

**Social Security Act 1991**

**No. 46 of 1991**

**READER’S GUIDE**

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

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

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

**2. The Act is divided into 8 Chapters.**

Chapter 1 is introductory and contains definitions.

Chapter 2 deals with each type of pension, benefit or allowance under the Act.

Chapter 3 deals with general rules explaining e.g. how to work out the rate of pension, benefit or allowance, how the assets test works etc.

Chapter 4 deals with portability of pensions, benefits or allowances and with international agreements.

Chapter 5 deals with overpayments and debt recovery.

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

Chapter 7 deals with administrative matters.

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

**3. There is a separate Part in Chapter 2 for each type of pension, benefit or allowance.**

Chapter 2 is divided into Parts. Each Part deals with one type of pension, benefit or allowance. To find out about a particular type of payment (e.g. sole parent pension), look at the Table of Parts at the beginning of the Act. It will direct you to Part 2.6 for the provisions dealing with sole parent pension.

Within each Part dealing with a type of pension, benefit or allowance, the topics are dealt with in this order:

* qualification and payability (who can get the type of payment?)
* claim (how do you go about claiming it?)
* determination of claim (when is it granted from?)
* rate (if it is granted, what will the rate be?)
* payment (how is it paid?)
* protection (how is your payment protected?)
* recipient obligations (if you get it, what are your obligations?)
* continuation, variation and determination (if you get it, when can the rate be increased or decreased and when can the payment be cancelled or suspended?)
* bereavement payments (what happens if you get it and someone who affects your rate dies?)
* fringe benefits (who can get fringe benefits?)

**4. The other Chapters deal with general topics.**

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

* rate calculation (Parts 3.1 to 3.8)
* fringe benefits means tests (Part 3.9)
* income and assets test (Parts 3.10, 3.11 and 3.12)
* effect of imprisonment (Part 3.13)
* effect of compensation (Part 3.14)
* indexation (Part 3.15)
* international agreements (Part 4.1)
* overseas portability (Part 4.2)
* overpayments and debt recovery (Chapter 5)
* review of decisions (Chapter 6)
* administration (Chapter 7)
* miscellaneous (Chapter 8)

**5. Definitions are generally in Chapter 1.**

The definitions of terms used in the Act are generally at the front of the Act, after the Table of Provisions and the formal citation and commencement provisions.

Related definitions have been grouped together to help give a complete picture of the terms relating to a particular topic or concept.

**6. The Index of definitions is at section 3.**

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

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

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



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**Social Security Act 1991**

**No. 46 of 1991**

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

[*Assented to 23 April 1991*]

The Parliament of Australia enacts:

**CHAPTER 1—INTRODUCTORY**

**PART 1.1—FORMAL MATTERS**

**Short title**

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

**Commencement**

**2.** This Act commences on 1 July 1991.

**s. 3** **Definitions**

**PART 1.2—DEFINITIONS**

**Index of definitions**

**3.** Each expression listed in the Index below is defined, for the purposes of this Act, in the section or sections listed in the Index opposite that expression.

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***Family relationships* definitions—couples**

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

**“approved respite care”** has the meaning given by subsection (9);

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

1. a person who was a veteran for the purposes of any provisions of the Veterans’ Entitlements Act; or
2. a person who was a member of the forces for the purposes of Part IV of that Act; or
3. a person who was a member of a peacekeeping force for the purposes of Part IV of that Act;

immediately before the death of the person;

**“benefit increase partner”** has the meaning given by subsection (10);

**“illness separated couple”** has the meaning given by subsection (7);

**“member of a couple”** has the meaning given by subsections (2), (3) and (6);

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

**“partnered”** has the meaning given by subsection (11);

**Definitions s. 4**

**“partnered (partner getting benefit)”** has the meaning given by subsection (11);

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

**“partnered (partner getting pension)”** has the meaning given by subsection (11);

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

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

*Member of a couple*—*general*

**(2)** Subject to subsection (3), a person is a **member of a couple** for the purposes of this Act if:

1. the person is legally married to another person and is not living separately and apart from the other person on a permanent basis; or
2. all of the following conditions are met:

(i) the person is living with a person of the opposite sex (in this paragraph called the **“partner”**);

(ii) the person is not legally married to the partner;

(iii) the relationship between the person and the partner is, in the Secretary’s opinion (formed as mentioned in subsection (3)), a marriage-like relationship;

(iv) both the person and the partner are over the age of consent applicable in the State or Territory in which they live;

(v) the person and the partner are not within a prohibited relationship for the purposes of section 23b of the *Marriage Act 1961.*

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

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

*Member of a couple*—*criteria for marriage-like relationship*

**(3)** In forming an opinion about the relationship between 2 people for the purposes of paragraph (2) (a) or subparagraph (2) (b) (iii), the Secretary is to have regard to all the circumstances of the relationship including, in particular, the following matters:

(a) the financial aspects of the relationship, including:

(i) any joint ownership of real estate or other major assets and any joint liabilities; and

(ii) any significant pooling of financial resources especially in relation to major financial commitments; and

**s. 4 Definitions**

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

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

(b) the nature of the household, including:

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

(ii) the living arrangements of the people; and

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

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

(i) whether the people hold themselves out as married to each other; and

(ii) the assessment of friends and regular associates of the people about the nature of their relationship; and

(iii) the basis on which the people make plans for, or engage in, joint social activities;

1. any sexual relationship between the people;
2. the nature of the people’s commitment to each other, including:

(i) the length of the relationship; and

(ii) the nature of any companionship and emotional support that the people provide to each other; and

(iii) whether the people consider that the relationship is likely to continue indefinitely; and

(iv) whether the people see their relationship as a marriagelike relationship.

**(4)** If:

1. a person claims, or is receiving, sole parent pension; and
2. a particular residence has been, for a period of at least 8 weeks, the principal home of both the claimant or recipient and a person of the opposite sex; and
3. the claimant or recipient is not legally married to the other person; and
4. at least one of the following paragraphs is satisfied:

(i) a child of both the people also lives in the residence;

(ii) the people have joint ownership of the residence;

(iii) the people are joint lessees of the residence and the original duration of the lease was at least 10 years;

(iv) the people have joint assets with a total value of more than $4,000;

(v) the people have joint liabilities totalling more than $1,000;

(vi) the people have at any time been legally married to each other;

**Definitions s. 4**

(vii) the people have at any time shared another residence with each other;

the Secretary must not form the opinion that the claimant or recipient is not living with the other person in a marriage-like relationship unless, having regard to all of the matters referred to in subsection (3), the weight of evidence supports the formation of an opinion that the claimant or recipient is not living in a marriage-like relationship with the other person.

**(5)** If:

1. a person claims, or is receiving, sole parent pension; and
2. a particular residence has been, for a period of at least 8 weeks, the principal home of both the claimant or recipient and a person of the opposite sex; and
3. the claimant or recipient and the other person are legally married to one another; and
4. the claimant or recipient and the other person:

(i) are living separately and apart on a permanent basis; or

(ii) claim to be living separately and apart on a permanent basis;

the Secretary must not form the opinion that the claimant or recipient is living separately and apart from the other person on a permanent basis unless, having regard to all of the matters referred to in subsection (3), the weight of evidence supports the formation of an opinion that the claimant or recipient is living separately and apart from the other person on a permanent basis.

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

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

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

*Illness separated couple*

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

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

**s. 4 Definitions**

*Respite care couple*

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

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

*Approved respite care*

**(9)** For the purposes of this Act, a person is in **approved respite care** if:

1. the person is a benefit respite care patient as defined in the *National Health Act 1953* (as modified by the National Health (Nursing Home Respite Care) regulations); or
2. the person is a leave respite care patient as defined in the National Health Act 1953 (as modified by the National Health (Nursing Home Respite Care) regulations); or
3. the person is an eligible person as defined in the *Aged or Disabled Persons Home Act 1954* and is occupying a respite care place as defined in that Act.

*Benefit increase partner*

**(10)** A person’s partner is a **benefit increase partner** if:

1. the person’s social security benefit rate is worked out using Benefit Rate Calculator A or Benefit Rate Calculator B; and
2. the person’s rate includes an amount under Module C of that Rate Calculator for the person’s partner.

*Standard family situation categories*

**(11)** For the puposes of this Act:

1. a person is **partnered** if the person is a member of a couple; and
2. a person is **partnered (partner getting neither pension nor benefit)**

if the person is a member of a couple and the person’s partner:

(i) is not receiving a social security pension; and

(ii) is not receiving a social security benefit; and

(iii) is not receiving a service pension; and

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

(i) a social security pension; or

(ii) a social security benefit; or

(iii) a service pension; and

**Definitions s. 4**

(d) a person is **partnered (partner getting pension**) if the person is a member of a couple and the person’s partner is receiving:

(i) a social security pension; or

(ii) a service pension; and

(e) a person is **partnered (partner getting benefit)** if the person is a member of a couple and the person’s partner is receiving a social security benefit.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance (see subsection 23 (1)).

***Family relationships* definitions—children**

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

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

**“dependent child”** has the meaning given by subsections (2) to (9);

**“exempt FA child”** means:

(a) a dependent child under 18 in respect of whom a person is receiving:

(i) a family allowance supplement; or

(ii) a double orphan pension; or

(iii) a child disability allowance; or

(iv) a rate increase in the person’s social security or service pension or benefit which has been calculated by reference to the child; or

(b) a dependent child who has turned 18 in respect of whom a person would, but for the child being 18, receive:

(i) a family allowance supplement; or

(ii) a double orphan pension; or

(iii) a child disability allowance; or

(iv) where the person is receiving a social security or service pension or social security benefit, a rate increase in the person’s pension or benefit by reference to the child; or

(c) a dependent child who has turned 18 where a person or the person’s partner:

(i) is not receiving family allowance supplement and lodges a claim for family allowance supplement; and

(ii) is not precluded by the taxable income test from receiving family allowance supplement;

in respect of the child.

**“homeless person”** means a person who:

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

**s. 5 Definitions**

1. has no dependent children; and
2. either:

(i) does not live, and for a continuous period of at least 2 weeks has not lived, at a home of the parents, or of a parent, of the person because the parents are not, or neither parent is, prepared to allow the person to live at such a home; or

(ii) does not live at a home of the parents, or of a parent, of the person because domestic violence, incestuous harassment or other exceptional circumstances make it unreasonable to expect the person to live at such a home; and

1. is not receiving continuous support, whether directly or indirectly and whether pecuniary or otherwise, from a parent of the person or from another person who is acting as the person’s guardian on a long-term basis; and
2. is not receiving, on a continuous basis, any payment in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory;

**‘independent young person”** means a person who:

1. does not live, and for a continuous period of at least 6 months has not lived, at a home of the parents, or of a parent, of the person; and
2. has, at a time when the person was not living at such a home, been employed on a full-time basis for a period of, or for periods that total, at least 13 weeks; and
3. does not receive regular financial support from a parent of the person;

**“maintained child”**,in relation to a person, means a young person who:

1. is not a dependent child of the person; and
2. is being wholly or substantially maintained by the person;

**“parent”** means:

1. in relation to a young person, other than an adopted child—a natural parent of the young person; or
2. in relation to an adopted child—an adoptive parent of the young person;

Note: for a modification of this definition in the parental income test applied to social security benefits see point 1067-G7 of Benefit Rate Calculator A.

**“prescribed educational scheme”** means:

1. the AUSTUDY Scheme; or
2. the ABSTUDY Schooling Scheme; or
3. the ABSTUDY Tertiary Scheme; or
4. the Assistance for Isolated Children Scheme; or

**Definitions s. 5**

(e) the Veterans’ Children Education Scheme; or

(f) the Post-Graduate Awards Scheme;

**“prescribed student child”** has the meaning given by subsection (11);

**“receiving full-time education at a school, college or university”** has the meaning given by subsection (10);

**“student child”** means a person who:

1. has turned 16 but who has not turned 25; and
2. is receiving full-time education at a school, college or university;

Note: see also subsection (10) (receiving full-time education).

**“young person”** means:

1. a person who has not turned 16; or
2. a person who:

(i) has turned 16 but not turned 25; and

(ii) is receiving full-time education at a school, college or university.

Note: see also subsection (10) (receiving full-time education).

*Dependent child*—*under 16*

**(2)** Subject to subsections (3) and (6) to (8), a young person who has not turned 16 is a **dependent child** of another person (in this subsection called the **“adult”**) if:

(a) the adult has the right (whether alone or jointly with another person):

(i) to have the daily care and control of the young person; and

(ii) to make decision’s about the daily care and control of the young person; and the young person is in the adult’s care and control; or

(b) the young person:

(i) is not a dependent child of someone else under paragraph (a); and

(ii) is wholly or substantially in the adult’s care and control.

**(3)** A young person who has not turned 16 cannot be a dependent child if:

1. the young person is not in full-time education; and
2. the young person is in receipt of income from employment; and
3. the rate of that income exceeds $100 per week.

Note 1: for a modification of this rule for sole parent pension qualification see subsection 250 (2).

Note 2: this subsection is disregarded for the purposes of the following maintenance income test provisions:

* section 10 (see subsection 10 (2));
* Module F of Pension Rate Calculator A (see point 1064-F1A);
* Module F of Pension Rate Calculator C (see point 1066-F1A);

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* Module J of Benefit Rate Calculator A (see point 1067-J2);
* Module H of Benefit Rate Calculator B (see point 1068-H1A);
* section 1116 (see subsection 1116 (7)).

Note 3: the amount in paragraph (c) is indexed annually in line with CPI increases (see sections 1191 to 1194).

*Dependent child*—*16 and over*

1. Subject to subsections (5) to (8), a young person who has turned 16 is a **dependent child** of another person (in this subsection called the **“adult”**) if the young person is wholly or substantially dependent on the adult.
2. A young person who has turned 16 cannot be a **dependent child** of another person if the other person is the young person’s partner.

*Dependent child*—*pension and benefit recipients*

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

1. the young person is receiving a social security pension (other than a sheltered employment allowance); or
2. the young person is receiving a social security benefit.

Note: “social security pension” includes a rehabilitation allowance and would normally include a sheltered employment allowance as well (see subsection 23 (1)).

*Dependent child*—*residence requirements*

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

(a) if the adult is an Australian resident:

(i) the young person is an Australian resident; or

(ii) the young person is living with the adult; or

(b) if the adult is not an Australian resident:

(i) the young person is an Australian resident; or

(ii) the young person has been an Australian resident and is living with the adult outside Australia; or

(iii) the young person had been living with the adult in Australia and is living with the adult outside Australia.

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

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

(a) if the adult is an Australian resident:

(i) the young person is an Australian resident or a resident of Australia; or

(ii) the young person is living with the adult; or

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(b) if the adult is not an Australian resident:

(i) the young person is an Australian resident or a resident of Australia; or

(ii) the young person has been an Australian resident and is living with the adult outside Australia; or

(iii) the young person had been living with the adult in Australia and is living with the adult outside Australia.

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

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

*Receiving full-time education*—*education leavers*

**(10)** If:

1. a person is under the age of 25 years; and
2. the person ceases to receive full-time education at a school, college or university; and
3. an unemployment benefit job search allowance or sickness benefit is not payable to the person because of an education leavers waiting period;

the person is to be taken to be **receiving full-time education at a school, college or university** during the period for the purposes of this Act (other than sections 541, 542, 612, 613, 684 and 685).

Note: for “education leavers waiting period” see subsection 23 (1).

*Prescribed student child*

**(11)** A person is a **prescribed student child** if:

1. the person is a young person who has turned 16; and
2. the young person is qualified to receive payments under a prescribed educational scheme.

**(12)** For the purposes of subsection (11), a young person is, subject to subsection (13), qualified to receive a payment under a prescribed educational scheme if:

1. the young person is receiving a payment under a prescribed educational scheme; or
2. someone else is receiving, in respect of the young person, a payment under a prescribed educational scheme; or
3. the Secretary has not formed the opinion that:

(i) the young person will not, or would not if an application were duly made, receive a payment under a prescribed educational scheme; and

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(ii) no other person will, or would if an application were duly made, receive, in respect of the young person, a payment under a prescribed educational scheme.

**(13)** For the purposes of subsection (11), a young person is not qualified to receive a payment under a prescribed educational scheme if:

1. the young person is not receiving a payment under a prescribed educational scheme; and
2. no other person is receiving, in respect of the young person, a payment under a prescribed educational scheme; and
3. the Secretary is satisfied that the educational scheme rate would be less than the social security rate.

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

1. the **educational scheme rate** is the total of the amounts that would be payable to or in respect of the young person under the prescribed educational scheme; and
2. the **social security rate** is the total of the amounts that would, if the young person were not a prescribed student child, be payable in respect of the young person by way of:

(i) dependent child add-on;

(ii) guardian allowance;

(iii) family allowance;

(iv) family allowance supplement.

**(15)** A child is a **pension increase child** of a person if:

1. the person’s pension rate includes a dependent child add-on for the child; or
2. the person’s partner’s social security or service pension rate includes a dependent child add-on for the child.

**(16)** A child is a **benefit increase child** of a person if:

1. a person’s benefit rate includes a dependent child add-on for the child; or
2. the person’s partner’s social security benefit rate includes a dependent child add-on for the child.

***Family payments* definitions**

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

**“approved care organisation”** means an organisation approved by the Secretary under subsection 35 (1);

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

**“FA assumed notifiable event”** means an event specified in a determination in force under section 857;

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**“FA child”**,in relation to a person, means a dependent child of the person who is a family allowance child of the person in accordance with sections 831 to 837;

**“FA notifiable event”**, in relation to a person, means an event that is specified as a notifiable event, under section 858, in a notice that is given to the person under section 873;

**“family payment payday”** means:

1. the Thursday that falls on 11 July 1991 ; and
2. each succeeding alternate Thursday;

**“FAS assumed notifiable event”** means an event specified in a determination in force under section 916;

**“FAS child”**,in relation to a person, means a dependent child of the person who is a family allowance supplement child of the person in accordance with sections 891 to 894;

**“FAS notifiable event”**,in relation to a person, means an event that is specified as a notifiable event, under section 917, in a notice that is given to the person under section 930;

**“FAS period”**,in relation to family allowance supplement, means the period that:

1. starts on the day on which the claim for the allowance is lodged; and
2. ends on the next 31 December.
3. For the purposes of this Act, a person is to be taken to receive family allowance for a dependent child of the person if, in calculating the rate at which family allowance is paid to the person, an FA child rate in respect of the child is included in the person’s maximum basic rate under point 1069-B1 of the Family Allowance Rate Calculator at the end of section 1069 in Part 3.7.
4. For the purposes of this Act, a person is to be taken to receive family allowance supplement for a dependent child of the person if, in calculating the rate of family allowance supplement payable to the person, a FAS child rate in respect of the child is included in the person’s maximum basic rate under point 1070-B1 of the Family Allowance Supplement Rate Calculator at the end of section 1070 in Part 3.8.

***Australian residence* definitions**

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

**“Australian resident”** has the meaning given by subsection (2);

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

**(2)** An **Australian resident** is a person who:

1. resides in Australia; and
2. is one of the following:

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(i) an Australian citizen;

(ii) a person who is, within the meaning of the *Migration Act 1958*,the holder of a valid permanent entry permit;

(iii) a person who has been granted, or who is included in, a return endorsement, or a resident return visa, in force under that Act;

(iv) a person who:

(a) is, for the purposes of that Act, an exempt non-citizen; and

(b) is likely to remain permanently in Australia.

Note: “exempt non-citizen” is defined in section 5 of the *Migration Act 1958*:it covers non-citizens who are diplomats, members of armed forces, ships’ crew members and others and, under section 7 of the Act, exempt non-citizens do not need an entry permit or entry visa to enter Australia.

**(3)** In deciding for the purposes of this Act whether or not a person is residing in Australia, regard must be had to:

1. the nature of the accommodation used by the person in Australia; and
2. the nature and extent of the family relationships the person has in Australia; and
3. the nature and extent of the person’s employment, business or financial ties with Australia; and
4. the nature and extent of the person’s property located in Australia; and
5. the frequency and duration of the person’s travel outside Australia; and

(f) any other matter relevant to determining whether the person intends to remain permanently in Australia.

**(4)** For the purposes of:

1. Part 2.2 (age pension); and
2. Part 2.3 (invalid pension); and
3. Part 2.4 (wife pension); and
4. Part 2.5 (carer pension); and
5. Part 2.6 (sole parent pension); and

(f) Part 2.7 (widowed person allowance); and

(g) Part 2.8 (widow B pension);

continuity of residence of a claimant in Australia is not to be taken to have been interrupted by absence of the claimant in an external Territory.

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

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

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

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

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

**(6)** In determining whether a person has 10 years qualifying residence for the purposes of:

1. Division 1 of Part 2.2 (age pension); and
2. Division 1 of Part 2.3 (invalid pension);

residence in an external Territory (other than Norfolk Island) is to be taken to be residence in Australia.

**(7)** In section 1220, a reference to a person who was formerly an Australian resident and who again becomes an Australian resident includes a reference to a person who:

1. formerly resided in an area that was, at the time of the residence, an external Territory; and
2. has never resided in Australia; and
3. has arrived in Australia.

***Income test* definitions**

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

**“dispose of income”** has the meaning given by section 1106;

**“domestic payment”** has the meaning given by subsection (3);

**“earned, derived or received”** has the meaning given by subsection (2);

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

Note: see also subsection (7).

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

1. an income amount earned, derived or received by the person for the person’s own use or benefit; or
2. a periodical payment by way of gift or allowance; or
3. a periodical benefit by way of gift or allowance;

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

Note 1: see also sections 1073-1099 (investment income).

Note 2: sections 1075 to 1077 provide that a person who has an accruing return investment or market-linked investment is to be taken to receive a particular rate of return on the investment as income.

Note 3: section 1078 provides that any return actually received by a person from an investment to which section 1075 to 1077 applies is to be treated as if it were not income of the person.

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Note 4: where a person or a person’s partner has disposed of income, the person’s income may be taken to include the amount which has been disposed of—see sections 1106-1112.

**“income amount”** means:

1. valuable consideration; or
2. personal earnings; or
3. moneys; or
4. profits;

(whether of a capital nature or not);

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

**“ordinary income”** means income that is not maintenance income.

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

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

*Earned, derived or received*

**(2)** A reference in this Act to an income amount **earned, derived or received** is a reference to:

1. an income amount earned, derived or received by any means; and
2. an income amount earned, derived or received from any source (whether within or outside Australia).

*Domestic payments*

**(3)** A payment received by a person is a **domestic payment** for the purposes of this Act if:

1. the person receives the payment on the disposal of an asset of the person; and
2. the asset was used, immediately before the disposal, by the person or the person’s partner for private or domestic purposes; and
3. the asset was used by the person or the person’s partner for those purposes for:

(i) a period of 12 months before the disposal; or

(ii) if the Secretary considers it appropriate—a period of less than 12 months before the disposal.

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

**(4)** If a person is not a member of a couple, an amount paid to or on behalf of the person under a home equity conversion agreement is an **excluded amount** for the person to the extent that the total amount

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owed by the person from time to time under home equity conversion agreements does not exceed $40,000.

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

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

*Home equity conversion (amount owed)*

**(6)** For the purposes of this Act, the amount owed by a person under a home equity conversion agreement is the principal amount secured by the mortgage concerned and does not include:

1. any amount representing mortgage fees; or
2. any amount representing interest; or
3. any similar liability whose repayment is also secured by the mortgage.

*Home equity conversion (principal home)*

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

*Excluded amounts*—*general*

**(8)** The following amounts are not income for the purposes of this Act:

1. a payment under this Act;
2. if the person has not reached pensionable age—any return on a compulsorily preserved superannuation benefit of the person;
3. the value of emergency relief or like assistance;
4. the value of any assistance that:

(i) is provided by an eligible organisation within the meaning of the *Homeless Persons Assistance Act 1974*;and

(ii) is assistance that consists of providing:

(a) accommodation or meals; or

(b) a ticket, voucher or token that may be exchanged for accommodation or meals;

(e) a payment under the *Handicapped Persons Assistance Act 1974*;

(f) a payment under Part III of the *Disability Services Act 1986* or the value of any rehabilitation program (including any follow-up program) provided under that Part;

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(g) a payment of domiciliary nursing care benefit under Part Vb of the *National Health Act 1953;*

(h) a payment under a law of the Commonwealth, being a law having an object of assisting persons to purchase or build their own homes;

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

(k) insurance or compensation payments made by reason of the loss of, or damage to, buildings, plant or personal effects;

(m) money from an investment that is:

(i) an investment of payments of the kind referred to in paragraph (k); and

(ii) an investment for:

(a) a period of not more than 12 months after the person receives the payments; or

(b) if the Secretary thinks it appropriate—of 12 months or more after the person receives those payments;

(n) an amount paid:

(i) by the Federal Republic of Germany under the laws of

that Republic; or (ii) by a State of the Federal Republic of Germany under the laws of that State;

by way of compensation for a victim of National Socialist persecution;

(p) an amount paid by the Republic of Austria under the laws of that Republic by way of compensation to a victim of National Socialist persecution;

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

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

(i) an amount calculated by reference to a rate of unemployment benefit or job search allowance;

(ii) an amount known as the training component;

(iii) an amount by way of a living away from home allowance;

(s) a payment received by a trainee in part-time training under a program included in the programs known as the Labour Force Program, if the trainee is also receiving:

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(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a carer pension; or

(v) a sole parent pension; or

(vi) a sheltered employment allowance; or

(vii) a rehabilitation allowance;

(t) a payment received by the person under the scheme known as the New Enterprise Incentive Scheme;

(u) a benefit under a law of the Commonwealth that relates to the provision of:

(i) pharmaceutical, sickness or hospital benefits; or

(ii) medical or dental services;

(v) a payment (other than a periodical payment or a payment representing an accumulation of instalments) made for or in respect of expenses incurred by a person for hospital, medical, dental or similar treatment;

(w) in the case of a member of:

(i) the Australian Naval Reserve; or

(ii) the Naval Emergency Reserve Forces; or

(iii) the Australian Army Reserve; or

(iv) the Australian Air Force Reserve; or

(v) the Air Force Emergency Force; or

(vi) the Regular Army Emergency Reserve;

the pay and allowances paid to the person as such a member (other than pay and allowances in respect of continuous full-time service) and, in the case of a member of a Force referred to in subparagraph (ii), (v) or (vi), any gratuity paid to the person by reason of a calling out for continuous service of that Force or of a part of that Force;

(y) a payment by way of:

(i) service pension; or

(ii) attendant allowance under section 98 of the Veterans’ Entitlements Act; or

(iii) recreation allowance under section 104 of that Act; or

(iv) an allowance for the running and maintenance of a motor vehicle under the Vehicle Assistance Scheme referred to in section 105 of that Act; or

(v) decoration allowance under section 102 of that Act; or

(vi) Victoria Cross allowance under section 103 of that Act; or

(vii) clothing allowance under section 97 of that Act; or

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(viii) a bereavement payment under Division 5a of Part III, or section 98a of that Act; or

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

(x) a bereavement payment under section 24b of the *Seamen’s War Pensions and Allowances Act 1940*;or

(xi) a funeral benefit under the Seamen’s War Pensions and Allowances Regulations;

(z) a periodical payment by way of gift or allowance, or a periodical benefit by way of gift or allowance, from the person’s father, mother, son, daughter, brother or sister;

(za) the value of board or lodging received by the person;

(zb) a domestic payment;

(zc) so much of a payment received by the person as is, in accordance with an agreement between the Commonwealth and a foreign country, applied in reduction of the amount of pension, benefit or allowance that would otherwise be payable to the person under this Act;

(zd) a payment made to the person by the Government of New Zealand, being a payment known as:

(i) accommodation benefit; or

(ii) disability allowance; or

(iii) home help payment; or

(iv) special benefit; or

(v) training incentive allowance;

(ze) a payment made to the person by the Government of the United Kingdom, being a payment known as:

(i) clothing allowance; or

(ii) constant attendance allowance; or

(iii) decoration allowance; or

(iv) mobility supplement;

(zf) a payment of an education supplement to a person who:

(i) is receiving:

(a) a social security or service pension; or

(b) a social security benefit; and

(ii) would, if the person were not receiving that pension or benefit, be eligible to receive payments under:

(a) the AUSTUDY scheme; or

(b) the ABSTUDY Tertiary Scheme.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

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***Investment income* definitions**

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

**“accruing return investment”** means an arrangement by a person that consists of or includes an investment of money, being an investment:

(a) that produces:

(i) a fixed rate or quantifiable rate of return, whether or not that rate Varies from time to time; or

(ii) a rate of return that may be reasonably approximated; and

(b) the value of which from time to time is unlikely to decrease as a result of market changes;

Note: a superannuation benefit may be taken to be an investment—see subsection (6).

**“annual rate of return”** has the meaning given by subsection (3);

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

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

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

1. a social security or service pension; or
2. a social security benefit;

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

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

**“deductible amount”**, in relation to an immediate annuity or a superannuation pension, is the amount that would be the deductible amount in relation to the annuity or superannuation pension in relation to a year of income under subsection 27h (2) of the Income Tax Assessment Act if “undeducted purchase price” had the same meaning in that subsection as “non-assessable purchase price” has in this Act;

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

**“determination of entitlement”**,in relation to a person, means a determination:

(a) whether the person is qualified for a pension, benefit or allowance under this Act; or

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1. whether a pension, benefit or allowance under this Act is payable to the person; or
2. of the rate at which a pension, benefit or allowance under this Act is payable to the person;

**“eligible investment”** means an investment that satisfies all of the following conditions:

1. money or property invested is paid or transferred by the investor directly or indirectly to a body corporate or into a trust fund;
2. the assets that represent money or property invested (in this definition called the **“investment assets”**) are held otherwise than in the names of investors;
3. the investor does not, either alone or jointly with a relative or relatives of the investor, have effective control over the management of the investment assets;
4. the investor has a legally enforceable right to share in any distribution of the income or profits derived from the investment assets;

**“friendly society”** means:

1. a society registered as a friendly society under a law in force in a State or Territory; or
2. a society that had, before 13 December 1987, been approved for the purpose of the definition of “friendly society” in subsection 115 (1) of the 1947 Act;

and, for the purpose of the definition of “market-linked investment” in this subsection, includes:

1. a society that has been approved for the purposes of the definition of “friendly society” in subsection 115 (1) of the 1947 Act on or after 13 December 1987; and
2. a society that is an approved friendly society for the purposes of this Act (see section 29);

**“fund manager”**, in relation to an investment product, means the person or body specified, in relation to that investment product, in a notice under subsection (2);

**“immediate annuity”** means an annuity that is presently payable;

Note: for “presently payable” see subsection (5).

**“investment product”** means a class of market-linked investments specified in a notice under subsection (2);

**“market-linked investment”** means:

(a) an investment in:

(i) an approved deposit fund; or

(ii) a deferred annuity; or

(iii) a public unit trust; or

(iv) an insurance bond; or

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1. an investment with a friendly society; or
2. an eligible investment other than an investment referred to in paragraph (a) or (b); or
3. a superannuation benefit vested in a person and held in a superannuation fund (unless a superannuation pension funded by that benefit is presently payable to the person);

other than an investment that is:

(e) an accruing return investment; or

(0 an investment consisting of the acquisition of real property, stock or shares;

**“non-assessable purchase price”**:

1. in relation to an immediate annuity other than a roll-over immediate annuity—has the same meaning as “undeducted purchase price” has in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act; or
2. in relation to a roll-over immediate annuity—means the roll-over purchase price; or
3. in relation to a superannuation pension—has the same meaning as “undeducted purchase price” has in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act;

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

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

**“purchase price”**, in relation to an annuity, has the meaning that it has in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act;

**“rate of return decision”**,in relation to an investment product, means:

1. a refusal, on application under subsection 1089 (1), to make a determination under subsection 1088 (1) of a rate of return on market-linked investments included in the investment product; or
2. a determination under subsection 1088 (1) of a rate of return on market-linked investments included in the investment product; or
3. the revocation under section 1092 of a determination of

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a rate of return on market-linked investments included in the investment product.

Note: this definition relates to Subdivision C of Part 3.10 (Market-Linked Investments) and Parts 6.2 and 6.4 (Review by the Social Security Appeals Tribunal and the Administrative Appeals Tribunal).

**“relevant number”**, in relation to an annuity, has the meaning that it has in section 27h of the Income Tax Assessment Act;

**“residual capital value”**,in relation to an annuity, has the meaning that it has in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act;

**“return”**,in relation to an investment (including an investment in the nature of superannuation), means any increase, whether of a capital or income nature and whether or not distributed, in the value or amount of the investment;

**“rolled-over amount”**, in relation to an annuity, has the meaning that it has in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act;

**“roll-over immediate annuity”**,means an immediate annuity the purchase price of which consists wholly of a rolled-over amount or rolled-over amounts;

**“roll-over purchase price”**,in relation to a roll-over immediate annuity, means:

(a) except where paragraph (b) applies—either the sum of the following amounts:

(i) the amount that would, under Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act, be the undeducted purchase price of the annuity;

(ii) the amount that is the upper limit under section 159sg of the Income Tax Assessment Act for the year of income in which the annuity was purchased;

or the purchase price of the annuity, whichever is less; or

(b) where:

(i) the roll-over immediate annuity, and another rollover immediate annuity, have been purchased using the same rolled-over amount or rolled-over amounts in the name of the same person; and

(ii) the roll-over purchase price of the other roll-over immediate annuity has previously been worked out under paragraph (a) for the purposes of this Act;

the amount that would, under Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act, be the undeducted purchase price of the annuity;

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**“statutory rate of return”** means 11% per year or such lower percentage per annum as is specified in a notice in force under subsection 1087 (1);

**“superannuation benefit”**,in relation to a person, means a benefit arising directly or indirectly from amounts contributed (whether by the person or by any other person) to a superannuation fund in respect of the person;

**“superannuation fund”** means a superannuation fund as defined for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act, other than a fund covered by subparagraph (ia) of the definition of “superannuation fund” in subsection 27a (1) of that Act;

**“superannuation pension”** has the same meaning as it has in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

**(2)** The Secretary, by notice in writing published in the *Gazette*:

1. may specify a class of market-linked investments that constitute an investment product; and
2. is to specify, in relation to each investment product so identified, a person or body for the purposes of the definition of “fund manager” in subsection (1).

**(3)** Where the value or amount at a particular time of a market-linked investment included in an investment product is equal to or less than the value or amount of that market-linked investment 12 months previously, the **annual rate of return** at that first-mentioned time for market-linked investments included in that investment product is to be taken, for the purposes of a determination under this Act, to be 0%.

1. A reference in this Act to the Secretary **refusing**,on application under section 1089, **to make a determination** under subsection 1088 (1) does not include a reference to the Secretary refusing, pursuant to subsection 1090 (2), to consider such an application.
2. For the purposes of this Act, an annuity or superannuation pension is to be taken to be **presently payable** at all times after, but not before, the commencement of the first period in respect of which the annuity or superannuation pension is payable.
3. For the purposes of the definition of ‘accruing return investment’ in subsection (1), a superannuation benefit vested in a person that is held in a superannuation fund is to be taken to be an **investment** of that person, unless a superannuation pension funded by that benefit is presently payable to the person.
4. For the purposes of this Act, a person’s superannuation benefit is **compulsorily preserved** if the person’s access to the benefit is restricted under:

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1. paragraph 23 (ja) of the Income Tax Assessment Act as in force at any time before 18 December 1987; or
2. section 23fa of the Income Tax Assessment Act as in force at any time before 18 December 1987; or
3. regulations made under section 7 or 8 of the *Occupational Superannuation Standards Act 1987*;or
4. a provision of the trust deed or contract concerned that imposes restrictions corresponding to the restrictions imposed by a provision of the regulations made under section 7 or 8 of the *Occupational Superannuation Standards Act 1987.*

***Maintenance income* definitions**

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

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

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

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

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

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

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

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

1. by way of lump sum payment; or
2. by way of transfer or settlement of property;

**“maintenance”** includes child support;

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

**“maintenance income”**, in relation to a person, means:

(a) child maintenance—that is, the amount of a payment or the value of a benefit that is received by the person for the maintenance of a dependent child of the person and is received from:

(i) a parent of the child; or

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(ii) the partner or former partner of a parent of the child; or

1. partner maintenance—that is, the amount of a payment or the value of a benefit that is received by the person for the person’s own maintenance and is received from the person’s partner or former partner; or
2. direct child maintenance—that is, the amount of a payment or the value of a benefit that is received by a dependent child of the person for the child’s own maintenance and is received from:

(i) a parent of the child; or

(ii) the partner or former partner of a parent of the child;

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

**“non-cash housing maintenance”**, in relation to a person, means maintenance income of the person that is not cash maintenance and is received in relation to the provision of a residence that is, or is to be, the person’s principal home;

Note: see also subsections (4) and (5) and section 1117.

**“special maintenance income”**,in relation to a person, means:

1. non-cash housing maintenance of the person; or
2. non-cash maintenance of the person (other than noncash housing maintenance or capitalised maintenance income) received from the person’s partner or former partner during the period of 6 months following the person’s separation from the partner or former partner; or
3. maintenance income of the person provided in relation to expenses arising directly from a physical, intellectual or psychiatric disability, or a learning difficulty, of a dependent child of the person where the disability or difficulty is likely to be permanent or to last for an extended period.

Note: see also subsection 1117 (1) (non-cash housing maintenance—value of substitute for former family home).

1. In working out whether a young person is a **dependent child** for the purposes of subsection (1), disregard subsection 5 (3).
2. For the purposes of the definition of “maintenance income” in subsection (1):

(a) a payment received under subsection 76 (1) of the *Child Support (Registration and Collection) Act 1988* in relation to a registered maintenance liability (within the meaning of that Act) is taken to be **received from** the person who is the payer (within the meaning of that Act) in relation to the liability; and

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1. a reference to a **benefit received by a person** includes a reference to a benefit received by the person because of a payment made to, or a benefit conferred on, another person (including a payment made or benefit conferred under a liability owed to the other person); and
2. a reference to a **payment or benefit received from a person** includes a reference to a payment or benefit received:

(i) directly or indirectly from the person; and

(ii) out of any assets of, under the control of, or held for the benefit of, the person; and

(iii) from the person under or as a result of a court order, a court registered or approved maintenance agreement or otherwise.

**(4)** For the purposes of the definition of “non-cash housing maintenance” in subsection (1), **maintenance received in relation to the provision of a residence** includes maintenance consisting of:

1. a benefit received because of the transfer or settlement of a right or interest in relation to the residence; and
2. where there is a secured housing loan on the residence—a benefit received because of:

(i) the payment of interest, charges or other amounts under the loan; or

(ii) the repayment of amounts borrowed under the loan; and

(c) a benefit received because of the payment of rent (including Government rent), or a like payment, in relation to the residence.

**(5)** For the purposes of paragraph (4) (b), there is a **secured housing loan** on a residence if:

1. there is a loan that is secured by a mortgage or other interest in relation to the residence; and
2. the sole or principal purpose of the loan is to enable the residence, or a right or interest in relation to the residence, to be acquired.

***Assets test* definitions**

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

**“asset”** means property (including property outside Australia);

**“disposes of assets”**:

1. has its ordinary meaning in Division 4 of Part 3.12 (pension loans scheme); and
2. has the meaning given by section 1123 in the rest of the Act;

**“exempt assets”** means assets described in any of paragraphs 1118 (1) (a) to (r);

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**“granny flat interest”** has the meaning given by subsection (9);

**“homeowner”** has the meaning given by subsection (4);

**“reasonable security of tenure”** has the meaning given by subsection (8);

**“pension year”** has the meaning given by subsection (10);

**“PLS assets”**,in relation to a person, means all the person’s assets (other than exempt assets):

1. that cannot readily be sold; or
2. that:

(i) the person does not wish to sell; and

(ii) are not of a kind that the person could reasonably be expected to sell;

Note: this definition is relevant only to the pension loans scheme (Part 3.12, Division 4).

**“principal home”** has the meaning given by subsections (5), (6) and (7);

**“unrealisable asset”** has the meaning given by subsections (12) and (13);

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

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

**(2)** A reference in this Act to the **value of a particular asset** of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of the person’s interest in the asset.

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

*Homeowner*

**(4)** For the purposes of this Act:

(a) a person who is not a member of a couple is a **homeowner** if:

(i) the person has a right or interest in the person’s principal home; and

(ii) the person’s right or interest in the home:

(a) gives the person reasonable security of tenure in the home; and

(b) is not a granny flat interest; and

(b) a person who is a member of a couple is a **homeowner** if:

(i) the person, or the person’s partner, has a right or interest in one residence that is:

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(a) the person’s principal home; or

(b) the partner’s principal home; or

(c) the principal home of both of them; and

(ii) the person’s right or interest, or the partner’s right or interest, in the home:

(a) gives the person or the person’s partner reasonable security of tenure in the home; and

(b) is not a granny flat interest; and

(c) a person (whether a member of a couple or not) is a **homeowner** if:

(i) the person has sold the person’s principal home not more than 12 months previously; and

(ii) the person is likely to apply some or all of the proceeds of the sale in acquiring another residence that is to be the person’s principal home.

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

*Principal home*

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

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

Note: for “private land” see subsection (6).

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

**(7)** A residence of a person is to be taken to continue to be the person’s **principal home** during:

1. any period (not exceeding 12 months) during which the person is temporarily absent from the residence; and
2. any period (not exceeding 2 years) during which the person is:

(i) residing in a benevolent home or in premises at which accommodation is provided exclusively or principally for persons who have a mental disability; or

(ii) residing in a nursing home; or

(iii) a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*,of a hospital;

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Note: for “benevolent home” and “nursing home” see subsection 23 (1).

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

*Granny flat interest*

**(9)** A person has a **granny flat interest** in the person’s principal home if:

1. the residence that is the person’s principal home is a private residence; and
2. the person has acquired for valuable consideration or has retained:
3. a right to accommodation for life in the residence; or
4. (ii) a life interest in the residence.

*Pension year*—*disposal of assets*

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

1. a social security or service pension; or
2. a social security benefit; or

(c) a family allowance supplement;

is a reference to:

1. if the person is a member of a couple and the person and the person’s partner were, immediately before they became members of that couple, receiving such a pension, benefit or allowance— the period of 12 months commencing on the day on which they became members of that couple; or
2. in a case (not being a case referred to in paragraph (d)) where the person is a member of a couple and the person’s partner is receiving such a pension, benefit or allowance—the period of 12 months commencing on the day on which such a pension, benefit or allowance first became payable to the person or to the person’s partner, whichever was the earlier; or
3. in any other case—the period of 12 months commencing on the day on which such a pension, benefit or allowance first became payable;

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

**(11)** The lending of money after 27 October 1986 is not a **disposition of an asset** for the purposes of section 1123.

*Unrealisable asset*

**(12)** An asset of a person is an **unrealisable asset** if:

(a) the person cannot sell or realise the asset; and

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(b) the person cannot use the asset as a security for borrowing.

**(13)** For the purposes of the application of this Act to a social security pension, an asset of a person is also an **unrealisable asset** if:

1. the person could not reasonably be expected to sell or realise the asset; and
2. the person could not reasonably be expected to use the asset as a security for borrowing.

***Retirement villages*****definitions**

**12. (1)** In this Act:

**“actual value”** has the meaning given by subsection (5);

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

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

1. the person is a member of a couple; and
2. the person does not share the person’s principal home with the person’s partner; and
3. the person is not a member of an illness separated couple.

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

1. the premises are residential premises; and
2. accommodation in the premises is primarily intended for persons who are at least 55 years old; and
3. the premises consist of:

(i) one or more of the following kinds of accommodation:

(a) self-care units;

(b) serviced units;

(c) hostel units; and

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

1. Residential premises are also to be taken to constitute a **retirement village** for the purposes of this Act if the Secretary is satisfied that the residential premises have similar functions to those referred to in subsection (3).
2. In Division 5 of Part 3.12 (sections 1145 to 1157), a reference to the **actual value** of the assets of a member of a couple is a reference to the value of the assets that are actually assets of the person rather than the person’s partner, that is, the value that would be the value of the person’s assets apart from the couple’s assets deeming provisions.
3. In subsection (5):

**“couple’s assets deeming provisions”** means:

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1. Pension Rate Calculator A (point 1064-G2); and
2. Pension Rate Calculator C (point 1066-G2); and
3. section 531; and
4. section 602; and
5. section 672; and

(f) subsection 895 (2); and

(g) section 734; and

(h) Fringe Benefits Assets Test Calculator (point 1072-3).

***Rent* definitions**

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

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

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

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

1. The Housing Commission of New South Wales;
2. the Director, within the meaning of the *Housing Act 1983* of the State of Victoria;
3. The Queensland Housing Commission;
4. The Corporation of the Director of Aboriginal and Islanders Advancement established by a law of Queensland;
5. the South Australian Housing Trust;
6. The State Housing Commission established by a law of Western Australia;
7. the Director-General of Housing and Construction holding office under a law of Tasmania;

(h) the Northern Territory Housing Commission;

(j) The Commissioner for Housing within the meaning of the *Housing Assistance Act 1987* of the Australian Capital Territory;

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

1. a person who is a homeowner by virtue of paragraph 11 (4) (c) (proceeds of sale of principal home disregarded for 12 months); or
2. a person who:

(i) is a member of a couple; and

(ii) is in approved respite care; and

(iii) has remained, or in the Secretary’s opinion is likely

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to remain, in approved respite care for at least 14 consecutive days; or

1. a person who is residing in a nursing home but is not residing in a retirement village; or
2. a person who pays amounts for the use of a site for a caravan or other vehicle, or a structure, that is the person’s principal home; or
3. a person who pays amounts for the right to moor a vessel that is the person’s principal home;

Note: for “approved respite care” see subsection 4 (9), for “retirement village” see subsections 12 (3) and (4), for “homeowner” see subsection 11 (4) and for “principal home” see subsections 11 (5), (6) and (7).

**“rent”** has the meaning given by subsections (2) and (4);

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

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

(a) the amounts are payable by the person:

(i) as a condition of occupancy of premises, or of a part of premises, occupied by the person as the person’s principal home; or

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

(iii) if the person is residing in a nursing home that is the person’s principal home—for accommodation in the nursing home; or

(iv) for lodging in premises that are the person’s principal home; or

(v) for the use of a site for:

(a) a caravan or other vehicle; or

(b) a structure;

occupied by the person as the person’s principal home;

or

(vi) for the right to moor a vessel that is occupied by the person as the person’s principal home; and

(b) either:

(i) the amounts are payable every 3 months or more frequently; or

(ii) the amounts are payable at regular intervals (greater than 3 months) and the Secretary is satisfied that the amounts should be treated as rent for the purposes of this Act.

Note: for “retirement village” see subsections 12 (3) and (4) and for “principal home” see subsections 11 (5), (6) and (7).

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

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**(4)** Amounts are **rent** in relation to a person if:

1. the person is a member of a couple; and
2. the amounts are paid by the person, or the person’s partner, for approved respite care for the person in a nursing home; and
3. the person has remained, or is in the Secretary’s opinion likely to remain, in the approved respite care for at least 14 consecutive days.

Note: for “approved respite care” see subsection 4 (9).

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

*Board and lodging*

**(6)** Where:

1. a person pays, or is liable to pay, amounts for board and lodging; and
2. it is not possible to work out the part of each of those amounts that is paid or payable for lodging;

the **amount of rent paid or payable** by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

*Nursing homes*

**(7)** Where:

1. a person who is residing in a nursing home pays, or is liable to pay, amounts for accommodation and other services in the nursing home; and
2. it is not possible to work out the part of each of those amounts that is paid or payable in respect of accommodation;

the **amount of rent paid or payable** by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

**(8)** Unless the contrary intention appears, a reference in this Act to a person **residing in a nursing home** is a reference to a person who is:

1. residing in a benevolent home or in premises at which accommodation is provided exclusively or principally for persons who have a mental disability; or
2. residing in premises that are:

(i) an approved nursing home for the purposes of the *National Health Act 1953* or the *Nursing Homes Assistance Act 1974*;or

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(ii) an approved home for the purposes of the *Aged or Disabled Persons Homes Act 1954*;or

(iii) an approved hostel for the purposes of the *Aged or Disabled Persons Hostels Act 1972*;or

1. a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital; or
2. residing in premises made available for the accommodation of the person by an approved organisation providing hostel care services or personal care services to the person for the purposes of Part III of the *Aged or Disabled Persons Homes Act 1954.*

Note: for “benevolent home” see subsection 23 (1).

***Remote area* definitions**

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

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

**“remote area”** means:

1. those parts of Australia referred to in paragraphs 1 and 2 of Part I of Schedule 2 to the Income Tax Assessment Act; and
2. the Territory of Cocos (Keeling) Islands; and
3. the Territory of Christmas Island.

**(2)** If:

1. a person’s usual place of residence is in the remote area; and
2. the person is absent from the remote area for a period;

the person is to be taken to be **physically present in the remote area** during:

1. if the period does not exceed 8 weeks—the whole of that period; or
2. if the period exceeds 8 weeks—the first 8 weeks of that period.

**(3)** Subsection (2) does not apply to a person in respect of a period during which the person is outside Australia.

***UB and JSA work test* definitions**

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

**“approved organisation”** means an organisation approved under section 28;

**“approved short-term vocational course”** means a course approved under section 26;

**“approved vocational course”** means a course approved under section 27;

**“average male full-time weekly earnings”**,in relation to employment undertaken during a calendar year, means the amount set out under the headings “males—full-time adults—average weekly

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ordinary time earnings” in the document entitled “Average Weekly Earnings, Australia, Preliminary” published by the Australian Statistician most recently before 1 January in that calendar year;

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

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

1. a social security benefit;
2. a sole parent’s pension;
3. a payment as a trainee in full-time training under a program included in the programs known as Labour Force Programs.

Note: a person is required to be a qualified beneficiary under sections 519, 522 to 527 and 597 and 598.

***UB and JSA industrial action* definitions**

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

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

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

Note: see also subsection (2).

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

Note: see also subsection (3).

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

(a) unemployment of the person arising from:

(i) a person or persons being, or having been, engaged in industrial action; and

(ii) the termination of the person’s employment; and

(b) a situation where the person:

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(i) is, or has been, stood down from the person’s employment or work; or

(ii) is, or has been, suspended from the person’s employment or work.

*Industrial action*

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

*Trade unions divided into branches*

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

***Compensation recovery* definitions**

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

**“average weekly earnings”**, in relation to a lump sum preclusion period, means the amount:

1. estimated as the average total weekly earnings, during a particular month, of all male employees in Australia; and
2. last published by the Australian Statistician before the lump sum compensation payment became payable;

Note: for “lump sum preclusion period” see subsections 1165 (3) to (6).

**“compensation”** has the meaning given by subsection (2);

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

**“compensation payer”** means:

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

**“payment for a period”** has the meaning given by subsection (7);

**“periodic payments period”**, in relation to a series of periodic payments, means the period in respect of which the payments are, or are to be, made;

**“potential compensation payer”** means a person who, in the Secretary’s opinion, may become a compensation payer;

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

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*Compensation*

**(2)** For the purposes of this Act, **compensation** means:

1. a payment of damages; or
2. a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme; or
3. a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme; or
4. any other compensation or damages payment, other than a payment to which the recipient has contributed;

(whether the payment is in the form of the whole or part of a lump sum or in the form of a series of periodic payments) that is:

(e) made wholly or partly in respect of lost earnings or lost capacity to earn; and

(f) made either within or outside Australia.

*Compensation part of a lump sum*

**(3)** For the purposes of this Act, the **compensation part of a lump sum compensation payment** is:

(a) 50% of the payment if the following circumstances apply:

(i) the payment is made (either with or without admission of liability) in settlement of a claim that is, in whole or in part, related to disease or injury; and

(ii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise, on or after 9 February 1988; or

(b) if those circumstances do not apply—so much of the payment as is, in the Secretary’s opinion, in respect of lost earnings or lost capacity to earn.

**(4)** Where a person:

1. has received periodic compensation payments in respect of lost earnings or lost capacity to earn; and
2. after receiving those payments, receives a lump sum compensation payment in respect of the lost earnings or lost capacity to earn (in this subsection called the **“LSP”**); and
3. because of receiving the LSP, becomes liable to repay an amount (in this subsection called the **Repaid Periodic Compensation Payment—“RPCP”**)equal to the periodic compensation payments received;

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

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**LSP** - **RPCP**

*Receives compensation*

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

*Insurer*

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

1. an authority of a State or Territory that is liable to indemnify a compensation payer against such a liability, whether the authority is so liable under a contract, a law or otherwise; or
2. an authority of a State or Territory that determines to make a payment to indemnify a compensation payer against such a liability, whether or not the authority is liable to do so.

*Payment for a period*

**(7)** A reference in Part 3.14 to a person receiving a **payment for a period** is a reference to:

1. where the payment is a pension payment—a person receiving a payment during the period; or
2. where the payment is a benefit payment—a person receiving the payment in respect of the period; or
3. where the payment is a sheltered employment allowance—a person receiving the payment during the period; or
4. where the payment is a rehabilitation allowance—a person receiving the payment during the period.

***Incentive allowance* definitions**

**18.** In this Act, unless the contrary intention appears:

**“activity therapy centre”** means premises at which approved activity therapy is provided;

**“adult training centre”** means premises at which approved training is provided;

**“approved activity therapy”** has the same meaning as in the *Handicapped Persons Assistance Act 1974* immediately before 5 June 1987;

Note: on 5 June 1987 the *Disability Services (Transitional Provisions and Consequential Amendments) Act 1986* repealed the definition in the *Handicapped Persons Assistance Act 1974.*

**“approved training”** has the same meaning as in the *Handicapped Persons Assistance Act 1974* immediately before 5 June 1987;

**Definitions s. 18**

Note: on 5 June 1987 the *Disability Services (Transitional Provisions and Consequential Amendments) Act 1986* repealed the definition in the *Handicapped Persons Assistance Act 1974.*

**“independent living training”** means training to assist persons with disabilities to develop or maintain the personal skills and self-reliance necessary to enhance their independence, and self-reliance, in the community, being training or training included in a class of training approved by the Secretary under section 25.

***Mobility allowance* definitions**

**19.** In this Act, unless the contrary intention appears:

**“allowance payday”** means:

1. the Thursday that falls on 11 July 1991; and
2. every second Thursday after that;

**“gainful employment”** means:

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

**“handicapped person”** means a person who:

1. has a physical or mental disability; and
2. has turned 16;

**“sheltered employment”** means paid employment in respect of which a direction under section 32 or 33 is in force;

**“vocational training”** includes training for a profession or occupation.

***Indexation and rate adjustment* definitions**

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

**“CPC rate”** (combined pensioner couple rate) has the meaning given by subsection (2);

**“current figure”**,as at a particular time and in relation to an amount that is to be indexed or adjusted under Part 3.16, means:

1. if the amount has not yet been indexed or adjusted under Part 3.16 before that time—the amount; and
2. if the amount has been indexed or adjusted under Part 3.16 before that time—the amount most recently substituted for the amount under Part 3.16 before that time;

**“FA amount”** (family allowance amount) has the meaning given by subsection (3);

**“index number”**,in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter;

**s. 20 Definitions**

**“November earnings average”**,in relation to a year, means the amount called the “All Employees—Average Weekly Total Earnings—Persons” published by the Australian Statistician in respect of a period ending on or before a particular day in November in that year but does not include a preliminary estimate of that amount.

