A; and

(b) the person's energy supplement (if any) resulting from that Module were used to work out the rate of the person's pension.

Note 1: This energy supplement is included in the total worked out under paragraph 146(4)(a) (see subparagraph 146(4)(a)(ia)).

Note 2: This subclause causes Division 2 of Part 2.18A (Quarterly energy supplement) of this Act to apply. If quarterly energy supplement is payable, then no energy supplement will be available to be included in the total worked out under paragraph 146(4)(a) (see point 1064-C1 of this Act).

Note 3: Other effects of this subclause include:

(a) the possibility of the minimum amount of fortnightly instalments of the pension being affected under section 43 of the Administration Act; and

(b) that section 1210 will affect the operation of reductions of the maximum payment rate because of the income test and assets test.

150 Persons exempt from requirement to be Australian residents to qualify for disability support pension

Paragraphs 94(1)(ea), 94A(1)(ja) and 95(1)(d) do not affect the qualification for disability support pension of:

(a) a person to whom the provisions mentioned in subclause 128(1) continue to apply as described in that subclause; or

(b) a person who is covered by a determination under clause 135.

Note: Those paragraphs are in Subdivision A of Division 1 of Part 2.3, which is about qualification for disability support pension.

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