**(2)** For the purposes of this Act, the **CPC rate (combined pensioner couple rate)** at a particular time is twice the amount that is, at that time, the maximum basic rate of age pension payable to a person who has a pensioner partner.

Note: for the maximum basic rate of age pension see point 1064-B1 of Pension Rate Calculator A in section 1064.

**(3)** For the purposes of this Act, the **FA amount (family allowance amount)** at a particular time is the amount that is, at that time, payable in respect of a child under item 1 of Table B of the Family Allowance Rate Calculator.

*Publication of substituted index numbers*

**(4)** Subject to subsection (5), if at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

*Change to CPI reference base*

**(5)** If at any time (whether before or after the commencement of this section) the Australian Statistician changes the reference base for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the change takes place, only to index numbers published in terms of the new reference base.

*Publication of substituted AWE amount*

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

***Bereavement* definitions**

**21.** For the purposes of this Act, if a person dies:

1. the **bereavement period** in relation to the person’s death is the period of 14 weeks from the day on which the person dies; and
2. the **bereavement notification day** in relation to the person’s death is the day on which the Secretary becomes aware of the death; and

**Definitions s. 21**

1. the **first available bereavement adjustment payday** in relation to the person’s death is the first payday after the bereavement notification day for which it is practicable to terminate or adjust payments under this Act to take account of the person’s death; and
2. the **bereavement rate continuation period** in relation to the person’s death is the period:

(i) that begins on the day on which the bereavement period begins; and

(ii) that ends:

(a) if the first available bereavement adjustment payday is before the end of the bereavement period—on the day before the first available bereavement adjustment payday; or

(b) if the first available bereavement adjustment payday occurs on or after the day on which the bereavement period ends—the day on which the bereavement period ends; and

(e) there is a **bereavement lump sum period** in relation to the person’s death if the first available bereavement adjustment payday occurs before the end of the bereavement period and the bereavement lump sum period is the period that begins on the first available bereavement adjustment payday and ends on the day on which the bereavement period ends.

***Review of decisions* definitions**

**22.** In this Act, unless the contrary intention appears:

**“AAT”** means the Administrative Appeals Tribunal;

**“AAT Act”** means the *Administrative Appeals Tribunal Act 1975*;

**“SSAT”** means the Social Security Appeals Tribunal;

**“SSAT rate of return decision”** means a decision of the Social Security Appeals Tribunal on a rate of return decision in relation to an investment product.

Note 1: for “rate of return decision” in relation to an investment product see subsection 9(1).

Note 2: this definition is relevant to Part 6.4 (Review by Social Security Appeals Tribunal) and Part 6.4 (Review by Administrative Appeals Tribunal).

**General definitions**

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

**“1947 Act”** means the *Social Security Act 1947*;

**“ABSTUDY”** means the ABSTUDY scheme to the extent that it provides means-test allowances;

**“ABSTUDY Schooling scheme”** means the ABSTUDY Schooling part of the ABSTUDY scheme;

**s. 23 Definitions**

**“ABSTUDY Tertiary scheme”** means the ABSTUDY Tertiary part of the ABSTUDY scheme;

**“actual market exchange rate”** in relation to a foreign currency, means the on-demand airmail buying rate in relation to that foreign currency available at the Commonwealth Bank of Australia;

**“additional amounts for dependent children”** means amounts added to the maximum basic rate of a social security pension by way of dependent child add-on or guardian allowance;

**“approved friendly society”** means a society person or body in relation to whom or in relation to which a determination under section 29 is in force;

**“assurance of support debt”** means a debt due and payable by a person to the Commonwealth because of the operation of sub-regulation 165 (1) of the Migration Regulations in respect of the payment to another person of special benefit under Part 2.15 of this Act;

**“Australia”** includes the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island;

Note: see also subsection 7 (4), (6) and (7) for special residence rules for external Territories.

**“AUSTUDY allowance”** means a benefit paid under the AUSTUDY scheme;

**“authorised review officer”** means an officer authorised under section 1301 to perform duties as an authorised review officer for the purposes of this Act;

**“benevolent home”** means a home approved by the Secretary under section 34;

**“building society account”** means an account maintained by a person with an organisation registered as a permanent building society under a law of a State or Territory into which moneys received on deposit by the organisation from the person are paid;

**“CES”** means Commonwealth Employment Service;

**“compensation debt”** means an amount that a person is liable to pay to the Commonwealth because of a notice by the Secretary under section 1166 or 1170;

**“computer”** means a device that is used by the Department for storing or processing information;

**“credit union account”** means an account maintained by a person with an organisation registered as a credit union under the law of a State or Territory into which moneys received on deposit from the person are paid;

**“decision”** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

**Definitions** s. **23**

Note: subsection 3 (3) of the *Administrative Appeals Tribunal Act 1975* defines “decision” as including:

* making, suspending, revoking or refusing to make an order or determination;
* giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
* issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
* imposing a condition or restriction;
* making a declaration, demand or requirement;
* retaining, or refusing to deliver up, an article;
* doing or refusing to do any other act or thing.

**“dependent child add-on”** means an amount included in a person’s pension or benefit rate under:

1. point 1064-C3 of Pension Rate Calculator A; or
2. point 1065-C3 of Pension Rate Calculator B (items 1, 2 and 3 of Table C); or
3. point 1066-C2 of Pension Rate Calculator C; or
4. point 1067-E2 of Benefit Rate Calculator A; or
5. point 1068-E2 of Benefit Rate Calculator B; or
6. paragraph 47 (3) (a), (b) or (c) of the Veterans’ Entitlements Act;

**“education leavers waiting period”** means:

1. an unemployment benefit education leavers waiting period under sections 541 and 542; or
2. a job search allowance education leavers waiting period under sections 612 and 613; or
3. a sickness benefit education leavers waiting period under sections 684 and 685;

**“employment declaration”** has the same meaning as in Part Va of the Income Tax Assessment Act;

**“exempt income”** means exempt income under subsection 23 (1) of the Income Tax Assessment Act;

**“external Territory”** does not include the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island;

**“foreign exchange period”** means:

1. the period commencing 20 September and ending on the day before the pension payday that falls closest to the middle of the 6 month period commencing 20 September; and
2. the period starting from the pension payday referred to in paragraph (a) and ending on 19 March; and
3. the period commencing 20 March and ending on the day before the pension payday that falls closest to the middle of a 6 month period commencing 20 March; and
4. the period starting from the pension payday referred to in paragraph (c) and ending on 19 September;

**s. 23 Definitions**

**“guardian allowance”** means an amount included in a person’spension or benefit rate under:

1. point 1064-C7 of Pension Rate Calculator A; or
2. point 1065-C3 of Pension Rate Calculator B (item 4 of Table C); or
3. point 1066-C4 of Pension Rate Calculator C; or
4. point 1067-E5 of Benefit Rate Calculator A; or
5. point 1068-E5 of Benefit Rate Calculator B; or

(f) paragraph 47 (3) (e) of the Veterans’ Entitlements Act;

**“incentive allowance”** means an amount under:

1. Module J of Pension Rate Calculator A; or
2. Module F of Pension Rate Calculator B;

**“Income Tax Assessment Act”** means the *Income Tax Assessment Act 1936*;

**“joint ownership”** includes ownership as joint tenants or as tenants in common;

**“JSA automatic deferment provision”** (job search allowance deferment provision) means:

1. subsection 614(3) (failure to comply with Secretary’s requirements); or
2. subsection 615 (1) (unemployment due to voluntary act); or
3. subsection 616 (1) (unemployment due to misconduct); or
4. subsection 617(1) (refusal of job offer); or
5. subsection 618 (1) (removal from allowance for failure to take reasonable steps to find work); or
6. subsection 619 (1) (failure to comply with notification requirements);

**“JSA discretionary deferment provision”** (job search allowance discretionary deferment provision) means:

1. subsection 614 (1) (failure to comply with Secretary’s requirements); or
2. subsection 620 (1) (failure to continue CFS registration); or

(c) subsection 621 (1) (seasonal workers);

**“major disaster”** means:

1. the earthquake that caused severe damage to parts of Newcastle on 28 December 1989; or
2. a disaster in respect of which a declaration is in force under section 36;

**Definitions s. 23**

**“medical practitioner”** means a person registered and licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners;

**“mental hospital”** means premises in relation to which a declaration by the Secretary under section 30 is in force;

**“mental hospital patient”** means:

(a) a person who:

(i) has been admitted to a mental hospital as a patient of the hospital; and

(ii) is shown on the records of the hospital as a patient (other than an outpatient) of the hospital; or

(b) a person who:

(i) is being transferred to a mental hospital; and (ii) will become a mental hospital patient within the meaning of paragraph (a) at that hospital; and

(iii) immediately before being transferred, was a mental hospital patient within the meaning of paragraph (a) at another mental hospital;

**“NEIS payment”** means a payment under the scheme known as the New Enterprise Incentive Scheme;

**“non-profit organisation”** means:

(a) an organisation that is not carried on for the purposes of profit or gain to its individual members and is:

(i) a religious organisation; or

(ii) an organisation the principle objects or purposes of which are charitable or benevolent; or

(iii) an organisation of former members of the Defence Force established in every State or a State branch of such an organisation; or

(iv) an organisation approved by the Minister for the purposes of this Part; and

1. the trustee under a trust established by an organisation referred to in paragraph (a); and
2. a corporation established by an organisation referred to in paragraph (a); and
3. a local governing body established by or under a law of a State or Territory; and
4. the trustee under a trust established by such a local governing body; and
5. a corporation established by such a local governing body; and
6. the trustee under a trust:

(i) established for charitable or benevolent purposes; and

**s. 23 Definitions**

(ii) approved by the Minister for the purpose of Part 2.9;

**“nursing home”** means premises that are:

1. an approved nursing home for the purposes of the *National Health Act 1953* or the *Nursing Homes Assistance Act 1974*;or
2. an approved home for the purposes of the *Aged or Disabled Persons Homes Act 1954*;or
3. an approved hostel for the purposes of the *Aged or Disabled Persons Hostels Act 1972*;or
4. made available for the accommodation of the person by an approved organisation providing hostel care services or personal care services to the person for the purposes of Part III of the *Aged or Disabled Persons Homes Act 1954*;

**“officer”** means a person performing duties, or exercising powers or functions under or in relation to this Act and, in the case of sections 1312 to 1321, includes:

1. a person who has been such a person; and
2. a person who is or has been appointed, or employed by the Commonwealth and who, as a result of that appointment or employment may acquire or has acquired information concerning a person under this Act; and
3. a person who, although not appointed or employed by the Commonwealth, performs or did perform services for the Commonwealth and who, as a result of performing those services may acquire or has acquired information concerning a person under this Act;

**“ordinary waiting period”** means:

1. an unemployment benefit ordinary waiting period under sections 539 and 540; or
2. a job search allowance ordinary waiting period under sections 610 and 611; or
3. a sickness benefit ordinary waiting period under sections 682 and 683;

**“pension age”**, in relation to a person, means:

1. if the person is a woman—the age of 60 years; or
2. if the person is a man—the age of 65 years;

**“pension payday”** means:

1. the Thursday that falls on 4 July 1991; and
2. each succeeding alternate Thursday;

**“pension period”** means a period that:

1. starts immediately after a pension payday; and
2. ends at the end of the next pension payday;

**Definitions s. 23**

**“protected information”** means information about a person that is held in the records of the Department;

**“receive”** has the meaning given by subsections (2), (3) and (4);

**“recipient notification notice”** means a notice given by the Secretary under section 68, 121, 172, 222, 284, 341, 389, 435, 487, 572, 644, 713, 759, 808, 873, 930, 978, 1023 or 1054;

**“recipient statement notice”** means a notice given by the Secretary under section 69, 122, 173, 223, 285, 342, 390, 436, 488, 573, 645, 714, 760, 809, 874, 931, 979, 1024 or 1055;

**“rehabilitation program”** means:

1. a rehabilitation program under Part III of the *Disability Services Act 1986*;or
2. a follow-up program in relation to which a determination by the Secretary under section 31 is in force;

**“Secretary”** means the Secretary to the Department;

**“service pension”** means:

1. an age service pension under Part III of the Veterans’ Entitlements Act; or
2. an invalid service pension; or
3. a wife service pension under Part III of the Veterans’ Entitlements Act; or
4. a carer service pension under Part III of the Veterans’ Entitlements Act;

**“social security benefit”** means:

1. unemployment benefit; or
2. job search allowance; or
3. sickness benefit; or
4. special benefit;

**“social security pension”** means:

1. an age pension; or
2. an invalid pension; or
3. a wife pension; or
4. a carer pension; or
5. a sole parent pension; or
6. a widowed person allowance; or
7. a widow B pension; or

(h) a sheltered employment allowance; or

(j) a rehabilitation allowance; or

(k) a special needs pension;

**“specified foreign country”** means a country determined by the Minister to be a specified foreign country under subsection 38 (1);

**s. 23 Definitions**

**“tax file number”** has the same meaning as in Part Va of the Income Tax Assessment Act;

**“tax year”** has the same meaning as **“year of income”** has in the Income Tax Assessment Act;

Note: section 6 of the Income Tax Assessment Act defines “year of income” as the financial year (1 July to 30 June) or, if another accounting period has been adopted under section 18 of that Act instead of the financial year, that accounting period.

**“taxable income”** has the same meaning as in the Income Tax Assessment Act;

**“transfer day”**, in relation to a transferee to a social security benefit, has the meaning given by subsections (6) and (7);

**“transferee to a social security benefit”** has the meaning given by subsections (6) and (7);

**“UB automatic deferment provision”** (unemployment benefit deferment provision) means:

1. subsection 543 (3) (failure to comply with Secretary’s requirements); or
2. subsection 544 (1) (unemployment due to voluntary act); or
3. subsection 545 (1) (unemployment due to misconduct); or
4. subsection 546 (1) (refusal of job offer); or
5. subsection 547 (1) (removal from benefit for failure to take reasonable steps to find work); or

(f) subsection 548 (1) (failure to comply with notification requirements);

**“UB discretionary deferment provision”** (unemployment benefit discretionary deferment provision) means:

1. subsection 543 (1) (failure to comply with Secretary’s requirements); or
2. subsection 549 (1) (failure to continue CES registration); or

(c) subsection 550 (1) (seasonal workers);

**“unused annual leave”,** in relation to a person, means:

1. leave described as annual leave, recreation leave or annual holidays; or
2. leave that is granted for reasons that are the same as, or similar to, the reasons for which annual leave, recreation leave or annual holidays are granted;

that is unused when the person becomes unemployed or when the person’s employment with an employer ends;

**“unused annual leave waiting period”** means:

**Definitions s. 23**

1. an unemployment benefit unused annual leave waiting period under sections 536 to 538; or
2. a job search allowance unused annual leave waiting period under sections 607 to 609; or
3. a sickness benefit unused annual leave waiting period under sections 679 to 681;

**“Veterans’ Entitlements Act”** or **“VEA”** means the *Veterans’ Entitlements Act 1986*;

**“waiting period”** means:

1. an unemployment benefit unused annual leave waiting period under sections 536 to 538; or
2. an unemployment benefit ordinary waiting period under sections 539 and 540; or
3. an unemployment benefit education leavers waiting period under sections 541 and 542; or
4. a job search allowance unused annual leave waiting period under sections 607 to 609; or
5. a job search allowance ordinary waiting period under sections 610 and 611; or
6. a job search allowance education leavers waiting period under sections 612 and 613; or
7. a sickness benefit unused annual leave waiting period under sections 679 to 681; or

(h) a sickness benefit ordinary waiting period under sections 682 and 683; or

(j) a sickness benefit education leavers waiting period under sections 684 and 685;

**“widow”** means a woman who was the partner of a man immediately before he died.

1. For the purposes of this Act (other than section 735), a person is taken to be **receiving** a social security pension or a social security benefit from the earliest day on which the pension or benefit is payable to the person even if the first instalment of the pension or benefit is not paid until a later day.
2. For the purposes of this Act, a person is to be taken to be **receiving** a social security pension until the latest day on which the pension is payable to the person even if the last instalment of the pension is paid before that day.
3. For the purposes of this Act, a person is to be taken to be **receiving** a social security benefit until the latest day for which the benefit is payable to the person even if the last instalment of the benefit is not paid until a later day.

**(5)** For the purposes of this Act, a person is **in gaol** if the person:

**s. 23 Definitions**

1. is imprisoned in connection with the person’s conviction for an offence; or
2. is being lawfully detained in a place other than a prison, in connection with the person’s conviction for an offence; or
3. is undergoing a period of custody pending trial or sentencing for an offence.

*Transferee to social security benefit*

**(6)** If:

1. a person becomes qualified for a social security benefit (in this subsection called the **“new benefit”**); and
2. immediately before becoming qualified for the new benefit the person is receiving:

(i) a social security or service pension; or

(ii) another social security benefit;

(in this subsection called the **“old pension or benefit”**); and

(c) the person ceases to receive the old pension or benefit;

the person is a **transferee** to the new benefit and the person’s **transfer day** is the day that immediately follows the day on which the person ceases to receive the old pension or benefit.

**(7)** If:

1. a person becomes qualified for a social security benefit (in this subsection called the **“new benefit”**); and
2. immediately before becoming qualified for the new benefit:

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

(ii) the person’s partner is receiving:

(a) a social security benefit; or

(b) a sheltered employment allowance; or

(c) a+ rehabilitation allowance; and

(iii) the rate of the partner’s benefit or allowance is increased by reference to the person;

the person is a **transferee** to the new benefit and the person’s **transfer day** is the day on which the person becomes qualified for the new benefit.

**(8)** Subject to subsection (9), **“psychiatric confinement”** in relation to a person includes confinement in:

1. a psychiatric section of a hospital; and
2. any other place where persons with psychiatric disabilities are, from time to time, confined.

**(9)** The confinement of a person in a psychiatric institution during a period when the person is undertaking a course of rehabilitation is not to be taken to be **psychiatric confinement**.

**Definitions s. 23**

**(10)** If a person is subject to an unused annual leave waiting period or an ordinary waiting period for a social security benefit under Part 2.11 (unemployment benefit), Part 2.12 (job search allowance) or Part 2.14 (sickness benefit), the person is to be taken to have **served the waiting period** if, and only if:

1. the waiting period has ended; and
2. the person was, throughout the waiting period, qualified for the social security benefit.

Note 1: for “unused annual leave waiting period” see sections 536, 607 and 679.

Note 2: for “ordinary waiting period” see sections 539, 610 and 682.

*Participation in pension loans scheme*

**(11)** For the purposes of this Act, a person is **participating in the pension loans scheme** if:

1. the person has made a request to participate in the scheme under section 1136; and
2. because of the request, the value of the person’s assets (or if the person is a member of a couple, the couple’s assets) has been disregarded when determining the rate of pension or allowance payable to the person; and
3. the person owes a debt to the Commonwealth under section 1135.

**s. 24 Determinations having Interpretative Effect**

**PART 1.3—DETERMINATIONS HAVING INTERPRETATIVE EFFECT**

**Person may be treated as not being a member of a couple (subsection 4 (2))**

**24. (1)** Where:

1. a person is legally married to another person; and
2. the person is not living separately and apart from the other person on a permanent basis; and
3. the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

**(2)** Where:

1. a person is living with another person as the spouse of that other person on a genuine domestic basis; and
2. the person is not legally married to the other person; and
3. the other person is of the opposite sex; and
4. the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

**Independent living training (incentive allowance)**

**25.** The Secretary may determine that training specified in the determination is to be independent living training for the purposes of this Act.

Note: incentive allowance may be available to a person who is receiving an invalid pension, a rehabilitation allowance or a sheltered employment allowance.

**Approval of short-term vocational courses (UB and JSA work test)**

**26.** The National Director of the CES may, for the purposes of sections 522, 524 and 597, by writing, approve full-time training courses of up to 4 weeks duration which he or she considers to be vocationally useful.

**Approval of vocational courses (UB work test)**

**27.** The National Director of the CES may, for the purposes of section 525, by writing, approve full-time training courses of up to 13 weeks duration which he or she considers to be vocationally useful.

**Determinations having Interpretative Effect s. 28**

**Approval of voluntary organisations (UB and JSA work test)**

**28.** The National Director of the CES may, for the purposes of sections 523, 526, 527 and 598, by writing, approve organisations which he or she considers provide vocationally useful full-time voluntary work.

**Approval of friendly** societies

**29.** Where:

1. a society is registered or incorporated under a law of a State or of a Territory relating to friendly societies; or
2. in the Secretary’s opinion, a person or body:

(i) is similar in character to a friendly society; and

(ii) provides benefits similar to the benefits provided by a friendly society;

the Secretary may determine that the society, person or body is to be an approved friendly society for the purposes of this Act.

**Approval of mental hospitals**

**30.** If the Secretary is satisfied that accommodation for persons with a mental disability is provided at particular premises, he or she may declare the premises to be a mental hospital for the purposes of this Act.

**Approval of follow-up rehabilitation programs**

**31.** The Secretary may determine that:

1. a follow-up program under Part III of the *Disability Services Act 1986*;or
2. each of the programs included in a class of follow-up programs under that Part;

are follow-up programs for the purposes of this Act.

**Approval of sheltered employment—non-profit organisation**

**32. (1)** Where the Secretary is satisfied that:

1. a non-profit organisation provides paid employment for disabled persons at certain premises; and
2. at least 50% of the persons employed at the premises are disabled persons;

the Secretary may determine that the paid employment provided at the premises by the organisation is sheltered employment.

Note: for “non-profit organisation” see subsection 23 (1).

**(2)** For the purposes of subsection (1), a **disabled person** is a person: (a) who is:

(i) permanently incapacitated for work; and

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(ii) the degree of the incapacity for work is 85% or more; and

(iii) 50% or more of the incapacity for work is directly caused by a physical or mental impairment; or

(b) who, in the Secretary’s opinion, would satisfy paragraph (a) if the person were no longer engaged in paid employment.

**Approval of sheltered employment—supported employment**

**33.** **(1)** Where:

1. the Minister administering the *Disability Services Act 1986* has approved a grant of financial assistance to a non-profit organisation under subsection 10 (1) of that Act; and
2. the financial assistance relates to the provision by the organisation of supported employment services within the meaning of section 7 of that Act;

the Secretary may determine that the paid employment to which those supported employment services relates is sheltered employment.

Note: for “non-profit organisation” see subsection 23 (1).

1. Subject to subsection (3), a determination under subsection (1) may relate to employment provided before or after the day of determination.
2. A determination under subsection (1) may not relate to employment provided before 5 June 1987.

**Approval of benevolent homes**

**34.** Where a home:

1. is conducted for benevolent purposes; and
2. is wholly or partly maintained by contributions from:

(i) the Consolidated Revenue Fund of the Commonwealth; or

(ii) the consolidated revenue of a State or of the Australian Capital Territory or the Northern Territory;

the Secretary may approve the home for the purposes of this Act.

Note: benevolent homes may receive pension payments on behalf of inmates in some cases—see section 60, 113, 164, 274 or 381.

**Approval of care organisation**

**35. (1)** The Secretary may approve:

1. a charitable or religious organisation; and
2. any other organisation;

that co-ordinates or provides residential care services to young people in Australia, as an approved care organisation, for the purposes of this Act.

**Determinations having Interpretative Effect s. 35**

**(2)** The Secretary may approve, under subsection (1), a charitable or religious organisation which is wholly or partly funded by contributions from:

(i) the Consolidated Revenue Fund of the Commonwealth; or

(ii) the consolidated revenue of a State or of the Australian Capital Territory or the Northern Territory.

**(3)** The Secretary is not to approve, under subsection (1), a mental hospital which is either:

1. maintained by the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or
2. mainly dependent upon financial assistance from the Commonwealth, a State, the Australian Capital Territory or the Northern Territory.

**Major disaster**

**36. (1)** The Minister may declare that a disaster that:

(a) caused a significant number of deaths, serious illnesses or serious injuries; or

(b) caused significant damage to property;

is a major disaster for the purposes of this Act.

1. The disaster may be one that occurs naturally or one that is caused by humans.
2. A declaration under this section is to be made by notice in the *Gazette.*

**Dependent child—inmate of a mental hospital**

**37. (1)** A young person is taken to be a **dependent child** of another person (in this section called the **“adult”**) for the purposes of Part 2.17 (family allowance) if:

1. the young person is an inmate of a mental hospital; and
2. the mental hospital is either:

(i) maintained by the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or

(ii) mainly dependent upon financial assistance from the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; and

1. the adult is making a reasonable contribution towards the expenses of maintaining the young person; and
2. the Secretary determines that the young person is to be taken to be a dependent child of the adult.

**(2)** Where the adult is the male member of a couple, the Secretary may determine, under paragraph (1) (d), that the young person is to be taken to be the dependent child of the female member of the couple.

**s. 38 Determinations having Interpretative Effect**

**Specification of foreign country**

**38. (1)** The Minister may determine that a foreign country is to be a specified foreign country for the purposes of this Act by notice in the *Gazette.*

**(2)** A notice is a disallowable instrument for the purposes of section 46a of the *Acts Interpretation Act 1901.*

**Miscellaneous s. 39**

**PART 1.4—MISCELLANEOUS**

**Tables, calculators etc. form part of section**

**39. (1)** For the purposes of this Act, a Table and a Key to a Table are to be taken to be part of:

1. if the Table occurs in a section containing subsections—the subsection immediately preceding the Table; and
2. if the Table occurs in a section that does not contain subsections—the section.
3. For the purposes of this Act, a Calculator (whether a Rate Calculator, a Lump Sum Calculator or any other Calculator) is to be taken to be part of the section immediately preceding the Calculator.
4. Rate Calculators are divided into Modules (for example, Module A).
5. A Module of a Rate Calculator is divided into points.
6. The points in a Module are numbered as follows:
7. the initial number (followed by a dash) identifies the section that immediately precedes the Rate Calculator;
8. the letter following the dash is the letter allocated to the Module in which the point occurs;
9. the final number identifies the order of the point within the Module.

*Example:* point 1068-E8 is the eighth point in Module E of the Rate Calculator at the end of section 1068.

Note: paragraph (5) (a) has been adopted so that if a reader is looking for a particular section of the Act and opens a page that happens to be in the middle of a Rate Calculator, the reader will know whether the section the reader is looking for is before or after that page.

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**CHAPTER 2—PENSIONS, BENEFITS AND ALLOWANCES**

**PART 2.1—INTRODUCTION**

**Order of provisions/structure of Parts**

**40. (1)** In each Part dealing with a pension, benefit or allowance, this is the order in which the provisions are presented:

1. qualification and payability provisions (who is entitled to the payment);
2. claim provisions (how is a claim made);
3. rates provisions (how much will the payment be);
4. determination of claim (when it will be granted from);
5. payment provisions (how will payment be made and when will it commence);
6. protection (how payments will be protected);
7. recipient obligations provisions (what does the recipient need to do);

(h) variation and termination provisions (when can payment and rate be reviewed or changed);

(j) bereavement payments (payments available when a person’s partner or child has died);

(k) fringe benefits (concessions available to people receiving that pension, benefit or allowance).

**(2)** Other relevant provisions are referred to in notes at the bottom of key provisions in the Part.

**Qualification for/payability of pension, benefit or allowance**

**41.** Before a pension, benefit or allowance is payable to a person under this Act:

1. the person must be qualified for the pension, benefit or allowance; and
2. there must be nothing in this Act that makes the pension, benefit or allowance not payable to the person (for example, a waiting period provision, a multiple entitlement exclusion provision or a compensation preclusion provision).

Note: provisions in the Act relating to paragraph (a) matters refer to the “person” being “qualified”, “disqualified” or “not qualified” for the pension, benefit or allowance and provisions in the Act relating to paragraph (b) matters refer to the “pension, benefit or allowance” being “payable” or “not payable” to the person.

**Payday-based payments and period-based payments**

**42. (1)** Some payments under this Act are payday-based and others are period-based.

**(2)** If a payday-based payment is payable to a person, the person will be paid a **full** instalment of the payment on each payday during

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**Introduction s. 42**

the period during which the payment is payable to the person and will be paid nothing on a payday outside that period.

Note: the payday-based payments are the social security pensions, family allowance and family allowance supplement.

**(3)** If a period-based payment is payable to a person, the person will be paid only for the particular period (which might be less than a fortnight) in respect of which the payment is payable.

Note 1: the period-based payments are the social security benefits.

Note 2: the qualifications for a period-based payment usually require the qualifying conditions to be met throughout a particular period and the payment is expressed as being “in respect of or “for” that period.

**s. 43 Age Pension**

**PART 2.2—AGE PENSION**

***Division 1*—*Qualification for and payability of age pension***

***Subdivision A*—*Qualification***

**Qualification for age pension**

**43. (1)** A person is qualified for an age pension if the person:

(a) has turned:

(i) if the person is a woman—60; or

(ii) if the person is a man—65; and

(b) has 10 years qualifying Australian residence.

Note: for “qualifying Australian residence” see section 7.

**(2)** Subsection (1) has effect subject to sections 1218 and 1219 (departure certificate requirements for people leaving Australia).

***Subdivision B*—*Payability***

**Age pension not payable in some circumstances**

**44. (1)** Even though a person is qualified for an age pension, the pension may not be payable to the person because:

1. the pension has not commenced to be payable (see sections 45 and 56); or
2. the person is in gaol (see Part 3.13); or
3. the person is receiving another pension or benefit (see section 47).

**(2)** An age pension is not payable to a person if the person’s age pension rate would be nil.

**Age pension generally not payable before claim**

**45.** An age pension is not payable to a person before the person’s provisional commencement day (identified under section 46).

**Provisional commencement day**

*General rule*

**46. (1)** Subject to subsections (2) and (3), a person’s **provisional commencement day** is the day on which the person claims the age pension.

*Initial incorrect claim followed by claim for age pension*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**) for:

(i) a social security or service pension or a social security benefit; or

**Age Pension s. 46**

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to an age pension; and

1. on the day on which the person makes the initial claim, the person is qualified for an age pension; and
2. the person subsequently makes a claim for an age pension; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

*Early claim*

**(3)** If:

1. a person lodges a claim for an age pension; and
2. the person is not, on the day on which the claim is lodged, qualified for an age pension; and
3. the person becomes qualified for an age pension sometime during the period of 3 months that starts immediately after the day on which the claim is lodged;

the person’s provisional commencement day is the first day on which the person is qualified for the pension and is an Australian resident and in Australia.

**Multiple entitlement** exclusion

**47.** An age pension is not payable to a person if the person is receiving:

1. another social security pension; or
2. a social security benefit; or
3. a service pension.

Note: “social security pension” includes sheltered employment and rehabilitation allowances and “social security benefit” includes job search allowance.

***Division 2*—*Claim for age pension***

**Need for a claim**

**48. (1)** A person who wants to be granted an age pension must make a proper claim for that pension.

Note: for “proper claim”—see section 49 (form), section 50 (manner of lodgment) and section 51 (residence/presence in Australia).

**(2)** For the purposes of subsection (1), if:

1. a claim for age pension is made by or on behalf of a person; and
2. at the time when the claim is made, the claim cannot be granted because the person is not qualified for that pension;

the claim is to be taken to have not been made.

**s. 49 Age Pension**

**Form of claim**

**49.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**50. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.
4. Subject to subsection (3), a place or person approved under subsection (1) must be a place or person in Australia.
5. The Secretary may approve a place or person outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

Note: for international agreements see 4.1.

**Claimant must be Australian resident and in Australia**

**51.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

Note 1: for “Australian resident” see subsections 7 (2) and (3).

Note 2: the provisions of a scheduled international agreement may permit a proper claim to be made by a person who is not an Australian resident or not in Australia: see section 1208.

***Division 3***—***Determination of claim***

**Secretary to determine claim**

**52.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**53.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for an age pension; and
2. the pension is payable.

**Date of effect of determination**

**54. (1)** Subject to subsections (2), (3) and (4), a determination under section 53 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

**Age Pension s. 54**

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for age pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for age pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for age pension; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

**s. 55 Age Pension**

***Division 4*—*Rate of age pension***

**How to work out a person’s age pension rate**

**55.** A person’s age pension rate is worked out:

1. if the person is not permanently blind—using Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or
2. if the person is permanently blind—using Pension Rate Calculator B at the end of section 1065 (see Part 3.3).

***Division 5*—*Payment of age pension***

**Commencement of age pension**

**56.** An age pension becomes payable to a person on the first day on which:

1. the person is qualified for the pension; and
2. no provision of this Act makes the pension not payable to the person.

Note 1: for qualification see section 43.

Note 2: for the circumstances in which an age pension is not payable see section 44.

**Payment by instalments**

**57. (1)** A full instalment of age pension is payable to a person on each pension payday on which:

1. the person is qualified for the pension; and
2. the pension is payable to the person.

**(2)** If the person is outside Australia, the instalments referred to in subsection (1) are to be paid to the person on such pension paydays as the Secretary determines for the purposes of this subsection..

**Effect on instalments of backdating claim**

**58.** If:

1. a person lodges a claim for an age pension on a particular day (in this section called the **“claim day”**); and
2. the person’s provisional commencement day is before the claim day;

any instalment of age pension that would, but for this section, be payable, is payable to the person:

1. if the claim day was a pension payday—on that day; or
2. the first pension payday after the claim day.

Note: for “provisional commencement day” see section 46.

**Age Pension s. 59**

**Calculation of amount of instalment**

**59. (1)** The amount of an instalment of age pension is the amount worked out by dividing the amount of the annual rate of the pension by 26.

1. If the amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is, subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a person on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.
3. If, apart from this subsection, the amount of an instalment of age pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Inmates of benevolent homes**

**60. (1)** While a person who is receiving an age pension is an inmate of a benevolent home:

1. so much of the person’s pension as does not exceed the pensioner contribution is to be paid to the person who controls the benevolent home for the maintenance of the person in the benevolent home; and
2. the balance (if any) is to be paid to the person receiving the pension.
3. For the purposes of this section, the **pensioner contribution** is, subject to subsection (3), 364 times the amount in force from time to time for the purposes of subparagraph 47 (2) (b) (iii) of the *National Health Act 1953.*
4. If the amount worked out under subsection (2) is not a multiple of $2.60, the pensioner contribution is the next lower amount that is a multiple of $2.60.

**Manner of payment**

**61.** A person’s age pension is, subject to section 62, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**62. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s age pension is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the age pension is to be paid in accordance with the direction.

**s. 63 Age Pension**

**Payment into bank account etc.**

**63. (1)** The Secretary may direct that the whole or a part of the amount of a person’s age pension is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the age pension is payable.
2. The account may be an account that is maintained by a person to whom the age pension is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the agepension is to be payable in accordance with the direction.

**Where pension payday would fall on public holiday etc.**

**64.** If the Secretary is satisfied that an amount of age pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or abank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of pension after death**

**65. (1)** If:

1. an age pension is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of age pension payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of age pension under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of age pension.

***Division******6***—***Protection of age pension***

**Age pension to be absolutely inalienable**

**66. (1)** Subject to subsection (2) and section 1359, age pension is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

**Age Pension s. 66**

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of age pension payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**67. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of age pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of age pension payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7*—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**68. (1)** The Secretary may give a person to whom an age pension is being paid a notice that requires the person to inform the Department if:

(a) a specified event or change of circumstances occurs; or

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(b) the person becomes aware that a specified event or change of circumstances is likely to occur.

1. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the pension.
2. A notice under subsection (1):
3. must be in writing; and
4. may be given personally or by post; and
5. must specify how the person is to give the information to the Department; and
6. must specify the period within which the person is to give the information to the Department; and
7. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of age pension**

**69. (1)** The Secretary may give a person to whom an age pension is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the pension to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and

**Age Pension s. 69**

1. must specify how the statement is to be given to the Department; and
2. must specify the period within which the person is to give the statement to the Department; and
3. must specify that the notice is given under this section.
4. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
5. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
6. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**70. (1)** A person is not excused from giving information pursuant to a notice under section 68 or 69 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 68 or 69 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 68 (5) or (6) or 69 (5) or (6).

***Division 8*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**71. (1)** A determination that:

1. a person’s claim for an age pension is granted; or
2. an age pension is payable to a person;

continues in effect until:

(c) the pension ceases to be payable under section 72 or 73; or

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(d) a further determination in relation to the pension under section 78 has taken effect.

Note 1: for paragraph (a) see section 53.

Note 2: for paragraph (b) see section 79—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of an age pension continues in effect until:

1. the pension becomes payable at a lower rate under section 74 or 75; or
2. a further determination in relation to the pension under section 76 or 77 has taken effect.

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 68 notification obligations**

**72.** If:

1. a person who is receiving an age pension is given a notice under section 68; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension would, but for this section, cease to be payable to the person;

the pension continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s pension, there is no automatic rate reduction and a determination under section 77 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 68 notification obligations**

**73.** If:

(a) a person who is receiving an age pension is given a notice under section 68; and

**Age Pension s. 73**

1. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
2. the event or change in circumstances occurs; and
3. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
4. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension ceases to be payable to the person;

the pension ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

***Subdivision C*—*Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 68 notification obligations**

**74.** If:

1. a person who is receiving an age pension is given a notice under section 68; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of pension is to be reduced;

the pension becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstance occurs.

**Automatic rate reduction—failure to inform Department of payment for remunerative work where earnings credit account balance available**

**75.** If:

1. a person who is receiving an age pension is given a notice under section 68; and
2. the notice requires the person to inform the Department of income for remunerative work undertaken by the person; and
3. the person fails to notify the Department of income of that kind in accordance with the notice; and

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(d) the person has an earnings credit account balance for the purposes of Division 4 of Part 3.10;

the pension becomes payable to the person at the reduced rate from the first pension payday after the day on which the person’s earnings credit account balance is reduced to nil.

***Subdivision D*—*Determinations***

**Rate increase determination**

**76.** If the Secretary is satisfied that the rate at which an age pension is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 80.

**Rate reduction determination**

**77.** If the Secretary is satisfied that the rate at which an age pension is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 74 or 75 (see subsection 71 (2)).

Note 2: for the date of effect of a determination under this section see section 81.

**Cancellation or suspension determination**

**78.** If the Secretary is satisfied that an age pension is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 72 or 73 (see subsection 71 (1)).

Note 2: for the date of effect of a determination under this section see section 81.

**Resumption of payment after cancellation or suspension**

**79. (1)** If the Secretary:

1. cancels or suspends a person’s age pension under section 78; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and (ii) because of the decision to cancel or suspend:

(a) the person did not receive an age pension that was payable to the person; or

(b) the person is not receiving an age pension that is payable to the person;

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the Secretary is to determine that an age pension was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 80.

***Subdivision E*—*Date of effect of determinations***

**Date of effect of favourable determination**

**80. (1)** The day on which a determination under section 76 or 79 (in this section called the **“favourable determination”**) takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the “previous decision”) is made in relation to a person’s age pension; and
2. a notice is given to the person to whom the age pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a person’s age pension; and
2. a notice is given to the person to whom the age pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

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the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a person’s age pension; and
2. no notice is given to the person to whom the age pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion, for the purposes of subsections 5 (12) and (13), that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect

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of that young person, and the young person or other person has since ceased to receive that payment; and

(c) the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**81. (1)** The day on which a determination under section 77 or 78 (in this section called the **“adverse determination”**) takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

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*Contravention of Act*

**(4)** If:

(a) the person whose age pension is affected by the adverse determination has contravened a provision of this Act (other than section 69, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the pension has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the pension was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments***

***Subdivision A*—*Death of pensioner partner***

**Qualification for payments under this Subdivision**

**82. (1)** If:

1. a person is receiving an age pension; and
2. the person is a member of a couple; and
3. the person’s partner dies; and
4. immediately before the partner died, the partner was receiving:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a carer pension; or

(v) a sole parent pension under subparagraph 249 (1) (a) (iv) (illness separated couple); or

(vi) a sheltered employment allowance instead of an invalid pension; or

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(vii) a rehabilitation allowance instead of a pension referred to in subparagaph (i), (ii) or (iii); or

(viii) a special needs age, invalid, wife or sole parent pension; or

(ix) a service pension;

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

Note 1: section 83 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person’s partner during that period if the partner had not died.

Note 2:section 84 provides for a lump sum that represents the instalments that would have been paid to the person’s partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

1. A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
2. An election under subsection (2):
3. must be made by written notice to the Secretary; and
4. may be made after the person has been paid an amount or amounts under this Subdivision; and
5. cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**(4)** If a person is qualified for payments under this Subdivision in relation to the partner’s death, the rate at which age pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 85.

**Continued payment of partner’s pension or allowance**

**83.** If a person is qualified for payments under this Subdivision in relation to the death of the person’s partner, there is payable to the person, on each of the pension paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person’s partner on that payday if the partner had not died.

**Lump sum payable in some circumstances**

**84.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

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***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if the person’s partner had not died, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday; and |
|  | (b) the amount that, if the partner had not died, would have been payable to the partner on the pension payday immediately before the first available bereavement adjustment payday; |
|  | the result is called the **combined pensioner couple rate.** |
| *Step 2.* | Work out the amount that, but for section 85, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **person’s individual rate.** |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component.** |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the partner’s instalment component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Adjustment of person’s age pension rate**

**85.** If:

1. a person is qualified for payments under this Subdivision; and
2. the person does not elect under subsection 82 (2) not to receive payments under this Subdivision;

the rate of the person’s age pension during the bereavement period is worked out as follows:

1. during the bereavement rate continuation period, the rate of age pension payable to the person is the rate at which the pension would have been payable to the person if the person’s partner had not died;
2. during the bereavement lump sum period (if any), the rate at which age pension is payable to the person is the rate at which

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the age pension would be payable to the person apart from this Subdivision.

**Effect of death of person entitled to payments under this Subdivision**

**86. If:**

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the person dies within the bereavement period; and
3. the Secretary does not become aware of the death of the person’s partner before the person dies;

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

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person on the pension payday immediately after the day on which the person dies; and |
|  | (b) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person’s partner on that pension payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 85, would have been payable to the person on the pension payday immediately after the day on which the person died if the person had not died: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the period that commences on the day after the person dies and ends on the day on which the bereavement period ends. |
| *Step 5.* | Multiply the partner’s instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section. |

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

**87. (1)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. after the person’s partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act; and
3. the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

1. the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person’s partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
2. the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

**(2)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. an amount to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act, within the bereavement period, into an account with a bank, credit union or building society (in this subsection called the **“financial institution”**); and
3. the financial institution pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

***Subdivision B***—***Death of dependent child***

**Bereavement payments on death of dependent child**

**88.** If:

1. a person is receiving an age pension; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s age pension rate included:

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(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

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

Note 1: section 89 provides for age pension to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 90 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new age pension rate and the rate at which the pension would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**89.** If a person is qualified for payments under this Subdivision in relation to the death of a dependent child, the person’s age pension rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**90.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance for the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

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***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the instalment of age pension payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 89 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of age pension that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s age pension rate were not calculated under section 89: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

***Subdivision C*—*Death of recipient***

**Death of recipient**

**91. (1)** If:

1. a person is receiving age pension; and
2. either:

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

(ii) the person is a member of a couple and the person’s partner:

(a) is not receiving a social security pension; and

(b) is not receiving a social security benefit; and

(c) is not receiving a service pension; and

(c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

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**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1: for amounts owing to the recipient before the recipient’s death see section 65.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 86.

***Division 10*—*Fringe benefits***

**Fringe benefits**

**92.** If a person who is receiving an age pension qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**93. (1)** A person who is receiving an age pension is qualified for fringe benefits if:

1. the person is permanently blind; or
2. the person’s age pension rate is neither income reduced nor assets reduced.

**(2)** If:

1. a person who is receiving an age pension is not qualified for fringe benefits under subsection (1); and
2. the person’s age pension rate is income reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

1. a person who is receiving an age pension is not qualified for fringe benefits under subsection (1); and
2. the person’s age pension rate is assets reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

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**PART 2.3—INVALID PENSION**

***Division 1*—*Qualification for and payability of invalid pension***

***Subdivision A*—*Qualification***

**Qualification for invalid pension**

*Permanent incapacity for work*

**94. (1)** A person is qualified for an invalid pension if :

1. the person is permanently incapacitated for work; and
2. the degree of the incapacity for work is 85% or more; and
3. 50% or more of the incapacity for work is directly caused by a physical or mental impairment; and
4. the person has turned 16 and is under the pension age; and
5. the person either:

(i) is an Australian resident at the time when the person first satisfies paragraphs (a), (b) and (c); or

(ii) has 10 years qualifying Australian residence; or

(iii) is born outside Australia and, at the time when the person first satisfies paragraphs (a), (b) and (c) the person:

(a) is not an Australian resident; and

(b) is a dependent child of an Australian resident;

and the person becomes an Australian resident while a dependent child of an Australian resident.

Note: for “Australian resident” and “qualifying Australian residence” see section 7.

*Permanent blindness*

**(2)** A person is qualified for an invalid pension if:

1. the person is permanently blind; and
2. the person has turned 16 and is under the pension age; and
3. the person either:

(i) is an Australian resident at the time when the person first satisfies paragraph (a); or

(ii) has 10 years qualifying Australian residence; or

(iii) is born outside Australia and, at the time when the person first satisfies paragraph (a), the person:

(a) is not an Australian resident; and

(b) is a dependent child of an Australian resident;

and the person becomes an Australian resident while a dependent child of an Australian resident.

Note: for “Australian resident” and “qualifying Australian residence” see section 7.

**(3)** Subsections (1) and (2) have effect subject to sections 1218 and 1219 (departure certificate requirements for people leaving Australia).

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**(4)** A person is not qualified for an invalid pension on the basis of incapacity or blindness if the person brought about the incapacity or blindness with a view to obtaining an invalid pension.

***Subdivision B*—*Payability***

**Invalid pension not payable in some** **circumstances**

**95. (1)** Even though a person is qualified for an invalid pension, the pension may not be payable to the person because:

1. the pension has not commenced to be payable (see sections 96 and 109); or
2. the person has not taken reasonable steps to claim or obtain compensation (see section 1164); or
3. the person or the person’s partner has received compensation (see Division 3 of Part 3.14); or
4. the person is in gaol (see Part 3.13); or
5. the person is receiving another pension or benefit (see section 98); or
6. the person fails to comply with a requirement that the person:

(i) attend a medical examination; or

(ii) receive treatment; or

(iii) undertake a training course; or

(iv) do suitable work;

as required by section 99.

**(2)** An invalid pension is not payable to a person if the person’s invalid pension rate would be nil.

**Invalid pension generally not payable before claim**

**96.** An invalid pension is not payable to a person before the person’s provisional commencement day (identified under section 97).

**Provisional commencement day**

*General rule*

**97. (1)** Subject to subsections (2) and (3), a person’s provisional commencement day is the day on which the person claims the invalid pension.

*Initial incorrect claim followed by claim for invalid pension*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**) for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the

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Commonwealth, that is similar in character to an invalid pension; and

1. on the day on which the person makes the initial claim, the person is qualified for an invalid pension; and
2. the person subsequently makes a claim for an invalid pension; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

*Early claim*

**(3)** If:

1. a person lodges a claim for an invalid pension; and
2. the person is not, on the day on which the claim is lodged, qualified for an invalid pension; and
3. the person becomes qualified for an invalid pension sometime during the period of 3 months that starts immediately after the day on which the claim is lodged;

the person’s provisional commencement day is the first day on which the person is qualified for the pension and is an Australian resident and in Australia.

**Multiple entitlement exclusion**

**98.** An invalid pension is not payable to a person if the person is receiving:

1. another social security pension; or
2. a social security benefit; or
3. a service pension.

Note: “social security pension” includes sheltered employment and rehabilitation allowances and “social security benefit” includes job search allowance.

**Secretary may require person to have medical examination, attend course or undertake work**

**99. (1)** If:

1. a person is receiving, or has lodged a claim for, an invalid pension; and
2. the Secretary is of the opinion that the person should:

(i) undergo a medical or psychological examination; or

(ii) receive medical or other treatment; or

(iii) undertake a course of vocational training; or

(iv) do any work suitable to be done by the person; and

(c) the Secretary notifies the person that the person is required to:

(i) undergo that examination; or

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(ii) receive that treatment; or

(iii) undertake that course; or

(iv) do that work; and

1. the Secretary is satisfied that it is reasonable for this subsection to apply to the person; and
2. the person does not take reasonable steps to comply with the Secretary’s requirements;

an invalid pension is not payable to the person for a period determined by the Secretary.

**(2)** The Secretary may determine that an invalid pension is payable for a period for which he or she had previously determined that it was not payable under subsection (1) if within a reasonable period the person takes reasonable steps to comply with the Secretary’s requirements.

***Division 2***—***Claim for invalid pension***

**Need for a claim**

**100. (1)** A person who wants to be granted an invalid pension must make a proper claim for that pension.

Note: for “proper claim”—see section 101 (form), section 102 (manner of lodgment) and section 103 (residence/presence in Australia).

**(2)** For the purposes of subsection (1), where:

1. a claim for invalid pension is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for that pension;

the claim is to be taken to have not been made.

**Form of claim**

**101.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**102. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.
4. Subject to subsection (3), a place or person approved under subsection (1) must be a place or person in Australia.
5. The Secretary may approve a place or person outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

Note: for international agreements see Part 4.1.

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**Claimant must be Australian resident and in Australia**

**103.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

Note 1: for “Australian resident” see subsections 7 (2) and (3).

Note 2: the provisions of a scheduled international agreement may permit a proper claim to be made by a person who is not an Australian resident or not in Australia: see section 1208.

***Division 3*—*Determination of claim***

**Secretary to determine claim**

**104.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**105.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for an invalid pension; and
2. the pension is payable.

**Date of effect of determination**

**106. (1)** Subject to subsections (2), (3) and (4), a determination under section 105 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for invalid pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

**Invalid Pension s. 106**

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for invalid pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for invalid pension; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 4***—***Medical examination following claim***

**Examination by medical practitioner**

**107. (1)** The Secretary must direct that a claimant for an invalid pension be examined by a medical practitioner unless:

(a) it is manifest that the claimant is permanently incapacitated for work and that:

(i) the degree of the incapacity is 85% or more; and

(ii) 50% or more of the incapacity for work is directly caused by a permanent physical or mental impairment; or

1. it is manifest that the claimant is permanently blind; or
2. the claimant resides in a place that is remote from any medical practitioner.

**(2)** After examining the claimant, the medical practitioner is to give a certificate stating the practitioner’s opinion on the following matters:

(a) whether or not the claimant is permanently incapacitated for work;

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(b) if the claimant is permanently incapacitated for work—whether or not:

(i) the degree of the incapacity is 85% or more; and

(ii) 50% or more of the incapacity for work is directly caused by a permanent physical or mental impairment;

(c) whether or not the claimant is permanently blind.

**(3)** A certificate under subsection (2) must be in accordance with **a** form approved by the Secretary.

***Division 5***—***Rate of invalid pension***

**How to work out a person’s invalid pension rate**

**108.** A person’s invalid pension rate is worked out:

1. if the person is not permanently blind—using Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or
2. if the person is permanently blind—using Pension Rate Calculator B at the end of section 1065 (see Part 3.3).

***Division 6*—*Payment of invalid pension***

**Commencement of invalid pension**

**109.** An invalid pension becomes payable to a person on the first day on which:

1. the person is qualified for the pension; and
2. no provision of this Act makes the pension not payable to the person.

Note 1: for qualification see section 94.

Note 2: for the circumstances in which an invalid pension is not payable see section 95.

**Payment by instalments**

**110. (1)** A full instalment of invalid pension is payable to a person on each pension payday on which:

1. the person is qualified for the pension; and
2. the pension is payable to the person.

**(2)** If a person who is qualified for an invalid pension is outside Australia, the instalments referred to in subsection (1) are to be paid to the person on such pension paydays as the Secretary determines for the purposes of this subsection.

**Effect on instalments of backdating claim**

**111.** If:

(a) a person lodges a claim for an invalid pension on aparticular day (in this section called the **“claim day”**); and

**Invalid Pension s. 111**

(b) the person’s provisional commencement day is before the claim day;

any instalment of invalid pension that would, but for this section, be payable, is payable to the person:

1. if the claim day was a pension payday—on that day; or
2. the first pension payday after the claim day.

Note: for “provisional commencement day” see section 97

**Calculation of amount of instalment**

**112. (1)** The amount of an instalment of invalid pension is the amount worked out by dividing the amount of the annual rate of the pension by 26.

1. If an amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is, subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a person on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.
3. If, apart from this subsection, the amount of an instalment of invalid pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Inmates of benevolent homes**

**113. (1)** While a person who is receiving an invalid pension is an inmate of a benevolent home:

1. so much of the person’s pension as does not exceed the pensioner contribution is to be paid to the person who controls the benevolent home for the maintenance of the person in the benevolent home; and
2. the balance (if any) is to be paid to the person receiving the pension.
3. For the purposes of this section, the **pensioner contribution** is, subject to subsection (3), 364 times the amount in force from time to time for the purposes of subparagraph 47 (2) (b) (iii) of the *National Health Act 1953.*
4. If the amount worked out under subsection (2) is not a multiple of $2.60, the pensioner contribution is the next lower amount that is a multiple of $2.60.

**Manner of payment**

**114.** A person’s invalid pension is, subject to section 115, is to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**s. 115 Invalid Pension**

**Nominee payments**

**115. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s invalid pension is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the invalid pension is to be paid in accordance with the direction.

**Payment into bank account etc.**

**116. (1)** The Secretary may direct that the whole or a part of the amount of a person’s invalid pension is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the invalid pension is payable.
2. The account may be an account that is maintained by a person to whom the invalid pension is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the invalid pension is to be payable in accordance with the direction.

**Where pension payday would fall on public holiday etc.**

**117.** If the Secretary is satisfied that an amount of invalid pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of pension after death**

**118. (1)** If:

1. an invalid pension is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of invalid pension payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of invalid pension under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of invalid pension.

**Invalid Pension s. 119**

***Division 7*—*Protection of invalid pension***

**Invalid pension to be absolutely inalienable**

**119. (1)** Subject to subsection (2) and section 1359, invalid pension is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of invalid pension payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**120. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of invalid pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of invalid pension payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

**s. 121 Invalid Pension**

***Division 8***—***Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**121. (1)** The Secretary may give a person to whom an invalid pension is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the pension.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Invalid Pension s. 122**

**Secretary may require recipient to give particular information relevant to payment of invalid pension**

**122. (1)** The Secretary may give a person to whom an invalid pension is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the pension to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**123. (1)** A person is not excused from giving information pursuant to a notice under section 121 or 122 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 121 or 122 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of. subsection 121 (5) or (6) or 122 (5) or (6).

**s. 124 Invalid Pension**

***Division 9***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**124. (1)** A determination that:

1. a person’s claim for an invalid pension is granted; or
2. an invalid pension is payable to a person;

continues in effect until:

(c) the pension ceases to be payable under section 125 or 126; or

(d) a further determination in relation to the pension under section 131 has taken effect.

Note 1: for paragraph (a) see section 105.

Note 2: for paragraph (b) see section 132—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of an invalid pension continues in effect until:

1. the pension becomes payable at a lower rate under section 127 or 128; or
2. a further determination in relation to the pension under section 129 or 130 has taken effect.

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 121 notification obligations**

**125.** If:

1. a person who is receiving an invalid pension is given a notice under section 121; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension would, but for this section, cease to be payable to the person;

**Invalid Pension s. 125**

the pension continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s pension, there is no automatic rate reduction and a determination under section 130 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 121** **notification obligations**

**126.** If:

1. a person who is receiving an invalid pension is given a notice under section 121; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension ceases to be payable to the person;

the pension ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

***Subdivision C***—***Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 121 notification obligations**

**127.** If:

1. a person who is receiving an invalid pension is given a notice under section 121; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of pension is to be reduced;

**s. 127 Invalid Pension**

the pension becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstance occurs.

**Automatic rate reduction—failure to inform Department of payment for remunerative work where earnings credit account balance available**

**128.** If:

1. a person who is receiving an invalid pension is given a notice under section 121; and
2. the notice requires the person to inform the Department of income for remunerative work undertaken by the person; and
3. the person fails to notify the Department of income of that kind in accordance with the notice; and
4. the person has an earnings credit account balance for the purposes of Division 4 of Part 3.10;

the pension becomes payable to the person at the reduced rate from the first pension payday after the day on which the person’s earnings credit account balance is reduced to nil.

***Subdivision D*—*Determinations***

**Rate increase determination**

**129.** If the Secretary is satisfied that the rate at which an invalid pension is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 133.

**Rate reduction determination**

**130.** If the Secretary is satisfied that the rate at which an invalid pension is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 127 or 128 (see subsection 124 (2)).

Note 2: for the date of effect of a determination under this section see section 134.

**Cancellation or suspension determination**

**131.** If the Secretary is satisfied that an invalid pension is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 125 or 126 (see subsection 124(1)).

Note 2: for the date of effect of a determination under this section see section 134.

**Invalid Pension s. 132**

**Resumption of payment after cancellation or suspension**

**132. (1)** If the Secretary:

1. cancels or suspends a person’s invalid pension under section 131; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive an invalid pension that was payable to the person; or

(b) the person is not receiving an invalid pension that is payable to the person;

the Secretary is to determine that an invalid pension was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 133.

***Subdivision E***—***Date of effect of determinations***

**Date of effect of favourable determination**

**133. (1)** The day on which a determination under section 129 or 132 (in this section called the **“favourable determination”**) takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a person’s invalid pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

**s. 133 Invalid Pension**

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a person’s invalid pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a person’s invalid pension; and
2. no notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

(a) the favourable determination is made as a result of the Secretary forming the opinion, for the purposes of subsections 5 (12) and (13), that a young person will not, or would not, receive payments under a prescribed educational scheme; and

**Invalid Pension s. 133**

(b) the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and
3. the Secretary was notified, within 28 days after the payment ceased, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**134. (1)** The day on which a determination under section 130 or 131 (in this section called the “adverse determination”) takes effect is worked out in accordance with this section.

**s. 134 Invalid Pension**

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose invalid pension is affected by the adverse determination has contravened a provision of this Act (other than section 122, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the pension has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the pension was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 10*—*Bereavement payments***

***Subdivision A*—*Death of pensioner partner***

**Qualification for payments under this Subdivision 135.**

**(1)** If:

1. a person is receiving an invalid pension; and
2. the person is a member of a couple; and

**Invalid Pension s. 135**

1. the person’s partner dies; and
2. immediately before the partner died, the partner was receiving:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a carer pension; or

(v) a sole parent pension under subparagraph 249 (1) (a) (iv) (illness separated couple); or

(vi) a sheltered employment allowance instead of an invalid pension; or

(vii) a rehabilitation allowance instead of a pension referred to in subparagraph (i), (ii) or (iii); or

(viii) a special needs age, invalid, wife or sole parent pension; or

(ix) a service pension;

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

Note 1: section 136 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person’s partner during that period if the partner had not died.

Note 2: section 137 provides for a lump sum that represents the instalments that would have been paid to the person’s partner,, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

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

**(3)** An election under subsection (2):

1. must be made by written notice to the Secretary; and
2. may be made after the person has been paid an amount or amounts under this Subdivision; and
3. cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**(4)** If a person is qualified for payments under this Subdivision in relation to the partner’s death, the rate at which age pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 138.

**Continued payment of partner’s pension or allowance**

**136.** If a person is qualified for payments under this Subdivision in relation to the death of the person’s partner, there is payable to the person, on each of the pension paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person’s partner on that payday if the partner had not died.

**s. 137 Invalid Pension**

**Lump sum payable in some circumstances**

**137.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if the person’s partner had not died, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday; and |
|  | (b) the amount that, if the partner had not died, would have been payable to the partner on the pension payday immediately before the first available bereavement adjustment payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 138, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the partner’s instalment component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Adjustment of person’s invalid pension rate**

**138.** If:

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

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(b) the person does not elect under subsection 135 (2) not to receive payments under this Subdivision;

the rate of the person’s invalid pension during the bereavement period is worked out as follows:

1. during the bereavement rate continuation period, the rate of invalid pension payable to the person is the rate at which the pension would have been payable to the person if the person’s partner had not died;
2. during the bereavement lump sum period (if any), the rate at which invalid pension is payable to the person is the rate at which the invalid pension would be payable to the person apart from this Subdivision.

**Effect of death of person entitled to payments under this Subdivision**

**139.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the person dies within the bereavement period; and
3. the Secretary does not become aware of the death of the person’s partner before the person dies;

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

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***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person on the pension payday immediately after the day on which the person dies; and |
|  | (b) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person’s partner on that pension payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 138, would have been payable to the person on the pension payday immediately after the day on which the person died if the person had not died: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the period that commences on the day after the person dies and ends on the day on which the bereavement period ends. |
| *Step 5.* | Multiply the partner’s instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section. |

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

**140. (1)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. after the person’s partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act; and
3. the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person’s

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partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

**(2)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. an amount to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act, within the bereavement period, into an account with a bank, credit union or building society (in this subsection called the **“financial institution”**); and
3. the financial institution pays to the person, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

***Subdivision B***—***Death of dependent child***

**Bereavement payments on death of dependent child**

**141.** If:

1. a person is receiving an invalid pension; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s invalid pension rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

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

Note 1: section 142 provides for invalid pension to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2:section 143 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new invalid pension rate and the rate at which the pension would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional incentive allowance;
* additional remote area allowance.

**s. 142 Invalid Pension**

**Continued payment of child-related amounts**

**142.** If a person is qualified for payments under this Subdivision in relation to the death of a dependent child, the person’s invalid pension rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**143.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance for the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**Invalid Pension s. 143**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the instalment of invalid pension payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 142 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of invalid pension that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s invalid pension rate were not calculated under section 142: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

***Subdivision C***—***Death of recipient***

**Death of recipient**

**144. (1)** If:

1. a person is receiving invalid pension; and
2. either:

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

(ii) the person is a member of a couple and the person’s partner:

(a) is not receiving a social security pension; and

(b) is not receiving a social security benefit; and

(c) is not receiving a service pension; and

(c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

**s. 144 Invalid Pension**

**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1 : for amounts owing to the recipient before the recipient’s death see section 118.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 139.

***Division 11*—*Fringe benefits***

**Fringe benefits**

**145.** If a person who is receiving an invalid pension qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**146. (1)** A person who is receiving an invalid pension is qualified for fringe benefits if:

1. the person is permanently blind; or
2. the person’s invalid pension rate is neither income reduced nor assets reduced.

**(2)** If:

1. a person who is receiving an invalid pension is not qualified for fringe benefits under subsection (1); and
2. the person’s invalid pension rate is income reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

1. a person who is receiving an invalid pension is not qualified for fringe benefits under subsection (1); and
2. the person’s invalid pension rate is assets reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

**Wife Pension s. 147**

**PART 2.4—WIFE PENSION**

***Division 1***—***Qualification for and payability of wife pension***

***Subdivision A*—*Qualification***

**Qualification for wife pension**

**147. (1)** A person is qualified for a wife pension if the person:

1. is a woman who is a member of a couple; and
2. has a partner who:

(i) is receiving an age pension or invalid pension; or

(ii) is receiving a rehabilitation allowance and was, immediately before he became qualified for that allowance, receiving an invalid pension.

Note: for “member of a couple” see section 4.

**(2)** Subsection (1) has effect subject to:

1. section 1215 (12 months limit on overseas portability in certain circumstances); and
2. sections 1218 and 1219 (departure certificate requirements for people leaving Australia).

***Subdivision B***—***Payability***

**Wife pension not payable in some circumstances**

**148. (1)** Even though a person is qualified for a wife pension, the pension may not be payable to the person because:

1. the pension has not commenced to be payable (see sections 149 and 160); or
2. the person or the person’s partner has received compensation (see Part 3.14); or
3. the person is in gaol (see Part 3.13); or
4. the person is receiving another pension or benefit (see section 151).

**(2)** A wife pension is not payable to a person if the person’s wife pension rate would be nil.

**Wife pension generally not payable before claim**

**149.** A wife pension is not payable to a person before the person’s provisional commencement day (identified under section 150).

**s. 150 Wife Pension**

**Provisional commencement day**

*General rule*

**150. (1)** Subject to subsections (2) and (3), a person’s provisional commencement day is the day on which the person claims the wife pension.

*Initial incorrect claim followed by claim for wife pension*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**) for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to a wife pension; and

1. on the day on which the person makes the initial claim, the person is qualified for a wife pension; and
2. the person subsequently makes a claim for a wife pension; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

*Early claim*

**(3)** If:

1. a person lodges a claim for a wife pension; and
2. the person is not, on the day on which the claim is lodged, qualified for a wife pension; and
3. the person becomes qualified for a wife pension sometime during the period of 3 months that starts immediately after the day on which the claim is lodged;

the person’s provisional commencement day is the first day on which the person is qualified for the pension and is an Australian resident and in Australia.

**Multiple entitlement exclusion**

**151.** A wife pension is not payable to a person if the person is receiving:

1. another social security pension; or
2. a social security benefit; or
3. a service pension.

Note: “social security pension” includes sheltered employment and rehabilitation allowances and “social security benefit” includes job search allowance.

**Wife Pension s. 152**

***Division 2*—*Claim for wife pension***

**Need for a claim**

**152. (1)** A person who wants to be granted a wife pension must make a proper claim for that pension.

Note: “proper claim”—see section 153 (form), section 154 (manner of lodgment) and section 155 (residence/presence in Australia).

**(2)** For the purposes of subsection (1), where:

1. a claim for wife pension is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for that pension;

the claim is to be taken to have not been made.

**Form of claim**

**153.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**154. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.
4. Subject to subsection (3), a place or person approved under subsection (1) must be a place or person in Australia.
5. The Secretary may approve a place or person outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

Note: for international agreements see Part 4.1.

**Claimant must be Australian resident and in Australia**

**155.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

Note 2: the provisions of a scheduled international agreement may permit a proper claim to be made by a person who is not an Australian resident or not in Australia: see section 1208.

**s. 156 Wife Pension**

***Division 3***—***Determination of claim***

**Secretary to determine claim**

**156.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**157.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for a wife pension; and
2. the pension is payable.

**Date of effect of determination**

**158. (1)** Subject to subsections (2), (3) and (4), a determination under section 157 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for wife pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for wife pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

**Wife Pension s. 157**

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for wife pension; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 4***—***Rate of wife pension***

**How to work out the rate of wife pension**

**159.** A person’s wife pension rate is worked out using Pension Rate Calculator A at the end of section 1064 (see Part 3.2).

***Division 5*—*Payment of wife pension***

**Commencement of wife pension**

**160.** A wife pension becomes payable to a person on the first day on which:

1. the person is qualified for the pension; and
2. no provision of this Act makes the pension not payable to the person.

Note 1: for qualification see section 147.

Note 2: for the circumstances in which a wife pension is not payable see section 148.

**Payment by instalments**

**161. (1)** A full instalment of wife pension is payable to a person on each pension payday on which:

1. the person is qualified for the pension; and
2. the pension is payable to the person.

**(2)** If a person who is qualified for a wife pension is outside Australia, the instalments referred to in subsection (1) are to be paid to the person on such pension paydays as the Secretary determines for the purposes of this subsection.

**Effect on instalments of backdating claim**

**162.** If:

1. a person lodges a claim for a wife pension on a particular day (in this section called the **“claim day”**); and
2. the person’s provisional commencement day is before the claim day;

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any instalment of wife pension that would, but for this section, be payable, is payable to the person:

1. if the claim day was a pension payday—on that day; or
2. the first pension payday after the claim day.

Note: for “provisional commencement day” see section 150.

**Calculation of amount of instalment**

**163. (1)** The amount of an instalment of wife pension is the amount worked out by dividing the amount of the annual rate of the pension by 26.

1. If an amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is, subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a person on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.
3. If, apart from this subsection, the amount of an instalment of wife pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Inmates of benevolent homes**

**164. (1)** While a person who is receiving a wife pension is an inmate of a benevolent home:

1. so much of the person’s pension as does not exceed the pensioner contribution is to be paid to the person who controls the benevolent home for the maintenance of the person in the benevolent home; and
2. the balance (if any) is to be paid to the person receiving the pension.
3. For the purposes of this section, the **pensioner contribution** is, subject to subsection (3), 364 times the amount in force from time to time for the purposes of subparagraph 47 (2) (b) (iii) of the *National Health Act 1953.*
4. If the amount worked out under subsection (2) is not a multiple of $2.60, the pensioner contribution is the next lower amount that is a multiple of $2.60.

**Manner of payment**

**165.** A wife pension that is, subject to section 166, payable to a person is to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Wife Pension s. 166**

**Nominee payments**

**166. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s wife pension is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the wife pension is to be paid in accordance with the direction.

**Payment into bank account etc.**

**167. (1)** The Secretary may direct that the whole or a part of the amount of a person’s wife pension is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account maintained by the person to whom the wife pension is payable.
2. The account may be an account that is nominated and maintained by a person to whom the wife pension is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the wife pension is to be payable in accordance with the direction.

**Where pension payday would fall on public holiday etc.**

**168.** If the Secretary is satisfied that an amount of wife pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of pension after death**

**169. (1)** If:

1. a wife pension is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of wife pension payable to her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of wife pension under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of wife pension.

**s. 170 Wife Pension**

***Division 6*—*Protection of wife pension***

**Wife pension to be absolutely inalienable**

**170. (1)** Subject to subsection (2) and section 1359, wife pension is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of wife pension payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**171. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of wife pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method Statement* | |
| *Step 1.* | Work out the total amount of wife pension payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

**Wife Pension s. 172**

***Division 7*—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**172. (1)** The Secretary may give a person to whom a wife pension is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the pension.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**s. 173 Wife Pension**

**Secretary may require recipient to give particular information relevant to payment of wife pension**

**173. (1)** The Secretary may give a person to whom a wife pension is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the pension to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**174. (1)** A person is not excused from giving information pursuant to a notice under section 172 or 173 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 172 or 173 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 172 (5) or (6) or 173 (5) or (6).

**Wife Pension s. 175**

***Division 8*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**175. (1)** A determination that:

1. a person’s claim for a wife pension is to be granted; or
2. a wife pension is payable to a person;

continues in effect until:

(c) the pension ceases to be payable under section 176 or 177; or

(d) a further determination in relation to the pension under section 182 has taken effect.

Note 1: for paragraph (a) see section 157.

Note 2: for paragraph (b) see section 183—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a wife pension continues in effect until:

1. the pension becomes payable at a lower rate under section 178 or 179; or
2. a further determination in relation to the pension under section 180 or 181 has taken effect.

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 172 notification obligations**

**176.** If:

1. a person who is receiving a wife pension is given a notice under section 172; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension would, but for this section, cease to be payable to the person;

**s. 176 Wife Pension**

the pension continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s pension, there is no automatic rate reduction and a determination under section 181 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 172 notification obligations**

**177.** If:

1. a person who is receiving a wife pension is given a notice under section 172; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension ceases to be payable to the person;

the pension ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

***Subdivision C*—*Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 172 notification obligations**

**178.** If:

1. a person who is receiving a wife pension is given a notice under section 172; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of pension is to be reduced;

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the pension becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

**Automatic rate reduction—failure to inform Department of payment for remunerative work where earnings credit account balance available**

**179.** If:

1. a person who is receiving a wife pension is given a notice under section 172; and
2. the notice requires the person to inform the Department of income for remunerative work undertaken by the person; and
3. the person fails to notify the Department of income of that kind in accordance with the notice; and
4. the person has an earnings credit account balance for the purposes of Division 4 of Part 3.10;

the pension becomes payable to the person at the reduced rate from the first pension payday after the day on which the person’s earnings credit account balance is reduced to nil.

***Subdivision D*—*Determinations***

**Rate increase determination**

**180.** If the Secretary is satisfied that the rate at which a wife pension is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 184.

**Rate reduction determination**

**181.** If the Secretary is satisfied that the rate at which a wife pension is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 178 or 179 (see subsection 175 (2)).

Note 2: for the date of effect of a determination under this section see section 185.

**Cancellation or suspension determination**

**182.** Ifthe Secretary is satisfied that a wife pension is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 176 or 177 (see subsection 175 (1)).

Note 2: for the date of effect of a determination under this section see section 185.

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**Resumption of payment after cancellation or suspension**

**183. (1)** If the Secretary:

1. cancels or suspends a wife pension of a person under section 182; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive a wife pension that was payable to the person; or

(b) the person is not receiving a wife pension that is payable to the person;

the Secretary is to determine that a wife pension was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 184.

***Subdivision E*—*Date of effect of determinations***

**Date of effect of favourable determination**

**184. (1)** The day on which a determination under section 180 or 183 (in this section called the **‘favourable determination”**) takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a person’s wife pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

**Wife Pension s. 184**

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a wife pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a wife pension; and
2. no notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

(a) the favourable determination is made as a result of the Secretary forming the opinion, for the purposes of subsections 5 (12) and (13), that a young person will not, or would not, receive payments under a prescribed educational scheme; and

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(b) the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and
3. the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**185. (1)** The day on which a determination under section 181 or 182 (in this section called the **“adverse determination”**) takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the

**Wife Pension s. 185**

outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

1. the person whose pension is affected by the adverse determination has contravened a provision of this Act (other than section 173, 1304, 1305, 1306 or 1307); and
2. the contravention causes a delay in making the determination;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the pension has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the pension was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9***—***Bereavement payments***

***Subdivision A*—*Continuation of wife pension where partner dies***

**Continuation of wife pension for bereavement period 186.**

**(1)** If:

1. a person is receiving a wife pension; and
2. the person’s partner dies;

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

**(2)** The payments under this Subdivision take the form of the payment on each of the paydays during the bereavement period of the amount that would have been payable to the person if:

1. the person’s partner had not died; and
2. the person’s partner had continued to receive age or invalid pension or rehabilitation allowance; and
3. the person and the person’s partner had continued to be members of a couple.

**Continued wife pension rate**

**187.** The rate of payments under this Subdivision is worked out as follows:

1. during the bereavement rate continuation period, the rate of payments is equal to the rate of wife pension that would have been payable to the person if the person’s partner had not died;
2. during the bereavement lump sum period (if any), the rate of payments under this Subdivision is the rate at which a widow B pension would have been payable to the person if the person had been qualified for a widow B pension.

***Subdivision B***—***Death of pensioner partner***

**Qualification for payments under this Subdivision**

**188. (1)** If:

1. a person is receiving a wife pension; and
2. the person’s partner dies;

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

Note 1: section 189 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person’s partner during that period if the partner had not died.

Note 2: section 190 provides for a lump sum that represents the instalments that would have been paid to the person’s partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

1. A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
2. An election under subsection (2):
3. must be made by written notice to the Secretary; and
4. may be made after the person has been paid an amount or amounts under this Subdivision; and
5. cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**Wife Pension s. 189**

**Continued payment of partner’s pension or allowance**

**189.** If a person is qualified for payments under this Subdivision in relation to the death of the person’s partner, there is payable to the person, on each of the pension paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person’s partner on that payday if the partner had not died.

**Lump sum payable in some circumstances**

**190.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

**s. 190 Wife Pension**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if the person’s partner had not died, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday; and |
|  | (b) the amount that, if the partner had not died, would have been payable to the partner on the pension payday immediately before the first available bereavement adjustment payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount of widow B pension that would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday if a widow B pension had been payable to the person on that payday: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the partner’s instalment component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Effect of death of person entitled to payments under this Subdivision 191.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the person dies within the bereavement period; and
3. the Secretary does not become aware of the death of the person’s partner before the person dies;

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

**Wife Pension s. 191**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person on the pension payday immediately after the day on which the person dies; and |
|  | (b) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person’s partner on that pension payday; |
|  | the result is called the **combined pensioner couple rate.** |
| *Step 2.* | Work out the amount that, but for sections 186 and 187, would have been payable to the person on the pension payday immediately after the day on which the person died if the person had not died: the result is called the **person’s individual rate.** |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component.** |
| *Step 4.* | Work out the number of pension paydays in the period that commences on the day after the person dies and ends on the day on which the bereavement period ends. |
| *Step 5.* | Multiply the partner’s instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section. |

**Matters affecting payment of benefits under this Subdivision 192.**

**(1)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. after the person’s partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act; and
3. the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person’s

**s. 192 Wife Pension**

partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

**(2)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. an amount to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act, within the bereavement period, into an account with a bank, credit union or building society (in this subsection called the “financial institution”); and
3. the financial institution pays to the person, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

***Subdivision C*—*Death of dependent child***

**Bereavement payments on death of dependent child**

**193.** If:

1. a person is receiving a wife pension; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s wife pension rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

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

Note 1: section 194 provides for wife pension to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 195 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new wife pension rate and the rate at which the pension would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Wife Pension s. 194**

**Continued payment of child-related amounts**

**194.** If a person is qualified for payments under this Subdivision in relation to the death of a dependent child, the person’s wife pension rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**195. If:**

1. a person is qualified for payments under this Subdivision in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance in respect of the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the instalment of wife pension payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 194 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of wife pension that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s wife pension rate were not calculated under section 194: the result is called the new rate. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**s. 196 Wife Pension**

***Division 10***—***Fringe benefits***

**Fringe benefits**

**196.** If a person who is receiving a wife pension qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**197. (1)** A person who is receiving a wife pension is qualified for fringe benefits if the person’s wife pension rate is neither income reduced nor assets reduced.

**(2)** If:

1. a person who is receiving a wife pension is not qualified for fringe benefits under subsection (1); and
2. the person’s wife pension rate is income reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

1. a person who is receiving a wife pension is not qualified for fringe benefits under subsection (1); and
2. the person’s wife pension rate is assets reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

**Carer Pension s. 198**

**PART 2.5—CARER PENSION**

***Division 1*—*Qualification for and payability of carer pension***

***Subdivision A*—*Qualification***

**Qualification for carer pension**

**198. (1)** A person is qualified for a carer pension if the person:

1. personally provides constant care for a severely handicapped pensioner; and
2. provides that care in a home that is the home of both the person and the pensioner; and
3. is in Australia.

**(2)** If:

1. a person is personally providing constant care for a severely handicapped pensioner; and
2. the person temporarily ceases to provide that care; and
3. the period, or the aggregate of the periods, for which the person ceases to provide that care is:

(i) not more than 28 days in any calendar year; or

(ii) another period that the Secretary, for any special reason in the particular case, decides to be appropriate;

the person does not cease to be qualified for a carer pension merely because of that cessation.

**(3)** In this section:

**“care”** includes attention and supervision;

**“severely handicapped pensioner”** means a person who:

1. has a physical, intellectual or psychiatric disability; and
2. because of that disability:

(i) requires frequent care in connection with the person’s bodily functions; or

(ii) requires constant supervision to prevent injury to the person or to another person;

permanently or for an extended period; and

(c) either:

(i) is receiving an age pension or an invalid pension; or

(ii) is receiving a rehabilitation allowance and was, immediately before becoming qualified for that allowance, receiving an invalid pension.

**s. 199 Carer Pension**

***Subdivision B***—***Payability***

**Carer pension not payable in some circumstances**

**199. (1)** Even though a person is qualified for a carer pension, the pension may not be payable to the person because:

1. the pension has not commenced to be payable (see sections 200 and 211); or
2. the person or the person’s partner has received compensation (see Part 3.14); or
3. the person is in gaol (see Part 3.13); or
4. the person is receiving another pension or benefit (see section 202).

**(2)** A carer pension is not payable to a person if the person’s carer pension rate would be nil.

**Carer pension generally not payable before claim**

**200.** A carer pension is not payable to a person before the person’s provisional commencement day (identified under section 201).

**Provisional commencement day**

*General rule*

**201. (1)** Subject to subsections (2) and (3), a person’s provisional commencement day is the day on which the person claims the carer pension.

*Initial incorrect claim followed by claim for carer pension*

**(2) If:**

(a) a person makes a claim (in this subsection called the **“initial claim”**)for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to a carer pension; and

1. on the day on which the person makes the initial claim, the person is qualified for a carer pension; and
2. the person subsequently makes a claim for a carer pension; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

**Carer Pension s. 201**

*Early claim*

**(3)** If:

1. a person lodges a claim for a carer pension; and
2. the person is not, on the day on which the claim is lodged, qualified for a carer pension; and
3. the person becomes qualified for a carer pension sometime during the period of 3 months that starts immediately after the day on which the claim is lodged;

the person’s provisional commencement day is the first day on which the person is qualified for the pension and is an Australian resident and in Australia.

**Multiple entitlement exclusion**

**202.** A carer pension is not payable to a person if the person is receiving:

1. another social security pension; or
2. a social security benefit; or
3. a service pension.

Note: “social security pension” includes sheltered employment and rehabilitation allowances and “social security benefit” includes job search allowance.

***Division 2***—***Claim for carer pension***

**Need for a claim**

**203. (1)** A person who wants to be granted a carer pension must make a proper claim for that pension.

Note: “proper claim”—see section 204 (form), section 205 (manner of lodgment) and section 206 (residence/presence in Australia).

(2) For the purposes of subsection (1), where:

1. a claim for carer pension is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for that pension;

the claim is to be taken to have not been made.

**Form of claim**

**204**. To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**205. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

**s. 205 Carer Pension**

1. Subject to subsection (3), a place or person approved under subsection (1) must be a place or person in Australia.
2. The Secretary may approve a place or person outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

Note: for international agreements see Part 4.1.

**Claimant must be Australian resident and in Australia**

**206.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

Note 2: the provisions of a scheduled international agreement may permit a proper claim to be made by a person who is not an Australian resident or not in Australia: see section 1208.

***Division 3*—*Determination of claim***

**Secretary to determine claim**

**207.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**208.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for a carer pension; and
2. the pension is payable.

**Date of effect of determination**

**209. (1)** Subject to subsections (2), (3) and (4), a determination under section 208 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2) If:**

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for carer pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

**Carer Pension s. 209**

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for carer pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for carer pension; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 4***—***Rate of carer pension***

**How to work out a person’s carer pension rate**

**210.** A person’s carer pension rate is worked out using Pension Rate Calculator A at the end of section 1064 (see Part 3.2).

***Division 5*—*Payment of carer pension***

**Commencement of carer pension**

**211.** A carer pension becomes payable to a person on the first day on which:

1. the person is qualified for the pension; and
2. no provision of this Act makes the pension not payable to the person.

Note 1: for qualification see section 198.

Note 2: for the circumstances in which a carer pension is not payable see section 199.

**s. 212 Carer Pension**

**Payment by instalments**

**212. (1)** A full instalment of carer pension is payable to a person on each pension payday on which:

1. the person is qualified for the pension; and
2. the pension is payable to the person.

**(2)** If a person who is qualified for a carer pension is outside Australia, the instalments referred to in subsection (1) are to be paid to the person on such pension paydays as the Secretary determines for the purposes of this subsection.

Note: carer pension is not payable outside Australia unless provided for by a scheduled international agreement.

**Effect on instalments of backdating claim**

**213. If:**

1. a person lodges a claim for a carer pension on a particular day (in this section called the “claim day”); and
2. the person’s provisional commencement day is before the claim day;

any instalment of carer pension that would, but for this section, be payable, is payable to the person:

1. if the claim day was a pension payday—on that day; or
2. the first pension payday after the claim day.

Note: for “provisional commencement day” see section 201.

Calculation of amount of instalment

**214. (1)** The amount of an instalment of carer pension is the amount worked out by dividing the amount of the annual rate of the pension by 26.

1. If an amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is, subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a person on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.
3. If, apart from this subsection, the amount of an instalment of carer pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Manner of payment**

**215.** A carer pension that is payable to a person is, subject to section 216, to be paid:

(a) to that person; and

**Carer Pension s. 215**

(b) in the manner directed by the Secretary.

**Nominee payments**

**216. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s carer pension is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the carer pension is to be paid in accordance with the direction.

**Payment into bank account etc.**

**217. (1)** The Secretary may direct that the whole or a part of the amount of a person’s carer pension is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the carer pension is payable.
2. The account may be an account that is maintained by a person to whom the carer pension is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the carer pension is to be payable in accordance with the direction.

**Where pension payday would fall on public holiday etc.**

**218.** If the Secretary is satisfied that an amount of carer pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of pension after death**

**219. (1)** If:

1. a carer pension is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of carer pension payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**s. 219 Carer Pension**

**(2)** If the Secretary pays an amount of carer pension under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of carer pension.

***Division 6*—*Protection of carer pension***

**Carer pension to be absolutely inalienable**

**220. (1)** Subject to subsection (2) and section 1359, carer pension is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of carer pension payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of taxation—see section 1359.

**Effect of garnishee or attachment order**

**221. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of carer pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of carer pension payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

(a) alone; or

**Carer Pension s. 221**

1. jointly with another person; or
2. in common with another person.

***Division 7*—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**222. (1)** The Secretary may give a person to whom a carer pension is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the pension.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**s. 223 Carer Pension**

**Secretary may require recipient to give particular information relevant to payment of carer pension**

**223. (1)** The Secretary may give a person to whom a carer pension is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the pension to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**224. (1)** A person is not excused from giving information pursuant to a notice under section 222 or 223 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 222 or 223 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 222 (5) or (6) or 223 (5) or (6).

**Carer Pension s. 225**

***Division 8***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**225. (1)** A determination that:

1. a person’s claim for a carer pension is to be granted; or
2. a carer pension is payable to a person;

continues in effect until:

(c) the pension ceases to be payable under section 226 or 227; or

(d) a further determination in relation to the pension under section 231 has taken effect.

Note 1 : for paragraph (a) see section 208.

Note 2: for paragraph (b) see section 232—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a carer pension continues in effect until:

1. the pension becomes payable at a lower rate under section 228; or
2. a further determination in relation to the pension under section 229 or 230 has taken effect.

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 222 notification obligations**

**226.** If:

1. a person who is receiving a carer pension is given a notice under section 222; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the pension; or (ii) the pension would, but for this section, cease to be payable to the person;

**s. 226 Carer Pension**

the pension continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s pension, there is no automatic rate reduction and a determination under section 230 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 222 notification obligations**

**227.** If:

1. a person who is receiving a carer pension is given a notice under section 222; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension ceases to be payable to the person;

the pension ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

***Subdivision C*—*Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 222 notification obligations**

**228.** If:

1. a person who is receiving a carer pension is given a notice under section 222; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of pension is to be reduced;

**Carer Pension s. 228**

the pension becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

***Subdivision D*—*Determinations***

**Rate increase determination**

**229.** If the Secretary is satisfied that the rate at which a carer pension is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 233.

**Rate reduction determination**

**230.** If the Secretary is satisfied that the rate at which a carer pension is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 228 (see subsection 225 (2)).

Note 2: for the date of effect of a determination under this section see section 234.

**Cancellation or suspension determination**

**231.** If the Secretary is satisfied that a carer’s pension is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 226 or 227 (see subsection 225 (1)).

Note 2: for the date of effect of a determination under this section see section 234.

**Resumption of payment after cancellation or suspension**

**232. (1)** If the Secretary:

1. cancels or suspends a carer pension of a person under section 231; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and (ii) because of the decision to cancel or suspend:

(a) the person did not receive a carer pension that was payable to the person; or

(b) the person is not receiving a carer pension that is payable to the person;

the Secretary is to determine that a carer pension was or is payable to the person.

**s. 232 Carer Pension**

Note: for the date of effect of a determination under this subsection see section 233.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

***Subdivision E***—***Date of effect of determinations***

**Date of effect of favourable determination**

**233. (1)** The day on which a determination under section 229 or 232 (in this section called the **“favourable determination”**)takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a carer pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a carer pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the person sought the review.

**Carer Pension s. 233**

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a carer pension; and
2. no notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion, for the purposes of subsections 5 (12) and (13), that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and

**s. 233 Carer Pension**

(c) the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**234. (1)** The day on which a determination under section 230 or 231 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose pension is affected by the adverse

**Carer Pension s. 234**

determination has contravened a provision of this Act (other than section .223, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the pension has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the pension was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments***

***Subdivision A*—*Continuation of carer pension***

**Continuation of carer pension for bereavement period where person cared for dies**

**235. (1)** If:

1. a person is receiving a carer pension; and
2. the person is caring for another person who is not the partner of the first person; and
3. the person being cared for dies;

the first person remains qualified for the carer pension during the bereavement period as if the person being cared for had not died.

1. A person’s entitlements under this Subdivision are instead of, and not in addition to, any entitlements the person would, but for this section, have to a social security or service pension or a social security benefit.
2. A person to whom subsection (1) applies may, by written notice to the Secretary, choose not to receive payments under this Subdivision and to receive instead any payments to which the person would be entitled but for subsection (2).

**s. 235 Carer Pension**

**(4)** Ifa person makes an election under subsection (3):

1. this Act, or Part III of the Veterans’ Entitlements Act, has effect accordingly; and
2. the person may not withdraw the election after the Department has taken all the action required to give effect to the election.

**Continued carer pension rate**

**236.** If a person is qualified for a carer pension solely because of section 235, the rate at which the pension is payable is to be determined having regard to the person’s actual circumstances.

***Subdivision B*—*Death of pensioner partner***

**Qualification for payments under this Subdivision**

**237. (1)** If:

1. a person is receiving a carer pension; and
2. the person is a member of a couple; and
3. the person’s partner dies; and
4. immediately before the partner died, the partner was receiving:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a carer pension; or

(iv) a sole parent pension under subparagraph 249 (1) (a) (iv) (illness separated couple); or

(v) a sheltered employment allowance instead of an invalid pension; or

(vi) a rehabilitation allowance instead of a pension referred to in subparagraph (i), (ii) or (iii); or

(vii) a special needs age, invalid, wife or sole parent pension; or

(viii) a service pension;

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

Note 1: section 238 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person’s partner during that period if the partner had not died.

Note 2: section 239 provides for a lump sum that represents the instalments that would have been paid to the person’s partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

1. A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
2. An election under subsection (2):

(a) must be made by written notice to the Secretary; and

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1. may be made after the person has been paid an amount or amounts under this Subdivision; and
2. cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**(4)** If a person is qualified for payments under this Subdivision in relation to the partner’s death, the rate at which carer pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 240.

**Continued payment of partner’s pension or allowance**

**238.** If a person is qualified for payments under this Subdivision in relation to the death of the person’s partner, there is payable to the person, on each of the pension paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person’s partner on that payday if the partner had not died.

**Lump sum payable in some circumstances**

**239.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

**s. 239 Carer Pension**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if the person’s partner had not died, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday; and |
|  | (b) the amount that, if the partner had not died, would have been payable to the partner on the pension payday immediately before the first available bereavement adjustment payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 240, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the partner’s instalment component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Adjustment of person’s carer pension rate**

**240.** If:

1. a person is qualified for payments under this Subdivision; and
2. the person does not elect under subsection 237 (2) not to receive payments under this Subdivision;

the rate of the person’s carer pension during the bereavement period is worked out as follows:

1. during the bereavement rate continuation period, the rate of carer pension payable to the person is the rate at which the pension would have been payable to the person if the person’s partner had not died;
2. during the bereavement lump sum period (if any), the rate at which carer pension is payable to the person is the rate at

**Carer Pension s. 240**

which the carer pension would be payable to the person apart from this Subdivision.

**Effect of death of person entitled to payments under this Subdivision**

**241.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the person dies within the bereavement period; and
3. the Secretary does not become aware of the death of the person’s partner before the person dies;

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

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person on the pension payday immediately after the day on which the person dies; and |
|  | (b) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person’s partner on that pension payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 240, would have been payable to the person on the pension payday immediately after the day on which the person died if the person had not died: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the period that commences on the day after the person dies and ends on the day on which the bereavement period ends. |
| *Step 5.* | Multiply the partner’s instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section. |

**s. 242 Carer Pension**

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

**242. (1)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. after the person’s partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act; and
3. the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

1. the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person’s partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
2. the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

**(2)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. an amount to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Act or under Part III of the *Veterans’ Entitlements Act 1986,* within the bereavement period, into an account with a bank, credit union or building society (in this subsection called the **“financial institution”**);and
3. the financial institution pays to the person, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

***Subdivision C*—*Death of dependent child***

**Bereavement payments on death of dependent child**

**243.** If:

1. a person is receiving a carer pension; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s carer pension rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

**Carer Pension s. 243**

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

Note 1: section 244 provides for carer pension to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 245 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new carer pension rate and the rate at which the pension would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**244.** If a person is qualified for payments under this Subdivision in relation to the death of a dependent child, the person’s carer pension rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**245.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance in respect of the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**s. 245 Carer Pension**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the instalment of carer pension payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 244 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of carer pension that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s carer pension rate were not calculated under section 244: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

***Subdivision D***—***Death of recipient***

**Death of recipient**

**246. (1)** If:

1. a person is receiving carer pension; and
2. either:

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

(ii) the person is a member of a couple and the person’s partner:

(a) is not receiving a social security pension; and

(b) is not receiving a social security benefit; and

(c) is not receiving a service pension; and

(c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1: for amounts owing to the recipient before the recipient’s death see section 219.

Note 2: for death of a person qualified for bereavement payments under Subdivision B see section 241.

**Carer Pension s. 247**

***Division 10*—*Fringe benefits***

**Fringe benefits**

**247.** If a person who is receiving a carer pension qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**248. (1)** A person who is receiving a carer pension is qualified for fringe benefits if the person’s carer pension rate is neither income reduced nor assets reduced.

**(2)** If:

1. a person who is receiving a carer pension is not qualified for fringe benefits under subsection (1); and
2. the person’s carer pension rate is income reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

1. a person who is receiving a carer pension is not qualified for fringe benefits under subsection (1); and
2. the person’s carer pension rate is assets reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

**s. 249 Sole Parent Pension**

**PART 2.6—SOLE PARENT PENSION**

***Division 1*—*Qualification for and payability of sole parent pension***

***Subdivision A*—*Qualification***

**Qualification for sole parent pension**

**249. (1)** A person is qualified for a sole parent pension if:

(a) the person:

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

(ii) is a member of a couple whose partner has been in gaol for a continuous period of at least 14 days; or

(iii) is a member of a couple who is living separately and apart from his or her partner; or

(iv) is a member of a couple who is unable to live together with his or her partner in a matrimonial home because of the illness or infirmity of the partner where the illness or infirmity:

1. results in the partner being unable to care for a child; and
2. is, in the opinion of the Secretary, likely to continue indefinitely; and
3. the person has at least one SPP child (see sections 250 and 251); and
4. at least one of the following conditions is satisfied:

(i) if the person has only one SPP child—that child became an SPP child while the person was an Australian resident;

(ii) if the person has 2 or more SPP children—one of those children became an SPP child while the person was an Australian resident;

(iii) if the person has ever been a member of a couple—the person was an Australian resident immediately before the person became a person to whom paragraph (a) applies;

(iv) the person had been an Australian resident for a continuous period of at least 5 years immediately before the day on which the person lodges the claim;

(v) the person has, at any time, been an Australian resident for a continuous period of at least 10 years.

Note: for “Australian resident” see section 7.

**(2)** A woman does not have to satisfy paragraph (1) (c) in order to be qualified for a sole parent pension if:

1. the woman became a person to whom paragraph (1) (a) applied because of the death of a man; and
2. the woman was, immediately before the man died, receiving:

**Sole Parent Pension s. 249**

(i) a wife pension because the man was receiving:

(a) an age pension; or

(b) an invalid pension; or

(c) a special needs age pension; or

(d) a special needs invalid pension; or

(ii) a wife service pension under Part III of the Veterans’ Entitlements Act because the man was receiving a service pension under that Part; and

(c) the woman was not in Australia at the time when the man died.

**(3)** Subsection (1) has effect subject to:

1. section 1214 (12 months limit on overseas portability); and
2. sections 1218 and 1219 (departure certificate requirements for people leaving Australia).

**SPP (sole parent pension) child**

**250. (1)** A young person is an **SPP child** of another person (in this section called the **“adult”**)if:

(a) the young person is:

(i) a dependent child of the adult; or

(ii) a maintained child of the adult; and

(b) the young person:

(i) has not turned 16; or

(ii) is a child for whom the adult is qualified for child disability allowance; and

(c) the young person:

(i) is a natural or adopted child of the adult; or (ii) is in the adult’s legal custody; or

(iii) if the adult has ever been a member of a couple—was being maintained by the adult immediately before the adult becomes a person to whom paragraph 249 (1) (a) applies; or

(iv) has been wholly or substantially in the care and control of the adult for a period of at least 12 months before the day on which the adult claims sole parent pension and is, in the Secretary’s opinion, likely to remain wholly or substantially in the adult’s care and control permanently or indefinitely.

**(2)** For the purposes of subsection (1), a young person who has not turned 16 can be a **dependent child** of the adult even though:

1. the young person is not in full-time education; and
2. the young person is in receipt of income from wages; and
3. the rate of that income exceeds $100 per week.

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Note 1: a young person covered by this subsection would normally not count as a dependent child (see subsection 5 (3)).

Note 2: subsection (2) does no more than allow the young person to be taken into account as a dependent child in working out whether a person is *qualified* for sole parent pension—it does not allow the young person to be taken into account as a dependent child in calculating the *rate* of a person’s sole parent pension (see Module C of Pension (Rate Calculator C).

**Young person to be SPP child for only one person**

**251. (1)** A young person can be an SPP child of only one person ata time.

**(2)** If the Secretary is satisfied that, but for this section, a young person would be an SP child of 2 or more persons, the Secretary is to:

1. make a written determination that the Secretary is satisfied that that is the case; and
2. specify in the determination the person whose SP child the young person is to be; and
3. give each person a copy of the determination.

**Effect of maintenance rights on qualification for sole parent pension**

**252. (1)** A person is not qualified for a sole parent pension if:

1. the person is entitled to maintenance; and
2. the Secretary considers that it is reasonable for the person to take action to obtain maintenance; and
3. the person does not take such action as the Secretary considers reasonable to obtain maintenance.

**(2)** In subsection (1):

**“maintenance”**,in relation to a person, means maintenance for the person or an SPP child of the person.

***Subdivision B***—***Payability***

**Sole parent pension not payable in some circumstances**

**253. (1)** Even though a person is qualified for a sole parent pension, the pension may not be payable to the person because:

1. the pension has not commenced to be payable (see sections 254 and 270); or
2. the person is in gaol (see Part 3.13); or
3. the person is receiving another pension or benefit (see section 258).

**(2)** A sole parent pension is not payable to a person if the person’s sole parent pension rate would be nil.

**Sole Parent Pension s. 254**

**Sole parent pension generally not payable before claim**

**254.** Subject to sections 256 and 257, a sole parent pension is not payable to a person before the person’s provisional commencement day (identified under section 255).

**Provisional commencement day**

*General rule*

**255. (1)** Subject to subsections (2) and (3), a person’s provisional commencement day is the day on which the person claims the sole parent pension.

*Initial incorrect claim followed by claim for sole parent pension*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**)for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to a sole parent pension; and

1. on the day on which the person makes the initial claim, the person is qualified for a sole parent pension; and
2. the person subsequently makes a claim for a sole parent pension; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

*Early claim*

**(3)** If:

1. a person lodges a claim for a sole parent pension; and
2. the person is not, on the day on which the claim is lodged, qualified for a sole parent pension; and
3. the person becomes qualified for a sole parent pension sometime during the period of 3 months that starts immediately after the day on which the claim is lodged;

the person’s provisional commencement day is the first day on which the person is qualified for the pension and is an Australian resident and in Australia.

**Backdating—death of partner etc.**

**256.** If:

(a) a person’s partner dies; and

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1. the person’s provisional commencement day is within one month after the day on which the partner dies; and
2. the person is qualified for sole parent pension at some time in the period between the death of the partner and the provisional commencement day;

the sole parent pension can become payable before the provisional commencement day but is not payable to the person before the first day in the period on which the person is qualified.

Note 1: for “provisional commencement day” see section 255.

Note 2: the pension will not *necessarily* be backdated to the day on which the person becomes qualified—some other factor may make the pension not payable at that time (e.g. compensation preclusion).

**Backdating—birth of child**

**257.** If:

1. a woman gives birth to a child; and
2. the woman’s provisional commencement day is within one month after the day on which the child is born; and
3. the woman is qualified for a sole parent pension at some time in the period between the birth of the child and the provisional commencement day;

the sole parent pension can become payable to the person before the provisional commencement day but is not payable to the person before the first day in the period on which the person is qualified.

Note: for “provisional commencement day” see section 255.

Multiple entitlement exclusion

**258.** A sole parent pension is not payable to a person if:

(a) the person is receiving:

(i) another social security pension; or

(ii) a social security benefit; or

(iii) a service pension; or

(b) the person is a widow who is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act.

Note: “social security pension” includes sheltered employment and rehabilitation allowances and “social security benefit” includes job search allowance.

**Sole Parent Pension s. 259**

***Division 2***—***Claim for sole parent pension***

**Need for a claim**

**259. (1)** A person who wants to be granted a sole parent pension must make a proper claim for that pension.

Note: “proper claim”—see section 260 (form), section 261 (manner of lodgment) and section 262 (residence/presence in Australia).

**(2)** For the purposes of subsection (1), where:

1. a claim for sole parent pension is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for that pension;

the claim is to be taken to have not been made.

**Form of claim**

**260.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**261. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.
4. Subject to subsection (3), a place or person approved under subsection (1) must be a place or person in Australia.
5. The Secretary may approve a place or person outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

Note: for international agreements see Part 4.1.

**Claimant must be Australian resident and in Australia**

**262. (1)** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

Note 2: the provisions of a scheduled international agreement may permit a proper claim to be made by a person who is not an Australian resident or not in Australia: see section 1208.

**(2)** Subsection (1) does not apply to a woman if:

1. the woman became a person to whom paragraph 249 (1) (a) applies because of the death of a man; and
2. the woman was, immediately before the man died, receiving:

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(i) a wife pension because the man was receiving:

(a) an age pension; or

(b) an invalid pension; or

(ii) a wife service pension under Part III of the Veterans’ Entitlements Act because the man was receiving a service pension under that Part; and

(c) the woman was not in Australia at the time when the man died.

**Secretary may require some claimants to give information about domestic circumstances**

*De facto relationship*

**263. (1)** If:

1. a particular residence has been, for a period of at least 8 weeks, the principal home of both a claimant for sole parent pension and a person of the opposite sex; and
2. the claimant is not legally married to the other person; and
3. the claimant and the other person are not within a prohibited relationship for the purposes of section 23b of the *Marriage Act 1961*;and
4. at least one of the following subparagraphs are satisfied:

(i) a child of both the people also lives in the residence;

(ii) the people have joint ownership of the residence;

(iii) the people are joint lessees of the residence and the original duration of the lease was at least 10 years;

(iv) the people have joint assets with a total value of more than $4,000;

(v) the people have joint liabilities totalling more than $1,000;

(vi) the people have at any time been legally married to each other;

(vii) the people have at any time shared another residence with each other;

the Secretary may give the claimant a notice that requires the claimant to give the Secretary:

1. specified information about the claimant’s relationship with the other person; and
2. any other information that might be relevant to the question whether the other person is the claimant’s partner.

*Living separately and apart under the one roof*

**(2)** If:

(a) a particular residence has been, for a period of at least 8 weeks, the principal home of both a claimant for sole parent pension and a person of the opposite sex; and

**Sole Parent Pension s. 263**

1. the claimant and the other person are legally married to one another; and
2. the claimant and the other person:

(i) are living separately and apart on a permanent basis; or (ii) claim to be living separately and apart on a permanent basis;

the Secretary may give the claimant a notice that requires the claimant to give the Secretary:

1. specified information about the claimant’s relationship with the other person; and
2. any other information that might be relevant to the question whether the claimant and the other person are living separately and apart on a permanent basis.

*Kind of information that can be specified*

**(3)** Information specified under paragraph (1) (e) or (2) (d) is to be information:

1. that is within the claimant’s own knowledge; or
2. that the claimant can reasonably be expected to obtain.

*Notice to state effect of failure to comply with notice*

**(4)** A notice under subsection (1) or (2) is to state that the claimant’s claim will be taken not to have been made if the claimant does not give the Secretary the required information within 14 days after the notice is given.

*Offence*

**(5)** A person must not, in purporting to comply with a notice under subsection (1) or (2), knowingly or recklessly give the Secretary information that is false or misleading in a material particular.

Penalty: $2,000 or imprisonment for 12 months, or both.

**Secretary’s obligations if claimant *complies* with section 263 notice**

*De facto relationship*

**264. (1)** If:

1. a person claims sole parent pension; and
2. the Secretary gives the claimant a notice under subsection 263 (1) about the claimant’s relationship with another person to whom the claimant is not legally married; and
3. the claimant purports to give the Secretary the information required by the notice; and
4. the Secretary is satisfied that the claimant has given the Secretary all the relevant information;

the Secretary must form an opinion whether the claimant is living with the other person in a marriage-like relationship.

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Note: in forming this opinion, the Secretary must apply the rule laid down in subsection 4 (4).

*Favourable subsection (1) determination to be followed by investigation moratorium*

**(2)** If the Secretary forms the opinion, under subsection (1), that the claimant is not living with the other person in a marriage-like relationship, the Secretary must not cause or permit any action to be taken for the purposes of, or in connection with, an investigation of the claimant’s relationship with the other person until:

(a) the Secretary has reason to believe that the claimant’s domestic circumstances have changed so that:

(i) a circumstance set out in subsection 263 (1) that did not previously apply to the claimant now applies to the claimant; or

(ii) a circumstance set out in subsection 263 (1) that previously applied to the claimant now applies to the claimant for a different reason; or

(b) 12 weeks after the Secretary formed the opinion under subsection (1) of this section;

whichever is earlier.

*Living separately and apart under the one roof*

**(3)** If:

1. a person claims sole parent pension; and
2. the Secretary gives the claimant a notice under subsection 263 (2) about the claimant’s relationship with another person to whom the claimant is legally married; and
3. the claimant purports to give the Secretary the information required by the notice; and
4. the Secretary is satisfied that the claimant has given the Secretary all the relevant information;

the Secretary must form an opinion whether the claimant is living separately and apart from the other person on a permanent basis.

Note: in forming this opinion, the Secretary must apply the rule laid down in subsection 4 (5).

*Favourable subsection (3) determination to be followed by investigation moratorium*

**(4)** If the Secretary forms the opinion, under subsection (3), that the claimant is living separately and apart from the other person on a permanent basis, the Secretary must not cause or permit any action to be taken for the purposes of, or in connection with, an investigation of the claimant’s relationship with the other person till 12 weeks after the Secretary formed that opinion.

**Sole Parent Pension s. 265**

**Effect of failure by claimant to comply with section 263 notice**

**265.** If:

1. the Secretary gives a claimant for sole parent pension a notice under subsection 263 (1) or (2); and
2. the claimant does not give the Secretary the information required by the notice within 14 days after the notice is given;

the claimant’s claim is to be taken not to have been lodged.

Note: if the claimant has to lodge a new claim for sole parent pension, this may well affect the date from which the sole parent pension can be paid.

***Division 3*—*Determination of claim***

**Secretary to determine claim**

**266.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**267.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for a sole parent pension; and
2. the pension is payable.

**Date of effect of determination**

**268. (1)** Subject to subsections (2), (3) and (4), a determination under section 267 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for a sole parent pension; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

(a) a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for a sole parent pension; and

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1. a notice is given to the person advising the person of the making of the previous decision; and
2. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
3. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a sole parent pension; and
2. no notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination under section 267 is made as a result of the application for review;

the determination under section 267 takes effect on the day on which the previous decision took effect.

***Division 4***—***Rate of sole parent pension***

**How to work out a person’s sole parent pension rate**

**269.** A person’s sole parent pension rate is worked out using:

1. if the person is qualified for sole parent pension because of subparagraph 249 (1) (a) (iv) (illness separation)—Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or
2. in any other case—Pension Rate Calculator C at the end of section 1066 (see Part 3.4).

***Division 5*—*Payment of sole parent pension***

**Commencement of sole parent pension**

**270.** A sole parent pension becomes payable to a person on the first day on which:

1. the person is qualified for the pension; and
2. no provision of this Act makes the pension not payable to the person.

Note 1 : for qualification see section 249.

Note 2: for the circumstances in which a sole parent pension is not payable see section 253.

**Sole Parent Pension s. 271**

**Payment by instalments**

**271. (1)** A full instalment of sole parent pension is payable to a person on each pension payday on which:

1. the person is qualified for the pension; and
2. the pension is payable to the person.

**(2)** If person who is qualified for a sole parent pension is outside Australia, the instalments referred to in subsection (1) are to be paid to the person on such pension paydays as the Secretary determines for the purposes of this subsection.

**Effect on instalments of backdating claim**

**272.** If:

1. a person lodges a claim for a sole parent pension on a particular day (in this section called the **“claim day”**);and
2. the person’s provisional commencement day is before the claim day;

any instalment of sole parent pension that would, but for this section, be payable, is payable to the person:

1. if the claim day was a pension payday—on that day; or
2. the first pension payday after the claim day.

Note: for “provisional commencement day” see section 255.

**Calculation of amount of instalment**

**273. (1)** The amount of an instalment of sole parent pension is the amount worked out by dividing the amount of the annual rate of the pension by 26.

1. If an amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is, subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a person on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.
3. If, apart from this subsection, the amount of an instalment ofsole parent pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Inmates of benevolent homes**

**274. (1)** While a person who is receiving a sole parent pension is an inmate of a benevolent home:

1. so much of the person’s pension as does not exceed the pensioner contribution is to be paid to the person who controls the benevolent home for the maintenance of the person in the benevolent home; and
2. the balance (if any) is to be paid to the person receiving the pension.

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1. For the purposes of this section, the **pensioner contribution** is, subject to subsection (3), 364 times the amount in force from time totime for the purposes of subparagraph 47 (2) (b) (iii) of the *National Health Act 1953.*
2. If the amount worked out under subsection (2) is not a multiple of $2.60, the pensioner contribution is the next lower amount that is a multiple of $2.60.

**Manner of payment**

**275.** A person’s sole parent pension is, subject to section 276, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**276. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s sole parent pension is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the sole parent pension is to be paid in accordance with the direction.

**Payment into bank account etc.**

**277. (1)** The Secretary may direct that the whole or a part of the amount of a person’s sole parent pension is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the sole parent pension is payable.
2. The account may be an account that is maintained by a person to whom the sole parent pension is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the sole parent pension is to be payable in accordance with the direction.

**Where pension payday would fall on public holiday etc.**

**278.** If the Secretary is satisfied that an amount of sole parent pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of pension after death**

**279. (1)** If:

(a) a sole parent pension is payable to a person; and

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1. the person dies; and
2. at the date of the person’s death the person had not received an amount of sole parent pension payable to him or her; and
3. another person applies to receive that amount; and
4. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of sole parent pension under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of sole parent pension.

***Division 6*—*Protection of sole parent pension***

**Sole parent pension to be absolutely inalienable**

**280. (1)** Subject to subsection (2) and section 1359, sole parent pension is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of sole parent pension payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**281. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of sole parent pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

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|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of sole parent pension payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7*—*Recipient obligations***

**Secretary may require some recipients to give information about domestic circumstances**

*De facto relationship*

**282. (1)** If:

1. a person is receiving sole parent pension; and
2. a particular residence has been, for a period of at least 8 weeks, the principal home of both the recipient and a person of the opposite sex; and
3. the recipient is not legally married to the other person; and
4. the recipient and the other person are not within a prohibited relationship for the purposes of section 23b of the *Marriage Act 1961*;and
5. at least one of the following subparagraphs is satisfied:

(i) a child of both the people also lives in the residence;

(ii) the people have joint ownership of the residence;

(iii) the people are joint lessees of the residence and the original duration of the lease was at least 10 years;

(iv) the people have joint assets with a total value of more than $4,000;

(v) the people have joint liabilities totalling more than $1,000;

(vi) the people have at any time been legally married to each other;

(vii) the people have at any time shared another residence with each other;

the Secretary may give the recipient a notice that requires the recipient to give the Secretary:

**Sole Parent Pension** s. **282**

1. specified information about the recipient’s relationship with the other person; and
2. any other information that might be relevant to the question whether the other person is the recipient’s partner.

Note: for the effect of a failure to comply with the notice see sections 296 and 297.

*Living separately and apart under the one roof*

**(2)** If:

1. a person is receiving sole parent pension; and
2. a particular residence has been, for a period of at least 8 weeks, the principal home of both the recipient and a person of the opposite sex; and
3. the recipient and the other person are legally married to one another; and
4. the recipient and the other person:

(i) are living separately and apart on a permanent basis; or

(ii) claim to be living separately and apart on a permanent basis;

the Secretary may give the recipient a notice that requires the recipient to give the Secretary:

(e) specified information about the recipient’s relationship with the other person; and

(f) any other information that might be relevant to the question whether the recipient and the other person are living separately and apart on a permanent basis.

Note: for the effect of a failure to comply with the notice see sections 296 and 297.

*Kind of information that may be specified*

**(3)** Information specified under paragraph (1) (f) or (2) (e) is to be information:

1. that is within the recipient’s own knowledge; or
2. that the recipient can reasonably be expected to obtain.

*Notice to state effect of failure to comply with notice*

**(4)** A notice under subsection (1) or (2) is to state that the recipient’s sole parent pension will be suspended if the recipient does not give the Secretary the required information within 14 days after the notice is given.

*Offence*

**(5)** A person must not, in purporting to comply with a notice under subsection (1) or (2), knowingly or recklessly give the Secretary information that is false or misleading in a material particular.

Penalty: $2,000 or imprisonment for 12 months, or both.

**s. 283 Sole Parent Pension**

**Secretary’s obligations if recipient complies with section 282 notice**

*De facto relationship*

**283. (1)** If:

1. a person is receiving a sole parent pension; and
2. the Secretary gives the recipient a notice under subsection 282 (1) about the recipient’s relationship with another person to whom the recipient is not legally married; and
3. the recipient purports to give the Secretary the information required by the notice; and
4. the Secretary is satisfied that the recipient has given the Secretary all the relevant information;

the Secretary must form an opinion whether the recipient is living with the other person in a marriage-like relationship.

Note: in forming this opinion, the Secretary must apply the rule laid down in subsection 4 (4).

*Favourable subsection (1) determination to be followed by investigation moratorium*

**(2)** If the Secretary forms the opinion, under subsection (1), that the claimant is not living with the other person in a marriage like relationship, the Secretary must not cause or permit any action to be taken for the purposes of, or in connection with, an investigation of the claimant’s relationship with the other person until:

(a) the Secretary has reason to believe that the claimant’s domestic circumstances have changed so that:

(i) a circumstance set out in subsection 263 (1) that did not previously apply to the claimant now applies to the claimant; or

(ii) a circumstance set out in subsection 263 (1) that previously applied to the claimant now applies to the claimant for a different reason; or

(b) 12 weeks after the Secretary formed the opinion under subsection (1) of this section;

whichever is earlier.

*Living separately and apart under the one roof*

**(3)** If:

1. a person is receiving a sole parent pension; and
2. the Secretary gives the recipient a notice under subsection 282 (2) about the recipient’s relationship with another person to whom the recipient is legally married; and
3. the recipient purports to give the Secretary the information required by the notice; and
4. the Secretary is satisfied that the recipient has given the Secretary all the relevant information;

**Sole Parent Pension s. 283**

the Secretary must form an opinion whether the recipient is living separately and apart from the other person on a permanent basis.

Note: in forming this opinion, the Secretary must apply the rule laid down in subsection 4 (5).

*Favourable subsection (3) determination to be followed by investigation moratorium*

**(4)** If the Secretary forms the opinion, under subsection (3), that the claimant is living separately and apart from the other person on a permanent basis, the Secretary must not cause or permit any action to be taken for the purposes of, or in connection with, an investigation of the claimant’s relationship with the other person until 12 weeks after the Secretary formed that opinion.

**Secretary may require notice of the happening of an event or a change in circumstances**

**284. (1)** The Secretary may give a person to whom a sole parent pension is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the pension.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**s. 284 Sole Parent Pension**

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of sole parent pension**

**285. (1)** The Secretary may give a person to whom a sole parent pension is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the pension to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

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**Self incrimination**

**286. (1)** A person is not excused from giving information pursuant to a notice under section 284 or 285 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 284 or 285 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 284 (5) or (6) or 285 (5) or (6).

***Division 8*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**287. (1)** A determination that:

1. a person’s claim for a sole parent pension is granted; or
2. a sole parent pension is payable to a person; continues in effect until:
3. the pension ceases to be payable under section 288, 289 or 290; or
4. a further determination in relation to the pension under section 295 or 296 has taken effect.

Note 1: for paragraph (a) see section 267.

Note 2: for paragraph (b) see section 298—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a sole parent pension continues in effect until:

1. the pension becomes payable at a lower rate under section 291 or 292; or
2. a further determination in relation to the pension under section 293 or 294 has taken effect.

***Subdivision B***—***Automatic termination***

**Automatic termination—recipient *complying* with section 284 notification obligations**

**288.** If:

1. a person who is receiving a sole parent pension is given a notice under section 284; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a

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specified period (in this section called the **“notification period”**);and

1. the event or change in circumstances occurs; and
2. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
3. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension would, but for this section, cease to be payable to the person;

the pension continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s pension, there is no automatic rate reduction and a determination under section 294 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 284 notification obligations**

**289.** If:

1. a person who is receiving a sole parent pension is given a notice under section 284; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension ceases to be payable to the person; the pension ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

**Automatic termination—failure to provide section 285 statement**

**290. (1)** If:

1. a person who is receiving a sole parent pension is given a notice under section 285 requiring the person to give the Department a statement; and
2. the notice relates to the payment of that pension during a period specified in the notice; and

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(c) the person does not comply with the notice; the pension, subject to subsection (2), ceases to be payable to the person as from the first day in that period.

1. 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 person from a day specified in the determination.
2. The day specified under subsection (2) may be before or after the making of the determination.

***Subdivision C***—***Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 284 notification obligations**

**291.** If:

1. a person who is receiving a sole parent pension is given a notice under section 284; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence or the event of change in circumstances, the person’s rate of pension is to be reduced;

the pension becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

**Automatic rate reduction—failure to inform Department of payment for remunerative work where earnings credit account balance available**

**292.** If:

1. a person who is receiving a sole parent pension is given a notice under section 284; and
2. the notice requires the person to inform the Department of income for remunerative work undertaken by the person; and
3. the person fails to notify the Department of income of that kind in accordance with the notice; and
4. the person has an earnings credit account balance for the purposes of Division 4 of Part 3.10;

the pension becomes payable to the person at the reduced rate from the first pension payday after the day on which the person’s earnings credit account balance is reduced to nil.

**s. 293 Sole Parent Pension**

***Subdivision D***—***Determinations***

**Rate increase determination**

**293.** If the Secretary is satisfied that the rate at which sole parent pension is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 299.

**Rate reduction determination**

**294.** If the Secretary is satisfied that the rate at which a sole parent pension is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 291 or 292 (see subsection 287 (2)).

Note 2: for the date of effect of a determination under this section see section 300.

**Cancellation or suspension determination**

**295.** If the Secretary is satisfied that a sole parent pension is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 288, 289 or 290 (see subsection 287 (1)).

Note 2: for the date of effect of a determination under this section see section 300. Suspension for failure to comply with section 282 notice

**296. (1)** If:

1. a person is receiving a sole parent pension; and
2. the Secretary gives the recipient a notice under section 282; and
3. the recipient fails to give the Secretary the information required by the notice within 14 days after the notice is given;

the Secretary is to determine that the pension is to be suspended.

1. If the Secretary suspends a person’s sole parent pension under subsection (1), the Secretary must give the person a notice that states that the person’s pension will be cancelled if the information required by the notice under section 282 is not given to the Secretary within 14 days after the notice under this subsection is given.
2. If:
3. the recipient’s sole parent pension is suspended under subsection (1); and
4. the recipient gives the Secretary the information required within the 14 days referred to in the notice under subsection (2) of this section; and

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(c) the Secretary forms the opinion that:

(i) if the notice under section 282 was a notice under subsection 282 (1) about the recipient’s relationship with another person to whom the recipient is not legally married—the recipient is not living with the other person in a marriage-like relationship; or

(ii) if the notice under section 282 was a notice under subsection 282 (2) about the recipient’s relationship with another person to whom the recipient is legally married— the recipient is living separately and apart from the other person on a permanent basis;

the recipient is entitled to be paid any amounts of sole parent pension that the recipient would have been entitled to be paid if the pension had not been suspended under subsection (1).

**Cancellation for failure to comply with subsection 296 (2) notice**

**297.** If:

1. a person’s sole parent pension is suspended under subsection 296 (1); and
2. the person fails to give the Secretary the information required by the notice under section 282 within the 14 days referred to in the notice under subsection 296 (2);

the Secretary is to determine that the pension is to be cancelled.

**Resumption of payment after cancellation or suspension**

**298. (1)** If the Secretary:

1. cancels or suspends a person’s sole parent pension under section 295; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive a sole parent pension that was payable to the person; or

(b) the person is not receiving a sole parent pension that is payable to the person;

the Secretary is to determine that a sole parent pension was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 299.

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***Subdivision E***—***Date of effect of determinations***

**Date of effect of favourable determination**

**299. (1)** The day on which a determination under section 293 or 298 (in this section called the **“favourable determination”)** takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a sole parent pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the “previous decision”) is made in relation to a sole parent pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a sole parent pension; and
2. no notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and

**Sole Parent Pension s. 299**

(d) the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and
3. the Secretary was notified, within 28 days after the payment ceased, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that

***s.* 299 Sole Parent Pension**

young person under any of the prescribed educational schemes; and

1. the Secretary is satisfied that it is reasonable for such applications not to be made; and
2. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**300. (1)** The day on which a determination under section 294 or 295 (in this section called the **“adverse determination”**) takes effect is worked out in accordance with this section.

Note: if a person seeks review of a section 297 cancellation decision, payment of the sole parent pension may be continued pending the outcome of the review. If the application for review is made within 14 days of notification of the decision, continued payment will be automatic: see section 1242 (internal review) and section 1252 (review by Social Security Appeals Tribunal). If the application is made after that time, continued payment is at the Secretary’s discretion: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

1. the person whose pension is affected by the adverse determination has contravened a provision of this Act (other than section 285, 1304, 1305, 1306 or 1307); and
2. the contravention causes a delay in making the determination;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

**Sole Parent Pension s. 300**

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the pension has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the pension was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments***

***Subdivision A*—*Continuation of sole parent pension***

**Continuation of sole parent pension for bereavement period where recipient’s only SPP child dies**

**301. (1)** If:

1. a person is receiving a sole parent pension; and
2. a dependent or maintained child of the person dies; and
3. the child was the only SPP child of the person;

the person is qualified for the sole parent pension during the bereavement period as if the child had not died.

1. Subsection (1) does not apply in respect of any part of the bereavement period after the person stops being a person to whom paragraph 249 (1) (a) applies.
2. A person’s entitlements under this Subdivision are instead of, and not in addition to, any entitlements the person would, but for this Subdivision, have to a social security or service pension or a social security benefit.
3. A person to whom subsection (1) applies may, by written notice to the Secretary, choose not to receive payments under this Subdivision and to receive instead any payments to which the person would be entitled but for subsection (3).

**(5)** Where a person makes an election under subsection (4):

(a) this Act has effect accordingly; and

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(b) the person may not withdraw the election after the Department has taken all the action required to give effect to the election.

**Continued sole parent pension rate**

**302. (1)** If a person is qualified for a sole parent pension solely because of section 301, the rate at which the pension is payable is to be determined having regard to the person’s actual circumstances.

**(2)** Without limiting the generality of subsection (1), the rate at which the pension is payable is not to include any amount by way of child related payment within the meaning of section 310.

***Subdivision B***—***Death of pensioner partner***

**Qualification for payments under this Subdivision**

**303. (1)** If:

1. a person is receiving a sole parent pension; and
2. the person is a member of a couple; and
3. the person’s partner dies; and
4. immediately before the partner died, the partner was receiving:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a carer pension; or

(iv) a sheltered employment allowance instead of an invalid pension; or

(v) a rehabilitation allowance instead of a pension referred to in subparagraph (i) or (ii); or

(vi) a special needs age or invalid pension; or

(vii) a service pension;

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

Note 1: section 304 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person’s partner during that period if the partner had not died.

Note 2: section 305 provides for a lump sum that represents the instalments that would have been paid to the person’s partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

1. A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
2. An election under subsection (2):
3. must be made by written notice to the Secretary; and
4. may be made after the person has been paid an amount or amounts under this Subdivision; and
5. cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**Sole Parent Pension s. 303**

**(4)** If a person is qualified for payments under this Subdivision in relation to the partner’s death, the rate at which sole parent pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 306.

**Continued payment of partner’s pension or allowance**

**304.** If a person is qualified for payments under this Subdivision in relation to the death of the person’s partner, there is payable to the person, on each of the pension paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person’s partner on that payday if the partner had not died.

**Lump sum payable in some circumstances**

**305.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

**s. 305 Sole Parent Pension**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if the person’s partner had not died, would have been payable to the person on the pension payday immediately before the first available payday; and |
|  | (b) the amount that, if the partner had not died, would have been payable to the partner on the pension payday immediately before the first available payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 306, would have been payable to the person on the pension payday immediately before the first available payday: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the lump sum period. |
| *Step 5.* | Multiply the partner’s instalment component by the number of pension paydays in the instalment period: the result is the amount of the lump sum payable to the person under this section. |

**Adjustment of person’s sole parent pension rate**

**306.** If:

1. a person is qualified for payments under this Subdivision; and
2. the person does not elect under subsection 303 (2) not to receive payments under this Subdivision;

the rate of the person’s sole parent pension during the bereavement period is worked out as follows:

1. during the bereavement rate continuation period, the rate of sole parent pension payable to the person is the rate at which the pension would have been payable to the person if the person’s partner had not died;
2. during the bereavement lump sum period (if any), the rate at which sole parent pension is payable to the person is the rate at which the sole parent pension would be payable to the person apart from this Subdivision.

**Sole Parent Pension s. 307**

**Effect of death of person entitled to payments under this Subdivision**

**307.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the person dies within the bereavement period; and
3. the Secretary does not become aware of the death of the person’s partner before the person dies;

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

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person on the pension payday immediately after the day on which the person dies; and |
|  | (b) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person’s partner on that pension payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 306, would have been payable to the. person on the pension payday immediately after the day on which the person died if the person had not died: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the period that commences on the day after the person dies and ends on the day on which the bereavement period ends. |
| *Step 5.* | Multiply the partner’s instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section. |

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

**308. (1)** If:

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

**s. 308 Sole Parent Pension**

1. after the person’s partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part HI of the Veterans’ Entitlements Act; and
2. the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

1. the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person’s partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
2. the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

**(2)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. an amount to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act, within the bereavement period, into an account with a bank, credit union or building society (in this subsection called the **“financial institution”**);and
3. the financial institution pays to the person, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

***Subdivision C*—*Death of dependent or maintained child***

**Bereavement payments on death of dependent or maintained child**

**309.** If:

1. a person is receiving a sole parent pension; and
2. a dependent or maintained child of the person dies; and
3. immediately before the child died, the person’s sole parent pension rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child; and

(d) the child was not the only SPP child of the person;

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

Note 1: section 310 provides for sole parent pension to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid

**Sole Parent Pension s. 309**

if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 311 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new sole parent pension rate and the rate at which the pension would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**310.** If a person is qualified for payments under this Subdivision in relation to the death of a dependent or maintained child, the person’s sole parent pension rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**311.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of a dependent or maintained child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance in respect of the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent or maintained child and somebody else was receiving family allowance in respect of the dependent or maintained child, a corresponding lump sum may be payable to the other person under section 890.

**s. 311 Sole Parent Pension**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the instalment of sole parent pension payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 310 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of sole parent pension that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s sole parent pension rate were not calculated under section 310: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

***Subdivision D*—*Death of recipient***

**Death of recipient**

**312. (1)** If:

1. a person is receiving sole parent pension; and
2. either:

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

(ii) the person is a member of a couple and the person’s partner:

(a) is not receiving a social security pension; and

(b) is not receiving a social security benefit; and

(c) is not receiving a service pension; and

(c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

**Sole Parent Pension s. 312**

**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1: for amounts owing to the recipient before the recipient’s death see section 279.

Note 2: for death of a person qualified for bereavement payments under Subdivision B see section 307.

***Division 10*—*Fringe benefits***

**Fringe benefits**

**313.** If a person who is receiving a sole parent pension qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**314. (1)** A person who is receiving a sole parent pension is qualified for fringe benefits if the person’s sole parent pension rate is neither income reduced nor assets reduced.

**(2)** If:

1. a person who is receiving a sole parent pension is not qualified for fringe benefits under subsection (1); and
2. the person’s sole parent pension rate is income reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

1. a person who is receiving a sole parent pension is not qualified for fringe benefits under subsection (1); and
2. the person’s sole parent pension rate is assets reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

**s. 315 Widowed Person Allowance**

**PART 2.7—WIDOWED PERSON ALLOWANCE**

***Division 1*—*Qualification for and payability of widowed person allowance***

***Subdivision A*—*Qualification***

**Qualification for widowed person allowance**

**315. (1)** A person is qualified for a widowed person allowance on a pension payday if:

(a) the person:

(i) was a member of a couple; and

(ii) stopped being a member of a couple because the person’s partner died on or after 17 February 1989; and

1. the person is not a member of a couple; and
2. the person is not qualified for a sole parent pension; and
3. at least one of the following conditions is satisfied:

(i) when the person’s partner died, both the person and the person’s partner were Australian residents;

(ii) the person had been an Australian resident for a continuous period of at least 5 years immediately before the day on which the person lodged the claim;

(iii) the person has, at any time, been an Australian resident

for a continuous period of at least 10 years;

(iv) the person is a woman:

1. to whom a wife pension, or a wife’s service pension under Part III of the Veterans’ Entitlements Act, was payable immediately before her partner died; and
2. who was not in Australia when her partner died; and

(e) the pension payday occurs:

(i) if the person is a man, or a woman who was not pregnant when her partner died—in the period of 12 weeks starting on the day of the death of the partner; or

(ii) if the person is a woman who was pregnant when her partner died:

1. in the period of 12 weeks starting on the day of the death of the partner; or
2. in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later.

Note: for “Australian resident” see section 7.

**Widowed Person Allowance s. 315**

**(2)** Subsection (1) has effect subject to sections 1218 and 1219 (departure certificate requirements for people leaving Australia).

***Subdivision B***—***Payability***

**Widowed person allowance not payable in some circumstances**

**316.** (1) Even though a person is qualified for a widowed person allowance on a pension payday the allowance may not be payable to the person because:

1. the allowance has not commenced to be payable (see sections 317 and 330); or
2. the person is in gaol (see Part 3.13); or
3. the person is already receiving pension or benefit (see section 321).

**(2)** A widowed person allowance is not payable to a person if the person’s widowed person allowance rate would be nil.

**Widowed person allowance generally not payable before claim**

**317.** Subject to sections 319 and 320, a widowed person allowance is not payable to a person before the person’s provisional commencement day (identified under section 318).

**Provisional commencement day**

*General rule*

**318. (1)** Subject to subsections (2) and (3), a person’s provisional commencement day is worked out as follows:

1. if the person claims the allowance within 4 weeks of the death of the person’s partner—the person’s provisional commencement day is the day of the death;
2. if the person does not claim the allowance within 4 weeks of the death of the person’s partner—the person’s provisional commencement day is the day on which the person claims the allowance.

Note: if the person does not claim the allowance within the period applicable to the person under paragraph 315 (1) (e), no allowance is payable to the person.

*Initial incorrect claim followed by claim for widowed person allowance*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**)for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the

**s. 318 Widowed Person Allowance**

Commonwealth, that is similar in character to a widowed person’s allowance;; and

1. on the day on which the person makes the initial claim, the person is qualified for a widowed person’s allowance; and
2. the person subsequently makes a claim for a widowed person’s allowance; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is:

1. if the person’s initial claim is made within 4 weeks of the death of the person’s partner—the day of the death; or
2. if the person’s initial claim is not made within 4 weeks of the death of the person’s partner—the day on which the person made the initial claim.

Note: if the person does not claim the allowance within the period applicable to the person under paragraph 315 (1) (e), no allowance is payable to the person.

*Early claim*

**(3)** If:

1. a person lodges a claim for widowed person allowance; and
2. the person is not, on the day on which the claim is lodged, qualified for widowed person allowance; and
3. the person becomes qualified for widowed person allowance sometime during the period of 3 months that starts immediately after the day on which the claim is lodged;

the person’s provisional commencement day is the first day on which the person is qualified for the allowance and is an Australian resident and in Australia.

**Backdating—death of partner etc.**

**319.** If:

1. a person’s partner dies; and
2. the person’s provisional commencement day is within one month after the day on which the partner dies; and
3. the person is qualified for widowed person allowance at some time in the period between the death of the partner and the provisional commencement day;

the widowed person allowance can become payable before the provisional commencement day but cannot become payable to the person before the first day in the period on which the person is qualified.

Note 1: for “provisional commencement day” see section 318.

Note 2: the allowance will not necessarily be backdated to the day on which the person becomes qualified—some other factor may make the allowance not payable at that time.

**Widowed Person Allowance s. 320**

**Backdating—birth of child**

**320.** If:

1. a woman gives birth to a child; and
2. the woman’s provisional commencement day is within one month after the day on which the child is born; and
3. the woman is qualified for a widowed person allowance at some time in the period between the birth of the child and the provisional commencement day;

the widowed person allowance can become payable to the person before the provisional commencement day but cannot become payable to the person before the first day in the period on which the person is qualified.

Note: for “provisional commencement day” see section 318.

**Multiple entitlement exclusion**

**321.** A widowed person allowance is not payable to a person if:

(a) the person is receiving:

(i) social security benefit; or

(ii) another social security pension; or

(iii) a service pension; or

(b) the person is a widow who is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (1) of that Act.

Note 1 : “social security pension” includes widowed person, sheltered employment and rehabilitation allowances and “social security benefit” includes job search allowance.

Note 2: “widow” means a woman who was a member of a couple immediately before her partner died—see section 23.

***Division 2*—*Claim for widowed person allowance***

**Need for a claim**

**322. (1)** A person who wants to be granted a widowed person allowance must make a proper claim for that allowance.

Note: “proper claim”—see section 323 (form), section 324 (manner of lodgment) and section 325 (residence/presence in Australia).

**(2)** For the purposes of subsection (1), where:

1. a claim for widowed person allowance is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for that pension;

the claim is to be taken to have not been made.

**s. 323 Widowed Person Allowance**

**Form of claim**

**323.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**324. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.
4. Subject to subsection (3), a place or person approved under subsection (1) must be a place or person in Australia.
5. The Secretary may approve a place or person outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

Note: for international agreements see Part 4.1.

**Claimant must be Australian resident and in Australia**

**325.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

Note 2: the provisions of a scheduled international agreement may permit a proper claim to be made by a person who is not an Australian resident or not in Australia: see section 1208.

***Division 3***—***Determination of claim***

**Secretary to determine claim**

**326.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**327.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for widowed person allowance; and
2. the allowance is payable.

**Date of effect of determination**

**328. (1)** Subject to subsections (2), (3) and (4), a determination under section 327 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

**Widowed Person Allowance s. 328**

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for widowed person allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for widowed person allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting the person’s claim for widowed person allowance; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

**s. 329 Widowed Person Allowance**

***Division 4*—*Rate of widowed person allowance***

**How to work out a person’s widowed person allowance rate**

**329.** A person’s rate of widowed person allowance is worked out using Pension Rate Calculator C at the end of section 1066 (see Part 3.4).

***Division 5***—***Payment of widowed person allowance***

**Commencement of widowed person allowance**

**330.** A widowed person allowance becomes payable to a person on the first day on which:

1. the person is qualified for the allowance; and
2. no provision of this Act makes the allowance not payable to the person.

Note 1: for qualification see section 315.

Note 2: for the circumstances in which a widowed person allowance is not payable see section 316.

**Payment by instalments**

**331. (1)** An instalment of widowed person allowance is payable to a person on each pension payday on which:

1. the person is qualified for the allowance; and
2. the allowance is payable to the person.

**(2)** If a person who is qualified for a widowed person allowance is outside Australia, the instalments referred to in subsection (1) are to be paid to the person on such pension paydays as the Secretary determines for the purposes of this subsection.

**Effect on instalments of backdating claim**

**332.** If:

1. a person lodges a claim for a widowed person allowance on a particular day (in this section called the **“claim day”**);and
2. the person’s provisional commencement day is before the claim day;

any instalment of widowed person allowance that would, but for this section, be payable, is payable to the person:

1. if the claim day was a pension payday—on that day; or
2. the first pension payday after the claim day.

Note: for “provisional commencement day” see section 318.

**Calculation of amount of instalment**

**333. (1)** The amount of an instalment of widowed person allowance is the amount worked out by dividing the amount of the annual rate of the allowance by 26.

**Widowed Person Allowance s. 333**

1. If an amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is, subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a person on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.
3. If, apart from this subsection, the amount of an instalment of allowance would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Manner of payment**

**334.** A person’s widowed person allowance is, subject to section 335, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**335. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s widowed person allowance is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the widowed person allowance is to be paid in accordance with the direction.

**Payment into bank account etc.**

**336. (1)** The Secretary may direct that the whole or a part of the amount of a person’s widowed person allowance is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the widowed person allowance is payable.
2. The account may be an account that is maintained by a person to whom the widowed person allowance is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the widowed person allowance is to be payable in accordance with the direction.

**Where allowance payday would fall on public holiday etc.**

**337.** If the Secretary is satisfied that an amount of widowed person allowance that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**s. 338 Widowed Person Allowance**

**Payment of allowance after death**

**338. (1)** If:

1. a widowed person allowance is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of widowed person allowance payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of widowed person allowance under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of widowed person allowance.

***Division 6***—***Protection of widowed person allowance***

**Widowed person allowance to be absolutely inalienable**

**339. (1)** Subject to subsection (2) and section 1359, widowed person allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments ofwidowed person allowance payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner ofTaxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**340. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of widowed person allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

**Widowed Person Allowance s. 340**

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of widowed person allowance payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7*—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**341. (1)** The Secretary may give a person to whom a widowed person allowance is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the allowance.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

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**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of widowed person allowance**

**342. (1)** The Secretary may give a person to whom a widowed person allowance is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end more than 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

**Widowed Person Allowance s. 342**

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**343. (1)** A person is not excused from giving information pursuant to a notice under section 341 or 342 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 341 or 342 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 341 (5) or (6) or 342 (5) or (6).

***Division 8***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**344.** (1) A determination that:

(a) a person’s claim for a widowed person allowance is to be granted; or

(b) a widowed person allowance is payable to a person; continues in effect:

1. until the expiry of the period referred to in paragraph 315 (1) (e) which is relevant to the person; or
2. before that period ends, until:

(i) the allowance ceases to be payable under section 345, 346 or 347; or

(ii) a further determination in relation to the pension under section 352 has taken effect.

Note 1 : for paragraph (a) see section 327.

Note 2: for paragraph (b) see section 353—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a widowed person allowance continues in effect until:

1. the allowance becomes payable at a lower rate under section 348 or 349; or
2. a further determination in relation to the allowance under section 350 or 351 has taken effect.

**s. 345 Widowed Person Allowance**

***Subdivision B***—***Automatic termination***

**Automatic termination—recipient *complying* with section 341 notification obligations**

**345.** If:

1. a person who is receiving a widowed person allowance is given a notice under section 341; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance would, but for this section, cease to be payable to the person;

the allowance continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person allowance, there is no automatic rate reduction and a determination under section 351 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 341 notification obligations**

**346.** If:

1. a person who is receiving a widowed person allowance is given a notice under section 341; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the allowance; or (ii) the allowance ceases to be payable to the person; the allowance ceases to be payable to the person immediately after the day on which the event or change in circumstance occurs.

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**Automatic termination—failure to provide section 342 statement**

**347. (1)** If:

1. a person who is receiving a widowed person allowance is given a notice under section 342 requiring the person to give the Department a statement; and
2. the notice relates to the payment of that allowance during a period specified in the notice; and
3. the person does not comply with the notice;

the allowance, subject to subsection (2), ceases to be payable to the person as from the first day in that period.

1. 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 person from a day specified in the determination.
2. The day specified under subsection (2) may be before or after the making of the determination.

***Subdivision C***—***Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 341 notification obligations**

**348.** If:

1. a person who is receiving a widowed person allowance is given a notice under section 341; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person rate of allowance is to be reduced;

the allowance becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstance occurs.

**Automatic rate reduction—failure to inform Department of payment for remunerative work where earnings credit account balance available**

**349.** If:

(a) a person who is receiving a widowed person allowance is given a notice under section 341; and

**s. 349 Widowed Person Allowance**

1. the notice requires the person to inform the Department of a payment for remunerative work undertaken by the person; and
2. the person fails to notify the Department of a payment of that kind in accordance with the notice; and
3. the person has an earnings credit account balance for the purposes of Division 4 of Part 3.10;

the allowance becomes payable to the person at the reduced rate from the first pension payday after the day on which the person’s earnings credit balance is reduced to nil.

***Subdivision D*—*Determinations***

**Rate increase determination**

**350.** If the Secretary is satisfied that the rate at which a widowed person allowance is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 354.

**Rate reduction determination**

**351.** If the Secretary is satisfied that the rate at which a widowed person allowance is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 348 or 349 (see subsection 344 (2)).

Note 2: for the date of effect of a determination under this section see section 355.

**Cancellation or suspension determination**

**352.** If the Secretary is satisfied that a widowed person allowance is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 345, 346 or 347 (see subsection 344 (1)).

Note 2: for the date of effect of a determination under this section see section 355.

**Resumption of payment after cancellation or suspension**

**353. (1)** If the Secretary:

1. cancels or suspends a person’s widowed person allowance under section 352; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

**Widowed Person Allowance s. 353**

(a) the person did not receive a widowed person allowance that was payable to the person; or

(b) the person is not receiving a widowed person allowance that is payable to the person;

the Secretary is to determine that a widowed person allowance was or is payable to the person.

(2) The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 354.

***Subdivision E***—***Date of effect of determinations***

**Date of effect of favourable determination**

**354. (1)** The day on which a determination under section 350 or 353 (in this section called the **“favourable determination”**)takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a widowed person allowance; and
2. a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a widowed person allowance; and
2. a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

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the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a widowed person allowance; and
2. no notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect

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of that young person, and the young person or other person has since ceased to receive that payment; and

(c) the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**355. (1)** The day on which a determination under section 351 or 352 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

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*Contravention of Act*

**(4)** If:

(a) the person whose allowance is affected by the adverse determination has contravened a provision of this Act (other than sections 342 and 1304 to 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the allowance has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the allowance was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments***

***Subdivision A*—*Death of dependent or maintained child***

**Bereavement payments on death of dependent or maintained child**

**356.** If:

1. a person is receiving a widowed person allowance; and
2. a dependent or maintained child of the person dies; and
3. immediately before the child died, the person’s widowed person allowance rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

the person is qualified for payments under this Subdivision to cover

the bereavement period.

Note 1: section 357 provides for widowed person allowance to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

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Note 2: section 358 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new widowed person allowance rate and the rate at which the allowance would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**357.** If a person is qualified for payments under this Subdivision in relation to the death of a dependent or maintained child, the person’s widowed person allowance rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**358.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of a dependent or maintained child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance in respect of the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**s. 358 Widowed Person Allowance**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the instalment of widowed person allowance payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 357 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of widowed person allowance that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s widowed person allowance rate were not calculated under section 357: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

***Subdivision B*—*Death of recipient***

**Death of recipient**

**359. (1)** If:

1. a person is receiving widowed person allowance; and
2. the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note: for amounts owing .o the recipient before the recipient’s death see section 338.

***Division 10*—*Fringe benefits***

**Fringe benefits**

**360.** If a person who is receiving a widowed person allowance qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person

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under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**361. (1)** A person who is receiving a widowed person allowance is qualified for fringe benefits if the person’s widowed person allowance rate is neither income reduced nor assets reduced.

**(2)** If:

(a) a person who is receiving a widowed person allowance is not qualified for fringe benefits under subsection (1); and

(b) the person’s widowed person allowance rate is income reduced; the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

(a) a person who is receiving a widowed person allowance is not qualified for fringe benefits under subsection (1); and

(b) the person’s widowed person allowance rate is assets reduced; the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

**s. 362 Widow B Pension**

**PART 2.8—WIDOW B PENSION**

***Division 1*—*Qualification for and payability of widow B pension***

***Subdivision A*—*Qualification***

**Qualification for widow B pension**

**362. (1)** A woman is qualified for a widow B pension if:

(a) the woman:

(i) was, immediately before 1 July 1987, receiving a widow’s pension as a class B widow under the 1947 Act; or

(ii) on 1 July 1987 had turned 45 years old and:

(a) was receiving a supporting parent’s benefit or a widow’s pension as a class A widow on or after that day; or

(b) was receiving a sole parent’s pension after 1 March 1989; or

(iii) on 1 July 1987 had turned 50 years old; and

1. the woman is not qualified for a sole parent pension; and
2. the woman:

(i) was legally married and her husband has died; or

(ii) was a **dependent female,** that is:

(a) she was a member of a couple and her partner has died; and

(b) she was a member of the couple for 3 years immediately before her partner died; and

(c) she was wholly or mainly financially maintained by him; or

(iii) is divorced from her husband; or

(iv) was legally married and her husband has deserted her without just cause for a period of at least 6 months; or

(v) is legally married to a man who is in gaol and has been in gaol continuously for at least 6 months; or

(vi) was:

(a) a party to a purported marriage that is void; and

(b) the man who was the other party to the purported marriage has deserted her without just cause for a period of at least 6 months; and

(c) in the Secretary’s opinion, she believed that the purported marriage was valid when it took place; and

1. the woman is not a member of another couple; and
2. either:

(i) the woman had been an Australian resident for a

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continuous period of at least 5 years immediately before the day she lodged the claim for the widow B pension; or

(ii) the woman has, at any time, been an Australian resident for a continuous period of at least 10 years; or

(iii) both the woman and her partner were Australian residents at the time:

(a) if she was legally married and her husband has died—when he died; or

(b) if she was a dependent female—when her partner died; or

(c) if she is divorced—when she became divorced; or

(d) if she was legally married and her husband has deserted her—when she was deserted; or

(e) if she was a party to a purported marriage and the man who was the’ other party has deserted her— when she was deserted; or

(f) if she was legally married and her husband has been in gaol for a period of at least 6 months— when that period began.

Note 1: for “sole parent pension qualifications” see section 249.

Note 2: for “Australian resident” see section 7.

**(2)** A woman does not have to satisfy paragraph (1) (e) in order to be qualified for a widow B pension if:

1. the woman became a person to whom paragraph (1) (c) applied because of the death of a man; and
2. the woman was, immediately before the man died, receiving:

(i) a wife pension because the man was receiving:

(a) an age pension; or

(b) an invalid pension; or

(c) a special needs age pension; or

(d) a special needs invalid pension; or

(ii) a wife service pension under Part III of the Veterans’ Entitlements Act because the man was receiving a service pension under that Part; and

(c) the woman was not in Australia at the time when the man died.

**(3)** Subsection (1) has effect subject to:

1. section 1215 (12 months limit on overseas portability in certain circumstances);
2. sections 1218 and 1219 (departure certificate requirements for people leaving Australia).

**s. 363 Widow B Pension**

**Effect of maintenance rights on qualification for widow B pension**

**363. (1)** A person is not qualified for a widow B pension if:

1. the person is entitled to maintenance; and
2. the Secretary considers that it is reasonable for the person to take action to obtain maintenance; and
3. the person does not take such action as the Secretary considers reasonable to obtain maintenance.

**(2)** In subsection (1):

**“maintenance”**,in relation to a person, means maintenance for the person or a dependent child of the person.

***Subdivision B*—*Payability***

**Widow B pension not payable in some circumstances**

**364. (1)** Even though a woman is qualified for a widow B pension, the pension may not be payable to the woman because:

1. the pension has not commenced to be payable (see sections 365 and 377); or
2. the woman is in gaol (see Part 3.13); or
3. the woman is receiving another pension or benefit (see section 368).

**(2)** A widow B pension is not payable to a woman if the woman’s widow B pension rate would be nil.

**Widow B pension generally not payable before claim**

**365.** Subject to section 367, a widow B pension is not payable to a woman before the woman’s provisional commencement day (identified under section 366).

**Provisional commencement day**

*General rule*

**366. (1)** Subject to subsections (2) and (3), a woman’s provisional commencement day is the day on which the woman claims the widow B pension.

*Initial incorrect claim followed by claim for widow B pension*

**(2)** If:

(a) a woman makes a claim (in this subsection called the **“initial claim”**)for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the

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Commonwealth, that is similar in character to a widow B pension; and

1. on the day on which the woman makes the initial claim, the woman is “qualified for a widow B pension; and
2. the woman subsequently makes a claim for a widow B pension; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the woman;

the woman’s provisional commencement day is the day on which the woman made the initial claim.

*Early claim*

**(3)** If:

1. a woman lodges a claim for a widow B pension; and
2. the woman is not, on the day on which the claim is lodged, qualified for a widow B pension; and
3. the woman becomes qualified for a widow B pension sometime during the period of 3 months that starts immediately after the day on which the claim is lodged;

the woman’s provisional commencement day is the first day on which the woman is qualified for the pension and is an Australian resident and in Australia.

**Backdating—death of partner etc.**

**367.** If:

1. a woman’s partner dies; and
2. the woman’s provisional commencement day is within one month after the day on which the partner dies; and
3. the woman is qualified for widow B pension at some time in the period between the death of the partner and the provisional commencement day;

the widow B pension can become payable before the provisional commencement day but is not payable to the woman before the first day in the period on which the woman is qualified.

Note 1 : for “provisional commencement day” see section 366.

Note 2: the pension will not *necessarily* be backdated to the day on which the woman becomes qualified—some other factor may make the pension not payable at that time.

**Multiple entitlement exclusion**

368. **(1)** A widow B pension is not payable to a woman if:

(a) the woman is receiving:

(i) another social security benefit; or

(ii) a social security pension; or

(iii) a service pension; or

(b) the woman is a widow who is receiving:

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(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act.

Note 1: “social security pension” includes sheltered employment and rehabilitation allowances and “social security benefit” includes job search allowance.

Note 2: “widow” means a woman who was a member of a couple immediately before her partner died—see section 23.

***Division 2*—*Claim for widow B pension***

**Need for a claim**

**369. (1)** A woman who wants to be granted a widow B pension must make a proper claim for that pension.

Note: for “proper claim”—see section 370 (form), section 371 (manner of lodgment) and section 372 (residence/presence in Australia).

**(2)** For the purposes of subsection (1), where:

1. a claim for widow B pension is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for that pension;

the claim is to be taken to have not been made.

**Form of claim**

**370.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**371. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a woman approved for the purpose by the Secretary.
4. Subject to subsection (3), a place or woman approved under subsection (1) must be a place or woman in Australia.
5. The Secretary may approve a place or woman outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

Note: for international agreements see Part 4.1.

**Claimant must be Australian resident and in Australia**

**372. (1)** A claim by a woman is not a proper claim unless the woman is:

(a) an Australian resident; and

**Widow B Pension s. 372**

(b) in Australia;

on the day on which the claim is lodged.

**(2)** Subsection (1) does not apply to a woman if:

1. the woman became a person to whom paragraph 362 (c) applies because of the death of a man; and
2. the woman was, immediately before the man died, receiving:

(i) a wife pension because the man was receiving:

(a) an age pension; or

(b) an invalid pension; or

(ii) a wife service pension under Part III of the Veterans’ Entitlements Act because the man was receiving a service pension under that Part; and

(c) the woman was not in Australia at the time when the man died.

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

Note 2: the provisions of a scheduled international agreement may permit a proper claim to be made by a person who is not an Australian resident or not in Australia: see section 1208.

***Division 3*—*Determination of claim***

**Secretary to determine claim**

**373.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**374.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for widow B pension; and
2. the pension is payable.

**Date of effect of determination**

375. (1) Subject to subsections (2), (3) and (4), a determination under section 374 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the “previous decision”) is made rejecting a person’s claim for a widow B pension; and
2. a notice is given to the woman advising the woman of the making of the previous decision; and
3. a woman applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and

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(d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for a widow B pension; and
2. a notice is given to the woman advising the woman of the making of the previous decision; and
3. a woman applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the woman sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for a widow B pension; and
2. no notice is given to the woman advising the woman of the making of the previous decision; and
3. the woman applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 4***—***Rate of widow B pension***

**How to work out the rate of widow B pension**

**376.** A woman’s widow B pension rate is worked out using Pension Rate Calculator C at the end of section 1066 (see Part 3.4).

***Division 5*—*Payment of widow B pension***

**Commencement of widow B pension**

**377.** A widow B pension becomes payable to a woman on the first day on which:

1. the woman is qualified for the pension; and
2. no provision of this Act makes the pension not payable to the woman.

**Widow B Pension s. 377**

Note 1: for qualification see section 362.

Note 2: for the circumstances in which a widow B pension is not payable see section 364.

**Payment by instalments**

**378. (1)** An instalment of widow B pension is payable to a woman on each pension payday on which:

1. the woman is qualified for the pension; and
2. the pension is payable to the woman.

**(2)** If a woman who is qualified for a widow B pension is outside Australia, the instalments referred to in subsection (1) are to be paid to the woman on such pension paydays as the Secretary determines for the purposes of this subsection.

**Effect on instalments of backdating claim**

**379.** If:

1. a woman lodges a claim for a widow B pension on a particular day (in this section called the **“claim day”**);and
2. the woman’s provisional commencement day is before the claim day;

any instalment of widow B pension that would, but for this section, be payable to the woman, is payable to the woman:

1. if the claim day was a pension payday—on that day; or
2. the first pension payday after the claim day.

**Calculation of amount of instalment**

**380. (1)** The amount of an instalment of widow B pension is the amount worked out by dividing the amount of the annual rate of the pension by 26.

1. If an amount that is payable to a woman on a pension payday is not a multiple of 10 cents, the amount is subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a woman on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.
3. If, apart from this subsection, the amount of an instalment of widow B pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Inmates of benevolent homes**

**381. (1)** While a woman who is receiving a widow B pension is an inmate of a benevolent home:

(a) so much of the woman’s pension as does not exceed the pensioner contribution is to be paid to the person who controls the benevolent home for the maintenance of the woman in the benevolent home; and

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(b) the balance (if any) is to be paid to the woman receiving the pension.

**(2)** For the purposes of this section, the **pensioner contribution** is, subject to subsection (3), 364 times the amount in force from time to time for the purposes of subparagraph 47 (2) (b) (iii) of the *National Health Act 1953.*

**(3)** If the amount worked out under subsection (2) is not a multiple of $2.60, the pensioner contribution is the next lower amount that is a multiple of $2.60.

**Manner of payment**

**382.** A woman’s widow B pension is, subject to section 383, to be paid:

1. to that woman; and
2. in the manner directed by the Secretary.

Nominee payments

**383. (1)** The Secretary may direct that the whole, or a part, of the amount of a woman’s widow B pension is to be paid to someone else on behalf of the woman.

**(2)** If the Secretary makes a direction under subsection (1), the widow B pension is to be paid in accordance with the direction.

**Payment into bank account etc.**

**384. (1)** The Secretary may direct that the whole or a part of the amount of a woman’s widow B pension is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the woman to whom the widow B pension is payable.
2. The account may be an account that is maintained by a woman to whom the widow B pension is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the widow B pension is to be payable in accordance with the direction.

**Where pension payday would fall on public holiday etc.**

**385.** If the Secretary is satisfied that an amount of widow B pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Widow B Pension s. 386**

**Payment of pension after death**

**386. (1)** If:

1. a widow B pension is payable to a woman; and
2. the woman dies; and
3. at the date of the woman’s death the woman had not received an amount of widow B pension payable to her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of widow B pension under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of widow B pension.

***Division 6***—***Protection of widow B pension***

**Widow B pension to be absolutely inalienable**

**387. (1)** Subject to subsection (2) and section 1359, widow B pension is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of widow B pension payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**388. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of widow B pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of widow B pension payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7***—***Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**389. (1)** The Secretary may give a woman to whom a widow B pension is being paid a notice that requires the woman to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the woman becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the pension.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the woman is to give the information to the Department; and
8. must specify the period within which the woman is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the woman becomes aware that the event or change of circumstances is likely to occur.

**Widow B Pension s. 389**

**(5)** A woman must not refuse or fail to comply with a notice under subsection (1) to the extent that the woman is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A woman must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of widow B pension**

**390. (1)** The Secretary may give a woman to whom a widow B pension is being paid a notice that requires the woman to give the Department a statement about a matter that might affect the payment of the pension to the woman.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the woman is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A woman must not refuse or fail to comply with a notice under subsection (1) to the extent that the woman is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A woman must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

**s. 390 Widow B Pension**

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**391. (1)** A woman is not excused from giving information pursuant to a notice under section 389 or 390 on the ground that the information may tend to incriminate the woman.

**(2)** Information given by a woman pursuant to a notice under section 389 or 390 is not admissible in evidence against the woman in a criminal proceeding other than a proceeding under, or arising out of, subsection 389 (5) or (6) or 390 (5) or (6).

***Division 8*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**392. (1)** A determination that:

1. a woman’s claim for a widow B pension is granted; or
2. a widow B pension is payable to a woman;

continues in effect until:

(c) the pension ceases to be payable under section 393, 394 or 395;

or

(d) a further determination in relation to the pension under section 400 has taken effect.

Note 1: for paragraph (a) see section 374.

Note 2: for paragraph (b) see section 401—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a widow B pension continues in effect until:

1. the pension becomes payable at a lower rate under section 396 or 397; or
2. a further determination in relation to the pension under section 398 or 399 has taken effect.

***Subdivision B***—***Automatic termination***

**Automatic termination—recipient *complying* with section 389 notification obligations**

**393.** If:

(a) a woman who is receiving a widow B pension is given a notice under section 389; and

**Widow B Pension s. 393**

1. the notice requires the woman to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
2. the event or change in circumstances occurs; and
3. the woman informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
4. because of the occurrence of the event or change in circumstances:

(i) the woman ceases to be qualified for the pension; or

(ii) the pension would, but for this section, cease to be payable to the woman;

the pension continues to be payable to the woman until the end of the notification period and then ceases to be payable to the woman.

Note: if the woman informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the woman’s pension, there is no automatic rate reduction and a determination under section 399 must be made in order to bring the rate reduction into effect.

**Automatic termination**—**recipient *not complying* with section 389 notification obligations**

**394.** If:

1. a woman who is receiving a widow B pension is given a notice under section 389; and
2. the notice requires the woman to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the woman does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the woman ceases to be qualified for the pension; or (ii) the pension ceases to be payable to the woman; the pension ceases to be payable to the woman immediately after the day on which the event or change in circumstances occurs.

**Automatic termination—failure to provide section 390 statement**

**395. (1)** If:

(a) a woman who is receiving a widow B pension is given a notice under section 390 requiring the woman to give the Department a statement; and

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1. the notice relates to the payment of that pension during a period specified in the notice; and
2. the woman does not comply with the notice;

the pension, subject to subsection (2), ceases to be payable to the woman as from the first day in that period.

1. 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 woman from a day specified in the determination.
2. The day specified under subsection (2) may be before or after the making of the determination.

***Subdivision C*—*Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 389 notification obligations**

**396.** If:

1. a woman who is receiving a widow B pension is given a notice under section 389; and
2. the notice requires the woman to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the woman does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the woman’s rate of pension is to be reduced;

the pension becomes payable to the woman at the reduced rate immediately after the day on which the event or change in circumstances occurs.

**Automatic rate reduction—failure to inform Department of payment for remunerative work where earnings credit account balance available**

**397.** If:

1. a woman who is receiving a widow B pension is given a notice under section 389; and
2. the notice requires the woman to inform the Department of income for remunerative work undertaken by the woman; and
3. the woman fails to notify the Department of income of that kind in accordance with the notice; and
4. the woman has an earnings credit account balance for the purposes of Division 4 of Part 3.10;

**Widow B Pension s. 397**

the pension becomes payable to the woman at the reduced rate from the first pension payday after the day on which the woman’s earnings credit account balance is reduced to nil.

***Subdivision D*—*Determinations***

**Rate increase determination**

**398.** If the Secretary is satisfied that the rate at which a widow B pension is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 402.

**Rate reduction determination**

**399.** If the Secretary is satisfied that the rate at which a widow B pension is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 396 or 397 (see subsection 392 (2)).

Note 2: for the date of effect of a determination under this section see section 403.

**Cancellation or suspension determination**

**400.** If the Secretary is satisfied that a widow B pension is being, or has been, paid to a woman to whom it is not, or was not, payable under this Act, the Secretary is to determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 393, 394 or 395 (see subsection 392 (1)).

Note 2: for the date of effect of a determination under this section see section 403.

**Resumption of payment after cancellation or suspension**

**401. (1)** If the Secretary:

1. cancels or suspends a woman’s widow B pension under section 400; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and (ii) because of the decision to cancel or suspend:

(a) the woman did not receive a widow B pension that was payable to the woman; or

(b) the woman is not receiving a widow B pension that is payable to the woman;

the Secretary is to determine that a widow B pension was or is payable to the woman.

**s. 401 Widow B Pension**

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 402.

***Subdivision E*—*Date of effect of determinations***

**Date of effect of favourable determination**

**402. (1)** The day on which a determination under section 398 or 401 (in this section called the “favourable determination”) takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a widow B pension; and
2. a notice is given to the woman to whom the pension is payable advising the woman of the making of the previous decision; and
3. the woman applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a widow B pension; and
2. a notice is given to the woman to whom the pension is payable advising the woman of the making of the previous decision; and
3. the woman applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the woman sought the review.

**Widow B Pension s. 402**

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a widow B pension; and
2. no notice is given to the woman to whom the pension is payable advising the woman of the making of the previous decision; and
3. the woman applies to the Secretary under section 1240, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a woman having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the woman’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and

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(c) the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**403. (1)** The day on which a determination under section 399 or 400 (in this section called the **“adverse determination”**) takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the woman whose pension is affected by the adverse

**Widow B Pension s. 403**

determination has contravened a provision of this Act (other than sections 390, 1304, 1305, 1306 and 1307); and

(b) the contravention causes a delay in making the determination;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the pension has been paid to a woman when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the pension was paid to a woman was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments***

***Subdivision A*—*Death of dependent or maintained child***

**Bereavement payments on death of dependent or maintained child**

**404.** If:

1. a woman is receiving a widow B pension; and
2. a dependent or maintained child of the woman dies; and
3. immediately before the child died, the woman’s widow B pension rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child; the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: section 405 provides for widow B pension to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 406 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new widow B pension rate

**s. 404 Widow B Pension**

and the rate at which the pension would have been paid if the child had not died but were disregarded for the purposes of working out the the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**405.** If a woman is qualified for payments under this Subdivision in relation to the death of a dependent or maintained child, the woman’s widow B pension rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**406.** If:

1. a woman is qualified for payments under this Subdivision in relation to the death of a dependent or maintained child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the woman was, immediately before the child died, receiving family allowance in respect of the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the woman qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**Widow B Pension s. 406**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the instalment of widow B pension payable to the woman on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 405 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of widow B pension that would have been payable to the woman on the payday immediately before the first available bereavement adjustment payday if the woman’s widow B pension rate were not calculated under section 405: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the woman under this section. |

***Subdivision B*—*Death of recipient***

**Death of recipient**

**407. (1)** If:

1. a person is receiving widow B pension; and
2. the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note: for amounts owing to the recipient before the recipient’s death see section 386.

**s. 408 Widow B Pension**

***Division 10***—***Fringe benefits***

**Fringe benefits**

**408.** If a woman who is receiving a widow B pension qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**409. (1)** A woman who is receiving a widow B pension is qualified for fringe benefits if the woman’s widow B pension rate is neither income reduced nor assets reduced.

**(2)** If:

1. a person who is receiving a widow B pension is not qualified for fringe benefits under subsection (1); and
2. the person’s widow B pension rate is income reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

1. a person who is receiving a widow B pension is not qualified for fringe benefits under subsection (1); and
2. the person’s widow B pension rate is assets reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

**Sheltered Employment Allowance s. 410**

**PART 2.9—SHELTERED EMPLOYMENT ALLOWANCE**

***Division 1***—***Qualification for and payability of sheltered employment allowance***

***Subdivision A*—*Qualification***

**Qualification for sheltered employment allowance**

*Qualified for invalid pension*

**410. (1)** A person is qualified for a sheltered employment allowance if:

1. the person is engaged in sheltered employment; and
2. the person is qualified for invalid pension.

Note 1: for “sheltered employment” see sections 32 and 33.

Note 2: for the qualifications for invalid pension see section 94.

*Not qualified for invalid pension*

**(2)** A person is qualified for a sheltered employment allowance if:

1. the person is engaged in sheltered employment; and
2. the person is incapacitated for work; and
3. subsection (1) does not apply to the person; and
4. the Secretary is of the opinion that if the person was no longer provided with sheltered employment:

(i) the person would be permanently incapacitated for work; and

(ii) the degree of the permanent incapacity for work would be 85% or more; and

(iii) 50% or more of the incapacity for work would be directly caused by a physical or mental impairment; and

(e) the person has turned 16 and is under the pension age; and

(f) the Secretary is satisfied that, having regard to:

(i) whether the person was an Australian resident when the person became incapacitated for work; and

(ii) if the person was not an Australian resident when the person became incapacitated for work—the degree of the person’s incapacity when the person became an Australian resident;

it is reasonable for this subsection to apply to the person.

Note 1: for “sheltered employment” see sections 32 and 33.

Note 2: for “pension age” see section 23.

Note 3: for “Australian resident” see section 7.

**s. 411 Sheltered Employment Allowance**

***Subdivision B*—*Payability***

**Sheltered employment allowance not payable in some circumstances**

**411.** (1) Even though a person is qualified for a sheltered employment allowance, the allowance may not be payable to the person because:

1. the allowance has not commenced to be payable (see sections 412 and 424); or
2. the person or the person’s partner has received compensation (see Part 3.14); or
3. the person is in gaol (see Part 3.13); or
4. the person is already receiving pension or benefit (see section 413); or
5. the Secretary has determined that it is in the person’s interest to receive another pension or benefit (see section 414); or
6. the person fails to comply with a requirement that the person:

(i) attend a medical examination; or

(ii) receive treatment; or

(iii) undertake a training course; or

(iv) do suitable work;

as required by section 415.

**(2)** A sheltered employment allowance is not payable to a person if the person’s sheltered employment allowance rate would be nil.

**Sheltered employment allowance not payable before day determined by Secretary**

**412.** (1) A sheltered employment allowance is not payable to a person before the day determined by the Secretary.

**(2)** The day determined by the Secretary can be a day before the determination is made.

**Multiple entitlement exclusion**

**413.** A sheltered employment allowance is not payable to a person if the person is receiving:

1. another social security pension; or
2. a social security benefit; or
3. a service pension.

Note: “social security pension” includes rehabilitation allowance and “social security benefit” includes job search allowance.

**Sheltered employment allowance not payable if in person’s interest to receive other pension or benefit**

**414.** If:

(a) a person is qualified for a sheltered employment allowance; and

**Sheltered Employment Allowance s. 414**

1. another social security pension or benefit is also payable to the person; and
2. the Secretary is satisfied that it is in the person’s interests to receive the other pension or benefit instead of sheltered employment allowance;

the Secretary may determine that:

1. sheltered employment allowance is not payable to the person; and
2. the other pension or benefit is to be paid to the person.

**Secretary may require person to have medical examination, attend course or undertake work**

**415. (1)** If:

1. a person is receiving, or has lodged a claim for, a sheltered employment allowance; and
2. the Secretary is of the opinion that the person should:

(i) undergo a medical or psychological examination; or (ii) receive medical or other treatment; or (iii) undertake a course of vocational training; or (iv) undertake a course:

(a) which the person could reasonably undertake; and

(b) to which the person has been referred by the CES; or

(v) do any work suitable to be done by the person; and

(c) the Secretary notifies the person that the person is required to:

(i) undergo that examination; or

(ii) receive that treatment; or

(iii) undertake that course; or

(iv) do that work; and

(d) the person does not take reasonable steps to comply with the Secretary’s requirements;

a sheltered employment allowance is not payable to the person for a period determined by the Secretary.

**(2)** The Secretary may determine that a sheltered employment allowance is payable for a period for which he or she had previously determined that it was not payable under subsection (1) if within a reasonable period the person takes reasonable steps to comply with the Secretary’s requirements.

**s. 416 Sheltered Employment Allowance**

***Division 2*—*Claim for sheltered employment allowance***

**Secretary may require claim**

**416. (1)** The Secretary may require a person who wants to be granted a sheltered employment allowance to make a proper claim for that allowance.

Note: for “proper claim”—see section 417 (form) and section 418 (manner of lodgment).

**(2)** For the purposes of subsection (1), if:

1. a claim for sheltered employment allowance is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for that allowance;

the claim is to be taken to have not been made.

**Form of claim**

**417.** To be a proper claim, a claim must be made in writing and must be in accordance with the form approved by the Secretary.

**Lodgment of claim**

**418. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

**(2)** A place or person approved under subsection (1) must be a place or person in Australia.

***Division 3*—*Determination of claim***

**Secretary to determine claim**

**419.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**420.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for sheltered employment allowance; and
2. the allowance is payable.

**Date of effect of determination**

**421. (1)** Subject to subsection (2), a determination under section 420 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

**Sheltered Employment Allowance s. 421**

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for sheltered employment allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for sheltered employment allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for sheltered employment allowance; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240 for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

**s. 422 Sheltered Employment Allowance**

***Division 4*—*Rate of sheltered employment allowance***

**Rate of sheltered employment allowance**

**422. (1)** A person’s sheltered employment allowance rate is an annual rate equal to the sum of:

1. the rate of invalid pension that would, in the Secretary’s opinion, be payable to the person if the person were receiving an invalid pension; and
2. the rate of wife or carer pension that would, in the Secretary’s opinion, be payable to the person’s partner (if applicable) if the person were receiving an invalid pension.

(2) No amount is to be added under paragraph (1) (b) if the person’s partner is receiving:

1. a social security or service pension; or
2. a social security benefit.

Note: “social security pension” includes sheltered employment and rehabilitation allowance and “social security benefit” includes job search allowance.

**Incentive allowance**

**423.** For the purposes of subsection 422, in calculating the rate of invalid pension that would be payable to a person if the person were receiving an invalid pension, the person is taken to satisfy the requirements of point 1064-J1 of Pension Rate Calculator A (qualifications for incentive allowance—not blind) and point 1065-F1 of Pension Rate Calculator B (qualifications for incentive allowance— blind).

***Division 5***—***Payment of sheltered employment allowance***

**Commencement of sheltered employment allowance**

**424.** A sheltered employment allowance becomes payable to a person on the first day on which:

1. the person is qualified for the allowance; and
2. no provision of this Act makes the allowance not payable to the person.

Note 1: for qualification see section 410.

Note 2: for circumstances in which a sheltered employment allowance is not payable see section 411.

**Payment by instalments**

**425.** A full instalment of sheltered employment allowance is payable to a person on each pension payday on which:

1. the person is qualified for the allowance; and
2. the allowance is payable to the person.

**Sheltered Employment Allowance s. 426**

**Effect on instalments of backdated determination**

**426.** If the date determined by the Secretary under section 412 is a date before the day on which the determination was made (in this section called the **“determination day”),** any instalment of sheltered employment allowance, that would, but for this section, be payable, is payable to the person:

1. if the determination day was a pension payday—on that day; or
2. the first pension payday after the determination day.

**Calculation of amount of instalment**

**427. (1)** The amount of an instalment of sheltered employment allowance is the amount worked out by dividing the amount of the annual rate of the allowance by 26.

1. If an amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is, subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a person on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.
3. If, apart from this subsection, the amount of an instalment of sheltered employment allowance would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Manner of payment**

**428.** A person’s sheltered employment allowance is, subject to section 429, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**429. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s sheltered employment allowance is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the sheltered employment allowance is to be paid in accordance with the direction.

**Payment into bank account etc.**

**430. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s sheltered employment allowance is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

**s. 430 Sheltered Employment Allowance**

1. The account must be an account nominated and maintained by the person to whom the sheltered employment allowance is payable.
2. The account may be an account that is maintained by a person to whom the sheltered employment allowance is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the sheltered employment allowance is to be payable in accordance with the direction.

**Where allowance payday would fall on public holiday etc.**

**431.** If the Secretary is satisfied that an amount of sheltered employment allowance that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of allowance after death**

**432. (1)** If:

1. a sheltered employment allowance is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of sheltered employment allowance payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of sheltered employment allowance under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of sheltered employment allowance.

***Division 6***—***Protection of sheltered employment allowance***

**Sheltered employment allowance to be absolutely inalienable**

**433. (1)** Subject to subsection (2) and section 1359, sheltered employment allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

**Sheltered Employment Allowance s. 433**

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of sheltered employment allowance payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**434. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of sheltered employment allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of sheltered employment allowance payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7***—***Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**435. (1)** The Secretary may give a person to whom a sheltered employment allowance is being paid a notice that requires the person to inform the Department if:

(a) a specified event or change of circumstances occurs; or

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(b) the person becomes aware that a specified event or change of circumstances is likely to occur.

1. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the allowance.
2. A notice under subsection (1):
3. must be in writing; and
4. may be given personally or by post; and
5. must specify how the person is to give the information to the Department; and
6. must specify the period within which the person is to give the information to the Department; and
7. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of sheltered employment allowance**

**436. (1)** The Secretary may give a person to whom a sheltered employment allowance is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and

**Sheltered Employment Allowance s. 436**

(e) must specify that the notice is given under this section.

1. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
2. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
3. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**437. (1)** A person is not excused from giving information pursuant to a notice under section 435 or 436 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 435 or 436 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 435 (5) or (6) or 436 (5) or (6).

***Division 8***—***Continuation, variation and termination***

***Subdivision A***—***General***

**Continuing effect of determination**

*Entitlement determination*

**438. (1)** A determination that:

(a) a sheltered employment allowance is to be granted to a person; or

(b) a sheltered employment allowance is to be paid to a person; continues in effect until:

1. the allowance ceases to be payable under section 439 or 440; or
2. a further determination in relation to the allowance under section 445 has taken effect.

Note 1: for paragraph (a) see section 420.

**s. 438 Sheltered Employment Allowance**

Note 2: for paragraph (b) see section 446—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a sheltered employment allowance continues in effect until:

1. the allowance becomes payable at a lower rate under section 441 or 442; or
2. a further determination in relation to the allowance under section 443 or 444 has taken effect.

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 435 notification obligations**

**439.** If:

1. a person who is receiving a sheltered employment allowance is given a notice under section 435; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance would, but for this section, cease to be payable to the person;

the allowance continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s allowance, there is no automatic rate reduction and a determination under section 444 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 435 notification obligations**

**440.** If:

1. a person who is receiving a sheltered employment allowance is given a notice under section 435; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and

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1. the event or change in circumstances occurs; and
2. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
3. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance ceases to be payable to the person;

the allowance ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

***Subdivision C***—***Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 435 notification obligations**

**441.** If:

1. a person who is receiving a sheltered employment allowance is given a notice under section 435; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of allowance is to be reduced;

the allowance becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

**Automatic rate reduction—failure to inform Department of payment for remunerative work where earnings credit account balance available**

**442.** If:

1. a person who is receiving a sheltered employment allowance is given a notice under section 435; and
2. the notice requires the person to inform the Department of income for remunerative work undertaken by the person; and
3. the person fails to notify the Department of income of that kind in accordance with the notice; and
4. the person has an earnings credit account balance for the purposes of Division 4 of Part 3.10;

**s. 442 Sheltered Employment Allowance**

the allowance becomes payable to the person at the reduced rate from the first pension payday after the day on which the person’s earnings credit account balance is reduced to nil.

***Subdivision D*—*Determinations***

**Rate increase determination**

**443.** If the Secretary is satisfied that the rate at which a sheltered employment allowance is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 447.

**Rate reduction determination**

**444.** If the Secretary is satisfied that the rate at which a sheltered employment allowance is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 441 or 442 (see subsection 438 (2)).

Note 2: for the date of effect of a determination under this section see section 448.

**Cancellation or suspension determination**

**445.** If the Secretary is satisfied that a sheltered employment allowance is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 439 or 440 (see subsection 438 (1)).

Note 2: for the date of effect of a determination under this section see section 448.

**Resumption of payment after cancellation or suspension**

**446. (1)** If the Secretary:

1. cancels or suspends a person’s sheltered employment allowance under section 445; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive sheltered employment allowance that was payable to the person; or

(b) the person is not receiving sheltered employment allowance that is payable to the person;

the Secretary is to determine that a sheltered employment allowance was or is payable to the person.

**Sheltered Employment Allowance s. 446**

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 447.

***Subdivision E***—***Date of effect of determinations***

**Date of effect of favourable determination**

**447. (1)** The day on which a determination under section 443 or 446(in this subsection called the **“favourable determination”**)takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the “previous decision”) is made in relation to a person’s sheltered employment allowance; and
2. a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s sheltered employment allowance; and
2. a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the person sought the review.

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*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s sheltered employment allowance; and
2. no notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and

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(c) the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received; the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**448.** (1) The day on which a determination under section 444 or 445 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose sheltered employment allowance is affected by the adverse determination has contravened a provision of

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this Act (other than section 436, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the allowance has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the allowance was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments***

***Subdivision A*—*Death of pensioner partner***

**Qualification for payments under this Subdivision**

**449. (1)** If:

1. a person is receiving a sheltered employment allowance instead of an invalid pension; and
2. the person is a member of a couple; and
3. the person’s partner dies; and
4. immediately before the partner died, the partner was receiving:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a carer pension; or

(iv) a sheltered employment allowance instead of an invalid pension; or

(v) a rehabilitation allowance instead of a pension referred to in subparagraph (i) or (ii); or

(vi) a service pension;

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

Note 1: section 450 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person’s partner during that period if the partner had not died.

Note 2: section 451 provides for a lump sum that represents the instalments that would have been paid to the person’s partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

**(2)** If:

1. a person is receiving a sheltered employment allowance instead of an invalid pension; and
2. the person is a member of a couple; and
3. the person’s partner dies; and
4. immediately before the partner died, the person’s sheltered employment allowance rate included an amount under paragraph 422 (1) (b) in respect of the partner;

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

Note: for the consequences of this subsection on a person’s sheltered employment allowance rate see section 452.

1. A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
2. An election under subsection (3):
3. must be made by written notice to the Secretary; and
4. may be made after the person has been paid an amount or amounts under this Subdivision; and
5. cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**(5)** If a person is qualified for payments under this Subdivision in relation to the partner’s death, the rate at which sheltered employment allowance is payable to the person during the bereavement period is, unless the person has made an election under subsection (3), governed by section 452.

**Continued payment of partner’s pension or allowance**

**450.** If a person qualifies under subsection 449 (1) for payments under this Subdivision in relation to the death of the person’s partner, there is payable to the person, on each of the pension paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person’s partner on that payday if the partner had not died.

Note: a person who qualifies under subsection 449 (2) receives a similar benefit through the operation of paragraph 452 (c).

**s. 451 Sheltered Employment Allowance**

**Lump sum payable in some circumstances**

**451.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if the person’s partner had not died, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday; and |
|  | (b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the pension payday immediately before the first available bereavement adjustment payday: |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 452, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the partner’s instalment component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Adjustment of person’s sheltered employment allowance rate**

**452.** If:

1. a person is qualified for payments under this Subdivision; and
2. the person does not elect under subsection 449 (3) not to receive payments under this Subdivision;

**Sheltered Employment Allowance s. 452**

the person’s sheltered employment allowance rate during the bereavement period is worked out as follows:

1. during the bereavement rate continuation period, the person’s sheltered employment allowance rate is the rate at which the allowance would have been payable to the person if the person’s partner had not died;
2. during the bereavement lump sum period (if any), the person’s sheltered employment allowance rate is the rate at which the allowance would be payable to the person apart from this Subdivision.

**Effect of death of person entitled to payments under this Subdivision**

**453.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the person dies within the bereavement period; and
3. the Secretary does not become aware of the death of the person’s partner before the person dies;

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

**s. 453 Sheltered Employment Allowance**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person on the pension payday immediately after the day on which the person dies; and |
|  | (b) the amount (if any) that, if neither the person nor the person’s partner had died, would have been payable to the person’s partner on that pension payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 452, would have been payable to the person on the pension payday immediately after the day on which the person died if the person had not died: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the period that commences on the day after the person dies and ends on the day on which the bereavement period ends. |
| *Step 5.* | Multiply the partner’s instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section. |

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

**454. (1)** If:

1. a person is qualified for payments under this Subdivision and in relation to the death of the person’s partner; and
2. after the person’s partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act; and
3. the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person’s partner except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;

**Sheltered Employment Allowance s. 454**

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

**(2)** If:

1. a person is qualified for payments under this Subdivision and in relation to the death of the person’s partner; and
2. an amount to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act, within the bereavement period, into an account with a bank, credit union or building society (in this subsection called the **“financial institution”**);and
3. the financial institution pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

***Subdivision B***—***Death of dependent child***

**Bereavement payments on death of dependent child**

**455.** If:

1. a person is receiving a sheltered employment allowance instead of an age or invalid pension; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s sheltered employment allowance rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

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

Note 1: section 456 provides for sheltered employment allowance to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 457 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new sheltered employment allowance rate and the rate at which the allowance would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional incentive allowance;
* additional remote area allowance.

**s. 456 Sheltered Employment Allowance**

**Continued payment of child-related amounts**

**456.** If the person is qualified for payments under this Subdivision in relation to the death of a dependent child, the person’s sheltered employment allowance rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**457.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance in respect of the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**Sheltered Employment Allowance s. 457**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the instalment of sheltered employment allowance payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 456 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of sheltered employment allowance that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s sheltered employment allowance rate were not calculated under section 456: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

***Subdivision C*—*Death of recipient***

**Death of recipient**

**458. (1)** If:

1. a person is receiving sheltered employment allowance; and
2. either:

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

(ii) the person is a member of a couple and the person’s partner:

1. is not receiving a social security pension; and
2. is not receiving a social security benefit; and
3. is not receiving a service pension; and

(c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

**s. 458 Sheltered Employment Allowance**

**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1: for amounts owing to the recipient before the recipient’s death see section 432.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 453.

***Division 10*—*Fringe benefits***

**Fringe benefits**

**459.** If a person who is receiving sheltered employment allowance qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**460. (1)** A person who is receiving a sheltered employment allowance is qualified for fringe benefits if the person’s sheltered employment allowance rate is neither income reduced nor assets reduced.

**(2)** If:

1. a person who is receiving a sheltered employment allowance is not qualified for fringe benefits under subsection (1); and
2. the person’s sheltered employment allowance rate is income reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

1. a person who is receiving a sheltered employment allowance is not qualified for fringe benefits under subsection (1); and
2. the person’s sheltered employment allowance rate is assets reduced;

the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

**Rehabilitation Allowance s. 461**

**PART 2.10—REHABILITATION ALLOWANCE**

***Division 1*—*Qualification for and payability of rehabilitation allowance***

***Subdivision A*—*Qualification***

**Qualification for rehabilitation allowance**

**461.** A person is qualified for a rehabilitation allowance if:

1. the person is undertaking a rehabilitation program; and
2. immediately before starting the rehabilitation program, the person was qualified for:

(i) an invalid pension; or

(ii) a sole parent pension; or

(iii) a widowed person allowance; or

(iv) a widow B pension; or

(v) a sheltered employment allowance; or

(vi) a social security benefit; and

1. where the person is not a member of a couple—the person has turned 16; and
2. the person has not turned 65.

Note 1: for “rehabilitation program” see section 23.

Note 2: “social security benefit” includes job search allowance.

Note 3: for “member of a couple” see section 4.

Note 4: a person does not stop being qualified for a rehabilitation allowance merely because the person stops being qualified for a payment referred to in paragraph (b). In many cases, enrolment in the program may disqualify the person from a pension or benefit for which the person was previously qualified. For example, a person who was receiving unemployment benefit before starting the program may no longer be qualified for unemployment benefit because the person is not available for work. If the person does remain qualified for another pension or benefit, the person may choose to receive the other pension or benefit instead of rehabilitation allowance.

***Subdivision B***—***Payability***

**Rehabilitation allowance not payable in some circumstances**

**462. (1)** Even though a person is qualified for a rehabilitation allowance, the allowance may not be payable to the person because:

1. the allowance has not commenced to be payable (see sections 463 and 476); or
2. the person or the person’s partner has received compensation (see Part 3.14); or
3. the person is in gaol (see Part 3.13); or
4. the person is already receiving pension or benefit (see section 464).

**(2)** A rehabilitation allowance is not payable to a person if the person’s rehabilitation allowance rate would be nil.

**s. 463 Rehabilitation Allowance**

**Rehabilitation allowance not payable before date determined by Secretary**

**463. (1)** A rehabilitation allowance is not payable to a person before the day determined by the Secretary.

**(2)** The day determined by the Secretary can be a day before the determination is made.

**Multiple entitlement exclusion**

**464.** A rehabilitation allowance is not payable to a person if the person is receiving:

1. another social security pension; or
2. a social security benefit; or
3. a service pension.

Note: “social security pension” includes sheltered employment allowance and “social security benefit” includes job search allowance.

***Division 2***—***Claim for rehabilitation allowance***

**Secretary may require claim**

**465. (1)** The Secretary may require a person who wants to be granted a rehabilitation allowance to make a proper claim for that allowance.

Note: for “proper claim”—see section 466 (form) and section 467 (manner of lodgment).

**(2)** For the purposes of subsection (1), if:

1. a claim for rehabilitation allowance is made by or on behalf ofa person; and
2. at the time when the claim is made the claim cannot be granted because the person is not qualified for that allowance;

the claim is to be taken to have not been made.

**Form of claim**

**466.** To be a proper claim, a claim must be made in writing and must be in accordance with the form approved by the Secretary.

**Lodgment of claim**

**467. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

**(2)** A place or person approved under subsection (1) must be aplace or person in Australia.

**Rehabilitation Allowance s. 468**

***Division 3***—***Determination of claim***

**Secretary to determine claim**

**468.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**469.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for rehabilitation allowance; and
2. the allowance is payable.

**Date of effect of determination**

**470. (1)** Subject to subsections (2), (3) and (4), a determination under section 469 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for rehabilitation allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for rehabilitation allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

**s. 470 Rehabilitation Allowance**

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for rehabilitation allowance; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240 for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 4***—***Rate of rehabilitation allowance***

**How to work out the rate of rehabilitation allowance**

**471.** The rate of rehabilitation allowance is a fortnightly rate worked out as follows:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out whether the person was receiving an invalid pension immediately before starting the rehabilitation program. |
| *Step 2.* | If the person was receiving an invalid pension immediately before the person started the rehabilitation program, the person’s rate of rehabilitation allowance is worked out using section 472. |
| *Step 3.* | If the person was not receiving an invalid pension immediately before the person started the rehabilitation program: |
|  | (a) use section 473 to work out the person’s qualifying payment; and |
|  | (b) the person’s rate of rehabilitation allowance depends on the person’s qualifying payment and is worked out using sections 474 and 475. |

Note 1: for “rehabilitation program” see section 23.

Note 2: a person’s rate of rehabilitation allowance is based on the invalid pension rate unless a higher rate would be payable if the person were receiving the person’s qualifying payment. Where a person is a member of a couple, it is intended that the income of the couple be the same as if the person were receiving invalid pension. If the person was receiving invalid pension before starting the rehabilitation program, this is achieved by continuing the person’s rate of invalid pension because the person’s partner can remain qualified for a wife or carer pension. Where the person was not receiving invalid pension,

**Rehabilitation Allowance s. 471**

the person’s partner will not be qualified for a wife or carer pension. The person may therefore receive an amount for the person’s partner (see section 474).

**Rate of rehabilitation allowance—person previously receiving invalid pension**

**472.** If, immediately before a person started a rehabilitation program, the person was receiving an invalid pension, the person’s rate of rehabilitation allowance on a pension payday is the amount of invalid pension that would be payable to the person on that payday if the person were receiving an invalid pension.

**Qualifying payment**

*Person receiving a payment before rehabilitation program*

**473. (1)** If, immediately before a rehabilitation program started, a person was receiving:

1. an invalid pension; or
2. a sole parent pension; or
3. a widowed person allowance; or
4. a widow B pension; or
5. a social security benefit;

the person’s qualifying payment is that pension, benefit or allowance.

Note: “social security benefit” includes job search allowance.

*Person not receiving a payment before rehabilitation program*

**(2)** If, immediately before a rehabilitation program started:

(a) a person was qualified for one or more of the following:

(i) an invalid pension;

(ii) a sole parent pension;

(iii) a widowed person allowance;

(iv) a widow B pension;

(v) a social security benefit; and

(b) subsection (1) does not apply to the person (the person was not actually receiving the payment);

the person’s qualifying payment is:

1. where the person was qualified for only one pension, benefit or allowance referred to in paragraph (a)—that pension, benefit or allowance; and
2. where the person was qualified for more than one pension, benefit or allowance referred to in paragraph (a)—the pension, benefit or allowance for which the highest rate would have been payable immediately before the person started the rehabilitation program if the person had then been receiving that pension, benefit or allowance.

**s. 474 Rehabilitation Allowance**

**Rate of rehabilitation allowance—person not receiving invalid pension before rehabilitation program**

**474. (1)** If a person was not receiving an invalid pension immediately before starting a rehabilitation program, the person’s rehabilitation allowance rate on a pension payday is whichever is the greater of:

1. the amount that would be payable to the person on that payday if the person were receiving the person’s qualifying payment; and
2. the sum of:

(i) the amount that would be payable to the person on that payday if the person were receiving an invalid pension; and

(ii) subject to subsection (2), the amount (if any) that would be payable to the person’s partner on that payday by way of wife or carer pension if the person were receiving an invalid pension.

Note 1: for “qualifying payment” see section 473.

Note 2: if the person’s qualifying payment is a social security benefit, see section 475 for the amount that person would receive on a pension payday if the person were receiving that benefit.

**(2)** An amount is not to be included under subparagraph (1) (b) (ii) if the person’s partner is receiving:

1. a social security or service pension; or
2. a social security benefit.

Note: “social security pension” includes rehabilitation allowance and sheltered employment allowance and “social security benefit” includes job search allowance.

**Amount payable on pension payday—social security benefit**

**475.** For the purposes of paragraph 474 (1) (a), where a person’s qualifying payment is a social security benefit, the amount that the person would receive on a pension payday if the person were receiving that benefit is taken to be the amount of that benefit which the person would receive for the period of 14 days ending on the pension payday.

Note: “social security benefit” includes job search allowance.

***Division 5***—***Payment of rehabilitation allowance***

**Commencement of rehabilitation allowance**

**476.** A rehabilitation allowance becomes payable to a person on the first day on which:

1. the person is qualified for the allowance; and
2. no provision of this Act makes the allowance not payable to the person.

Note 1: for qualification see section 461.

Note 2: for circumstances in which a rehabilitation allowance is not payable see section 462.

**Rehabilitation Allowance s. 477**

**Payment by instalments**

**477. (1)** A full instalment of rehabilitation allowance is payable to a person on each pension payday on which:

1. the person is qualified for the allowance; and
2. the allowance is payable to the person.

**(2)** Where a person who is qualified for a rehabilitation allowance is outside Australia, the instalments referred to in subsection (1) are to be paid to the person on such pension paydays as the Secretary determines for the purposes of this subsection.

**Effect on instalments of backdated determination**

**478.** If the date of effect of a determination under section 469 is before the day on which the determination was made (in this section called the **“determination day”**),any instalment of rehabilitation allowance, that would, but for this section, be payable, is payable to the person:

1. if the determination day was a pension payday—on that day; or
2. the first pension payday after the determination day.

**Calculation of amount of instalment**

**479.** The amount of an instalment of rehabilitation allowance is the fortnightly rate of rehabilitation allowance.

Note: for calculation of the fortnightly rate see sections 471 to 475.

**Manner of payment**

**480.** A person’s rehabilitation allowance is, subject to section 481, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**481. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s rehabilitation allowance is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the rehabilitation allowance is to be paid in accordance with the direction.

**Payment into bank account etc.**

**482. (1)** The Secretary may direct that the whole or a part of the amount of a person’s rehabilitation allowance is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

**s. 482 Rehabilitation Allowance**

1. The account must be an account maintained by the person to whom the rehabilitation allowance is payable.
2. The account may be an account that is maintained by a person to whom the rehabilitation allowance is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the rehabilitation allowance is to be payable in accordance with the direction.

**Where allowance payday would fall on public holiday etc.**

**483.** If the Secretary is satisfied that an amount of rehabilitation allowance that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of allowance after death**

**484. (1)** If:

1. a rehabilitation allowance is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of rehabilitation allowance payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** Where the Secretary pays an amount of rehabilitation allowance under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of rehabilitation allowance.

***Division 6***—***Protection of rehabilitation allowance***

**Rehabilitation allowance to be absolutely inalienable**

**485. (1)** Subject to subsection (2) and section 1359, rehabilitation allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of rehabilitation allowance payable to a person where the recipient asks the Secretary:

**Rehabilitation Allowance s. 485**

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**486. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of rehabilitation allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of rehabilitation allowance payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7*—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**487. (1)** The Secretary may give a person to whom a rehabilitation allowance is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.

**s. 487 Rehabilitation Allowance**

1. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the allowance.
2. A notice under subsection (1):
3. must be in writing; and
4. may be given personally or by post; and
5. must specify how the person is to give the information to the Department; and
6. must specify the period within which the person is to give the information to the Department; and
7. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of rehabilitation allowance**

**488. (1)** The Secretary may give a person to whom a rehabilitation allowance is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and

**Rehabilitation Allowance s. 488**

1. must specify the period within which the person is to give the statement to the Department; and
2. must specify that the notice is given under this section.
3. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
4. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
5. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**489. (1)** A person is not excused from giving information pursuant to a notice under section 487 or 488 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 487 or 488 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 487 (5) or (6) or 488 (5) or (6).

***Division 8***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**490.** (1) A determination that:

1. a rehabilitation allowance is to be granted to a person; or
2. a rehabilitation allowance is to be paid to a person; continues in effect until:

(c) the allowance ceases to be payable under section 491 or 492; or

**s. 490 Rehabilitation Allowance**

(d) a further determination in relation to the allowance under section 497 has taken effect.

Note 1: for paragraph (a) see section 469.

Note 2: for paragraph (b) see section 498—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a rehabilitation allowance continues in effect until:

1. the allowance becomes payable at a lower rate under section 493 or 494; or
2. a further determination in relation to the allowance under section 495 or 496 has taken effect.

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 487 notification obligations**

**491.** If:

1. a person who is receiving a rehabilitation allowance is given a notice under section 487; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance would, but for this section, cease to be payable to the person;

the allowance continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s allowance, there is no automatic rate reduction and a determination under section 496 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 487 notification obligations**

**492.** If:

(a) a person who is receiving a rehabilitation allowance is given a notice under section 487; and

**Rehabilitation Allowance s. 492**

1. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
2. the event or change in circumstances occurs; and
3. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
4. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance ceases to be payable to the person;

the allowance ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

***Subdivision C***—***Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 487 notification obligations**

**493.** If:

1. a person who is receiving a rehabilitation allowance is given a notice under section 487; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of allowance is to be reduced;

the allowance becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

**Automatic rate reduction—failure to inform Department of payment for remunerative work where earnings credit account balance available**

**494.** If:

1. a person who is receiving a rehabilitation allowance is given a notice under section 487; and
2. the notice requires the person to inform the Department of income for remunerative work undertaken by the person; and
3. the person fails to notify the Department of income of that kind in accordance with the notice; and

**s. 494 Rehabilitation Allowance**

(d) the person has an earnings credit account balance for the purposes of Division 4 of Part 3.10;

the allowance becomes payable to the person at the reduced rate from the first pension payday after the day on which the person’s earnings credit account balance is reduced to nil.

***Subdivision D*—*Determinations***

**Rate increase determination**

**495.** If the Secretary is satisfied that the rate at which a rehabilitation allowance is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 499.

**Rate reduction determination**

**496.** If the Secretary is satisfied that the rate at which a rehabilitation allowance is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 493 or 494 (see subsection 490 (2)).

Note 2: for the date of effect of a determination under this section see section 500.

**Cancellation or suspension determination**

**497.** If the Secretary is satisfied that a rehabilitation allowance is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 491 or 492 (see subsection 490 (1)).

Note 2: for the date of effect of a determination under this section see section 500.

**Resumption of payment after cancellation or suspension**

**498. (1)** If the Secretary:

1. cancels or suspends a person’s rehabilitation allowance under section 497; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive rehabilitation allowance that was payable to the person; or

(b) the person is not receiving rehabilitation allowance that is payable to the person;

**Rehabilitation Allowance s. 498**

the Secretary is to determine that a rehabilitation allowance is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 499.

***Subdivision E*—*Date of effect of determinations***

**Date of effect of favourable determination**

**499. (1)** The day on which a determination under section 495 or 498 (in this subsection called the **“favourable determination”**)takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s rehabilitation allowance; and
2. a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s rehabilitation allowance; and
2. a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the person sought the review.

**s. 499 Rehabilitation Allowance**

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s rehabilitation allowance; and
2. no notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and

**Rehabilitation Allowance s. 499**

(c) the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**500. (1)** The day on which a determination under section 496 or 497 (in this section called the “adverse determination”) takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose rehabilitation allowance is affected by the

**s. 500 Rehabilitation Allowance**

adverse determination has contravened a provision of this Act (other than sections 488 and 1304 to 1307); and

(b) the contravention causes a delay in making the determination;

the day specified under paragraph (2) (b) may be earlier than the day

on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the allowance has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the allowance was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments***

***Subdivision A*—*Death of pensioner partner***

**Qualification for payments under this Subdivision**

**501.(1)** If:

1. a person is receiving a rehabilitation allowance instead of an age or invalid pension; and
2. the person is a member of a couple; and
3. the person’s partner dies; and
4. immediately before the partner died, the partner was receiving:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a carer pension; or

(v) a sheltered employment allowance instead of an invalid pension; or

(vi) a rehabilitation allowance instead of a pension referred to in subparagaph (i) or (ii); or

(vii) a service pension;

**Rehabilitation Allowance s. 501**

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

Note 1 : section 502 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person’s partner during that period if the partner had not died.

Note 2: section 503 provides for a lump sum that represents the instalments that would have been paid to the person’s partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

**(2)** If:

1. a person is receiving a rehabilitation allowance instead of an age or invalid pension; and
2. the person is a member of a couple; and
3. the person’s partner dies; and
4. immediately before the partner died, the person’s rehabilitation allowance rate included an amount under subparagraph 474 (1) (b) (ii) in respect of the partner;

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

Note: for the consequences of this subsection on a person’s rehabilitation allowance rate see section 504.

1. A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
2. An election under subsection (3):
3. must be made by written notice to the Secretary; and
4. may be made after the person has been paid an amount or amounts under this Subdivision; and
5. cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**(5)** If a person is qualified for payments under this Subdivision in relation to the partner’s death, the rate at which rehabilitation allowance is payable to the person during the bereavement period is, unless the person has made an election under subsection (3), governed by section 504.

**Continued payment of partner’s pension or allowance**

**502.** If a person qualifies under subsection 501 (1) for payments under this Subdivision in relation to the death of the person’s partner, there is payable to the person, on each of the pension paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person’s partner on that payday if the partner had not died.

Note: a person who qualifies under subsection 501 (2) receives a similar benefit through the operation of paragraph 504 (c).

**s. 503 Rehabilitation Allowance**

**Lump sum payable in some circumstances**

**503.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if the person’s partner had not died, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday; and |
|  | (b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the pension payday immediately before the first available bereavement adjustment payday: |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 504, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the partner’s instalment component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable |

**Adjustment of person’s rehabilitation allowance rate**

**504.** If:

1. a person is qualified for payments under this Subdivision; and
2. the person does not elect under subsection 501 (3) not to receive payments under this Subdivision;

**Rehabilitation Allowance s. 504**

the rate of the person’s rehabilitation allowance during the bereavement payment period is worked out as follows:

1. during the bereavement rate continuation period, the person’s rehabilitation allowance rate is the rate at which the allowance would have been payable to the person if the person’s partner had not died;
2. during the bereavement rate lump sum period (if any), the person’s rehabilitation allowance rate is the rate at which the allowance would be payable to the person apart from this Subdivision.

**Effect of death of person entitled to payments under this Subdivision**

**505.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the person dies within the bereavement period; and
3. the Secretary does not become aware of the death of the person’s partner before the person dies;

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

**s. 505 Rehabilitation Allowance**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Add up: |
|  | (a) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person on the pension payday immediately after the day on which the person dies; and |
|  | (b) the amount (if any) that, if neither the person nor the person’s partner had died, would have been payable to the person’s partner on that pension payday; |
|  | the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 504, would have been payable to the person on the pension payday immediately after the day on which the person died if the person had not died: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the period that commences on the day after the person dies and ends on the day on which the bereavement period ends. |
| *Step 5.* | Multiply the partner’s instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section. |

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

**506. (1)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. after the person’s partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act; and
3. the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person’s partner except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;

**Rehabilitation Allowance s. 506**

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

**(2)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. an amount to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act, within the bereavement period, into an account with a bank, credit union or building society (in this subsection called the **“financial institution”);** and
3. the financial institution pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

***Subdivision B***—***Death of dependent child***

**Bereavement payments on death of dependent child**

**507.** If:

1. a person is receiving a rehabilitation allowance instead of an age or invalid pension; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s rehabilitation allowance rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

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

Note 1: section 508 provides for rehabilitation allowance to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 509 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new rehabilitation allowance rate and the rate at which the allowance would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Subdivision are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional incentive allowance;
* additional remote area allowance.

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**Continued payment of child-related amounts**

**508.** If a person is qualified for payments under this Subdivision in relation to the death of a dependent child, the person’s rehabilitation allowance rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**509.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance for the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Subdivision was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

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***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the instalment of rehabilitation allowance payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
|  | Note: section 508 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the instalment of rehabilitation allowance that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s rehabilitation allowance rate were not calculated under section 508: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

***Subdivision C*—*Death of recipient***

**Death of recipient**

**510. (1) If:**

1. a person is receiving rehabilitation allowance; and
2. either:

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

(ii) the person is a member of a couple and the person’s partner:

1. is not receiving a social security pension; and
2. is not receiving a social security benefit; and
3. is not receiving a service pension; and

(c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

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**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1 : for amounts owing to the recipient before the recipient’s death see section 484.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 505.

***Division 10*—*Fringe benefits***

**Fringe benefits**

**511.** If a person who is receiving rehabilitation allowance qualifies for fringe benefits in accordance with this Division, benefits and concessions of various kinds may be made available to the person under other Commonwealth legislation (for example, the *National Health Act 1953*)*.*

**Qualification for fringe benefits**

**512. (1)** A person who is receiving a rehabilitation allowance is qualified for fringe benefits if the person’s rehabilitation allowance rate is neither income reduced nor assets reduced.

**(2)** If:

(a) a person who is receiving a rehabilitation allowance is not qualified for fringe benefits under subsection (1); and

(b) the person’s rehabilitation allowance rate is income reduced; the person is qualified for fringe benefits only if the person satisfies the fringe benefits ordinary income test.

Note: the Fringe Benefits Ordinary Income Test Calculator at the end of section 1071 is to be used in working out whether a person satisfies the fringe benefits ordinary income test.

**(3)** If:

(a) a person who is receiving a rehabilitation allowance is not qualified for fringe benefits under subsection (1); and

(b) the person’s rehabilitation allowance rate is assets reduced; the person is qualified for fringe benefits only if the person satisfies the fringe benefits assets test.

Note: the Fringe Benefits Assets Test Calculator at the end of section 1072 is to be used in working out whether a person satisfies the fringe benefits assets test.

**Unemployment Benefit s. 513**

**PART 2.11—UNEMPLOYMENT BENEFIT**

***Division 1***—***Qualification for and payability of unemployment benefit Subdivision A*—*Basic qualifications***

**Qualification for unemployment benefit**

**513.** A person is qualified for an unemployment benefit in respect of a period if:

(a) throughout the period, or for each period within that period, the person either:

(i) satisfies the work test; or

(ii) is not required to satisfy the work test; and

(b) throughout the period the person:

(i) is at least 18 and has not reached the pension age; and

(ii) is an Australian resident; and

(iii) is in Australia; and

(iv) is registered as being unemployed by the CES.

Note 1: the work test is set out in section 518.

Note 2: “CES” means Commonwealth Employment Service—see section 23.

Note 3: for “pension age” see section 23.

Note 4: for “Australian resident” see section 7.

Note 5: a person may not be qualified if the person’s unemployment is due to industrial action (see section 514).

Note 6: a person may not be qualified if the person has reduced employment prospects by moving to an area of lower employment (see section 515).

Note 7: where circumstances beyond a person’s control prevent the person from being registered at the CES, this requirement may be waived—see section 516.

Note 8: an unemployment benefit is not payable in certain situations even if the person is qualified—see Subdivision C.

**Unemployment due to industrial action**

**514. (1)** A person is not qualified for an unemployment benefit for a period unless the person satisfies the Secretary that the person’s unemployment during the period was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.

**(2)** A person is not qualified for unemployment benefit for a period unless the Secretary is satisfied:

1. that the person’s unemployment during the period was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and
2. the people, or some of the people, were members of a trade union which was involved in the industrial action; and

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(c) the person was not a member of the trade union during the period.

**(3)** Subsections (1) and (2) do not prevent a person from being qualified for an unemployment benefit for a period that occurs after the relevant industrial action or series of industrial actions has stopped.

Note: for “industrial action”, “trade union” and “unemployment” see section 16.

**Move to area of lower employment**

**515. (1)** A person is not qualified for an unemployment benefit on a day on which the person reduces his or her employment prospects by moving to a new place of residence without sufficient reason.

**(2)** For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person moves to live:

1. with a family member who has already established his or her residence in that place of residence; or
2. near a family member who has already established residence in the same area; or
3. the person satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by,a family member.

**Some people not required to be registered at the CES**

**516.** The Secretary may decide that a person does not have to satisfy subparagraph 513 (b) (iv) (CES registration) for a period if:

1. the person was not registered as unemployed by the CES during the period; and
2. the Secretary is satisfied that there are circumstances beyond the person’s control relating to the person’s failure to be registered; and
3. having regard to those circumstances, the Secretary is satisfied that the person’s failure to be registered should be disregarded in respect of the period.

Note: “CES” means Commonwealth Employment Service (see section 23).

**Prospective determinations for some beneficiaries**

**517. (1)** A person is qualified for unemployment benefit for a period, if the person:

(a) has turned 55 and:

(i) in the case of a woman—has not turned 59 and 6 months; and

(ii) in the case of a man—has not turned 64 and 6 months; and

(b) is in receipt of an unemployment benefit; and

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(c) has in the previous 12 months been in continuous receipt of one or a combination of the following:

(i) an unemployment benefit;

(ii) a sickness benefit;

(iii) a special benefit; and

1. is not indebted to the Commonwealth under or as a result of this Act;
2. is not, in the Secretary’s opinion, likely to be employed; and
3. will, in the Secretary’s opinion, comply with the requirements of this Act; and
4. may, in the Secretary’s opinion, reasonably be expected to satisfy the qualification requirements for unemployment benefit (see sections 513 to 516) during the period.

**(2)** A person is qualified for unemployment benefit for a period if:

1. the person is in receipt of an unemployment benefit; and
2. the unemployment benefit was granted before 1 November 1977; and
3. the person may, in the Secretary’s opinion, reasonably be expected to satisfy the qualification requirements for unemployment benefit (see sections 513 to 516) during the period.

**(3)** A person is qualified for unemployment benefit for a period if:

(a) the person was, immediately before starting to receive unemployment benefit, receiving:

(i) a social security benefit; or

(ii) a sheltered employment allowance; or

(iii) a rehabilitation allowance; and

1. the last payment of that benefit or allowance was made in respect of a period that ended after the day on which the payment was made; and
2. the person may, in the Secretary’s opinion, reasonably be expected to satisfy the qualification requirements for unemployment benefit (see sections 513 to 516) during the period.

***Subdivision B***—***Work test***

**Work test**

**518. (1)** A person satisfies the work test for a period if the person satisfies the Secretary that:

(a) throughout the period:

(i) the person is unemployed; and

(ii) the person is:

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(a) capable of undertaking; and

(b) willing to undertake;

paid work that in the opinion of the Secretary is suitable to be undertaken by the person; and

(b) during the period, the person takes reasonable steps to obtain paid work that in the opinion of the Secretary is suitable to be undertaken by the person.

*Persons undertaking paid work may be treated as unemployed*

**(2)** If:

1. a person undertakes paid work during a period; and
2. the Secretary is of the opinion that, taking into account:

(i) the nature of the work; and

(ii) the duration of the work; and

(iii) any other matters relating to the work that the Secretary considers relevant;

the work should be disregarded;

the Secretary may treat the person as being unemployed throughout the period.

Note: for situations where a person is not required to satisfy the work test see:

1. section 519 (certain persons over 55 in employment);
2. section 520 (persons attending training camps);
3. section 521 (certain persons in remote areas);
4. section 522 (long-term beneficiaries under 55 in short-term vocational courses);
5. section 523 (long-term beneficiaries under 55 engaged in voluntary work);
6. section 524 (persons over 55 in short-term vocational courses);

(g) section 525 (long-term beneficiaries over 55 in vocational courses);

(h) section 526 (persons over 55 engaged in voluntary work);

(j) section 527 (long-term beneficiaries over 55 engaged in voluntary work).

**Relief from work test—certain persons over 55 in employment**

**519.** A person is taken to satisfy the work test in respect of a period if:

(a) throughout the period:

(i) the person is at least 55; and

(ii) the person is in employment that commences on or after 1 January 1990; and

(iii) the person earns at least 35% of average male full-time weekly earnings from that employment; and

(b) the person has been a qualified beneficiary for at least 12 months immediately before commencing that employment.

Note 1: for “average male full-time weekly earnings” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 518.

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**Relief from work test—persons attending training camps**

**520.** A person is not required to satisfy the work test in respect of a period when the person is attending a training camp as a member of:

1. the Australian Naval Reserve; or
2. the Naval Emergency Reserve Forces; or
3. the Australian Army Reserve; or
4. the Australian Airforce Reserve; or
5. the Airforce Emergency Force; or

(f) the Regular Army Emergency Reserve.

Note: for “work test” see section 518.

**Relief from work test—certain persons in remote areas**

**521.** Where the Secretary considers that:

(a) it would be reasonable to assume that:

(i) at the end of a period a person is present in a remote area; and

(ii) the person is throughout the period:

1. unemployed; and
2. capable of undertaking paid work that in the Secretary’s opinion is suitable to be undertaken by the person; and
3. willing to undertake paid work that in the Secretary’s opinion is suitable to be undertaken by the person; and

(iii) during the period, the person takes reasonable steps to obtain paid work that in the Secretary’s opinion is suitable to be undertaken by the person; and

(b) having regard to all the relevant factors, including:

(i) the location of offices of the Department; and

(ii) difficulties with transport and communication; and

(iii) the educational and cultural background of the person; it would be unreasonable to expect the person to comply with the work test in order to be qualified for unemployment benefit for that period;

the person is not required to satisfy the work test during that period.

Note 1: for “remote area” see section 14.

Note 2: for “work test” see section 518.

**Relief from work test—long-term beneficiaries under 55 in short-term vocational courses**

**522. (1)** Subject to subsection (2), a person is not required to satisfy the work test in respect of a period if:

(a) on each day in the period:

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(i) the person has not turned 55; and

(ii) the person is engaged in an approved short-term vocational course; and

(b) the person has been a qualified beneficiary for at least 12 months immediately before the person starts the course.

Note 1: for “approved short-term vocational course” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 518.

**(2)** Subsection (1) does not apply to a day if:

(a) there are already 40 days in the same calendar year on which the person is not required to satisfy the work test because of one or a combination of the following:

(i) subsection (1);

(ii) subsection 523 (1) (long-term beneficiaries under 55 engaged in voluntary work);

(iii) subsection 597 (1) (long-term beneficiaries in short term vocational courses—JSA);

(iv) subsection 598(1) (long-term beneficiaries engaged in voluntary work—JSA); or

(b) having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that subsection (1) should not apply in relation to that day.

**Relief from work test—long-term beneficiaries under 55 engaged in voluntary work**

**523. (1)** Subject to subsection (2), a person is not required to satisfy the work test in respect of a period if:

(a) on each day in the period:

(i) the person has not turned 55; and

(ii) the person is engaged in full-time voluntary work with an approved organisation; and

(b) the person has been a qualified beneficiary for at least 12 months immediately before the person starts working for the organisation.

Note 1: for “approved organisation” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 518.

**(2)** Subsection (1) does not apply to a day if:

1. there are already 20 days in the same calendar year on which the person is not required to satisfy the work test because of subsection (1) or subsection 598 (1); or
2. there are already 40 days in the same calendar year on which the person is not required to satisfy the work test because of one or a combination of the following:

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(i) subsection (1);

(ii) subsection 522 (1) (long-term beneficiaries under 55 in short-term vocational courses);

(iii) subsection 597 (1) (long-term beneficiaries in short-term vocational courses—JSA);

(iv) subsection 598(1) (long-term beneficiaries engaged in voluntary work—JSA); or

(c) having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that subsection (1) should not apply in relation to that day.

**Relief from work test—persons over 55 in short-term vocational courses**

**524. (1)** Subject to subsection (2), a person is not required to satisfy the work test in respect of a period if:

(a) on each day in the period:

(i) the person is at least 55; and

(ii) the person is engaged in an approved short-term vocational course; and

(b) the person has been a qualified beneficiary for less than 12 months immediately before the person starts the course.

Note 1: for “approved short-term vocational course” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 518.

**(2)** Subsection (1) does not apply to a day if:

(a) there are already 40 days in the same calendar year on which the person is not required to satisfy the work test because of one or a combination of the following:

(i) subsection (1);

(ii) subsection 522 (1) (long-term beneficiaries under 55 in short-term vocational courses);

(iii) subsection 523 (1) (long-term beneficiaries under 55 engaged in voluntary work);

(iv) subsection 526 (1) (persons over 55 engaged in voluntary work); or

(b) having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that subsection (1) should not apply in relation to that day.

**Relief from work test—long-term beneficiaries over 55 in vocational courses**

**525. (1)** Subject to subsection (2), a person is not required to satisfy the work test in respect of a period if:

(a) on each day in the period:

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(i) the person is at least 55; and

(ii) the person is engaged in an approved vocational course; and

(b) the person has been a qualified beneficiary for at least 12 months immediately before the person starts the course.

Note 1: for “approved vocational course” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 518.

**(2)** Subsection (1) does not apply to a day if:

(a) there are already 130 days in the same calendar year on which the person is not required to satisfy the work test because of one or a combination of the following:

(i) subsection (1);

(ii) subsection 527 (1) (long-term beneficiaries over 55 engaged in voluntary work); or

(b) having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that subsection (1) should not apply in relation to that day.

**Relief from work test—persons over 55 engaged in voluntary work**

**526. (1)** Subject to subsection (2), a person is not required to satisfy the work test in respect of a period if:

(a) on each day in the period:

(i) the person is at least 55; and

(ii) the person is engaged in full-time voluntary work with an approved organisation; and

(b) the person has been a qualified beneficiary for less than 12 months immediately before the person starts working for the organisation.

Note 1: for “approved organisation” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 518.

**(2)** Subsection (1) does not apply to a day if:

1. there are already 20 days in the same calendar year on which the person is not required to satisfy the work test because of subsection (1) or subsection 523 (1) (long-term beneficiaries under 55 engaged in voluntary work); or
2. there are already 40 days in the same calendar year on which the person is not required to satisfy the work test because of one or a combination of the following:

(i) subsection (1);

(ii) subsection 522 (1) (long-term beneficiaries under 55 in short-term vocational courses);

(iii) subsection 523 (1) (long-term beneficiaries under 55 engaged in voluntary work);

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(iv) subsection 524 (1) (persons over 55 in short-term vocational courses); or

1. having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that subsection (1) should not apply in relation to that day.

**Relief from work test—long-term beneficiaries over 55 engaged in voluntary work**

**527. (1)** Subject to subsection (2), a person is not required to satisfy the work test in respect of a period if:

(a) on each day in the period:

(i) the person is at least 55; and

(ii) the person is engaged in full-time voluntary work within an approved organisation; and

(b) the person has been a qualified beneficiary for at least 12 months immediately before the person starts working for the organisation.

Note 1: for “approved organisation” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 518.

(2) Subsection (1) does not apply to a day if:

1. there are already 65 consecutive days in the same calendar year on which the person is not required to satisfy the work test because the person is working for that organisation; or
2. there are already 130 days in the same calendar year on which the person is not required to satisfy the work test because of one or a combination of the following:

(i) subsection (1);

(ii) subsection 525 (1) (long-term beneficiaries over 55 in vocational courses); or

(c) having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that subsection (1) should not apply in relation to that day.

***Subdivision C***—***Situations where benefit not payable (general)***

**Unemployment benefit not payable in certain circumstances**

**528. (1)** An unemployment benefit is not payable to a person for a period during which the person is qualified for unemployment benefit (see section 513) if during that period:

1. the person has not provided a tax file number (see section 529); or
2. the value of the person’s assets exceeds the person’s assets value limit (see sections 530 and 531); or

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1. the person is a full-time student (see section 532); or
2. another income support payment is being paid to the person (see section 533); or
3. the unemployment benefit has not commenced to be payable (see sections 535 and 561); or
4. the person is subject to an unused annual leave waiting period and has not served that waiting period (see sections 536 to 538); or
5. the person is subject to an ordinary waiting period and has not served that waiting period (see sections 539 and 540); or

(h) the person is subject to an education leavers waiting period and that period has not ended (see sections 541 and 542); or

(j) the person fails to comply with a requirement that the person:

(i) undertake a training course; or

(ii) do suitable work; or

(iii) attend an office of the CES;

as required by section 543; or

(k) a period of non-payment is being imposed because:

(i) the person’s unemployment is due to a voluntary act of the person (see section 544); or

(ii) the person’s unemployment is due to misconduct by the person (see section 545); or

(iii) the person has refused an offer of employment (see section 546); or

(iv) the person had previously ceased to be qualified for unemployment benefit because the person was not taking reasonable steps to find work (see section 547); or

(v) the person failed to comply with notification requirements (see section 548); or

(vi) the person had previously ceased to be qualified for unemployment benefit because the person was not registered with the CES (see section 549); or

(vii) the person is a seasonal worker (see section 550); or

(viii) the person moved to an area of lower employment (see section 551); or

(m) the person is in gaol (see Part 3.13); or

(n) the person is subject to a compensation preclusion period (see Part 3.14).

Note 1: for “serving a waiting period” see subsection 23 (10).

Note 2: “CES” means Commonwealth Employment Service (see section 23).

**(2)** An unemployment benefit is not payable to a person if the person’s unemployment benefit rate would be nil.

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**Provision of tax file number**

**529. (1)** Unemployment benefit is not payable unless:

1. a person has given the Secretary a written statement of the person’s tax file number; or
2. a person has given the Secretary an employment declaration and satisfies either subsection (2) or (3).

Note: the Secretary can require a person to quote their tax file number under section 1308.

**(2)** A person satisfies this subsection if:

(a) the employment declaration states that the person:

(i) has a tax file number but does not know what it is; and

(ii) has asked the Commissioner of Taxation to inform him or her of the number; and

(b) the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:

(i) whether the person has a tax file number; and

(ii) if the person has a tax file number—the tax file number; and

(c) the Commissioner of Taxation has not told the Secretary that the person has no tax file number.

**(3)** A person satisfies this subsection if:

1. the employment declaration states that an application by the person for a tax file number is pending; and
2. the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the person—the tax file number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn; and

1. the Commissioner of Taxation has not told the Secretary that an application by the person for a tax file number has been refused; and
2. the application for a tax file number has not been withdrawn.

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

**530. (1)** An unemployment benefit is not payable to a person if the value of the person’s assets exceeds the person’s assets value limit.

**(2)** A person’s assets value limit is worked out using the following table: work out which family situation applies to the person; the assets value limit is the corresponding amount in column 3.

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|  |  |  |  |
| --- | --- | --- | --- |
| ASSETS VALUE LIMIT TABLE | | | |
| column 1 | column 2 | column 3 | |
|  |  | assets value limit | |
| item | person’s family situation | column 3a either person or partner homeowner | column 3b neither person nor partner homeowner |
| 1. | Not member of couple | $103,500 | $177,500 |
| 2. | Partnered (partner getting neither pension nor benefit) | $147,500 | $221,500 |
| 3. | Partnered (partner getting pension or benefit) | $73,750 | $110,750 |

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

Note 2: for “homeowner” see section 11.

Note 3: if item 2 applies to a person, the value of *all* the assets of the person’s partner are to be taken as being included in the value of the person’s assets (see subsection 531 (1))—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person’s assets is only *half* the combined value of the person’s assets and the assets of the person’s partner—see subsection 531 (2).

Note 4: if an unemployment benefit is not payable to a person because of the value of the person’s assets, the person may be able to take advantage of provisions dealing with financial hardship (sections 1131 and 1132).

Note 5: the assets value limits of items 1 and 3 in column 3a and item 3 in column 3b are indexed annually in line with CPI increases (see sections 1191 to 1194).

Note 6: the assets value limit of item 1 in column 3b is adjusted annually (see subsection 1204 (1)).

Note 7: the item 2 assets value limits are adjusted annually so that the item 2 limits are twice the corresponding item 3 limits (see subsections 1204 (2) and (3)).

**Value of assets of members of couples**

**531. (1)** If:

1. the person is a member of a couple; and
2. the person’s partner:

(i) is not in receipt of a social security or service pension; and

(ii) is not in receipt of a social security benefit;

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

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

**(2)** If:

1. the person is a member of a couple; and
2. the person’s partner is in receipt of:

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(i) a social security or service pension; or

(ii) a social security benefit;

the value of:

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

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

**Full-time students**

**532. (1)** Subject to subsection (2), an unemployment benefit is not payable to a person engaged in a course of education on a full-time basis for the period:

1. starting when the person starts the course; and
2. finishing when the person finishes or abandons the course; and
3. including periods of vacation.

**(2)** Subsection (1) does not prevent an unemployment benefit from being payable for any period during which:

1. a person is engaged in a course that the Secretary has required the person to undertake under section 543; or
2. the person is not required to satisfy the work test because of:

(i) section 522 (long-term beneficiaries under 55 in short-term vocational courses); or

(ii) section 524 (persons over 55 in short-term vocational courses); or

(iii) section 525 (long-term beneficiaries over 55 in vocational courses); or

(c) the person has deferred a course of education.

**Multiple entitlement exclusion**

**533. (1)** An unemployment benefit is not payable to a person for a period if:

(a) the person is receiving:

(i) another social security benefit; or

(ii) a social security pension; or

(iii) a service pension; or

(b) the person is a widow who is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act;

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unless:

(iii) the widow has been in receipt of a payment referred to in subparagraph (i) or (ii) continuously since before 1 November 1986; and

(iv) before 1 November 1986 the widow was also receiving a social security benefit; or

(c) a payment has been or may be made in respect of the person for the same period under:

(i) a prescribed educational scheme other than the ABSTUDY Tertiary Scheme to the extent that it applies to part-time students; or

(ii) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or

(iii) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or

(iv) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note 1 : “social security pension” includes sheltered employment and rehabilitation allowance.

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

Note 3: for “prescribed educational scheme” see section 5.

**(2)** If:

1. a person may start a course of education on a full-time basis; and
2. a payment under a scheme referred to in paragraph (1) (c) may be made in respect of the person;

the Secretary may decide that, notwithstanding subsection (1), an unemployment benefit is payable to the person for a period before the person starts the course.

**Provisional commencement day**

*General rule*

534. (1) Subject to subsections (2), (3), (4) and (5), a person’s provisional commencement day is the day on which the person claims an unemployment benefit.

*Initial incorrect claim followed by claim for unemployment benefit*

**(2)** If:

(a) the person makes a claim (in this subsection called the **“initial claim”**) for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the

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Commonwealth, that is similar in character to an unemployment benefit; and

1. on the day on which the person makes the initial claim, the person is qualified for unemployment benefit; and
2. the person subsequently makes a claim for unemployment benefit; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is, subject to subsections (3), (4) and (5), the day on which the person made the initial claim.

*Claim within 14 days of CES registration*

**(3)** If:

1. a person is not a transferee to unemployment benefit; and
2. the person is not subject to an education leavers waiting period (see section 541); and

(c) the person becomes registered as unemployed by the CES; and

(d) the day that would be the person’s provisional commencement day under subsections (1) and (2) occurs:

(i) within 14 days after becoming registered by the CES; or

(ii) within such further period after becoming registered by the CES as the Secretary considers reasonable;

the person’s provisional commencement day is the day on which the person became registered by the CES.

Note: for “transferee” see subsections 23 (6) and (7).

*Education leavers who claim within 14 days of CES registration*

**(4)** If:

1. a person becomes registered as unemployed by the CES; and
2. the person is subject to an education leavers waiting period (see subsection 541 (1));

the person’s provisional commencement day is:

(c) if the person becomes registered by the CES before stopping the course and the day that would be the person’s provisional commencement day under subsections (1) and (2) occurs:

(i) within 14 days after stopping the course; or

(ii) within such further period after stopping the course as the Secretary considers reasonable;

the day after the last day on which the person was undertaking the course; or

(d) if the person becomes registered by the CES after stopping the course and the day that would be the person’s provisional commencement day under subsections (1) and (2) occurs:

(i) within 14 days after becoming registered by the CES; or

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(ii) within such further period after becoming registered by the CES as the Secretary considers reasonable;

the day on which the person became registered by the CES.

*Transferees*

**(5)** If a person is a transferee to unemployment benefit and:

1. the day that would be the person’s provisional commencement day under subsections (1) and (2) occurs within 14 days after the transfer day; or
2. both of the following subparagraphs are satisfied:

(i) the person becomes registered as unemployed by the CES within 14 days after the transfer day; and

(ii) the day that would be the person’s provisional commencement day under subsections (1) and (2) occurs:

1. within 14 days after becoming registered by the CES; or
2. within such further period after becoming registered by the CES as the Secretary considers reasonable;

the person’s provisional commencement day is the person’s transfer day.

Note: for “transferee” to a benefit and “transfer day” see subsections 23 (6) and (7).

**Commencement of unemployment benefit**

**535.** An unemployment benefit is not payable to a person who is qualified for the benefit before:

1. if the person is not subject to a waiting period—the person’s provisional commencement day; or
2. if the person is subject to one waiting period only—the first day after the end of that waiting period; or
3. if the person is subject to more than one waiting period—the first day after all of the waiting periods have ended.

Note 1: for “provisional commencement day” see section 534.

Note 2: a waiting period is:

1. an unused annual leave waiting period—see sections 536 to 538; or
2. an ordinary waiting period—see sections 539 and 540; or
3. an education leavers waiting period—see sections 541 and 542.

If the person has an unused annual leave waiting period and an ordinary waiting period, the ordinary waiting period will follow the unused annual leave waiting period (see subsection 540 (2). If the person has an education leavers waiting period and another waiting period, the education leavers waiting period runs concurrently with the other waiting period and the unemployment benefit will not be payable until the longest waiting period has finished.

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***Subdivision D***—***Situations where benefit not payable (waiting periods)***

**Unused annual leave waiting period**

**536.** A person is subject to an unused annual leave waiting period if:

1. when the person became unemployed, the person became entitled to receive a payment for unused annual leave; and
2. the person’s provisional commencement day occurs within the notional leave period.

Note 1: for “unused annual leave” see section 23.

Note 2: for “notional leave period” see section 537.

Note 3: for “provisional commencement day” see section 534.

**Notional leave period**

**537. (1)** A person’s notional leave period is the period that:

1. starts on the day after the day on which the person’s employment has ended; and
2. runs for the number of days for which the person has unused annual leave as calculated under subsections (2) and (3).

**(2)** Subject to subsection (3), the number of days for which the person has unused annual leave is worked out as follows:

1. if the period of unused annual leave is expressed in weeks— multiply by 7 the number of weeks (including fractions of weeks) in the period of unused annual leave and disregard any fraction that results;
2. in any other case—multiply by 7 the number of working weeks (including any fraction of a working week) represented by the period of unused annual leave and disregard any fraction that results.

**(3)** The number of days for which a person has unused annual leave cannot exceed 28 days.

**Duration of unused annual leave waiting period**

**538.** A person’s unused annual leave waiting period starts on the person’s provisional commencement day and finishes on the last day of the notional leave period.

Note 1: for “notional leave period” see section 537.

Note 2: an unused annual leave waiting period may apply to a person whether or not the person is subject to an ordinary waiting period. If the person is subject to an ordinary waiting period, that period will start after the unused annual leave waiting period—see subsection 540 (2).

Note 3: for “provisional commencement day” see section 534.

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**Ordinary waiting period**

**539.** A person is subject to an ordinary waiting period unless:

1. immediately before becoming qualified for the unemployment benefit, the person was receiving a job search allowance; or
2. the person has served an ordinary waiting period that ended not more than 12 weeks before the person’s provisional commencement day; or
3. both of the following conditions apply:

(i) the person is a transferee to unemployment benefit; (ii) the person claims the unemployment benefit:

(a) within 14 days of the transfer day; or

(b) where the person becomes registered as unemployed by the CES within 14 days after the transfer day—within 14 days of the person becoming so registered or such further period as the Secretary considers reasonable; or

(d) both of the following conditions apply:

(i) at some time in the 13 weeks immediately before the person’s provisional commencement day, an unemployment benefit stopped being payable to the person;

(ii) immediately before the benefit stopped being payable to the person, one or a combination of the following had been payable to the person for at least 12 months:

(a) a social security benefit;

(b) a payment as a trainee in full-time training under a program included in the programs known as Labour Force Programs.

Note 1: for “transferee” to a benefit and “transfer day” see subsections 23 (6) and (7).

Note 2: for “provisional commencement day” see section 534.

Note 3: for “ordinary waiting period” see subsection 23 (1).

**Duration of ordinary waiting period**

*No unused annual leave waiting period*

**540.** (1) If a person:

1. is subject to an ordinary waiting period; and
2. is not subject to an unused annual leave waiting period;

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

Note: for “provisional commencement day” see section 534.

*Unused annual leave waiting period*

**(2)** If a person is subject to:

(a) an ordinary waiting period; and

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(b) an unused annual leave waiting period;

the ordinary waiting period is the period of 7 days that starts on the day after the day on which the person’s unused annual leave waiting period ends.

Note 1: for “unused annual leave waiting period” see sections 536 to 538.

Note 2: for “provisional commencement day” see section 534.

**Education leavers waiting period**

*Persons subject to waiting period*

**541.** (1) A person is subject to an education leavers waiting period if the person:

1. was undertaking a course of education of at least 6 months duration on a full-time basis; and
2. has stopped the course; and
3. was, immediately before stopping the course, receiving neither:

(i) a social security or service pension; nor

(ii) a social security benefit; and

(d) has a provisional commencement day within 6 months after stopping the course; and

(e) is not covered by subsection (2) (beneficiaries stopping courses after 4 weeks).

Note: for “provisional commencement day” see section 534.

*No education leavers waiting period in some cases where already served*

**(2)** A person who would otherwise be subject to an education leavers waiting period in relation to unemployment benefit is not subject to such a period if:

1. the person had previously been subject to an education leavers waiting period; and
2. an unemployment benefit or a job search allowance had been payable to the person continuously from the end of the education leavers waiting period until immediately before the person started the course; and
3. the person’s provisional commencement day is within 4 weeks after starting the course.

Note 1: for “provisional commencement day” see section 534.

Note 2: for “education leavers waiting period” see subsection 23 (1).

**Duration of education leavers waiting period**

*General rule*

**542.** (1) Subject to this section, the education leavers waiting period starts on the person’s provisional commencement day and lasts for:

(a) 13 weeks if, on the person’s provisional commencement day, the person:

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

(ii) is under 21 ; and

(iii) does not have a dependent child; or

(b) 6 weeks if, on the person’s provisional commencement day, the person:

(i) is a member of a couple; or

(ii) is over 21; or

(iii) has a dependent child.

Note 1: the duration of the education leavers waiting period may be modified by:

1. subsections (2) and (3) (change of status during waiting period);
2. subsection (5) (periods of employment or periods on special benefit);
3. subsection (6) (previous periods of non-payment because of education leavers waiting period);
4. subsection (7) (6 months ceiling).

Note 2: for “provisional commencement day” see section 534.

*Change of status in first 6 weeks .*

**(2)** Subject to subsection (4), where:

(a) a person who is covered by paragraph (1) (a):

(i) becomes a member of a couple; or

(ii) turns 21; or

(b) a young person becomes a dependent child of a person who is covered by paragraph (1) (a);

within 6 weeks from and including the person’s provisional commencement day, the education leavers waiting period starts on the person’s provisional commencement day and lasts for 6 weeks.

Note: for “provisional commencement day” see section 534.

*Change of status after 6 weeks*

**(3)** Subject to subsection (4), where:

(a) a person who is covered by paragraph (1) (a):

(i) becomes a member of a couple; or

(ii) turns 21; or

(b) a young person becomes a dependent child of a person who is covered by paragraph (1) (a);

in the period:

1. starting at the end of 6 weeks from the person’s provisional commencement day; and
2. lasting for 6 weeks;

the education leavers waiting period starts on the person’s provisional commencement day and ends on the day before the day on which the person is first covered by paragraph (a) or (b).

Note: for “provisional commencement day” see section 534.

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*Notification required*

**(4)** For the purposes of subsections (2) and (3):

1. a person is not to be taken to have become a member of a couple; and
2. a young person is not to be taken to have become a dependent child of a person;

until the person notifies the Department that this is the case.

*Reduction of waiting period for periods of special benefit and employment*

**(5)** The waiting period imposed by subsection (1) or (2) is to be reduced by a period equivalent to:

1. if the person is subject to a 13 week education leavers waiting period—any period during which the person was employed on a full-time basis after stopping the course; and
2. if the person is subject to a 6 week education leavers waiting period—any period during which the person has been employed, at any time, on a full-time basis; and
3. any period during which the person was paid a special benefit after stopping the course.

*Reduction of education leavers waiting period where already partially served*

**(6)** If:

1. a person is subject to an education leavers waiting period; and
2. the person started the course concerned at a time when an unemployment benefit, job search allowance or sickness benefit was not payable to the person because of an education leavers waiting period; and
3. the person’s provisional commencement day is within 4 weeks after the person started the course concerned;

the duration of the education leavers waiting period is reduced by the number of days of the previous education leavers waiting period that the person had served immediately before starting the course.

Note 1: for “provisional commencement day” see section 534.

Note 2: for “education leavers waiting period” see section 23.

*6 month ceiling*

**(7)** An education leavers waiting period that applies in respect of a course of study undertaken by a person is not to extend more than 6 months after the person has stopped the course.

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***Subdivision E***—***Situations where benefit not payable (recipient non-compliance)***

**Secretary may require person to attend course or undertake work**

**543. (1)** If:

1. a person is receiving, or has lodged a claim for, an unemployment benefit; and
2. the Secretary is of the opinion that the person should:

(i) undertake a course of vocational training; or

(ii) undertake a course:

(a) which the person could reasonably undertake; and

(b) to which the person has been referred by the CES; or

(iii) do any work suitable to be done by the person; or

(iv) attend an office of the CES; and

(c) the Secretary notifies the person that the person is required to:

(i) undertake that course; or

(ii) do that work; or

(iii) attend an office of the CES; and

1. the requirement is reasonable; and
2. the person does not take reasonable steps to comply with the Secretary’s requirement;

an unemployment benefit is not payable to the person for a period determined by the Secretary.

1. The Secretary may determine that an unemployment benefit is payable for a period for which he or she had previously determined that it was not payable under subsection (1) if within a reasonable period the person takes reasonable steps to comply with the Secretary’s requirement.
2. If:
3. the Secretary has determined under subsection (1) that an unemployment benefit is not payable for a period; and
4. within a reasonable period the person has not taken reasonable steps to comply with the Secretary’s requirements; and
5. at a later time an unemployment benefit would, but for this subsection, be payable to the person;

an unemployment benefit is not payable to the person for the deferment period.

1. Subject to subsections (5) and (6), the deferment period is 2 weeks.
2. If:

(a) subsection (1) applies to a person at a particular time; and

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(b) on one occasion only within the period of 3 years before that time a JSA or UB automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(6)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA or UB automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 3 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(7)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Unemployment due to voluntary act**

**544. (1)** If:

1. a person’s unemployment is due either directly or indirectly, to a voluntary act of the person; and
2. the voluntary act was without sufficient reason;

an unemployment benefit is not payable to the person for the deferment period.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 3 years before that time a JSA or UB automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA or UB automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 3 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

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Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Unemployment due to misconduct**

**545. (1)** If a person’s unemployment is due to the person’s misconduct as a worker, an unemployment benefit is not payable to the person for the deferment period.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 3 years before that time a JSA or UB automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA or UB automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 3 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Refusal of job offer**

**546. (1)** If a person has refused or failed, without sufficient reason, to accept a suitable offer of employment, an unemployment benefit is not payable to the person for the deferment period.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 3 years before that

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time a UB or JSA automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “UB automatic deferment provision” and “JSA automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a UB or JSA automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 3 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “UB automatic deferment provision” and “JSA automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Removal from benefit for failure to take reasonable steps to find work**

**547. (1)** If:

1. an unemployment benefit or a job search allowance was payable to a person; and
2. the person ceased to be qualified for that benefit or allowance because the person was not taking reasonable steps to find employment; and

(c) the person later becomes qualified for unemployment benefit; an unemployment benefit is not payable to the person for the deferment period.

Note: where a person has been paid unemployment benefit or a job search allowance while the person was not qualified because he or she was not taking reasonable steps to find work, an overpayment may arise (see Chapter 5). Subsection (1) does not prevent the Secretary from taking action to recover the overpayment.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 3 years before that time a JSA or UB automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(4)** If:

(a) subsection (1) applies to the person at a particular time; and

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(b) a JSA or UB automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 3 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Removal from benefit for failure to comply with notification requirements**

**548. (1)** If a person refuses or fails, without sufficient reason, to comply with a requirement made of the person under section 572, 573 or 1304, an unemployment benefit is not payable to the person for the deferment period.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 3 years before that time a JSA or UB automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA or UB automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 3 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” and “UB automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Removal from benefit for failure to continue CES registration**

**549. (1)** If:

(a) an unemployment benefit or a job search allowance was payable to a person; and

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(b) the person ceased to be qualified for that benefit or allowance because the person:

(i) was not registered at the CES (see subparagraph 513 (b) (iv) and subparagraph 589 (1) (b) (iv)); and

(ii) the Secretary has not excused the person from being registered at the CES under section 516 or 592; and

(c) the person later becomes qualified for unemployment benefit; an unemployment benefit is not payable to the person for a period determined, in writing, by the Secretary.

Note: where a person has been paid unemployment benefit or a job search allowance while the person was not qualified because he or she was not registered at the CES, an overpayment may arise (see Chapter 5). Subsection (1) does not prevent the Secretary from taking action to recover the overpayment.

**(2)** The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

**Seasonal workers**

**550. (1)** If:

1. a person is a seasonal or intermittent worker; and
2. the person’s income is sufficient to maintain:

(i) the person; and

(ii) any other persons who are ordinarily maintained by the person;

notwithstanding that the person is temporarily unemployed; an unemployment benefit is not payable to the person for a period determined, in writing, by the Secretary.

**(2)** The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

**Move to area of lower employment**

**551. (1)** If a person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, an unemployment benefit is not payable to the person for 12 weeks.

**(2)** For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person moves to live:

1. with a family member who has already established his or her residence in that place of residence; or
2. near a family member who has already established residence in the same area; or
3. the person satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member.

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**(3)** The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

***Division 2*—*Claim for unemployment benefit***

**Need for a claim**

**552. (1)** A person who wants to be granted an unemployment benefit must make a proper claim for that benefit.

Note 1: “proper claim”—see section 553 (form), section 554 (manner of lodgment) and section 555 (residence/presence in Australia).

Note 2: because the payability of unemployment benefit may be affected by, for example, the provisions dealing with the circumstances in which a person’s former employment ended (see sections 544 and 545), the person may be asked to support his or her claim for unemployment benefit with an end of employment statement by the former employer (see section 1311).

1. Subsection (1) does not apply to a person who, immediately before becoming qualified for the unemployment benefit, is receiving job search allowance.
2. For the purposes of subsection (1), where:
3. a claim for unemployment benefit is made by or on behalf of a person; and
4. at, the time the claim is made, the claim cannot be granted because the person is not qualified for unemployment benefit;

the claim is to be taken to have not been made.

**Form of claim**

**553.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**554. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

(2) A place or person approved under subsection (1) must be a place or person in Australia.

**Claimant must be Australian resident and in Australia**

**555.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

**Unemployment Benefit s. 556**

***Division 3*—*Determination of claim***

**Secretary to determine claim**

**556.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**557.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for an unemployment benefit; and
2. the benefit is payable.

**Date of effect of determination**

**558. (1)** Subject to subsections (2), (3) and (4), a determination under section 557 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for unemployment benefit; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for unemployment benefit; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

**s. 558 Unemployment Benefit**

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for unemployment benefit; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 4*—*Rate of unemployment benefit***

**How to work out a person’s unemployment benefit rate**

**559.** A person’s unemployment benefit rate is worked out using Benefit Rate Calculator B at the end of section 1068.

Note 1: for double payments on release from gaol see section 1161.

Note 2: for double payments in case of major disaster see section 560.

**Double payment**—**claim as a result of major disaster**

**560.** If:

1. a person makes a claim for unemployment benefit; and
2. unemployment benefit is payable to the person on the person’s provisional commencement day; and
3. the claim is made because of a major disaster;

the amount of unemployment benefit payable to the person for the period of 7 days starting on the person’s provisional commencement day is 2 times the amount that would, apart from this section, be payable to the person for that period.

Note: for “provisional commencement day” see section 534.

***Division 5*—*Payment of unemployment benefit***

**Commencement of unemployment benefit**

**561.** Unemployment benefit becomes payable to a person on the first day on which:

1. the person is qualified for the benefit; and
2. no provision of this Act makes the benefit not payable to the person.

Note 1: for qualification see section 513.

Note 2: for the circumstances in which unemployment benefit is not payable see section 528.

**Unemployment Benefit s. 562**

**Instalments**

**562. (1)** Unemployment benefit is to be paid by instalments for periods determined by the Secretary.

**(2)** Instalments of unemployment benefit are to be paid at the times determined by the Secretary.

**Instalments for period less than a fortnight**

**563. (1)** If:

1. an instalment of unemployment benefit is for a period; and
2. the period is less than a fortnight;

the instalment for the period is:

|  |  |
| --- | --- |
| **unemployment benefit rate ×** | **week days in period** |
| **10** |

**(2)** If:

(a) an instalment of unemployment benefit is for a period; and

(b) the period consists of:

(i) a number of whole fortnights; and

(ii) a period that is less than a fortnight;

the instalment, insofar as it relates to the period that is less than a fortnight, is:

|  |  |
| --- | --- |
| **unemployment benefit rate ×** | **week days in period** |
| **10** |

**Rounding off instalment**

**564. (1)** If the amount of an instalment is:

1. a number of whole dollars and a part of a cent; or
2. a number of whole dollars and cents and a part of a cent;

the amount is, subject to subsection (2), to be increased or decreased to the nearest whole cent.

**(2)** If the amount of an instalment is:

1. a number of whole dollars and 0.5 cent; or
2. a number of whole dollars and cents and 0.5 cent; the amount is to be increased by 0.5 cent.

**(3)** If, apart from this section, the amount of an instalment would be less than $1.00, the amount is to be increased to $1.00.

**Manner of payment**

**565.** A person’s unemployment benefit is, subject to section 566, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**s. 566 Unemployment Benefit**

**Nominee payments**

**566. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s unemployment benefit is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the unemployment benefit is to be paid in accordance with the direction.

**Payment into bank account etc.**

**567. (1)** The Secretary may direct that the whole or a part of the amount of a person’s unemployment benefit is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the unemployment benefit is payable.
2. The account may be an account that is maintained by a person to whom the unemployment benefit is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the unemployment benefit is to be payable in accordance with the direction.

**Where benefit payday would fall on public holiday etc.**

**568.** If the Secretary is satisfied that an amount of unemployment benefit that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of benefit after death**

**569. (1)** If:

1. an unemployment benefit is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of unemployment benefit payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of unemployment benefit under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of unemployment benefit.

**Unemployment Benefit s. 570**

***Division 6***—***Protection of unemployment benefit***

**Unemployment benefit to be absolutely inalienable**

**570. (1)** Subject to subsection (2) and section 1359, unemployment benefit is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of unemployment benefit payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**571. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of unemployment benefit payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of unemployment benefit payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

**s. 572 Unemployment Benefit**

***Division* 7—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**572. (1)** The Secretary may give a person to whom an unemployment benefit is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the benefit.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; arid
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 7 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Unemployment Benefit s. 573**

**Secretary may require recipient to give particular information relevant to payment of unemployment benefit**

**573. (1)** The Secretary may give a person to whom an unemployment benefit is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the benefit to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 7 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**574. (1)** A person is not excused from giving information pursuant to a notice under section 572 or 573 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 572 or 573 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 572 (5) or (6) or 573 (5) or (6).

**s. 575 Unemployment Benefit**

***Division 8*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**575. (1)** A determination that:

1. a person’s claim for unemployment benefit is granted; or
2. an unemployment benefit is payable to a person; continues in effect until:
3. the benefit ceases to be payable under section 576, 577 or 578; or
4. a further determination in relation to the benefit under section 582 has taken effect.

Note 1: for paragraph (a) see section 557.

Note 2: for paragraph (b) see section 583—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of an unemployment benefit continues in effect until:

1. the benefit becomes payable at a lower rate under section 579; or
2. a further determination in relation to the benefit under section 580 or 581 has taken effect.

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 572 notification obligations**

**576.** If:

1. a person who is receiving an unemployment benefit is given a notice under section 572; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the benefit; or

**Unemployment Benefit s. 576**

(ii) the benefit would, but for this section, cease to be payable to the person;

the benefit continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s benefit, there is no automatic rate reduction and a determination under section 581 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 572 notification obligations**

**577.** If:

1. a person who is receiving an unemployment benefit is given a notice under section 572; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the benefit; or (ii) the benefit ceases to be payable to the person; the benefit ceases to be payable to the person immediately after the day on which the event or change in circumstance occurs.

**Automatic termination—failure to provide section 573 statement**

**578. (1) If:**

1. a person who is receiving an unemployment benefit is given a notice under section 573 requiring the person to give the Department a statement; and
2. the notice relates to the payment of that benefit in respect of a period specified in the notice; and
3. the person does not comply with the notice;

the benefit, subject to subsection (2), ceases to be payable to the person as from the first day in that period.

1. 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 person from a day specified in the determination.
2. The day specified under subsection (2) may be before or after the making of the determination.

**s. 579 Unemployment Benefit**

***Subdivision C*—*Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 572 notification obligations**

**579.** If:

1. a person who is receiving an unemployment benefit is given a notice under section 572; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of benefit is to be reduced;

the benefit becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

***Subdivision D***—***Determinations***

**Rate increase determination**

**580.** If the Secretary is satisfied that the rate at which an unemployment benefit is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 584.

**Rate reduction determination**

**581.** If the Secretary is satisfied that the rate at which an unemployment benefit is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate isto be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 579 (see subsection 575 (2)).

Note 2: for the date of effect of a determination under this section see section 585.

**Cancellation or suspension determination**

**582.** If the Secretary is satisfied that an unemployment benefit is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the benefit is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 576, 577 or 578 (see subsection 575 (1)).

Note 2: for the date of effect of a determination under this section see section 585.

**Unemployment Benefit s. 583**

**Resumption of payment after cancellation or suspension**

**583. (1)** If the Secretary:

1. cancels or suspends a person’s unemployment benefit under section 582; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive unemployment benefit that was payable to the person; or

(b) the person is not receiving unemployment benefit that is payable to the person;

the Secretary is to determine that unemployment benefit was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 584.

***Subdivision E*—*Date of effect of determinations***

**Date of effect of favourable determination**

**584. (1)** The day on which a determination under section 580 or 583 (in this section called the **“favourable determination”)** takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to an unemployment benefit; and
2. a notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

**s. 584 Unemployment Benefit**

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the “previous decision”) is made in relation to an unemployment benefit; and
2. a notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to an unemployment benefit; and
2. no notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240 for review of the previous decision; and
4. the favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

(a) the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and

**Unemployment Benefit s. 584**

(b) the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and
3. the Secretary was notified, within 28 days after the payment ceased, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**585. (1)** The day on which a determination under section 581 or 582 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the

**s. 585 Unemployment Benefit**

outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose benefit is affected by the adverse determination has contravened a provision of this Act (other than section 573, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the benefit has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation—rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the benefit was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments (death of dependent child)***

**Bereavement payments on death of dependent child**

**586.** If:

1. a person is receiving unemployment benefit; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s unemployment benefit rate included:

(i) a dependent child add-on in respect of the child; or

**Unemployment Benefit s. 586**

(ii) guardian allowance in respect of the child;

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

Note 1: section 587 provides for unemployment benefit to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 588 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new unemployment benefit rate and the rate at which the benefit would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Division are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**587.** If a person is qualified for payments under this Division in relation to the death of a dependent child, the person’s unemployment benefit rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**588.** If:

1. a person is qualified for payments under this Division in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance for the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Division was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**s. 588 Unemployment Benefit**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the amount of unemployment benefit payable to the person on the payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**.  Note: section 587 applies in working out this amount because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the amount of unemployment benefit that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s unemployment benefit rate were not calculated under section 587: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Job Search Allowance s. 589**

**PART 2.12—JOB SEARCH ALLOWANCE**

***Division 1*—*Qualification for and payability of job search allowance***

***Subdivision A*—*Basic qualifications***

**Qualification for job search allowance**

**589. (1)** Subject to subsection (2), a person is qualified for a job search allowance in respect of a period if:

(a) throughout the period, or for each period within that period, the person either:

(i) satisfies the work test; or

(ii) is not required to satisfy the work test; and

(b) throughout the period the person:

(i) is at least 16 and had not turned 18; and

(ii) is an Australian resident; and

(iii) is in Australia; and

(iv) is registered as being unemployed by the CES.

Note 1: the work test is set out in section 594.

Note 2: “CES” means Commonwealth Employment Service—see section 23.

Note 3: for “Australian resident” see section 7.

Note 4: a person may not be qualified if the person’s unemployment is due to industrial action (see section 590).

Note 5: a person may not be qualified if the person has reduced the person’s employment prospects by moving to an area of lower employment (see section 591).

Note 6: where circumstances beyond a person’s control prevent the person from being registered at the CES, this requirement may be waived—see section 592.

Note 7: a job search allowance is not payable in certain situations even if the person is qualified—see Subdivision C.

**(2)** If:

1. a person is receiving a job search allowance; and
2. the person would, but for subsection 666 (3), become qualified for a sickness benefit;

the person continues to be qualified for a job search allowance for the period during which the person would have been qualified for sickness benefit.

**Unemployment due to industrial action**

**590. (1)** A person is not qualified for unemployment benefit for a period unless the person satisfies the Secretary that the person’s unemployment during the period was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.

**(2)** A person is not qualified for unemployment benefit for a period unless the Secretary is satisfied:

(a) that the person’s unemployment during the period was due to

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other people being, or having been, engaged in industrial action or in a series of industrial actions; and

1. the people, or some of the people, were members of a trade union which was involved in the industrial action; and
2. the person was not a member of the trade union during the period.

**(3)** Subsections (1) and (2) do not prevent a person from being qualified for a job search allowance for a period that occurs after the relevant industrial action or series of industrial actions has stopped.

Note: for “industrial action”, “trade union” and “unemployment” see section 16.

**Move to area of lower employment**

**591. (1)** A person is not qualified for a job search allowance on a day on which the person reduces his or her employment prospects by moving to a new place of residence without sufficient reason.

**(2)** For the purposes of subsection (1) a person has a sufficient reason for moving to a new place of residence if and only if the person moves to live:

1. with a family member who has already established his or her residence in that place of residence; or
2. near a family member who has already established residence in the same area; or
3. the person satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member.

**Some people not required to be registered at the CES**

**592.** The Secretary may decide that a person does not have to satisfy subparagraph 589 (1) (b) (iv) (CES registration) for a period if:

1. the person was not registered as unemployed by the CES during the period; and
2. the Secretary is satisfied that there are circumstances beyond the person’s control relating to the person’s failure to be registered; and
3. having regard to those circumstances, the Secretary is satisfied that the person’s failure to be registered should be disregarded in respect of the period.

Note: “CES” means Commonwealth Employment Service (see section 23).

**Prospective determinations for some beneficiaries**

**593.** A person is qualified for job search allowance in respect of a period, if:

(a) the person was, immediately before starting to receive job search allowance, receiving:

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(i) a social security benefit; or

(ii) a sheltered employment allowance; or

(iii) a rehabilitation allowance; and

1. the last payment of that benefit or allowance was made in respect of a period that ended after the day on which the payment was made; and
2. the person may, in the Secretary’s opinion, reasonably be expected to satisfy the qualification requirements for job search allowance (see sections 589 to 592) during the period.

***Subdivision B***—***Work test***

**Work test**

**594. (1)** A person satisfies the work test in respect of a period if the person satisfies the Secretary that:

(a) throughout the period:

(i) the person is unemployed; and

(ii) the person is:

(a) capable of undertaking; and

(b) willing to undertake;

paid work that in the opinion of the Secretary is suitable to be undertaken by the person; and

(b) during the period, the person takes reasonable steps to obtain paid work that in the opinion of the Secretary is suitable to be undertaken by the person.

*Persons undertaking paid work may be treated as unemployed*

**(2)** If:

1. a person undertakes paid work during a period; and
2. the Secretary is of the opinion that, taking into account:

(i) the nature of the work; and

(ii) the duration of the work; and

(iii) any other matters relating to the work that the Secretary considers relevant;

the work should be disregarded;

the Secretary may treat the person as being unemployed throughout the period.

Note: for situations where a person is not required to satisfy the work test see:

1. section 595 (persons attending training camps);
2. section 596 (certain persons in remote areas);
3. section 597 (long-term beneficiaries in short-term vocational courses);
4. section 598 (long-term beneficiaries engaged in voluntary work).

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**Relief from work test—persons attending training camps**

**595.** A person is not required to satisfy the work test in respect of a period when the person is attending a training camp as a member of:

1. the Australian Naval Reserve; or
2. the Naval Emergency Reserve Forces; or
3. the Australian Army Reserve; or
4. the Australian Airforce Reserve; or
5. the Airforce Emergency Force; or
6. the Regular Army Emergency Reserve.

Note: for “work test” see section 594.

**Relief from work test—certain persons in remote areas**

**596.** Where the Secretary considers that:

(a) it would be reasonable to assume that:

(i) at the end of a period a person is present in a remote area; and

(ii) the person is throughout the period:

(a) unemployed; and

(b) capable of undertaking paid work that in the Secretary’s opinion is suitable to be undertaken by the person; and

(c) willing to undertake paid work that in the Secretary’s opinion is suitable to be undertaken by the person; and

(iii) during the period, the person takes reasonable steps to obtain paid work that in the Secretary’s opinion is suitable to be undertaken by the person; and

(b) having regard to all the relevant factors, including:

(i) the location of offices of the Department; and

(ii) difficulties with transport and communication; and

(iii) the educational and cultural background of the person;

it would be unreasonable to expect the person to comply with the work test in order to be qualified for job search allowance for that period;

the person is not required to satisfy the work test during that period.

Note 1: for “remote area” see section 14.

Note 2: for “work test” see section 594.

**Relief from work test—long-term beneficiaries in short-term vocational courses**

**597. (1)** Subject to subsection (2), a person is not required to satisfy the work test in respect of a period if:

(a) on each day in the period the person is engaged in an approved short-term vocational course; and

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(b) the person has been a qualified beneficiary for at least 3 months immediately before the person starts the course.

Note 1: for “approved short-term vocational course” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 594.

**(2)** Subsection (1) does not apply to a day if:

(a) there are already 40 days in the same calendar year on which the person is not required to satisfy the work test because of one or a combination of the following:

(i) subsection (1);

(ii) subsection 598 (1) (long-term beneficiaries engaged in voluntary work); or

(b) having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that subsection (1) should not apply in relation to that day.

**Relief from work test—long-term beneficiaries engaged in voluntary work**

**598. (1)** Subject to subsection (2), a person is not required to satisfy the work test in respect of a period if:

1. on each day in the period the person is engaged in full-time voluntary work with an approved organisation; and
2. the person has been a qualified beneficiary for at least 3 months immediately before the person starts working for the organisation.

Note 1: for “approved organisation” and “qualified beneficiary” see section 15.

Note 2: for “work test” see section 594.

**(2)** Subsection (1) does not apply to a day if:

1. there are already 20 days in the same calendar year on which the person is not required to satisfy the work test because of subsection (1); or
2. there are already 40 days in the same calendar year on which the person is not required to satisfy the work test because of one or a combination of the following:

(i) subsection (1);

(ii) subsection 597 (1) (long-term beneficiaries in short-term vocational courses); or

(c) having regard to the opportunities or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that subsection (1) should not apply in relation to that day.

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***Subdivision C*—*Situations where allowance not payable (general)***

**Job search allowance not payable in certain situations**

**599. (1)** A job search allowance is not payable to a person for a period during which the person is qualified for job search allowance (see section 589) if during that period:

1. the person has not provided a tax file number (see section 600); or
2. the value of the person’s assets exceeds the person’s assets value limit (see sections 601 and 602); or
3. the person is a full-time student (see section 603); or
4. another income support payment is being paid to the person (see section 604); or
5. the job search allowance has not commenced to be payable (see sections 606 and 633); or
6. the person is subject to an unused annual leave waiting period and has not served that waiting period (see sections 607 to 609); or
7. the person is subject to an ordinary waiting period and has not served that waiting period (see sections 610 and 611); or

(h) the person is subject to an education leavers waiting period and that period has not ended (see sections 612 and 613); or

(j) the person fails to comply with a requirement that the person:

(i) undertake a training course; or

(ii) do suitable work; or

(iii) attend an office of the CES;

as required by section 614; or

(k) a period of non-payment has been imposed because:

(i) the person’s unemployment is due to a voluntary act of the person (see section 615); or

(ii) the person’s unemployment is due to misconduct by the person (see section 616); or

(iii) the person has refused an offer of employment (see section 617); or

(iv) the person had previously ceased to be qualified for unemployment benefit because the person was not taking reasonable steps to find work (see section 618); or

(v) the person failed to comply with notification requirements (see section 619); or

(vi) the person had previously ceased to be qualified for unemployment benefit because the person was not registered with the CES (see section 620); or

(vii) the person is a seasonal worker (see section 621); or

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(viii) the person moved to an area of lower employment (see section 622); or

(m) the person is in gaol (see Part 3.13); or

(n) the person is subject to a compensation preclusion period (see Part 3.14).

Note 1: for “serving a waiting period” see subsection 23 (10).

Note 2: “CES” means Commonwealth Employment Service (see section 23).

**(2)** A job search allowance is not payable to a person if the person’s job search allowance rate would be nil.

**Provision of tax file number**

**600. (1)** Job search allowance benefit is not payable unless:

1. a person has given the Secretary a written statement of the person’s tax file number; or
2. a person has given the Secretary an employment declaration and satisfies either subsection (2) or (3).

Note: the Secretary can require a person to quote their tax file number under section 1308.

**(2)** A person satisfies this subsection if:

(a) the employment declaration states that the person:

(i) has a tax file number but does not know what it is; and

(ii) has asked the Commissioner of Taxation to inform him or her of the number; and

(b) the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:

(i) whether the person has a tax file number; and

(ii) if the person has a tax file number—the tax file number; and

(c) the Commissioner of Taxation has not told the Secretary that the person has no tax file number.

**(3)** A person satisfies this subsection if:

1. the employment declaration states that an application by the person for a tax file number is pending; and
2. the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the person—the tax file number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn; and

(c) the Commissioner of Taxation has not told the Secretary that an application by the person for a tax file number has been refused; and

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(d) the application for a tax file number has not been withdrawn.

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

**601. (1)** A job search allowance is not payable to a person if:

1. the person is not excluded from the job search allowance assets test; and
2. the value of the person’s assets exceeds the person’s assets value limit.

**(2)** A person is excluded from the job search allowance assets test if the person:

1. has not turned 18; and
2. is not a member of a couple; and
3. does not have a dependent child; and
4. is not an independent young person; and
5. is not a homeless person.

**(3)** A person’s assets value limit is worked out using the following table: work out which family situation applies to the person; the assets value limit is the corresponding amount in the “assets value limit” column.

|  |  |  |  |
| --- | --- | --- | --- |
| ASSETS VALUE LIMIT TABLE | | | |
| column 1 | column 2 | column 3 | |
|  |  | assets value limit | |
| item | person’s family situation | column 3a  either person or partner homeowner | column 3b  neither person nor partner homeowner |
| 1. | Not member of couple | $103,500 | $177,500 |
| 2. | Partnered (partner getting neither pension nor benefit) | $147,500 | $221,500 |
| 3. | Partnered (partner getting pension or benefit) | $73,750 | $110,750 |

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

Note 2: for “homeowner” see section 11.

Note 3: if item 2 applies to a person, the value of *all* the assets of the person’s partner are to be taken as being included in the value of the person’s assets (see subsection 602 (1))—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person’s assets is only *half* the combined value of the person’s assets and the assets of the person’s partner—see subsection 602 (2).

Note 4: if an unemployment benefit is not payable to a person because of the value of the person’s assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).

Note 5: the assets value limits of items 1 and 3 in column 3a and item 3 in column 3b are indexed annually in line with CPI increases (see sections 1191 to 1194).

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Note 6: the assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204 (1)).

Note 7: the item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204 (2) and (3)).

**Value of assets of members of couples**

**602. (1)** If:

1. the person is a member of a couple; and
2. the person’s partner:

(i) is not in receipt of a social security or service pension; and

(ii) is not in receipt of a social security benefit;

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

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

**(2)** If:

1. the person is a member of a couple; and
2. the person’s partner is in receipt of:

(i) a social security or service pension; or

(ii) a social security benefit;

the value of:

1. the person’s assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person’s partner; and
2. the person’s assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of assets of that kind of the person’s partner.

**Full-time students**

**603. (1)** Subject to subsection (2), a job search allowance is not payable to a person engaged in a course of education on a full-time basis for the period:

1. starting when the person starts the course; and
2. finishing when the person finishes or abandons the course; and
3. including periods of vacation.

**(2)** Subsection (1) does not prevent a job search allowance from being payable for any period during which:

1. a person is engaged in a course that the Secretary has required the person to undertake under section 614; or
2. the person is not required to satisfy the work test because of section 597 (long-term beneficiaries engaged in short-term vocational courses); or
3. the person has deferred a course of education.

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**Multiple entitlement exclusion**

**604. (1)** A job search allowance is not payable to a person for a period if:

(a) the person is receiving:

(i) another social security benefit; or

(ii) a social security pension; or

(iii) a service pension; or

(b) a payment has been or may be made in respect of the person for the same period under:

(i) a prescribed educational scheme other than the ABSTUDY Tertiary Scheme to the extent that it applies to part-time students; or

(ii) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or

(iii) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or

(iv) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note 1: “social security pension” includes sheltered employment and rehabilitation allowance.

Note 2: for “prescribed educational scheme” see section 5.

**(2)** If:

1. a person is to start a course of education on a full-time basis; and
2. a payment under a scheme referred to in paragraph (1) (b) may be made in respect of the person;

the Secretary may decide that a job search allowance is payable to the person for a period before the person starts the course.

**Provisional commencement day**

*General rule*

**605. (1)** Subject to subsections (2), (3), (4) and (5), a person’s provisional commencement day is the day on which the person claims a job search allowance.

*Initial incorrect claim followed by claim for job search allowance*

**(2)** If:

(a) the person makes a claim (in this subsection called the **“initial claim”**)for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the

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Commonwealth, that is similar in character to an unemployment benefit; and

1. on the day on which the person makes the initial claim, the person is qualified for job search allowance; and
2. the person subsequently makes a claim for job search allowance; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is, subject to subsections (3), (4) and (5), the day on which the person made the initial claim.

*Claim within 14 days of CES registration*

**(3)** If:

1. a person is not a transferee to job search allowance; and
2. the person is not subject to an education leavers waiting period (see subsection 612 (1)); and
3. the person becomes registered as unemployed by the CES; and
4. the day that would be the person’s provisional commencement day under subsections (1) and (2) occurs:

(i) within 14 days after becoming registered by the CES; or

(ii) within such further period after becoming registered by the CES as the Secretary considers reasonable;

the person’s provisional commencement day is the day on which the person became registered by the CES.

Note: for “transferee” see subsections 23 (6) and (7).

*Education leavers who claim within 14 days of CES registration*

**(4)** If:

1. a person becomes registered as unemployed by the CES; and
2. the person is subject to an education leavers waiting period (see subsection 612 (1));

the person’s provisional commencement day is:

(c) if the person becomes registered by the CES before stopping the course and the day that would be the person’s provisional commencement day under subsections (1) and (2) occurs:

(i) within 14 days after stopping the course; or

(ii) within such further period after stopping the course as the Secretary considers reasonable;

the day after the last day on which the person was undertaking the course; or

(d) if the person becomes registered by the CES after stopping the course and the day that would be the person’s provisional commencement day under subsections (1) and (2) occurs:

(i) within 14 days after becoming registered by the CES; or

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(ii) within such further period after becoming registered by the CES as the Secretary considers reasonable;

the day on which the person became registered by the CES.

*Transferees*

**(5)** If a person is a transferee to job search allowance and:

1. the person claims the job search allowance within 14 days after the transfer day; or
2. both of the following subparagraphs are satisfied:

(i) the person becomes registered as unemployed by the CES within 14 days after the transfer day; and

(ii) the day that would be the person’s provisional commencement day under subsection (1) and (2) occurs:

(a) within 14 days after becoming registered by the CES; or

(b) within such further period after becoming registered by the CES as the Secretary considers reasonable;

the person’s provisional commencement day is the person’s transfer day.

Note: for “transferee” to a benefit and “transfer day” see subsections 23 (6) and (7).

**Commencement of job search allowance**

**606.** A job search allowance is not payable to a person who is qualified for the allowance before:

1. where the person is not subject to a waiting period—the person’s provisional commencement day; or
2. if the person is subject to one waiting period only—the first day after the end of that waiting period; or
3. if the person is subject to more than one waiting period—the first day after all of the waiting periods have ended.

Note 1: for “provisional commencement day” see section 605.

Note 2: a waiting period is:

1. an unused annual leave waiting period—see sections 607 to 609; or
2. an ordinary waiting period—see sections 610 and 611; or
3. an education leavers waiting period—see sections 612 and 613.

If the person has an unused annual leave waiting period and an ordinary waiting period, the ordinary waiting period will follow the unused annual leave waiting period (see subsection 611 (2)). If the person has an education leavers waiting period and another waiting period, the education leavers waiting period runs concurrently with the other waiting period and the job search allowance will not be payable until the longest waiting period has finished.

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

**Unused annual leave waiting period**

**607.** A person is subject to an unused annual leave waiting period if:

1. when the person became unemployed, the person became entitled to receive a payment for unused annual leave; and
2. the person’s provisional commencement day occurs within the notional leave period.

Note 1: for “unused annual leave” see section 23.

Note 2: for “notional leave period” see section 608.

Note 3: for “provisional commencement day” see section 605.

**Notional leave period**

**608. (1)** A person’s notional leave period is the period that:

1. starts on the day after the day on which the person’s employment has ended; and
2. runs for the number of days for which the person has unused annual leave as calculated under subsections (2) and (3).

**(2)** Subject to subsection (3), the number of days for which the person has unused annual leave’ is worked out as follows:

1. if the period of unused annual leave is expressed in weeks—multiply by 7 the number of weeks (including fractions of weeks) in the period of unused annual leave and disregard any fraction that results;
2. in any other case—multiply by 7 the number of working weeks (including any fraction of a working week represented by the period of unused annual leave and disregard any fraction that results.

**(3)** The number of days for which a person has unused annual leave cannot exceed 28 days.

**Duration of unused annual leave waiting period**

**609.** A person’s unused annual leave waiting period starts on the person’s provisional commencement day and finishes on the last day of the notional leave period.

Note 1: for “notional leave period” see section 608.

Note 2: an unused annual leave waiting period may apply to a person whether or not the person is subject to an ordinary waiting period. If the person is subject to an ordinary waiting period, that period will start after the unused annual leave waiting period—see subsection 611 (2).

Note 3: for “provisional commencement day” see section 605.

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**Ordinary waiting period**

**610.** A person is subject to an ordinary waiting period unless:

1. the person has served an ordinary waiting period that ended not more than 12 weeks before the person’s provisional commencement day; or
2. both of the following conditions apply:

(i) the person is a transferee to job search allowance;

(ii) the person claims the job search allowance:

(a) within 14 days of the transfer day; or

(b) where the person becomes registered as unemployed by the CES within 14 days after the transfer day—within 14 days of the person becoming so registered or such further period as the Secretary considers reasonable;

(c) both of the following conditions apply:

(i) at some time in the 13 weeks immediately before the person’s provisional commencement day, a job search allowance stopped being payable to the person;

(ii) immediately before the allowance stopped being payable to the person, one or a combination of the following had been payable to the person for at least 9 months:

(a) a social security benefit;

(b) a payment as a trainee in full-time training under a program included in the programs known as Labour Force Programs.

Note 1: for “transferee” to a benefit and “transfer day” see subsections 23 (6) and (7).

Note 2: for “provisional commencement day” see section 605.

Note 3: for “ordinary waiting period” see subsection 23 (1).

**Duration of ordinary waiting period**

*No unused annual leave waiting period*

**611.** (1) If a person:

1. is subject to an ordinary waiting period; and
2. is not subject to an unused annual leave waiting period;

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

Note: for “provisional commencement day” see section 605.

*Unused annual leave waiting period*

**(2)** If a person is subject to:

1. an ordinary waiting period; and
2. an unused annual leave waiting period;

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the ordinary waiting period is the period of 7 days that starts on the day after the day on which the person’s unused annual leave waiting period ends.

Note 1: for “unused annual leave waiting period” see sections 607 to 609.

Note 2: for “provisional commencement day” see section 605.

**Education leavers waiting period**

*Persons subject to waiting period*

**612. (1)** A person is subject to an education leavers waiting period if the person:

1. was undertaking a course of education of at least 6 months duration on a full-time basis; and
2. has stopped the course; and
3. was, immediately before stopping the course, receiving neither:

(i) a social security or service pension; nor

(ii) a social security benefit; and

1. has a provisional commencement day within 6 months after stopping the course; and
2. is not covered by subsection (2) (beneficiaries stopping courses after 4 weeks).

Note: for “provisional commencement day” see section 605.

*No education leavers waiting period in some cases where already served*

**(2)** A person who would otherwise be subject to an education leavers waiting period in relation to job search allowance is not subject to such a period if:

1. the person had previously been subject to an education leavers waiting period; and
2. a job search allowance had been payable to the person continuously from the end of the education leavers waiting period until immediately before the person started the course; and
3. the person’s provisional commencement day is within 4 weeks after starting the course.

Note 1: for “provisional commencement day” see section 605.

Note 2: for “education leavers waiting period” see subsection 23 (1).

**Duration of education leavers waiting period**

*General rule*

**613. (1)** Subject to this section, the education leavers waiting period starts on the person’s provisional commencement day and lasts for:

(a) 13 weeks if, on the person’s provisional commencement day, the person:

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

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(ii) does not have a dependent child; or

(b) 6 weeks if, on the person’s provisional commencement day, the person:

(i) is a member of a couple; or

(ii) has a dependent child.

Note 1: the duration of the education leavers waiting period may be modified by:

1. subsections (2) and (3) (change of status during waiting period);
2. subsection (5) (periods of employment or periods on special benefit);
3. subsection (6) (previous periods of non-payment because of education leavers waiting period);
4. subsection (7) (6 months ceiling).

Note 2: for “provisional commencement day” see section 605.

*Change of status in first 6 weeks*

**(2)** Subject to subsection (4), where:

1. a person who is covered by paragraph (1) (a) becomes a member of a couple; or
2. a young person becomes a dependent child of a person who is covered by paragraph (1) (a);

within 6 weeks from and including the person’s provisional commencement day, the education leavers waiting period starts on the person’s provisional commencement day and lasts for 6 weeks.

Note: for “provisional commencement day” see section 605.

*Change of status after 6 weeks*

**(3)** Subject to subsection (4), where:

1. a person who is covered by paragraph (1) (a) becomes a member of a couple; or
2. a young person becomes a dependent child of a person who is covered by paragraph (1) (a);

in the period:

1. starting at the end of 6 weeks from the person’s provisional commencement day; and
2. lasting for 6 weeks;

the education leavers waiting period starts on the person’s provisional commencement day and ends on the day before the day on which the person is first covered by paragraph (a) or (b).

Note: for “provisional commencement day” see section 605.

*Notification required*

**(4)** For the purposes of subsections (2) and (3):

1. a person is not to be taken to have become a member of a couple; and
2. a young person is not to be taken to have become a dependent child of a person;

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until the person notifies the Department that this is the case.

*Reduction of waiting period for periods of special benefit and employment*

**(5)** The waiting period imposed by subsection (1) or (2) is to be reduced by a period equivalent to:

1. if the person is subject to a 13 week education leavers waiting period—any period during which the person was employed on a full-time basis after stopping the course; and
2. if the person is subject to a 6 week education leavers waiting period—any period during which the person has been employed, at any time, on a full-time basis; and
3. any period during which the person was paid special benefit.

*Reduction of education leavers waiting period where already partially served*

**(6)** If:

1. a person is subject to an education leavers waiting period; and
2. the person started the course concerned at a time when an unemployment benefit, job search allowance or sickness benefit was not payable to the person because of an education leavers waiting period; and
3. the person’s provisional commencement day is within 4 weeks after the person started the course concerned;

the duration of the education leavers waiting period is reduced by the number of days of the previous education leavers waiting period that the person had served immediately before starting the course.

Note 1: for “provisional commencement day” see section 605.

Note 2: for “education leavers waiting period” see section 23.

*6 month ceiling*

**(7)** An education leavers waiting period that applies in respect of a course of study undertaken by a person is not to extend more than 6 months after the person has stopped the course.

***Subdivision E***—***Situations where allowance not payable (recipient non-compliance)***

**Secretary may require person to attend course, undertake work or attend CES**

**614. (1)** Where:

1. a person is receiving, or has lodged a claim for, a job search allowance; and
2. the Secretary is of the opinion that the person should:

(i) undertake a course of vocational training; or

(ii) undertake a course:

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(a) which the person could reasonably undertake; and

(b) to which the person has been referred by the CES; or

(iii) do any work suitable to be done by the person; or

(iv) attend an office of the CES; and

(c) the Secretary notifies the person that the person is required to:

(i) undertake that course; or

(ii) do that work; or

(iii) attend that office of the CES; and

1. the requirement is reasonable; and
2. the person:

(i) does not take reasonable steps to comply with the Secretary’s requirements; and

(ii) where the Secretary notifies the person under subparagraph (c) (iii)—does not have a reasonable excuse for failing to comply with the Secretary’s requirements;

a job search allowance is not payable to the person for a period determined by the Secretary.

1. The Secretary may determine that a job search allowance is payable for a period for which he or she had previously determined that it was not payable under subsection (1) if, within a reasonable period, the person takes reasonable steps to comply with the Secretary’s requirements.
2. If:
3. the Secretary has determined under subsection (1) that a job search allowance is not payable for a period; and
4. the person:

(i) has not taken reasonable steps to comply with the Secretary’s requirements within a reasonable period; or

(ii) where the Secretary had notified the person under subparagraph (1) (c) (iii)—does not have a reasonable excuse for failing to comply with the Secretary’s requirements; and

(c) at a later time a job search allowance would but for this subsection be payable to the person;

a job search allowance is not payable to the person for the period.

1. Subject to subsections (5) and (6), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 2 years before that time a JSA automatic deferment provision applied to the person;

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the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(6)** If:

1. subsection (1) applies to a person at a particular time; and
2. a JSA automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 2 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(7)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Unemployment due to voluntary act**

**615. (1)** If:

1. a person’s unemployment is due either directly or indirectly, to a voluntary act of the person; and
2. the voluntary act was without sufficient reason;

a job search allowance is not payable to the person for the deferment period.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 2 years before that time a JSA automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 2 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

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**Unemployment due to misconduct**

**616. (1)** If a person’s unemployment is due to the person’s misconduct as a worker, a job search allowance is not payable to the person for the deferment period.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 2 years before that time a JSA automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 2 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Refusal of job offer**

**617. (1)** If a person has refused or failed, without sufficient reason, to accept a suitable offer of employment, a job search allowance is not payable to the person for the deferment period.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 2 years before that time a JSA automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 2 years before that time;

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the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Removal from allowance for failure to take reasonable steps to find work**

**618. (1)** If:

1. a job search allowance was payable to a person; and
2. the person ceased to be qualified for unemployment benefit because the person was not taking reasonable steps to find employment; and
3. the person later becomes qualified for a job search allowance;

a job search allowance is not payable to the person for the deferment period.

Note: where a person has been paid job search allowance while the person was not qualified because he or she was not taking reasonable steps to find work, an overpayment may arise (see Chapter 5). Subsection (1) does not prevent the Secretary from taking action to recover the overpayment.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 2 years before that time a JSA automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 2 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

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**Removal from allowance for failure to comply with notification requirements**

**619. (1)** If a person refuses or fails, without sufficient reason, to comply with a requirement made of the person under section 644, 645 or 1304, a job search allowance is not payable to the person for the deferment period.

1. Subject to subsections (3) and (4), the deferment period is 2 weeks.
2. If:
3. subsection (1) applies to a person at a particular time; and
4. on one occasion only within the period of 2 years before that time a JSA automatic deferment provision applied to the person;

the deferment period is 6 weeks.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(4)** If:

1. subsection (1) applies to the person at a particular time; and
2. a JSA automatic deferment provision or provisions applied to the person on 2 or more occasions within the period of 2 years before that time;

the deferment period is 6 weeks plus 6 weeks for each occasion referred to in paragraph (b) after the first.

Note: for “JSA automatic deferment provision” see subsection 23 (1).

**(5)** The Secretary may determine in writing the day on which the deferment period commences and that day may be before the day of the determination.

**Removal from allowance for failure to continue CES registration**

**620. (1)** If:

1. a job search allowance was payable to a person; and
2. the person ceased to be qualified for job search allowance because the person:

(i) was not registered at the CES (see subparagraph 589(1) (b) (iv)); and

(ii) the Secretary has not excused the person from being registered at the CES under section 592; and

(c) the person later becomes qualified for job search allowance again;

a job search allowance is not payable to the person for a period determined, in writing, by the Secretary.

Note: where a person has been paid job search allowance while the person was not qualified because he or she was not registered at the CES, an overpayment may arise (see Chapter 5). Subsection (1) does not prevent the Secretary from taking action to recover the overpayment.

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**(2)** The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

**Seasonal workers**

**621. (1)** Where:

1. a person is a seasonal or intermittent worker; and
2. the person’s income is sufficient to maintain:

(i) the person; and

(ii) any other persons who are ordinarily maintained by the person;

notwithstanding that the person is temporarily unemployed;

a job search allowance is not payable to the person for a period determined, in writing, by the Secretary.

**(2)** The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

**Move to area of lower employment**

**622. (1)** Where a person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, a job search allowance is not payable to the person for 12 weeks.

**(2)** For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person moves to live:

1. with a family member who has already established his or her residence in that place of residence; or
2. near a family member who has already established residence in the same area; or
3. the person satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member.

**(3)** The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

***Division 2***—***Claim for job search allowance***

**Need for a claim**

**623. (1)** A person who wants to be granted a job search allowance must make a proper claim for that allowance.

Note 1: “proper claim”—see section 624 (form), section 625 (manner of lodgment) and section 626 (residence/presence in Australia).

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Note 2: because the payability of job search allowance may be affected by, for example, the provisions dealing with the circumstances in which a person’s former employment ended (see sections 615 and 616), the person may be asked to support his or her claim for job search allowance with an end of employment statement by the former employer (see section 1311).

**(2)** For the purposes of subsection (1), where:

1. a claim for job search allowance is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for job search allowance;

the claim is to be taken to have not been made.

**Form of claim**

**624.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**625. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

**(2)** A place or person approved under subsection (1) must be a place or person in Australia.

**Claimant must be Australian resident and in Australia**

**626.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

***Division 3***—***Determination of claim***

**Secretary to determine claim**

**627.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**628.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for a job search allowance; and
2. the allowance is payable.

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**Date of effect of determination**

**629. (1)** Subject to subsections (2), (3) and (4), a determination under section 628 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for job search allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for job search allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for job search allowance; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240 for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

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the determination takes effect on the day on which the previous decision took effect.

***Division 4*—*Rate of job search allowance***

**How to work out a person’s job search allowance rate**

**630.** A person’s job search allowance rate is worked out using the Benefit Rate Calculator A at the end of section 1067.

Note 1: for double payments on release from gaol see section 1161.

Note 2: for double payments in case of major disaster see section 631.

**Double payment—claim as a result of major disaster**

**631.** If:

1. a person makes a claim for job search allowance; and
2. job search allowance is payable to the person on the person’s provisional commencement day; and
3. the claim is made because of a major disaster;

the amount of job search allowance payable to the person for the period of 7 days starting on the person’s provisional commencement day is 2 times the amount that would, apart from this section, be payable to the person for that period.

Note: for “provisional commencement day” see section 605.

**JSA recipient may ask Secretary to change appropriate tax year**

**632. (1)** If:

1. the maximum basic rate of a person’s job search allowance has been reduced because of the parental income test provided in Module G of Benefit Rate Calculator A (see section 1067); and
2. the person asks the Secretary to make a determination under this section; and
3. the taxable income of the person’s income test parent or parents for the tax year in which the request is made is less than 75% of the taxable income of the income test parent or parents for the tax year that is the appropriate tax year immediately before the request is made;

the Secretary must determine that the appropriate tax year, for the purposes of applying that Module to the person for the period:

(d) starting on the day on which the request is made; and

(e) finishing on the first anniversary of that day;

is the tax year in which the request is made.

1. A request under paragraph (1) (b) must be made in writing, in accordance with a form approved by the Secretary.
2. Terms used in subsection (1) have the same meaning as they have in Module G of Benefit Rate Calculator A.

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***Division 5***—***Payment of job search allowance***

**Commencement of job search allowance**

**633.** Job search allowance becomes payable to a person on the first day on which:

1. the person is qualified for the allowance; and
2. no provision of this Act makes the allowance not payable to the person.

Note 1: for qualification see section 58a.

Note 2: for the circumstances in which a job search allowance is not payable see section 599.

**Instalments**

**634. (1)** Job search allowance is to be paid by instalments for periods determined by the Secretary.

**(2)** Instalments of job search allowance are to be paid at the times determined by the Secretary.

**Instalments for period less than a fortnight**

**635. (1)** If:

1. an instalment of job search allowance is for a period; and
2. the period is less than a fortnight;

the instalment for the period is:

|  |  |
| --- | --- |
| **job search allowance rate ×** | **week days in period** |
|  | 10 |

**(2)** If:

1. an instalment of job search allowance is for a period; and
2. the period consists of:

(i) a number of whole fortnights; and

(ii) a period that is less than a fortnight;

the instalment, insofar as it relates to the period that is less than a fortnight, is:

|  |  |
| --- | --- |
| **job search allowance rate ×** | **week days in period** |
|  | **10** |

**Rounding off instalment**

**636. (1)** If the amount of an instalment is:

1. a number of whole dollars and a part of a cent; or
2. a number of whole dollars and cents and a part of a cent;

the amount is, subject to subsection (2), to be increased or decreased to the nearest whole cent.

**(2)** If the amount of an instalment is:

1. a number of whole dollars and 0.5 cent; or
2. a number of whole dollars and cents and 0.5 cent;

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the amount is to be increased by 0.5 cent.

**(3)** If, apart from this section, the amount of an instalment would be less than $1.00, the amount is to be increased to $1.00.

**Manner of payment**

**637.** A person’s job search allowance is, subject to section 638, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**638. (1)** The Secretary may direct that the whole, or a part, of the amount of a person’s job search allowance is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the job search allowance is to be paid in accordance with the direction.

**Payment into bank account etc.**

**639. (1)** The Secretary may direct that the whole or a part of the amount of a person’s job search allowance is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the job search allowance is payable.
2. The account may be an account that is maintained by a person to whom the job search allowance is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the job search allowance is to be payable in accordance with the direction.

**Where allowance payday would fall on public holiday etc.**

**640.** If the Secretary is satisfied that an amount of job search allowance that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of allowance after death**

**641. (1)** If:

1. a job search allowance is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of job search allowance payable to him or her; and
4. another person applies to receive that amount; and

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(e) the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** Where the Secretary pays an amount of job search allowance under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of job search allowance.

***Division 6***—***Protection of job search allowance***

**Job search allowance to be absolutely inalienable**

**642. (1)** Subject to subsection (2) and section 1359, job search allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of job search allowance payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**643. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of job search allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the total amount of job search allowance payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7***—***Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**644. (1)** The Secretary may give a person to whom a job search allowance is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the allowance.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 7 days after:

(a) the day on which the event or change of circumstances occurs; or

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(b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of job search allowance**

**645. (1)** The Secretary may give a person to whom a job search allowance is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 7 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

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**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**646. (1)** A person is not excused from giving information pursuant to a notice under section 644 or 645 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 644 or 645 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 644 (5) or (6) or 645 (5) or (6).

***Division 8*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**647. (1)** A determination that:

1. a person’s claim for a job search allowance is to be granted; or
2. a job search allowance is payable to a person;

continues in effect until:

1. the allowance ceases to be payable under section 648, 649 or 650; or
2. a further determination in relation to the allowance under section 654 has taken effect.

Note 1: for paragraph (a) see section 628.

Note 2: for paragraph (b) see section 655—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a job search allowance continues in effect until:

1. the allowance becomes payable at a lower rate under section 651; or
2. a further determination in relation to the allowance under section 652 or 653 has taken effect.

***Subdivision B***—***Automatic termination***

**Automatic termination—recipient *complying* with section 644 notification obligations**

**648.** If:

(a) a person who is receiving a job search allowance is given a notice under section 644; and

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1. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
2. the event or change in circumstances occurs; and
3. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
4. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance would, but for this section, cease to be payable to the person;

the allowance continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s allowance there is no automatic rate reduction and a determination under section 653 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 644 notification obligations**

**649.** If:

1. a person who is receiving a job search allowance is given a notice under section 644; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance ceases to be payable to the person;

the allowance ceases to be payable to the person immediately after the day on which the event or change in circumstance occurs.

**Automatic termination—failure to provide section 645 statement**

**650. (1)** If:

(a) a person who is receiving a job search allowance is given a notice under section 645 requiring the person to give the Department a statement; and

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1. the notice relates to the payment of that allowance in respect of a period specified in the notice; and
2. the person does not comply with the notice;

the allowance, subject to subsection (2), ceases to be payable to the person as from the first day in that period.

1. 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 person from a day specified in the determination.
2. The day specified under subsection (2) may be before or after the making of the determination.

***Subdivision C*—*Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 644 notification obligations**

**651.** If:

1. a person who is receiving a job search allowance is given a notice under section 644; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of allowance is to be reduced;

the allowance becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

***Subdivision D*—*Determinations***

**Rate increase determination**

**652.** If the Secretary is satisfied that the rate at which a job search allowance is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 656.

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**Rate reduction determination**

**653.** If the Secretary is satisfied that the rate at which a job search allowance is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 651 (see subsection 647(2)).

Note 2: for the date of effect of a determination under this section see section 657.

**Cancellation or suspension determination**

**654.** If the Secretary is satisfied that a job search allowance is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 648, 649 or 650 (see subsection 647 (1)).

Note 2: for the date of effect of a determination under this section see section 657.

**Resumption of payment after cancellation or suspension**

**655. (1)** If the Secretary:

1. cancels or suspends a person’s job search allowance under section 654; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive job search allowance that was payable to the person; or

(b) the person is not receiving job search allowance that is payable to the person;

the Secretary is to determine that job search allowance was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 656.

***Subdivision E*—*Date of effect of determinations***

**Date of effect of favourable determination**

**656. (1)** The day on which a determination under section 652 or 655 (in this section called the **“favourable determination”**) takes effect is worked out in accordance with this section.

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*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a job search allowance; and
2. a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a job search allowance; and
2. a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a job search allowance; and
2. no notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

**Job Search Allowance s. 656**

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to received that payment; and
3. the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because

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of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**657. (1)** The day on which a determination under section 653 or 654 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

1. the person whose allowance is affected by the adverse determination has contravened a provision of this Act (other than section 645, 1304, 1305, 1306 or 1307); and
2. the contravention causes a delay in making the determination;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the allowance has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

**Job Search Allowance s. 657**

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the allowance was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9***—***Bereavement payments (death of dependent child)***

**Bereavement payments on death of dependent child**

**658.** If:

1. a person is receiving a job search allowance; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s job search allowance rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

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

Note 1: section 659 provides for job search allowance to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 660 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new job search allowance rate and the rate at which the allowance would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Division are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**659.** If a person is qualified for payments under this Division in relation to the death of a dependent child, the person’s job search allowance rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**s. 660 Job Search Allowance**

**Lump sum payable in some circumstances**

**660.** If:

1. a person is qualified for payments under this Division in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance for the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Division was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Step 1.* | Work out the amount of job search allowance payable to the person on the payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**.  Note: section 659 applies in working out this amount because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the amount of job search allowance that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s job search allowance rate were not calculated under section 659: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Employment Entry Payment s. 661**

**PART 2.13—EMPLOYMENT ENTRY PAYMENT**

**Unemployment benefit recipients**

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

1. the person has turned 18; and
2. the person commences employment; and
3. immediately before the person commences the employment:

(i) the person was receiving an unemployment benefit; and

(ii) the person had been a qualified beneficiary for a continuous period of at least 12 months; and

1. because the person commences the employment, the person ceases to be qualified for unemployment benefit; and
2. the employment is, in the Secretary’s opinion, likely to continue for more than 4 weeks; and

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

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

1. the person is a member of a couple; and
2. the person has turned 18; and
3. the person commences employment; and
4. immediately before the person commenced the employment:

(i) the person’s partner was receiving unemployment benefit or job search allowance and either:

(a) the partner’s unemployment benefit rate was worked out taking into account an amount under Module C of Benefit Rate Calculator B for the person; or

(b) the partner’s job search allowance rate was worked out taking into account an amount under Module C of Benefit Rate Calculator A for the person; or

(c) the person was receiving special benefit or sickness benefit; and

(ii) the person’s partner had been a qualified beneficiary for a continuous period of at least 12 months; and

(e) the income earned by the person from the employment results in unemployment benefit or job search allowance ceasing to be payable to the person’s partner; and

1. the employment is, in the Secretary’s opinion, likely to continue for more than 4 weeks; and
2. the person has not, within the last 12 months, received a payment under this Part.

**s. 661 Employment Entry Payment**

**(3)** If the Secretary is satisfied that:

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

the following provisions have effect:

1. subject to paragraph (d), the person is qualified for an employment entry payment, which is payable to the person at such time as the Secretary determines;
2. the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.
3. The time determined under paragraph (3) (c) is not to be more than 14 days before the person is to commence the employment.
4. In this section:

**“qualified beneficiary”** means a person who is receiving:

1. unemployment benefit; or
2. sickness benefit; or
3. job search allowance; or
4. payments as a trainee in full-time training under a program included in the programs known as Labour Force Programs.

**Amount of section 661 payment**

**662.** The amount of an employment entry payment under section 661 is $100.

**Job search allowance recipients**

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

1. the person has not turned 18; and
2. the person commences employment; and
3. immediately before the person commences the employment:

(i) the person was receiving job search allowance; and

(ii) the person had been a qualified beneficiary for a continuous period of at least 9 months; and

1. because the person commences the employment, the person stops being qualified for job search allowance; and
2. the employment is, in the Secretary’s opinion, likely to continue for more than 4 weeks; and
3. the person has not, within the last 12 months, received a payment under this section.

**Employment Entry Payment s. 663**

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

1. the person is a member of a couple; and
2. the person commences employment; and
3. immediately before the person commenced the employment:

(i) the person’s partner was receiving unemployment benefit or job search allowance and either:

(a) the partner’s unemployment benefit rate was worked out taking into account an amount under Module C of Benefit Rate Calculator B for the person; or

(b) the partner’s job search allowance rate was worked out taking into account an amount under Module C of Benefit Rate Calculator A; or

(c) the person was receiving special benefit or sickness benefit; and

(ii) the person’s partner had been a qualified beneficiary for a continuous period of at least 9 months; and

1. the income earned by the person from the employment results in unemployment benefit or job search allowance ceasing to be payable to the person’s partner; and
2. the employment is, in the Secretary’s opinion, likely to continue for more than 4 weeks; and
3. the person has not, within the last 12 months, received a payment under this Part.

**(3)** If the Secretary is satisfied that:

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

the following provisions have effect:

1. subject to paragraph (d), the person is qualified for an employment entry payment under this section, which is payable to the person at such time as the Secretary determines;
2. the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.
3. The time determined under paragraph (3) (c) is not to be more than 14 days before the person is to start the employment.
4. In this section:

**“qualified beneficiary”** means a person who is receiving:

**s. 663 Employment Entry Payment**

1. unemployment benefit; or
2. sickness benefit; or
3. job search allowance; or
4. special benefit; or
5. payments as a trainee in full-time training under a program included in the programs known as Labour Force Programs.

**Amount of section 663 payment**

**664.** The amount of an employment entry payment under section 663 is $50.00.

**Claim**

**665. (1)** A person is not qualified for an employment entry payment under section 661 or 663 unless the person makes a claim for payment.

**(2)** A person is not qualified for an employment entry payment under section 661 or 663 if the claim for payment is made more than 28 days after the start of the employment in respect of which the claim is made.

**Sickness Benefit s. 666**

**PART 2.14—SICKNESS BENEFIT**

***Division 1*—*Qualification for and payability of sickness benefit***

***Subdivision A*—*Basic qualifications***

**Qualification for sickness benefit**

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

1. the person satisfies the Secretary that the person was, or is likely to be, incapacitated for work throughout the period because of sickness or an accident; and
2. the incapacity for work is, or is likely to be, of a temporary nature; and
3. either:

(i) the person satisfies the Secretary that the person has suffered, or is likely to suffer, a loss of salary, wages or other income of a similar nature because of the incapacity for work; or

(ii) the person satisfies the Secretary that, if the person were not incapacitated for work, the person would have been, or would be likely to be, qualified for unemployment benefit or job search allowance in respect of the period; or

(iii) the person was receiving, or is likely to be receiving, an invalid pension, a sheltered employment allowance or a transferred rehabilitation allowance, immediately before the beginning of the period; and

1. before the period began or begins the person has turned, or is likely to turn, 16; and
2. before the period ended or ends the person has not turned, or is not likely to turn pension age; and
3. the person was, or is likely to be, an Australian resident throughout the period; and
4. the person was, or is likely to be, in Australia throughout the period.

Note 1: see section 669 for the circumstances in which sickness benefit is not payable to a person even though the person is qualified for the benefit.

Note 2: for “loss of income” see section 668.

Note 3: for “pension age” see section 23.

**(2)** A person is not qualified for a sickness benefit in respect of an incapacity if the Secretary is satisfied that the incapacity is brought aboutwith the purpose of obtaining a sickness benefit.

**s. 666 Sickness Benefit**

**(3)** A person is not qualified for a sickness benefit if immediately before the person became incapacitated for work, the person was receiving a job search allowance.

Note: subsection 589 (2) provides that a person who becomes qualified for a sickness benefit while the person is receiving a job search allowance continues to be qualified for the job search allowance notwithstanding that the person is incapacitated for work.

**Temporary absence from Australia**

**667. (1)** For the purposes of subsection 666 (1), a person who is temporarily absent from Australia for a period is to be taken to be in Australia during:

1. if the period does not exceed 3 months—the whole of that period; or
2. if the period exceeds 3 months—the first 3 months of that period.

**(2)** For the purposes of subsection (1), in determining if an absence is temporary, regard must be had to the following factors:

1. the purpose of any such absence;
2. the intended duration of any such absence;
3. the frequency of any such absences.

**Loss of income**

**668. (1)** For the purposes of section 666, a person’s **income of a similar nature to salary or wages** includes:

1. a payment received by the person under the New Enterprise Incentive Scheme (see Part 3.15); and
2. any amount payable to the person or to the person’s partner under Part 2.18 (family allowance supplement).

**(2)** If:

1. a person makes a payment to someone else who acts as the person’s substitute during a period of incapacity; and
2. the Secretary is satisfied that the payment is made justifiably and genuinely;

the Secretary may, for the purposes of section 666, regard the person as having suffered a loss of income of a similar nature to salary or wages (equal to the amount of the payment).

***Subdivision B***—***Situations where benefit not payable (general)***

**Sickness benefit not payable in certain circumstances**

**669. (1)** A sickness benefit is not payable to a person for a period during which the person is qualified for sickness benefit (see section 666) if during that period:

(a) the person has not provided a tax file number (see section 670); or

**Sickness Benefit s. 669**

1. the value of the person’s assets exceeds the person’s assets value limit (see sections 671 and 672); or
2. the person was receiving job search allowance when the person became qualified for sickness benefit (see section 673); or
3. the person is a full-time student (see section 674); or
4. another income support payment is being paid to the person (see section 675); or
5. the sickness benefit has not commenced to be payable (see sections 677 and 702); or
6. the person is subject to an unused annual leave waiting period and has not served that waiting period (see sections 679 to 681); or
7. (h) the person is subject to an ordinary waiting period and has not served that waiting period (see sections 682 and 683); or

(j) the person is subject to an education leavers waiting period and that period had not ended (see sections 684 and 685); or

(k) the person fails to comply with a requirement that the person:

(i) attend a medical examination; or

(ii) receive treatment; or

(iii) undertake a training course; or

(iv) do suitable work;

as required by section 686; or

(m) the person is in gaol (see Part 3.13); or

(n) the person is subject to a compensation preclusion period (see Part 3.14).

**(2)** A sickness benefit is not payable to a person if the person’s sickness benefit rate would be nil.

**Provision of tax file number**

**670. (1)** Sickness benefit is not payable unless:

1. a person has given the Secretary a written statement of the person’s tax file number; or
2. a person has given the Secretary an employment declaration and satisfies either subsection (2) or (3).

Note: the Secretary can require a person to quote their tax file number under section 1308.

**(2)** A person satisfies this subsection if:

(a) the employment declaration states that the person:

(i) has a tax file number but does not know what it is; and

(ii) has asked the Commissioner of Taxation to inform him or her of the number; and

(b) the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:

**s. 670 Sickness Benefit**

(i) whether the person has a tax file number; and

(ii) if the person has a tax file number—the tax file number; and

(c) the Commissioner of Taxation has not told the Secretary that the person has no tax file number.

**(3)** A person satisfies this subsection if:

1. the employment declaration states that an application by the person for a tax file number is pending; and
2. the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the person—the tax file number; or

(ii) if the application is refused—that the application has been refused; or

1. the Commissioner of Taxation has not told the Secretary that an application by the person for a tax file number has been refused; and
2. the application for a tax file number has not been withdrawn.

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

**671. (1)** A sickness benefit is not payable to a person if:

1. the person is not excluded from the sickness benefit assets test; and
2. the value of the person’s assets exceeds the person’s assets value limit.

**(2)** A person is excluded from the sickness benefit assets test if the person:

1. has not turned 18; and
2. is not a member of a couple; and
3. does not have a dependent child; and
4. is not an independent young person; and
5. is not a homeless person.

**(3)** A person’s assets value limit is worked out using the following table: work out which family situation applies to the person; the assets value limit is the corresponding amount in column 3.

**Sickness Benefit s. 671**

|  |  |  |  |
| --- | --- | --- | --- |
| ASSETS VALUE LIMIT TABLE | | | |
| column 1 | column 2 | column 3 | |
|  |  | assets value limit | |
| item | person’s family situation | column 3a  either person or partner homeowner | column 3b  neither person nor partner homeowner |
| 1. | Not member of couple | $103,500 | $177,500 |
| 2. | Partnered (partner getting neither pension nor benefit) | $147,500 | $221,500 |
| 3. | Partnered (partner getting pension or benefit) | $73,750 | $110,750 |

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

Note 2: for “homeowner” see section 11.

Note 3: if item 2 applies to a person, the value of *all* the assets of the person’s partner is to be taken as being included in the value of the person’s assets (see subsection 672 (1)—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person’s assets is only *half* the combined value of the person’s assets and the assets of the person’s partner (see subsection 672 (2)).

Note 4: if an unemployment benefit is not payable to a person because of the value of the person’s assets, the person may be able to take advantage of provisions dealing with financial hardship (sections 1131 and 1132).

Note 5: the assets value limits of items 1 and 3 in column 3a and item 3 in column 3b are indexed annually in line with CPI increases (see sections 1191 to 1194).

Note 6: the assets value limit of item 1 in column 3b is adjusted annually (see subsection 1204(1)).

Note 7: the item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204 (2) and (3)).

**Value of assets of members of couples**

**672. (1)** If:

1. the person is a member of a couple; and
2. the person’s partner:

(i) is not in receipt of a social security or service pension; and

(ii) is not in receipt of a social security benefit;

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

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

**(2)** If:

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

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(b) the person’s partner is in receipt of:

(i) a social security or service pension; or

(ii) a social security benefit;

the value of:

1. the person’s assets is taken to be 50% of the sum of the value of the person’s assets and the value of the partner’s assets; and
2. the person’s assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of assets of that kind of the person’s partner.

**Person previously receiving job search allowance**

**673.** A sickness benefit is not payable to a person if:

1. the person has not turned 18; and
2. the person was receiving a job search allowance immediately before the person became qualified for a sickness benefit.

Note: where a person who is receiving a job search allowance becomes qualified for sickness benefit, the person remains qualified for a job search allowance—see subsection 589 (2).

**Full-time students**

**674. (1)** Subject to subsection (2), a sickness benefit is not payable to a person engaged in a course of education on a full-time basis for the period:

1. starting when the person starts the course; and
2. finishing when the person finishes or abandons the course; and
3. including periods of vacation.

**(2)** Subsection (1) does not prevent a sickness benefit from being payable for any period during which:

1. a person is engaged in a course that the Secretary has required the person to undertake under section 686; or
2. the person has deferred a course of education.

**Multiple entitlement exclusion**

**675. (1)** A sickness benefit is not payable to a person if:

(a) the person is receiving:

(i) another social security benefit; or

(ii) a social security pension; or

(iii) a service pension; or

(b) the person is a widow who is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act;

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unless:

(iii) the widow has been in receipt of a payment referred to in subparagraph (i) or (ii) continuously since before 1 November 1986; and

(iv) before 1 November 1986 the widow was also receiving a social security benefit; or

(c) a payment has been or may be made in respect of the person for the same period under:

(i) a prescribed educational scheme other than the ABSTUDY Tertiary scheme to the extent that it applies to part-time students; or

(ii) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or

(iii) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or

(iv) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note 1: “social security pension” includes sheltered employment and rehabilitation allowance.

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

Note 3: for “prescribed educational scheme” see section 5.

**(2)** If:

1. a person may start a course of education on a full-time basis; and
2. a payment under a scheme referred to in paragraph (1) (c) may be made in respect of the person;

the Secretary may decide that, notwithstanding subsection (1), a sickness benefit is payable to the person for a period before the person starts the course.

**Provisional commencement day**

**676. (1)** A person’s provisional commencement day is, subject to subsection (2), the day on which the person becomes incapacitated for work.

**(2)** If:

1. the person is a transferee to the sickness benefit; and
2. the person claims the sickness benefit within 4 weeks after the person’s transfer day;

the person’s provisional commencement day is the person’s transfer day.

Note: for “transferee” to a benefit and “transfer day” see subsections 23 (6) and (7).

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Commencement of sickness benefit

**677. (1)** If a person is qualified for a sickness benefit, the benefit is not payable to the person before the day worked out in accordance with subsections (2) to (7) and section 678.

*Claim within 5 weeks of incapacity and no waiting period applying*

**(2)** If the person:

1. claims the benefit within 5 weeks after the day on which the person becomes incapacitated for work; and
2. the person is not subject to an ordinary waiting period; and
3. the person is not subject to an unused annual leave waiting period;

the benefit is not payable to the person before the person’s provisional commencement day.

Note 1: for “ordinary waiting period” see sections 682 and 683 and for “unused annual leave waiting period” see sections 679 to 681.

Note 2: for “provisional commencement day” see section 676.

*Claim within 5 weeks of incapacity and ordinary waiting period applying*

**(3)** If the person:

1. claims the benefit within 5 weeks after the day on which the person becomes incapacitated for work; and
2. the person is subject to an ordinary waiting period;

the benefit is not payable to the person before the first day after the end of the ordinary waiting period.

Note 1: for “ordinary waiting period” see sections 682 and 683.

Note 2: a person who is a transferee to the sickness benefit and claims within 4 weeks of the person’s transfer day will not be subject to an ordinary waiting period.

Note 3: the ordinary waiting period will follow an unused annual leave waiting period if there is one (see subsection 683 (2)).

*Claim within 5 weeks of incapacity and unused annual leave waiting period applying*

**(4)** If the person:

1. claims the benefit within 5 weeks after the day on which the person becomes incapacitated; and
2. the person is subject to an unused annual leave waiting period but not subject to an ordinary waiting period;

the benefit is not payable to the person before the first day after the end of the unused annual leave waiting period.

Note 1: for “unused annual leave waiting period” see sections 679 to 681 and for “ordinary waiting period” see sections 682 and 683.

Note 2: if a person is subject to both an ordinary waiting period and an unused annual leave waiting period, the ordinary waiting period will follow the unused annual leave waiting period (see subsection 683 (2)) and subsection (3) of this section will apply.

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*Claim more than 5 weeks after incapacity and delay due to incapacity*

**(5)** If:

1. the person claims the benefit more than 5 weeks after the day on which the person becomes incapacitated for work; and
2. the Secretary is satisfied that the incapacity is the sole or dominant cause for the failure to claim the benefit within 5 weeks after that day;

the benefit is not payable to the person before the day determined by the Secretary.

**(6)** The day determined under subsection (5):

1. must not be more than 4 weeks before the day on which the person lodges the claim for the benefit; and
2. must not, if the person is subject to an ordinary waiting period, be earlier than the first day after the end of the ordinary waiting period; and
3. must not, if the person is subject to an unused annual leave waiting period and not subject to an ordinary waiting period, be earlier than the first day after the end of the unused annual leave waiting period.

*Claim more than 5 weeks after incapacity and delay not due to incapacity*

**(7)** If:

1. the person claims the benefit more than 5 weeks after the day on which the person becomes incapacitated for work; and
2. the Secretary is not satisfied that the incapacity is the sole or dominant cause for the failure to claim the benefit within 5 weeks after that day;

the benefit is not payable to the person before the day on which the claim is lodged.

**Initial incorrect claim followed by claim for sickness benefit**

**678.** If:

**(a)** a person makes a claim (in this section called the **“initial claim”**)for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to sickness benefit; and

1. on the day on which the person makes the initial claim, the person is qualified for sickness benefit; and
2. the person subsequently makes a claim for sickness benefit; and

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**(d)** the Secretary is satisfied that it is reasonable for this section to apply to the person;

section 677 applies to the person as if the person had made the claim for sickness benefit on the day on which the person made the initial claim.

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

**Unused annual leave waiting period**

**679.** A person is subject to an unused annual leave waiting period if:

1. the person’s employment with an employer has ended; and
2. when that employment ended, the person became entitled to receive a payment for unused annual leave; and
3. the person’s provisional commencement day occurs within the notional leave period.

Note 1: for “unused annual leave” see subsection 23 (1).

Note 2: for “notional leave period” see section 680.

Note 3: for “provisional commencement day” see section 676.

**Notional leave period**

**680. (1)** A person’s notional leave period is the period that:

1. starts on the day after the day on which the person’s employment has ended; and
2. runs for the number of days for which the person has unused annual leave as calculated under subsections (2) and (3).

**(2)** Subject to subsection (3), the number of days for which the person has unused annual leave is worked out as follows:

1. if the period of unused annual leave is expressed in weeks—multiply by 7 the number of weeks (including fractions of weeks) in the period of unused annual leave and disregard any fraction that results;
2. in any other case—multiply by 7 the number of working weeks (including any fraction of a working week) represented by the period of unused annual leave and disregard any fraction that results.

**(3)** The number of days for which a person has unused annual leave cannot exceed 28 days.

**Duration of unused annual leave waiting period**

**681.** A person’s unused annual leave waiting period starts on the person’s provisional commencement day and finishes on the last day of the notional leave period.

Note 1: for “notional leave period” see section 680.

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Note 2: an unused leave waiting period may apply to a person whether or not the person is subject to an ordinary waiting period. If the person is subject to an ordinary waiting period, that period will start after the unused leave waiting period—see subsection 683 (2).

Note 3: for “provisional commencement day” see section 676.

**Ordinary waiting period**

**682.** A person is subject to an ordinary waiting period unless:

1. immediately before becoming qualified for the sickness benefit, the person was receiving a job search allowance; or
2. the person has served an ordinary waiting period that ended not more than 12 weeks before the person’s provisional commencement day; or
3. the person is a transferee to the sickness benefit and claims the sickness benefit within 4 weeks after the person’s transfer day.

Note 1: for “transferee” and “transfer day” to a benefit see subsections 23 (6) and (7).

Note 2: for “provisional commencement day” see section 676.

**Duration of ordinary waiting period**

*No unused annual leave waiting period*

**683. (1)** If a person:

1. is subject to an ordinary waiting period; and
2. is not subject to an unused annual leave waiting period;

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

*Unused annual leave waiting period*

**(2)** If a person is subject to:

1. an ordinary waiting period; and
2. an unused annual leave waiting period;

the ordinary waiting period is the period of 7 days that starts on the day after the day on which the person’s unused annual leave waiting period ends.

Note 1: for “unused annual leave waiting period” see sections 679 to 681.

Note 2: for “provisional commencement day” see section 676.

**Education leavers waiting period**

*Persons subject to waiting period*

**684. (1)** A person is subject to an education leavers waiting period if the person:

1. was undertaking a course of education of at least 6 months duration on a full-time basis; and
2. has stopped the course; and
3. was, immediately before stopping the course, receiving neither:

(i) a social security or service pension; nor

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(ii) a social security benefit; and

1. has a provisional commencement day within 6 months after stopping the course; and
2. is not covered by subsection (2) (beneficiaries stopping courses after 4 weeks).

Note: for “provisional commencement day” see section 676.

*No education leavers waiting period in some cases where already served*

**(2)** A person who would otherwise be subject to an education leavers waiting period in relation to sickness benefit is not subject to such a period if:

1. the person had previously been subject to an education leavers waiting period; and
2. an unemployment benefit, job search allowance or sickness benefit had been payable to the person continuously from the end of the education leavers waiting period until immediately before the person started the course; and
3. the person’s provisional commencement day is within 4 weeks after starting the course.

Note 1: for “provisional commencement day” see section 676.

Note 2: for “education leavers waiting period” see subsection 23 (1).

**Duration of education leavers waiting period**

*General rule*

**685. (1)** Subject to this section, the education leavers waiting period starts on the person’s provisional commencement day and lasts for:

(a) 13 weeks if, on the person’s provisional commencement day, the person:

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

(ii) is under 21; and

(iii) does not have a dependent child; or

(b) 6 weeks if, on the person’s provisional commencement day, the person:

(i) is a member of a couple; or

(ii) is over 21; or

(iii) has a dependent child.

Note 1: the duration of the education leavers waiting period may be modified by:

1. subsections (2) and (3) (change of status during waiting period);
2. subsection (5) (periods of employment or periods on special benefit);
3. subsection (6) (previous periods of non-payment because of education leavers waiting period);
4. subsection (7) (6 months ceiling).

Note 2: for “provisional commencement day” see section 676.

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*Change of status in first 6 weeks*

**(2)** Subject to subsection (4), where:

(a) a person who is covered by paragraph (1) (a):

(i) becomes a member of a couple; or

(ii) turns 21; or

(b) a young person becomes a dependent child of a person who is covered by paragraph (1) (a);

within 6 weeks from and including the person’s provisional commencement day, the education leavers waiting period starts on the person’s provisional commencement day and lasts for 6 weeks.

Note: for “provisional commencement day” see section 676.

*Change of status after 6 weeks*

**(3)** Subject to subsection (4), where:

(a) a person who is covered by paragraph (1) (a):

(i) becomes a member of a couple; or

(ii) turns 21; or

(b) a young person becomes a dependent child of a person who is covered by paragraph (1) (a);

in the period:

1. starting at the end of 6 weeks from the person’s provisional commencement day; and
2. lasting for 6 weeks;

the education leavers waiting period starts on the person’s provisional commencement day and ends on the day before the day on which the person is first covered by paragraph (a) or (b).

Note: for “provisional commencement day” see section 676.

*Notification required*

**(4)** For the purposes of subsections (2) and (3):

1. a person is not to be taken to have become a member of a couple; and
2. a young person is not to be taken to have become a dependent child of a person;

until the person notifies the Department that this is the case.

*Reduction of waiting period for periods of special benefit and employment*

**(5)** The waiting period imposed by subsection (1) or (2) is to be reduced by a period equivalent to:

1. if the person is subject to a 13 week education leavers waiting period—any period during which the person was employed on a full-time basis after stopping the course; and
2. if the person is subject to a 6 week education leavers waiting

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period—any period during which the person has been employed, at any time, on a full-time basis; and

(c) any period during which the person was paid special benefit after stopping the course.

*Reduction of education leavers waiting period where already partially served*

**(6)** If:

1. a person is required to serve an education leavers waiting period; and
2. the person started the course concerned at a time when an unemployment benefit job search allowance or sickness benefit was not payable to the person because of an education leavers waiting period; and
3. the person’s provisional commencement day is within 4 weeks after the person started the course concerned;

the duration of the education leavers waiting period is reduced by the number of days of the previous education leavers waiting period that the person had served immediately before starting the course.

Note 1 : for “provisional commencement day” see section 676.

Note 2: for “education leavers waiting period” see section 23.

*6 month ceiling*

**(7)** An education leavers waiting period that applies in respect of a course of study undertaken by a person is not to extend more than 6 months after the person has stopped the course.

***Subdivision D*—*Situations where benefit not payable (recipient non-compliance)***

**Secretary may require person to have medical examination, attend course or undertake work**

**686. (1)** If:

1. a person is receiving, or has lodged a claim for, a sickness benefit; and
2. the Secretary is of the opinion that the person should:

(i) undergo a medical or psychological examination; or

(ii) receive medical or other treatment; or

(iii) undertake a course of vocational training; or

(iv) undertake a course:

(a) which the person could reasonably undertake; and

(b) to which the person has been referred by the CES; or

(v) do any work suitable to be done by the person; and

(c) the Secretary notifies the person that the person is required to:

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(i) undergo that examination; or

(ii) receive that treatment; or

(iii) undertake that course; or

(iv) do that work; and

1. the requirement is reasonable; and
2. the person does not take reasonable steps to comply with the Secretary’s requirements;

a sickness benefit is not payable to the person for a period determined by the Secretary.

**(2)** The Secretary may determine that a sickness benefit is payable for a period for which he or she had previously determined that it was not payable under subsection (1) if within a reasonable period the person takes reasonable steps to comply with the Secretary’s requirements.

***Division 2***—***Claim for sickness benefit***

**Need for a claim**

**687. (1)** A person who wants to be granted a sickness benefit must make a proper claim for that benefit.

Note: “proper claim”—see section 688 (form), section 689 (manner of lodgment) and section 690 (residence/presence in Australia).

**(2)** For the purposes of subsection (1), where:

1. a claim for sickness benefit is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for sickness benefit;

the claim is to be taken to have not been made.

**Form of claim**

**688.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**689. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

**(2)** A place or person approved under subsection (1) must be a place or person in Australia.

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**Claimant must be Australian resident and in Australia**

**690.** Subject to section 691, a claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

**Temporary absence from Australia**

**691.** For the purposes of section 690, a person who is temporarily absent from Australia for a period is to be taken to be in Australia during:

1. if the period does not exceed 3 months—the whole of that period; or
2. if the period exceeds 3 months—the first 3 months of that period.

**Medical certificate to accompany claim**

**692. (1)** Subject to subsection (2), a claim for a sickness benefit must be supported by the certificate of a medical practitioner which:

1. certifies such matters; and
2. contains such information;

as the Secretary requires.

**(2)** The Secretary may, in special circumstances, direct that subsection (1) does not apply.

***Division 3***—***Determination of claim***

**Secretary to determine claim**

**693.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**694.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for a sickness benefit; and
2. the benefit is payable.

**Date of effect of determination**

**695. (1)** Subject to subsections (2), (3) and (4), a determination under section 694 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

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*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for sickness benefit; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for sickness benefit; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for sickness benefit; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240 for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

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***Division 4***—***Rate of sickness benefit***

**How to work out a person’s sickness benefit rate**

**696.** Subject to sections 698, 699, 700 and 701, a person’s sickness benefit rate is worked out:

1. if the person has not turned 18—using Benefit Rate Calculator A at the end of section 1067; or
2. if the person has turned 18—using Benefit Rate Calculator B at the end of section 1068.

Note 1: for double payments on release from gaol see section 1161.

Note 2: for double payments in the case of a major disaster see section 697.

**Double payment—claim as a result of major disaster**

**697.** If:

1. a person makes a claim for sickness benefit; and
2. sickness benefit is payable to the person on the person’s provisional commencement day; and
3. the claim is made because of a major disaster;

the amount of sickness benefit payable to the person for the period of 7 days starting on the person’s provisional commencement day is 2 times the amount that would, apart from this section, be payable to the person for that period.

Note: for “provisional commencement day” see section 676.

**Limitation on rate—loss of salary, wages or income**

*General rule*

**698. (1)** If a person is qualified for sickness benefit through subparagraph 666 (1) (c) (i) (loss of salary, wages or other income of a similar nature), the rate per fortnight of the person’s benefit is not to exceed the rate that, in the Secretary’s opinion, is the rate per fortnight of the salary, wages or other income that the person has lost because of the person’s incapacity for work.

*Loss of salary, wages or income includes NEIS and FAS payments*

**(2)** For the purposes of subsection (1), the income that a person has lost because of the person’s incapacity for work includes:

1. a payment received by the person under the New Enterprise Incentive Scheme; and
2. any family allowance supplement payable to the person or to the person’s partner.

*Payment to a substitute*

**(3)** If:

(a) a person makes a payment to someone else who acts as the person’s substitute during a period of incapacity; and

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(b) the Secretary is satisfied that the payment is made justifiably and genuinely;

the Secretary may, for the purposes of subsection (1), regard the payment as income that the person has lost because of the person’s incapacity for work.

**Limitation on rate—loss of unemployment benefit qualification**

**699.** If a person is qualified for sickness benefit through subparagraph 666 (1) (c) (ii) (loss of qualification for unemployment benefit), the rate per fortnight of the person’s benefit is not to exceed the rate per fortnight of the unemployment benefit that would be payable to the person if the person were receiving unemployment benefit.

**Limitation on rate**—**transferee**

*Partner getting wife or carer pension*

**700. (1)** If:

1. a person is qualified for sickness benefit through subparagraph 666 (1) (c) (iii) (transfer from another pension or allowance); and
2. a wife pension or carer pension was, immediately before the person ceased to receive the pension or allowance referred to in that subparagraph, payable to the person’s partner;

the rate per fortnight of the person’s benefit is not to exceed the sum of the rates per fortnight of the pension or allowance referred to in that subparagraph and the wife pension or carer pension that was payable to the person’s partner.

*Other transferee cases*

**(2)** If:

1. a person is qualified for sickness benefit through subparagraph 666 (1) (c) (iii) (transfer from another pension, benefit or allowance); and
2. subsection (1) does not apply to the person;

the rate per fortnight of the person’s benefit is not to exceed the rate per fortnight of the pension, benefit or allowance referred to in that subparagraph.

**Rate of persons receiving sickness benefit with rent assistance since before 1 July 1987**

**701.** If:

(a) immediately before 1 July 1987:

(i) a sickness benefit was payable to a person; and

(ii) an allowance was payable to the person under section 120 of the 1947 Act (supplementary allowance for rent); and

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(b) a sickness benefit has been payable to the person continuously since 1 July 1987;

the maximum payment rate of the person must not be less than twice the sum of:

1. the rate of sickness benefit payable to the person immediately before 1 July 1987 without applying section 122 of the 1947 Act (income and assets test); and
2. the rate of the allowance payable to the person immediately before 1 July 1987 under section 120 of the 1947 Act (supplementary allowance for rent).

***Division 5*—*Payment of sickness benefit***

**Commencement of sickness benefit**

**702.** A sickness benefit becomes payable to a person on the first day on which:

1. the person is qualified for the benefit; and
2. no provision of this Act makes the benefit not payable to the person.

Note 1: for qualification see section 666.

Note 2: for the circumstances in which a sickness benefit is not payable see section 669.

**Instalments**

**703. (1)** Sickness benefit is to be paid by instalments for periods determined by the Secretary.

**(2)** Instalments of sickness benefit are to be paid at the times determined by the Secretary.

**Instalments for period less than a fortnight**

**704. (1)** If:

1. an instalment of sickness benefit is for a period; and
2. the period is less than a fortnight;

the instalment for the period is:

|  |  |
| --- | --- |
| **sickness benefit rate ×** | **week days in period** |
|  | **10** |

**(2)** If:

1. an instalment of sickness benefit is for a period; and
2. the period consists of:

(i) a number of whole fortnights; and

(ii) a period that is less than a fortnight;

the instalment, insofar as it relates to the period that is less than a fortnight, is

|  |  |
| --- | --- |
| **sickness benefit rate ×** | **week days in period** |
|  | **10** |

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**Rounding off instalment**

**705. (1)** If the amount of an instalment is:

1. a number of whole dollars and a part of a cent; or
2. a number of whole dollars and cents and a part of a cent;

the amount is, subject to subsection (2), to be increased or decreased to the nearest whole cent.

**(2)** If the amount of an instalment is:

1. a number of whole dollars and 0.5 cent; or
2. a number of whole dollars and cents and 0.5 cent; the amount is to be increased by 0.5 cent.

**(3)** If, apart from this section, the amount of an instalment would be less than $1.00, the amount is to be increased to $1.00.

**Manner of payment**

**706.** A person’s sickness benefit is, subject to section 707, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**707. (1)** The Secretary may direct that the whole, or a part, of the amount of sickness benefit payable to a person is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the sickness benefit is to be paid in accordance with the direction.

**Payment into bank account etc.**

**708. (1)** The Secretary may direct that the whole, or a part, of the amount of a sickness benefit payable to a person is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the sickness benefit is payable.
2. The account may be an account that is maintained by a person to whom the sickness benefit is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the sickness benefit is to be payable in accordance with the direction.

**Where benefit payday would fall on public holiday etc.**

**709.** If the Secretary is satisfied that an amount of sickness benefit that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank

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holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of benefit after death**

**710. (1)** If:

1. a sickness benefit is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of sickness benefit payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of sickness benefit under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of sickness benefit.

***Division 6***—***Protection of sickness benefit***

**Sickness benefit to be absolutely inalienable**

**711. (1)** Subject to subsection (2) and section 1359, sickness benefit is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of sickness benefit payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**712. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of sickness benefit payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the total amount of sickness benefit payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7*—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**713. (1)** The Secretary may give a person to whom a sickness benefit is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the benefit.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 7 days after:

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1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of sickness benefit**

**714. (1)** The Secretary may give a person to whom a sickness benefit is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the benefit to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 7 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

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Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**715. (1)** A person is not excused from giving information pursuant to a notice under section 713 or 714 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 713 or 714 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 713 (5) or (6) or 714 (5) or (6).

***Division 8*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**716. (1)** A determination that:

1. a person’s claim for a sickness benefit is granted; or
2. a sickness benefit is payable to a person;

continues in effect until:

(c) the benefit ceases to be payable under section 717 or 718; or

(d) a further determination in relation to the pension under section 722 has taken effect.

Note 1: for paragraph (a) see section 694.

Note 2: for paragraph (b) see section 723—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a sickness benefit continues in effect until:

1. the benefit becomes payable at a lower rate under section 719; or
2. a further determination in relation to the benefit under section 720 or 721 has taken effect.

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***Subdivision B***—***Automatic termination***

**Automatic termination—recipient *complying* with section 713 notification obligations**

**717.** If:

1. a person who is receiving a sickness benefit is given a notice under section 713; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the benefit; or

(ii) the benefit would, but for this section, cease to be payable to the person;

the benefit continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s benefit, there is no automatic rate reduction and a determination under section 721 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 713 notification obligations**

**718.** If:

1. a person who is receiving a sickness benefit is given a notice under section 713; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the benefit; or

(ii) the benefit ceases to be payable to the person;

the benefit ceases to be payable to the person immediately after the day on which the event or change in circumstance occurs.

**Sickness Benefit s. 719**

***Subdivision C*—*Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 713 notification obligations**

**719.** If:

1. a person who is receiving a sickness benefit is given a notice under section 713; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of benefit is to be reduced;

the benefit becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

***Subdivision D***—***Determinations***

**Rate increase determination**

**720.** If the Secretary is satisfied that the rate at which a sickness benefit is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 724.

**Rate reduction determination**

**721.** If the Secretary is satisfied that the rate at which a sickness benefit is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 719 (see subsection 716(2)).

Note 2: for the date of effect of a determination under this section see section 725.

**Cancellation or suspension determination**

**722.** If the Secretary is satisfied that a sickness benefit is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the benefit is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 717 or 718 (see subsection 716(1)).

Note 2: for the date of effect of a determination under this section see section 725.

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**Resumption of payment after cancellation or suspension**

**723. (1)** If the Secretary:

1. cancels or suspends a person’s sickness benefit under section 722; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive sickness benefit that was payable to the person; or

(b) the person is not receiving sickness benefit that is payable to the person;

the Secretary is to determine that sickness benefit was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 724.

***Subdivision E***—***Date of effect of determinations***

**Date of effect of favourable determination**

**724. (1)** The day on which a determination under section 720 or 723 (in this section called the **“favourable determination”**)takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a sickness benefit; and
2. a notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

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*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a sickness benefit; and
2. a notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a sickness benefit; and
2. no notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

(a) the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and

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(b) the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and
3. the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**725. (1)** The day on which a determination under section 721 or 722 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the

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outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose benefit is affected by the adverse determination has contravened a provision of this Act (other than section 714, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the benefit has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the benefit was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9*—*Bereavement payments (death of dependent child)***

**Bereavement payments on death of dependent child**

**726.** If:

1. a person is receiving sickness benefit; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s sickness benefit rate included:

(i) a dependent child add-on in respect of the child; or

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(ii) guardian allowance in respect of the child;

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

Note 1: section 727 provides for sickness benefit to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 728 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new sickness benefit rate and the rate at which the benefit would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Division are:

* dependent child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**727.** If a person is qualified for payments under this Division in relation to the death of a dependent child, the person’s sickness benefit rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

**Lump sum payable in some circumstances**

**728.** If:

1. a person is qualified for payments under this Division in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance in respect of the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Division was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

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***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Step 1.* | Work out the amount of sickness benefit payable to the person on the payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**.  Note: section 727 applies in working out this amount because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the amount of sickness benefit that would have been payable to the person on the payday immediately before the first available bereavement adjustment payday if the person’s sickness benefit rate were not calculated under section 727: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

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**PART 2.15—SPECIAL BENEFIT**

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

***Subdivision A*—*Qualification***

**Qualification for special benefit**

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

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

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

1. no social security pension is payable to the person during the period; and
2. no other social security benefit is payable to the person for the period; and
3. the person is not disqualified for an unemployment benefit or a job search allowance for the period solely because of the operation of one or more of the following:

(i) subparagraph 513 (b) (iv) or 589 (1) (b) (iv) (is not registered as being unemployed by the CES);

(ii) section 514 or 590 (unemployment due to industrial action);

(iii) section 515 or 591 (moving to area of lower employment); and

(d) in a case where the person is qualified for an unemployment benefit or a job search allowance but the benefit or allowance is not payable to the person for the period—that result is not produced solely by the operation of one or more of the following:

(i) subsection 543 (3) or 614 (3) (person failing to comply with Secretary’s requirements);

(ii) section 544 or 615 (unemployment due to voluntary act);

(iii) section 545 or 616 (unemployment due to misconduct);

(iv) section 546 or 617 (refusal of job offer);

(v) section 547 or 618 (person not taking reasonable steps to find work);

(vi) section 549 or 620 (person failing to continue CES registration);

(vii) section 550 or 621 (seasonal workers);

(viii) section 551 or 622 (move to area of lower employment); and

(e) the Secretary is satisfied that the person is unable to earn a sufficient livelihood for the person and the person’s dependants

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(if any) because of age, physical or mental disability or domestic circumstances or for any other reason; and

1. the person is a resident of Australia and in Australia throughout the period; and
2. the person is not, at any time during the period, an illegal entrant within the meaning of the *Migration Act 1958.*

Note: paragraph (2) (f) requires only that the person is a “resident of Australia” and in Australia throughout the period and does not require the person to be an “Australian resident” as defined in subsection 7 (2).

1. The Secretary is not to determine that a special benefit should be granted to a person for a period if the Secretary is satisfied that the benefit is not payable to the person for that period.
2. For the purposes of paragraph (2) (d), an unemployment benefit or job search allowance is to be taken to be not payable to a person for a period because of the operation of a provision if:
3. the person has claimed the benefit or allowance for the period and the benefit is not payable to the person because of the operation of the provision; or
4. were the person to claim the benefit or allowance for the period the benefit would not be payable to the person because of the operation of the provision.

**Determination of period**

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

**Provisional commencement day**

*General rule*

**731. (1)** Subject to subsection (2), a person’s **provisional commencement day** is the day on which the person claims special benefit.

*Initial incorrect claim followed by claim for special benefit*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**)for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to an age pension; and

(b) had the person claimed special benefit on the day on which the

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person made the initial claim, the person would have been qualified for speical benefit on that day; and

1. the person subsequently makes a claim for special benefit; and
2. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

***Subdivision B*—*Payability***

**Special benefit not payable in some circumstances**

**732. (1)** Even though a person might otherwise be qualified for a special benefit, the benefit may not be payable to the person because:

1. the value of the person’s assets exceeds the assets value limit (see sections 733 and 734); or
2. the person is receiving another income support payment (see section 735); or
3. the person fails to comply with a requirement that the person:

(i) attend a medical examination; or

(ii) receive treatment; or

(iii) undertake a training course; or

(iv) do suitable work;

as required by section 736; or

1. the person is a full-time student (see section 737) or is receiving a payment under certain educational schemes (see section 738); or
2. the person is in gaol (see Part 3.13); or

(f) the person has received a compensation payment (see Part 3.14).

**(2)** A special benefit is not payable to a person if the person’s special benefit rate would be nil.

Note: see section 746 for the rule that special benefit rate is not to exceed the equivalent unemployment benefit job search allowance rate.

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

**733. (1)** A special benefit is not payable to a person if:

1. the person is not excluded from the special benefit assets test; and
2. the value of the person’s assets exceeds the person’s assets value limit.

**(2)** A person is excluded from the special benefit assets test if the person:

1. has not turned 18; and
2. is not a member of a couple; and

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(c) does not have a dependent child; and

1. is not an independent young person; and
2. is not a homeless person.

**(3)** A person’s assets value limit is worked out using the following table: work out which family situation applies to the person; the assets value limit is the corresponding amount in the “assets value limit” column.

|  |  |  |  |
| --- | --- | --- | --- |
| ASSETS VALUE LIMIT TABLE | | | |
| column 1 | column 2 | column 3 | |
|  |  | assets value limit | |
| item | person’s family situation | column 3a  either person or partner homeowner | column 3b  neither person nor partner homeowner |
| 1. | Not member of couple | $103,500 | $177,500 |
| 2. | Partnered (partner getting neither pension nor benefit) | $147,500 | $221,500 |
| 3. | Partnered (partner getting pension or benefit) | $73,750 | $110,750 |

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

Note 2: for “homeowner” see section 11.

Note 3: if item 2 applies to a person, the value of *all* the assets of the person’s partner is to be taken as being included in the value of the person’s assets (see subsection 734 (1)—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person’s assets is only *half* the combined value of the person’s assets and the assets of the person’s partner (see subsection 734 (2)).

Note 4: If a special benefit is not payable to a person because of the value of the person’s assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).

Note 5: the assets value limits of items 1 and 3 in column 3a and item 3 in column 3b are indexed annually in line with CPI increases (see sections 1191 to 1194).

Note 6: the assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204 (1)).

Note 7: the item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

**Value of assets of members of couples**

**734. (1)** If:

1. the person is a member of a couple; and
2. the person’s partner:

(i) is not in receipt of a social security or service pension; and

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(ii) is not in receipt of a social security benefit;

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

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

**(2)** If:

1. the person is a member of a couple; and
2. the person’s partner is in receipt of:

(i) a social security or service pension; or

(ii) a social security benefit;

the following provisions have effect:

1. the value of the person’s assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person’s partner; and
2. the value of the person’s assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of assets of that kind of the person’s partner.

**Multiple entitlement exclusion**

**735.** A special benefit is not payable to a person if:

(a) the person is receiving:

(i) another social security benefit; or

(ii) a social security pension; or

(iii) a service pension; or

(b) the person is a widow who is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act;

unless:

(iii) the widow has been in receipt of a payment referred to in subparagraph (i) or (ii) continuously since before 1 November 1986; and

(iv) before 1 November 1986 the widow was also receiving a social security benefit.

Note 1: “social security pension” includes sheltered employment and rehabilitation allowance.

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

Note 3: normally a person is treated as receiving a social security pension, benefit or allowance from the earliest day on which the pension is payable to the person (see subsection 23 (2)): for the purposes of paragraph (a) of this section, however, *actual receipt* is required before special benefit is not payable.

**Special Benefit s. 736**

**Secretary may require person to have medical examination, attend course or undertake work**

**736. (1)** If:

1. a person is receiving, or has lodged a claim for, a special benefit; and
2. the Secretary is of the opinion that the person should:

(i) undergo a medical or psychological examination; or

(ii) receive medical or other treatment; or

(iii) undertake a course of vocational training; or

(iv) undertake a course:

(a) which the person could reasonably undertake; and

(b) to which the person has been referred by the CES; or

(v) do any work suitable to be done by the person; and

(c) the Secretary notifies the person that the person is required to:

(i) undergo that examination; or

(ii) receive that treatment; or

(iii) undertake that course; or

(iv) do that work; and

(d) the person does not take reasonable steps to comply with the Secretary’s requirements;

a special benefit is not payable to the person for a period determined by the Secretary.

**(2)** The Secretary may determine that a special benefit is payable for a period for which he or she had previously determined that it was not payable under subsection (1), if within a reasonable period, the person takes reasonable steps to comply with the Secretary’s requirements.

**Full-time students**

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

1. who has turned 16; or
2. who satisfies both of the following:

(i) the person has not turned 16; and

(ii) the person is not a SPB homeless person;

if the person is engaged in a course of education on a full-time basis.

Note: for “SPB homeless person” see section 739.

*Period for which benefit not payable*

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

(a) starting when the person starts the course; and

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1. finishing when the person finishes or abandons the course; and
2. including periods of vacation.

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

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

1. a person is engaged in a course that the Secretary has required the person to undertake under section 736; or
2. the person has deferred a course of education.

**Payments under certain education schemes**

**738. (1)** Subject to subsection (2), a special benefit is not payable to a person:

1. who has turned 16; or
2. who satisfies both of the following:

(i) the person has not turned 16;

(ii) the person is not a SPB homeless person;

if a payment has been made or may be made in respect of the person for the same period under:

(iii) a prescribed educational scheme other than the ABSTUDY Tertiary scheme to the extent that it applies to part-time students; or

(iv) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or

(v) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or

(vi) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note 1: for “prescribed educational scheme” see section 5.

Note 2: for “SPB homeless person” see section 739.

**(2)** If:

1. a person may start a course of education on a full-time basis; and
2. a payment under a scheme referred to in subsection (1) may be made in respect of the person;

the Secretary may decide that notwithstanding subsection (1), a special benefit is payable to the person for a period before the person starts the course.

**SPB homeless person**

**739.** For the purposes of subparagraphs 737 (1) (b) (ii) and 738 (1) (b) (ii), a person is an **SPB homeless person** if:

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

**Special Benefit s. 739**

1. the person does not have a dependent child; and
2. the person does not live at a home of the parents, or of a parent, of the person because:

(i) the parents are not, or neither parent is, prepared to allow the person to live at such a home; or

(ii) domestic violence, incestuous harassment or other such exceptional circumstances make it unreasonable to expect the person to live at such a home; and

1. the person is not receiving continuous support, whether directly or indirectly and whether pecuniary or otherwise, from a parent of the person or from another person who is acting as the person’s guardian on a long-term basis; and
2. the person is not receiving, on a continuous basis, any payment in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

***Division 2***—***Claim for special benefit***

**Need for a claim**

**740. (1)** A person who wants to be granted a special benefit must make a proper claim for that benefit.

Note 1: “proper claim”—see section 741 (form) and section 742 (manner of lodgment).

Note 2: because the payability of special benefit on unemployment grounds may be affected by, for example, the provisions dealing with the circumstances in which a person’s former employment ended (see section 729), the person may be asked to support his or her claim for special benefit with an end of employment statement by the former employer (see section 1311).

**(2)** For the purposes of subsection (1), where:

1. a claim for special benefit is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for special benefit;

the claim is to be taken to have not been made.

**Form of claim**

**741.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**742. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

**(2)** A place or person approved under subsection (1) must be a place or person in Australia.

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***Division 3*—*Determination of claim***

**Secretary to determine claim**

**743.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**744.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for a special benefit; and
2. the benefit is payable.

**Date of effect of determination**

**745. (1)** Subject to subsections (2), (3) and (4), a determination under section 744 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is rejecting a person’s claim for special benefit; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for special benefit; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

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*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for special benefit; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 4***—***Rate of special benefit***

**Rate of special benefit**

**746. (1)** The rate of a person’s special benefit is the fortnightly rate determined by the Secretary in his or her discretion.

**(2)** Subject to sections 747 (major disaster) and 1161 (release from gaol), the rate of a person’s special benefit is not to exceed the rate at which unemployment benefit or job search allowance would be payable to the person if:

1. the person were qualified for unemployment benefit or job search allowance; and
2. unemployment benefit or job search allowance were payable to the person.

Note 1: for double payments on release from gaol see section 1161.

Note 2: for double payments in the case of a major disaster see section 747.

**Double payment—claim as a result of major disaster**

**747.** If:

1. a person makes a claim for special benefit; and
2. the claim is made because of a major disaster;

the amount of special benefit payable to the person for the period of 7 days starting on the first day of the period for which the special benefit is payable is not to exceed 2 times the amount that would, apart from this section, be the maximum rate payable to the person for that period.

***Division 5*—*Payment of special benefit***

**Commencement of special benefit**

**748.** Special benefit becomes payable to a person on the first day on which:

(a) the person is qualified for the benefit; and

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(b) no provision of this Act makes the benefit not payable to the person.

Note 1: for qualification see section 729.

Note 2: for the circumstances in which a special benefit is not payable see section 732.

**Instalments**

**749. (1)** Special benefit is to be paid by instalments for periods determined by the Secretary.

**(2)** Instalments of special benefit are to be paid at the times determined by the Secretary.

**Instalments for period less than a fortnight**

**750. (1)** If:

(a) an instalment of special benefit is for a period; and

(b) the period is less than a fortnight;

the instalment for the period is:

|  |  |
| --- | --- |
| **special benefit rate ×** | **week days in period** |
|  | **10** |

**(2)** If:

1. an instalment of special benefit is for a period; and
2. the period consists of:

(i) a number of whole fortnights; and

(ii) a period that is less than a fortnight;

the instalment, insofar as it relates to the period that is less than a fortnight, is:

|  |  |
| --- | --- |
| **special benefit rate ×** | **week days in period** |
|  | **10** |

**Rounding off instalment**

**751. (1)** If the amount of an instalment is:

1. a number of whole dollars and a part of a cent; or
2. a number of whole dollars and cents and a part of a cent;

the amount is, subject to subsection (2), to be increased or decreased to the nearest whole cent.

**(2)** If the amount of an instalment is:

1. a number of whole dollars and 0.5 cent; or
2. a number of whole dollars and cents and 0.5 cent;

the amount is to be increased by 0.5 cent.

**(3)** If, apart from this section, the amount of an instalment would be less than $ 1.00, the amount is to be increased to $ 1.00.

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**Manner of payment**

**752.** A person’s special benefit is, subject to section 753, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**753. (1)** The Secretary may direct that the whole, or a part, of the amount of special benefit payable to a person is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the special benefit is to be paid in accordance with the direction.

**Payment into bank account etc.**

**754. (1)** The Secretary may direct that the whole or a part of the amount of special benefit payable to a person is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the special benefit is payable.
2. The account may be an account that is maintained by a person to whom the special benefit is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the special benefit is to be payable in accordance with the direction.

**Where benefit payday would fall on public holiday etc.**

**755.** If the Secretary is satisfied that an amount of special benefit that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of benefit after death**

**756. (1)** If:

1. a special benefit is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of special benefit payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

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the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of special benefit under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of special benefit.

***Division 6***—***Protection of special benefit***

**Special benefit to be absolutely inalienable**

**757. (1)** Subject to subsection (2) and section 1359, special benefit is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of special benefit payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**758. (1)** If:

1. a person has an account with a financial institution; arid
2. instalments of special benefit payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of special benefit payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

**Special Benefit s. 758**

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 7***—***Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**759. (1)** The Secretary may give a person to whom special benefit is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the benefit.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 7 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

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(b) all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of special benefit**

**760. (1)** The Secretary may give a person to whom special benefit is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the benefit to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and

(c) must specify how the statement is to be given to the Department; and

1. must specify the period within which the person is to give the statement to the Department; and
2. must specify that the notice is given under this section.
3. The period specified under paragraph (2) (d) must end at least 7 days after the day on which the notice is given.
4. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
5. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**761. (1)** A person is not excused from giving information pursuant to a notice under section 759 or 760 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 759 or 760 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 759 (5) or (6) or 760 (5) or (6).

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***Division 8***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**762. (1)** A determination that:

(a) a person’s claim for special benefit is to be granted for a period; or

1. special benefit is to be paid to a person for a period; continues in effect until:
2. the period ends; or

(d) a further determination in relation to the benefit under section 765 has taken effect.

Note 1: for paragraph (a) see section 744.

Note 2: for paragraph (b) see section 766—this paragraph may be relevant where, for example, the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of special benefit continues in effect until a further determination in relation to the benefit under section 763 or 764 has taken effect.

***Subdivision B***—***Determinations***

**Rate increase determination**

**763.** If the Secretary is satisfied that the rate at which special benefit is being, or has been, paid is less than it should be, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 767.

**Rate reduction determination**

**764.** If the Secretary is satisfied that the rate at which special benefit is being, or has been, paid is more than it should be, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 768.

**Cancellation or suspension determination**

**765.** If the Secretary is satisfied that special benefit is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note: for the date of effect of a determination under this section see section 768.

**s. 766 Special Benefit**

**Resumption of payment after cancellation or suspension**

**766. (1)** If the Secretary:

1. cancels or suspends a person’s special benefit under section 765; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive special benefit that was payable to the person; or

(b) the person is not receiving special benefit that is payable to the person;

the Secretary is to determine that special benefit was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 767.

***Subdivision C***—***Date of effect of determinations***

**Date of effect of favourable determination**

**767. (1)** The day on which a determination under section 763 or 766 (in this subsection called the **“favourable determination”**)takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s special benefit; and
2. a notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

**Special Benefit s. 767**

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a person’s special benefit; and
2. a notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a person’s special benefit; and
2. no notice is given to the person to whom the benefit is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and

(e) subsections (6), (7) and (8) do not apply to the determination; the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

(a) the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and

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(b) the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and
3. the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**768. (1)** The day on which a determination under section 764 or 765 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the

**Special Benefit s. 768**

outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4) and (5), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose special benefit is affected by the adverse determination has contravened a provision of this Act (other than sections 761 and 1304 to 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the benefit has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which special benefit was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 9***—***Bereavement payments (death of dependent child)***

**Bereavement payments on death of dependent child**

**769.** If:

1. a person is receiving special benefit; and
2. a dependent child of the person dies; and
3. the person’s benefit rate would, if the person had been receiving unemployment benefit immediately before the child died, have included:

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(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

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

Note 1: section 770 provides for maximum special benefit rate payable to the person, up to the first available bereavement adjustment payday, to be the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: section 771 provides for the possibility of a lump sum being paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the maximum for the lump sum is the difference, over the bereavement lump sum period, between the person’s new special benefit rate and the rate at which the benefit would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: the additional payments preserved by this Division are:

* child add-on;
* guardian allowance;
* additional rent assistance;
* additional remote area allowance.

**Continued payment of child-related amounts**

**770.** Subsection 746 (2) ties the maximum special benefit rate to the unemployment benefit or job search allowance rate and the unemployment benefit or job search allowance rate is worked out during the bereavement rate continuation period as if the dependent child had not died (see section 587 or 659).

**Lump sum payable in some circumstances**

**771. (1)** If:

1. a person is qualified for payments under this Division in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance for the child;

a lump sum is payable to the person.

1. The amount of the lump sum is to be determined by the Secretary.
2. The amount determined under subsection (2) is not to exceed the amount of the lump sum that would be payable to the person under section 588 or 660 if the person were receiving unemployment benefit or job search allowance.

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**PART 2.16—SPECIAL NEEDS PENSIONS**

***Division 1***—***Qualifications for and payability of special needs pensions***

***Subdivision A*—*Qualification***

**Qualification for special needs age pension**

**772.** A person is qualified for a special needs age pension if:

1. the person has not resided in Australia at any time after 7 May 1973; and
2. the person has turned:

(i) if the person is a woman—60; or

(ii) if the person is a man—65; and

(c) the person ceased to reside in Australia after the person had turned:

(i) if the person is a woman—55; or

(ii) if the person is a man—60; and

1. the person had resided in Australia for a period that was, or for periods that in the aggregate were, not less than 30 years; and
2. the person would:

(i) if the person had lodged a claim immediately before the person ceased to reside in Australia—have been qualified under section 25 of the 1947 Act to receive an age pension; or

(ii) if the person had not ceased to reside in Australia, were physically present in Australia and lodged a claim for an age pension—be qualified under section 25 of the 1947 Act to receive an age pension; and

(f) the person is, in the opinion of the Secretary, in special need of financial assistance.

**Qualification for special needs invalid pension**

*Incapacity for work*

**773*.* (1)** A person is qualified for a special needs invalid pension if:

1. the person has not resided in Australia at any time after 7 May 1973; and
2. the person is permanently incapacitated for work; and
3. the degree of the incapacity for work is 85% or more; and
4. 50% or more of the incapacity for work is directly caused by a physical or mental impairment; and
5. the person has turned 16 and is under the pension age; and
6. at the time when the person first satisfied paragraphs (b), (c) and (d), the person was in Australia or temporarily absent from Australia; and

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(g) the person is, in the opinion of the Secretary, in special need of financial assistance.

*Permanent blindness*

**(2)** A person is qualified for a special needs invalid pension if:

1. the person is permanently blind; and
2. the person has turned 16 and is under the pension age; and
3. the person has not resided in Australia at any time after 7 May 1973; and
4. the person became permanently blind while the person was in Australia or temporarily absent from Australia; and
5. the person is, in the opinion of the Secretary, in special need of financial assistance.

**(3)** A person is not qualified for a special needs invalid pension on the basis of incapacity or blindness if the person brought about the incapacity or blindness with a view to obtaining an invalid pension or a special needs invalid pension.

**Qualification for special needs wife pension**

**774.** A person is qualified for a special needs wife pension if the person:

1. is a woman who is a member of a couple; and
2. has a partner who is receiving a special needs age pension or a special needs invalid pension.

**Qualification for special needs sole parent pension**

**775. (1)** A woman is qualified for a special needs sole parent pension if:

1. the woman has not resided in Australia at any time after 7 May 1973; and
2. is not a member of a couple; and
3. the woman has at least one SPP child (see section 776); and
4. either:

(i) a man to whom the woman was legally married has died and both the woman and the man were residing permanently in Australia when the man died; or

(ii) a man who had been the woman’s *de facto* partner for at least 3 years has died and both the woman and the man were residing permanently in Australia when the man died; and

(e) the woman is, in the Secretary’s opinion, in special need of financial assistance.

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**(2)** For the purposes of subsection (1), a man is a woman’s *de facto* partner if the man and the woman are members of a couple although not legally married to one another.

Note: for “member of a couple” see subsections 4 (2), (3) and (6).

**SPP (sole parent pension) child**

**776. (1)** A young person is an **SPP child** of another person (in this section called the **“adult”**)if:

(a) the young person is:

(i) a dependent child of the adult; or

(ii) a maintained child of the adult; and

1. the young person has not turned 16; and
2. the young person:

(i) is a natural or adopted child of the adult; or

(ii) is in the adult’s legal custody; or

(iii) has been wholly or substantially in the care and control of the adult for at least 12 months before the day on which the adult claims special needs sole parent pension and is, in the Secretary’s opinion, likely to remain wholly or substantially in the adult’s care and control permanently or indefinitely.

**(2)** For the purposes of subsection (1), a young person who has not turned 16 can be a **dependent child** of a person even though:

1. the young person is not in full-time education; and
2. the young person is in receipt of income from wages; and
3. the rate of that income exceeds $100 per week.

Note 1: a young person covered by this subsection would normally not count as a dependent child (see subsection 5 (3)).

Note 2: subsection (2) does no more than allow the young person to be taken into account as a dependent child in working out whether a person is *qualified* for special needs sole parent pension—it does not allow the young person to be taken into account as a dependent child in calculating the *rate* of a person’s special needs sole parent pension (see Module C of Pension Rate Calculator C).

**Young person to be SPP child for only one person**

**777. (1)** A young person can be an SPP child of only one person at a time.

**(2)** If the Secretary is satisfied that, but for this section, a young person would be an SPP child of 2 or more persons, the Secretary is to:

1. make a written determination that the Secretary is satisfied that that is the case; and
2. specify in the determination the person whose SP child the young person is to be; and
3. give each person a copy of the determination.

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**Qualification for special needs widow B pension**

**778.** A woman is qualified for a special needs widow B pension if:

1. the woman has not resided in Australia at any time after 7 May 1973; and
2. the woman:

(i) was, immediately before 1 July 1987, receiving a widow’s pension as a class B widow under the 1947 Act; or

(ii) on 1 July 1987 had turned 45 years old and:

(a) was receiving a supporting parent’s benefit or a widow’s pension as a class A widow on or after that day; or

(b) was receiving a sole parent pension after 1 March 1989; or

(iii) on 1 July 1987 had turned 50 years old; and

1. the woman is not qualified for a special needs sole parent pension; and
2. the woman:

(i) was legally married and her husband has died; or

(ii) was a dependent female, that is:

(a) she was a member of a couple and her partner has died; and

(b) she was a member of the couple for 3 years immediately before her partner died; and

(c) she was wholly or mainly financially maintained by him; and

1. both the woman and the man were residing permanently in Australia when the man died; and
2. the woman is not a member of another couple; and
3. the woman is, in the Secretary’s opinion, in special need of financial assistance.

Note: for “member of a couple” see subsections 4 (2), (3) and (6).

***Subdivision B***—***Payability***

**Special needs pension not payable in some circumstances**

**779. (1)** Even though a person is qualified for a special needs pension, the pension may not be payable to the person because:

1. the pension has not commenced to be payable (see sections 780 to 782 and 797); or
2. of a compensation preclusion period (see Part 3.14); or
3. the person is in gaol (see Part 3.13); or
4. the person is receiving another pension or benefit (see section 787); or

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(e) the person’s failure to comply with a requirement under section 788 to have a medical examination.

**(2)** A special needs pension is not payable to a person if the person’s special needs pension rate would be nil.

Note: a person whose rate might otherwise be nil under Pension Rate Calculator A or C may not have a nil rate after the application of the financial hardship provisions (sections 1129 and 1130).

**Some special needs pensions not payable before claim**

**780.** A special needs age, invalid or wife pension is not payable to a person before the person’s provisional commencement day (identified under section 784).

**Special needs sole parent pension generally not payable before claim**

**781.** Subject to sections 785 and 786, a special needs sole parent pension is not payable to a woman before the woman’s provisional commencement day (identified under section 784).

**Special needs widow B pension generally not payable before claim**

**782.** Subject to section 785, a special needs widow B pension is not payable to a woman before the woman’s provisional commencement day (identified under section 784).

**Second special needs pension generally not payable after cancellation of initial pension**

**783.** If:

1. a special needs pension is payable to a person; and
2. the special needs pension is cancelled;

another special needs pension is not payable to the person unless the person is qualified to receive another special needs pension at the time the initial pension is cancelled.

**Provisional commencement day**

*General rule*

**784.** (1) Subject to subsections (2) and (3), a person’s provisional commencement day is the day on which the person claims the special needs pension.

*Initial incorrect claim followed by claim for special needs pension*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**)for:

(i) a social security or service pension or a social security benefit; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the

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Commonwealth, that is similar in character to an invalid pension; and

1. on the day on which the person makes the initial claim, the person is qualified for a special needs pension; and
2. the person subsequently makes a claim for a special needs pension; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

*Early claim*

**(3)** If:

1. a person lodges a claim for a special needs age, invalid or wife pension; and
2. the person is not, on the day on which the claim is lodged, qualified for a special needs pension; and
3. the person becomes qualified for the special needs pension sometime during the period of 3 months that starts immediately after the day on which the claim is lodged;

the person’s provisional commencement day is the first day on which the person is qualified for the pension.

**Backdating**—**death of partner etc.**

**785.** If:

1. a woman’s partner dies; and
2. the woman’s provisional commencement day is within one month after the day on which the partner dies; and
3. the woman is qualified for the special needs sole parent or widow B pension (as the case requires) at some time in the period between the death of the partner and the provisional commencement day;

the special needs sole parent or widow B pension (as the case requires) can become payable before the provisional commencement day but is not payable to the woman before the first day in the period on which the person is qualified.

Note 1: for “provisional commencement day” see section 784.

Note 2: the pension will not *necessarily* be backdated to the day on which the woman becomes qualified—some other factor may make the pension not payable at that time.

**Backdating—birth of child**

**786.** If:

1. a woman gives birth to a child; and
2. the woman’s provisional commencement day is within one month after the day on which the child is born; and

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(c) the woman is qualified for the special needs sole parent pension at some time in the period between the birth of the child and the provisional commencement day;

the special needs sole parent pension (as the case requires) can become payable to the woman before the provisional commencement day but is not payable to the woman before the first day in the period on which the woman is qualified.

Note: for “provisional commencement day” see section 784.

**Multiple entitlement exclusion**

**787. (1)** A special needs pension is not payable to a person if:

(a) the person is receiving:

(i) another social security pension; or

(ii) a social security benefit; or

(iii) a service pension; or

(b) the person is a widow who is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act.

**Secretary may require person to have medical examination**

**788. (1)** If:

1. a person is receiving, or has lodged a claim for, a special needs invalid pension; and
2. the Secretary is of the opinion that the person should:

(i) undergo a medical or psychological examination; or

(ii) receive medical or other treatment; and

(c) the Secretary notifies the person that the person is required to:

(i) undergo that examination; or

(ii) receive that treatment; and

1. the Secretary is satisfied that it is reasonable for this subsection to apply to the person; and
2. the person does not take reasonable steps to comply with the Secretary’s requirements;

a special needs invalid pension is not payable to the person for a period determined by the Secretary.

**(2)** The Secretary may determine that a special needs invalid pension is payable for a period for which he or she had previously determined that it was not payable under subsection (1) if within a reasonable

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period the person takes reasonable steps to comply with the Secretary’s requirements.

***Division 2***—***Claim for special needs pension***

**Need for a claim**

**789. (1)** A person who wants to be granted a special needs pension must make a proper claim for that pension.

Note: for “proper claim” see section 790 (form) and section 791 (manner of lodgment).

**(2)** For the purposes of subsection (1), where:

1. a claim for special needs pension is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for special needs pension;

the claim is to be taken to have not been made.

**Form of claim**

**790.** To be a proper claim, a claim must be in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**791. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

**(2)** A place or person approved under subsection (1) must be a place or person in Australia.

***Division 3*—*Determination of claim***

**Secretary to determine claim**

**792.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**793.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for special needs pension; and
2. the pension is payable.

**Date of effect of determination**

**794. (1)** Subject to subsections (2), (3) and (4), a determination under section 793 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

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*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a special needs pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a special needs pension; and
2. a notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a special needs pension; and
2. no notice is given to the person to whom the pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

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***Division 4*—*Medical examination following claim***

**Examination by medical practitioner**

**795. (1)** The Secretary must direct that a claimant for a special needs invalid pension be examined by a medical practitioner unless:

(a) it is manifest that the claimant is permanently incapacitated for work and that:

(i) the degree of the incapacity is not less than 85%; and

(ii) the incapacity, or at least 50% of that incapacity, is directly caused by a permanent physical or mental impairment; or

1. it is manifest that the claimant is permanently blind; or
2. the claimant resides in a place that is remote from any medical practitioner.

**(2)** After examining the claimant, the medical practitioner is to give a certificate stating the practitioner’s opinion on the following matters:

1. whether or not the claimant is permanently incapacitated for work;
2. if the claimant is permanently incapacitated for work—whether or not:

(i) the degree of the incapacity is not less than 85%; and

(ii) the incapacity, or at least 50% of the incapacity, is directly caused by a permanent physical or mental impairment;

(c) whether or not the claimant is permanently blind.

**(3)** A certificate under subsection (2) must be in accordance with a form approved by the Secretary.

***Division 5*—*Rate of special needs pension***

**How to work out a person’s special needs pension rate**

**796. (1)** Subject to subsection (2), the rate of a person’s special needs pension is:

1. if the pension is a special needs age pension—the rate at which an age pension would be payable to the person if the person were qualified for an age pension; or
2. if the pension is a special needs invalid pension—the rate at which an invalid pension would be payable to the person if the person were qualified for an invalid pension; or
3. if the pension is a special needs wife pension—the rate at which a wife pension would be payable to the person if the person were qualified for a wife pension; or
4. if the pension is a special needs sole parent pension—the rate at which a sole parent pension would be payable to the person if the person were qualified for a sole parent pension; or

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(e) if the pension is a special needs widow B pension—the rate at which a widow B pension would be payable to the person if the person were qualified for a widow B pension.

**(2)** If:

1. the person was absent from Australia on 1 July 1986; and
2. the person commences after 1 July 1986 to receive a special needs pension; and
3. the person is absent from Australia;

the rate of the person’s special needs pension is, subject to subsections (3) and (4), to be worked out using the Special Needs Proportional Rate Calculator at the end of this section.

1. Subsection (2) does not apply to a person’s special needs invalid pension if the person became qualified for the pension because the person became permanently incapacitated for work or permanently blind while the person was an Australian resident.
2. Subsection (2) does not apply to a person’s special needs sole parent or widow B pension if:
3. the person became qualified for the pension because of the death of the person’s former partner; and
4. at the time when the former partner died the former partner was an Australian resident; and
5. the person would, apart from subsections 249 (2) and 362 (2) of this Act, and section 46 of the 1947 Act as in force at any time before 1 March 1989, have become so qualified for that pension.

**(5)** If:

1. a woman is absent from Australia on 1 July 1986; and
2. the woman commences to receive a special needs sole parent pension; and
3. before commencing to receive the special needs sole parent pension, the woman was receiving a wife pension at a rate worked out in accordance with the Pension Portability Rate Calculator at the end of section 1221;

the woman’s special needs sole parent pension rate is to be worked out using the Special Needs Proportional Rate Calculator at the end of this section.

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***SPECIAL NEEDS PROPORTIONAL RATE CALCULATOR***

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Overall rate calculation process*

796-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. |
| *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. |

*MODULE B—AUSTRALIAN WORKING LIFE RESIDENCE*

*Working life*

796-B1. For the purposes of this Module, a person’s **working life** is the period commencing when the person turns 16 and ending:

1. if the person is a woman—when she turns 60; or
2. if the person is a man—when he turns 65.

*Australian working life residence (general)*

796-B2. Subject to points 796-B3 to 796-B9, a person’s **period of Australian working life residence** as at a particular time is the number of months in the period, or the aggregate of the periods, during the person’s working life during which the person has, up to that time, been an Australian resident.

*Calculation of number of months*

796-B3. If a person’s period of Australian working life residence would, apart from this subsection, be a number of whole months, the period is to be increased by one month.

796-B4. If a person’s period of Australian working life residence would, apart from this subsection, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

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*Australian working life residence (special needs age or invalid pensioner couples)*

796-B5. If:

1. a person is receiving a special needs age pension or a special needs invalid pension; and
2. the person is a member of a couple; and
3. the person’s partner is receiving an age or invalid pension or a special needs age or invalid pension; and
4. the partner’s period of Australian working life residence is longer than the period that would be the person’s period of Australian working life residence under point 796-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence.

*Australian working life residence (member of former special needs age or invalid pensioner couple)*

796-B6. If:

1. a person is receiving a special needs age pension or a special needs invalid pension; and
2. the person is a member of a couple; and
3. the person ceases to be a member of a couple; and
4. immediately before the person ceases to be a member of a couple:

(i) the person was receiving an age or invalid pension or a special needs age or invalid pension; and

(ii) the partner was receiving an age or invalid pension or a special needs age or invalid pension; and

(e) the partner’s period of Australian working life residence (immediately before the person ceases to be a member of a couple) is longer than the period that would be the person’s period of Australian working life residence under point 796-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence (immediately beforethe person ceases to be a member of a couple).

*Australian working life residence (special needs wife pensioner)*

796-B7. If a person is receiving a special needs wife pension, the person’s period of Australian working life residence is equal to the periodof Australian working life residence of the person’s partner.

*Australian working life residence (recipient of special needs sole parent pension or widow B pension)*

796-B8. If:

(a) a person is receiving a special needs sole parent pension or a special needs widow B pension; and

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1. the person became qualified for the pension because the person’s former partner died; and
2. the partner’s period of Australian working life residence (immediately before the partner’s death) is longer than the period that would be the person’s period of Australian working life residence under point 796-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence (immediately before the partner’s death).

*Australian working life residence*—*second special needs pension*

796-B9. If:

1. a special needs pension is payable to a person (in this point called the **“initial pension”**);and
2. the special needs pension is cancelled or ceases to be payable automatically; and
3. another special needs pension is payable to the person (in this point called the “second pension”); and
4. the person’s period of Australian working life residence in respect of the second pension is shorter than the period that was the person’s period of Australian working life residence for the purposes of calculating the person’s initial special needs pension;

the person’s period of Australian working life residence for the second pension is to be equal to the period of Australian working life residence used in calculating the person’s initial pension.

*MODULE C—RESIDENCE FACTOR*

*Residence factor (period of Australian working life residence 25 years or more)*

796-C1. If a person’s period of Australian working life residence is 300 months (25 years) or more, the person’s residence factor is 1.

Note: if a person’s residence factor is 1, the person’s overseas pension will be payable overseas at the full domestic rate (less rent assistance and remote area allowance).

*Residence factor (period of Australian working life residence under 25 years)*

796-C2. If a person’s period of Australian working life residence is less than 300 months (25 years), the person’s residence factor is:

|  |
| --- |
| **person’s Australian working life residence** |
| 300 |

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***Division 6***—***Payment of special needs pension***

**Commencement of special needs pension**

**797.** A special needs pension becomes payable to a person on the first day on which:

1. the person is qualified for the pension; and
2. no provision of this Act makes the pension not payable to the person.

Note 1: for qualification see section 772.

Note 2: for the circumstances in which special needs pension is not payable see section 779.

**Payment by instalments**

**798. (1)** A full instalment of special needs pension is payable to a person on each pension payday on which:

1. the person is qualified for the pension; and
2. the pension is payable to the person.

**(2)** The instalments referred to in subsection (1) are to be paid to the person on such pension paydays as the Secretary determines for the purposes of this subsection.

**Effect on instalments of backdating claim**

**799.** If:

1. a person lodges a claim for a special needs pension on a particular day (in this section called the **“claim day”**);and
2. the person’s provisional commencement day is before the claim day;

any instalment of special needs pension that would, but for this section, be payable, is payable to the person:

1. if the claim day was a pension payday—on that day; or
2. the first pension payday after the claim day.

Note: for “provisional commencement day” see section 784.

**Calculation of amount of instalment**

**800. (1)** The amount of an instalment of special needs pension is the amount worked out by dividing the amount of the annual rate of the pension by 26.

1. If an amount that is payable to a person on a pension payday is not a multiple of 10 cents, the amount is, subject to subsection (3), to be increased or decreased to the nearest multiple of 10 cents.
2. If the amount that is payable to a person on a pension payday is a multiple of 5 cents, the amount is to be increased by 5 cents.

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**(4)** If, apart from this subsection, the amount of an instalment of special needs pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

**Manner of payment**

**801.** A person’s special needs pension is, subject to section 802, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**802. (1)** The Secretary may direct that the whole, or a part, of the amount of special needs pension payable to a person is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the special needs pension is to be paid in accordance with the direction.

**Payment into bank account etc.**

**803. (1)** The Secretary may direct that the whole or a part of the amount of a special needs pension payable to a person is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the special needs pension is payable.
2. The account may be an account that is maintained by a person to whom the special needs pension is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the special needs pension is to be payable in accordance with the direction.

**Where pension payday would fall on public holiday etc.**

**804.** If the Secretary is satisfied that an amount of special needs pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of pension after death**

**805. (1)** If:

1. a special needs pension is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of special needs pension payable to him or her; and
4. another person applies to receive that amount; and

**Special Needs Pensions s. 805**

(e) the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of special needs pension under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of special needs pension.

***Division 7*—*Protection of special needs pension***

**Special needs pension to be absolutely inalienable**

**806. (1)** Subject to subsection (2) and section 1359, a special needs pension is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of special needs pension payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**807. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of special needs pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the total amount of special needs pension payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 8***—***Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**808. (1)** The Secretary may give a person to whom a special needs pension is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the pension.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**Special Needs Pensions s. 808**

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country: and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of special needs pension**

**809. (1)** The Secretary may give a person to whom a special needs sole parent or special needs widow B pension is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the pension to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

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1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**810. (1)** A person is not excused from giving information pursuant to a notice under section 808 or 809 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 808 or 809 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 808 (5) or (6) or (809) (5) or (6).

***Division 9***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**811. (1)** A determination that:

1. a person’s claim for a special needs pension is granted; or
2. a special needs pension is payable to a person;

continues in effect until:

(c) if the pension is a special needs age, invalid or wife pension—the pension ceases to be payable under section 812 or 813; or

1. if the pension is a special needs sole parent or widow B pension—the pension ceases to be payable under section 812, 813 or 814; or
2. a further determination in relation to the pension under section 818 has taken effect.

Note 1: for paragraph (a) see section 793.

Note 2: for paragraph (b) sec section 819—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a special needs pension continues in effect until:

1. the pension becomes payable at a lower rate under section 815; or
2. a further determination in relation to the pension under section 816 or 817 has taken effect.

**Special Needs Pensions s. 812**

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 808 notification obligations**

**812.** If:

1. a person who is receiving a special needs pension is given a notice under section 808; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension would, but for this section, cease to be payable to the person;

the pension continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s pension, there is no automatic rate reduction and a determination under section 817 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 808 notification obligations**

**813.** If:

1. a person who is receiving a special needs pension is given a notice under section 808; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the pension; or

(ii) the pension ceases to be payable to the person;

the pension ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

**s. 814 Special Needs Pensions**

**Automatic termination—failure to provide section 809 statement**

**814. (1)** If:

1. a person who is receiving a special needs sole parent or widow B pension is given a notice under section 809 requiring the person to give the Department a statement; and
2. the notice relates to the payment of that pension during a period specified in the notice; and
3. the person does not comply with the notice;

the pension, subject to subsection (2), ceases to be payable to the person as from the first day in that period.

1. 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 person from a day specified in the determination.
2. The day specified under subsection (2) may be before or after the making of the determination.

***Subdivision C***—***Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 808 notification obligations**

**815.** If:

1. a person who is receiving a special needs pension is given a notice under section 808; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of pension is to be reduced;

the pension becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

***Subdivision D*—*Determinations***

**Rate increase determination**

**816.** If the Secretary is satisfied that the rate at which a special needs pension is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 820.

**Special Needs Pensions s. 817**

**Rate reduction determination**

**817.** If the Secretary is satisfied that the rate at which a special needs pension is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 815 (see subsection 811 (2)).

Note 2: for the date of effect of a determination under this section see section 821.

**Cancellation or suspension determination**

**818.** If the Secretary is satisfied that a special needs pension is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 812, 813 or 814 (see subsection 811 (1)).

Note 2: for the date of effect of a determination under this section see section 821.

**Resumption of payment after cancellation or suspension**

**819. (1)** If the Secretary:

1. cancels or suspends a person’s special needs pension under section 818; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive a special needs pension that was payable to the person; or

(b) the person is not receiving a special needs pension that is payable to the person;

the Secretary is to determine that a special needs pension was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 820.

***Subdivision E*—*Date of effect of determinations***

**Date of effect of favourable determination**

**820. (1)** The day on which a determination under section 816 or 819 (in this section called the **“favourable determination”**)takes effect is worked out in accordance with this section.

**s. 820 Special Needs Pensions**

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s special needs pension; and
2. a notice is given to the person to whom the special needs pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s special needs pension; and
2. a notice is given to the person to whom the special needs pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a person’s special needs pension; and
2. no notice is given to the person to whom the special needs pension is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240 for review of the previous decision; and
4. a favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

**Special Needs Pensions s. 820**

*Notified change of circumstances*

**(5)** If:

1. the favourable determination is made following a person having advised the Department of a change in circumstances; and
2. the change is not a decrease in the rate of the person’s maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Other determinations*

**(6)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**821. (1)** The day on which a determination under section 817 or 818 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: sec section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose benefit is affected by the adverse determination has contravened a provision of this Act (other than section 809, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the benefit

**s. 821 Special Needs Pensions**

has been paid to a person when it should have been cancelled or suspended:

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the benefit was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 10*—*Bereavement payments***

***Subdivision A*—*Death of pensioner partner***

**Qualification for payments under this Subdivision**

**822. (1)** If:

1. a person is receiving a special needs age, invalid or wife pension; and
2. the person is a member of a couple; and
3. the person’s partner dies; and
4. immediately before the partner died, the partner was receiving:

(i) a special needs age, invalid or wife pension; or

(ii) an age pension; or

(iii) an invalid pension; or

(iv) a service pension;

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

Note 1: section 823 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person’s partner during that period if the partner had not died.

Note 2: section 824 provides for a lump sum that represents the instalments that would have been paid to the person’s partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

1. A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
2. An election under subsection (2):
3. must be made by written notice to the Secretary; and
4. may be made after the person has been paid an amount or amounts under this Subdivision; and

**Special Needs Pensions s. 822**

(c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**(4)** If a person is qualified for payments under this Subdivision in relation to the partner’s death, the rate at which special needs pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 825.

**Continued payment of partner’s pension or allowance**

**823.** If a person is qualified for payments under this Subdivision in relation to the death of the person’s partner, there is payable to the person, on each of the pension paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person’s partner on that payday if the partner had not died.

**Lump sum payable in some circumstances**

**824.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

**s. 824 Special Needs Pensions**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Add up:  (a) the amount that, if the person’s partner had not died, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday; and  (b) the amount that, if the partner had not died, would have been payable to the partner on the pension payday immediately before the first available bereavement adjustment payday;  the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for subsection 825, would have been payable to the person on the pension payday immediately before the first available bereavement adjustment payday: the result is called the **person’s individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the **partner’s instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the partner’s instalment component by the number of pension paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Adjustment of rate of person’s special needs pension**

**825.** If:

1. a person is qualified for payments under this Subdivision; and
2. the person does not elect under subsection 822 (2) not to receive payments under this Subdivision;

the rate of the person’s special needs pension during the bereavement period is worked out as follows:

1. during the bereavement rate continuation period, the rate of special needs pension payable to the person is the rate at which the pension would have been payable to the person if the person’s partner had not died;
2. during the bereavement lump sum period (if any), the rate at which special needs pension is payable to the person is the rate

**Special Needs Pensions s. 825**

at which the special needs pension would be payable to the person apart from this Subdivision.

**Effect of death of person entitled to payments under this Subdivision**

**826.** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. the person dies within the bereavement period; and
3. the Secretary does not become aware of the death of the person’s partner before the person dies;

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

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Add up:  (a) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person on the pension payday immediately after the day on which the person dies; and  (b) the amount that, if neither the person nor the person’s partner had died, would have been payable to the person’s partner on that pension payday;  the result is called the **combined pensioner couple rate**. |
| *Step 2.* | Work out the amount that, but for section 825, would have been payable to the person on the pension payday immediately after the day on which the person died if the person had not died: the result is called the person’s **individual rate**. |
| *Step 3.* | Take the person’s individual rate away from the combined pensioner couple rate: the result is called the partner’s **instalment component**. |
| *Step 4.* | Work out the number of pension paydays in the period that starts on the day after the person dies and ends on the day on which the bereavement period ends. |
| *Step 5.* | Multiply the partner’s instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section. |

**s. 827 Special Needs Pensions**

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

**827. (1)** If:

1. a person is qualified for payments under this Subdivision and in relation to the death of the person’s partner; and
2. after the person’s partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act; and
3. the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

1. the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person’s partner except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
2. the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

**(2)** If:

1. a person is qualified for payments under this Subdivision in relation to the death of the person’s partner; and
2. an amount to which the person’s partner would have been entitled if the person’s partner had not died has been paid under this Act or under Part III of the Veterans’ Entitlements Act, within the bereavement period, into an account with a bank, credit union or building society (in this subsection called the **“financial institution”**); and
3. the financial institution pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person’s partner or anyone else in respect of the payment of that money to the person.

***Subdivision B***—***Death of dependent or maintained child***

**Bereavement payments on death of dependent or maintained child**

**828.** If:

1. a person is receiving a special needs pension; and
2. a dependent or maintained child of the person dies; and
3. immediately before the child died, the person’s special needs pension rate included:

(i) a dependent child add-on in respect of the child; or

(ii) guardian allowance in respect of the child;

**Special Needs Pensions s. 828**

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

Note 1: section 829 provides for special needs pension to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 2: the additional payments preserved by this Subdivision are:

* dependent child add-on:
* guardian allowance;
* additional rent assistance.

**Continued payment of child-related amounts**

**829.** If a person is qualified for payments under this Subdivision in relation to the death of a dependent or maintained child, the person’s special needs pension rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s ordinary income free area and maintenance income free area.

***Subdivision C***—***Death of recipient***

**Death of recipient**

**830. (1)** If:

1. a person is receiving a special needs pension; and
2. either:

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

(ii) the person is a member of a couple and the person’s partner:

(a) is not receiving a social security pension; and

(b) is not receiving a social security benefit; and

(c) is not receiving a service pension; and

(c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the pension payday after the person’s death if the person had not died.

**(2)** If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1: for amounts owing to the recipient before the recipient’s death see section 805.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 826.

**s. 831 Family Allowance**

**PART 2.17—FAMILY ALLOWANCE**

***Division 1*—*Family allowance child status***

**Family allowance child**

**831. (1)** Subject to subsections (2) and (3) and sections 832 to 837, each dependent child of a person is also a family allowance child of that person.

1. If the male member of a couple has a dependent child, the dependent child is taken to be the dependent child of the female member of the couple.
2. Subsection (2) does not apply if family allowance is not payable to the female for the child for some reason other than that the child is not her dependent child.

Note: for “dependent child” see subsections 5 (2) to (9).

**FA child—prescribed student child not included**

**832.** A dependent child cannot be a family allowance child if the child:

1. has turned 16; and
2. is a prescribed student child.

**FA child—child over 18**

**833. (1)** Subject to subsections (2), (3) and (4), a dependent child who has turned 18 cannot be a family allowance child.

**(2)** A dependent child who has turned 18 may be a family allowance child if a person would, but for subsection (1), be qualified for:

1. family allowance supplement; or
2. a double orphan pension; or

(c) a child disability allowance;

for the child.

**(3)** A dependent child who has turned 18 may be a family allowance child if:

1. a person is receiving a social security or service pension or a social security benefit; and
2. the rate of the pension or benefit is increased by reference to the child.

**(4)** A dependent child who has turned 18 may be a family allowance child if a person or the person’s partner:

1. is not receiving family allowance supplement; and
2. lodges a claim for family allowance supplement; and

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(c) is not precluded by the taxable income test from receiving family allowance supplement:

in respect of the child.

**FA child—child in approved care organisation care**

**834.** A dependent child cannot be a family allowance child of a person if an approved care organisation is qualified for family allowance for the child.

**FA** **child—residence requirements**

**835.** A dependent child cannot be a family allowance child unless:

1. the child is an Australian resident; or
2. the child is a dependent child of an Australian resident and is living with that Australian resident.

**FA child—child absent from Australia for more than 3 years**

**836. (1)** If:

1. a dependent child of a person leaves Australia at any time on or after 18 May 1986; and
2. before the child leaves Australia, the person is receiving family allowance and the rate of that allowance is calculated by reference to the child; and
3. the child continues to be absent from Australia for more than 3 years;

the child ceases to be a family allowance child of the person at the end of the period of 3 years commencing on the day on which the child leaves Australia.

1. Subsection (1) ceases to apply to the dependent child if the child returns to Australia.
2. If:
3. a dependent child who has been absent from Australia for less than 3 years returns to Australia; and
4. the child leaves Australia again within 3 months after returning to Australia;

the following provisions have effect for the purposes of subsections (1) and (2):

1. the child is to be taken to have continued to be absent from Australia during the period during which the child was in Australia;
2. the period of the child’s absence from Australia is to be taken to include the period during which the child was in Australia.

**(4)** If:

(a) a dependent child ceases to be a family allowance child of a person under subsection (1) or this subsection; and

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1. the child returns to Australia; and
2. the child leaves Australia again within 3 months after returning to Australia;

the child ceases to be a family allowance child of the person when the child leaves Australia as mentioned in paragraph (c).

1. Subsection (4) ceases to apply to the dependent child if the child returns to Australia.
2. A dependent child who was outside Australia on 18 May 1986 is to be taken, for the purposes of this section, to have left Australia on 18 May 1986.

**FA child—receipt of foreign “family allowance” in respect of child outside Australia**

**837.** A dependent child of a person cannot be a family allowance child of the person during a period if:

1. the child is outside Australia; and
2. a payment that is similar to family allowance has been, or is being, made by a foreign country to the person for the child during that period.

***Division 2***—***Qualification for and payability of family allowance***

***Subdivision A*—*Qualification***

**Qualification for individual family allowance**

**838.** A person is qualified for family allowance if:

1. the person has at least one FA child; and
2. the person is an Australian resident.

Note: for “Australian resident” see section 7.

**Qualification for approved care organisation family allowance**

**839. (1)** An approved care organisation is, subject to subsections (2), (3) and (4), qualified for family allowance for a young person if:

1. the young person is a client of the organisation; and
2. the young person is an Australian resident; and
3. no person is receiving family allowance for the young person.

**(2)** If the young person has not turned 16, the organisation is not qualified for family allowance for the young person if the young person:

1. is not a full-time student; and
2. is in receipt of income from employment; and
3. the rate of that income exceeds $100 per week.

Note: the amount referred to in paragraph (2) (c) is indexed annually in line with CPI increases (see sections 1191 to 1194).

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**(3)** If the young person has turned 16, the organisation is not qualified for family allowance for the young person if the young person is a prescribed student child.

Note: for “approved care organisation” see subsection 6 (1) and section 35.

**(4)** An approved care organisation is not qualified for family allowance for a young person if the young person is receiving:

1. a social security pension; or
2. a social security benefit; or
3. payment under a program included in the programs known as Labour Force Programs.

**Qualification for family allowance ceases after 3 year absence of recipient from Australia**

**840. (1)** If:

1. a person left, or leaves, Australia on or after 18 May 1986; and
2. before leaving, the person was in receipt of family allowance; and
3. the person continues to be absent from Australia for more than 3 years;

the person is not qualified for family allowance at any time after the first 3 years of the absence while the person remains absent from Australia.

**(2)** If:

1. a person who has been absent from Australia is not qualified for family allowance because of the application of subsection (1), or a previous application of this subsection, in relation to the person’s absence; and
2. the person returns to Australia; and
3. within 3 months after so returning, the person leaves Australia again;

the person is not qualified for family allowance at any time during the person’s absence from Australia that started when the person so left Australia.

**(3)** This section applies in relation to a person (including a child) who was outside Australia on 18 May 1986 as if the person had left Australia on 18 May 1986.

***Subdivision B*—*Payability***

**Family allowance not payable in some circumstances**

**841. (1)** Even though a person is qualified for family allowance, the allowance may not be payable to the person because:

(a) the allowance has not commenced to be payable (see sections 842 and 860); or

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(b) another person is receiving the full amount of family allowance for the person’s child (see section 846).

**(2)** Family allowance is not payable to a person if the person’s family allowance rate would be nil.

**Family allowance generally not payable before claim**

**842.** Subject to sections 844 and 845, family allowance is not payable to a person or an approved care organisation before the person’s or approved care organisation’s provisional commencement day (identified under section 843).

**Provisional commencement day**

*General rule*

**843.** (1) Subject to subsection (2), a person’s or approved care organisation’s provisional commencement day is the day on which the person or organisation claims family allowance.

*Initial incorrect claim followed by claim for family allowance*

**(2)** If:

(a) a person or organisation makes a claim (in this subsection called the **“initial claim”**)for:

(i) a family allowance supplement, a child disability allowance or a double orphan pension; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to a family allowance; and

1. on the day on which the person or organisation makes the initial claim, the person or organisation is qualified for family allowance; and
2. the person or organisation subsequently makes a claim for family allowance; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person or organisation;

the person’s or organisation’s provisional commencement day is the day on which the person or organisation made the initial claim.

**Backdating—birth of child**

**844. (1)** If:

1. a person has a dependent child; and
2. the person’s provisional commencement day is within 1 month after the day on which the child is born; and
3. the person is qualified for family allowance at some time in the period between the birth of the child and the provisional commencement day;

**Family Allowance s. 844**

family allowance can become payable to the person before the provisional commencement day but cannot become payable to the person before the first day in the period on which the person is qualified.

**(2)** If:

1. a person has 3 or more dependent children born during the same multiple birth; and
2. the person’s provisional commencement day is within 13 weeks of the birth of the dependent children; and
3. the person is qualified for family allowance at some time in the period between the birth of the children and the provisional commencement day;

family allowance can become payable to the person before the provisional commencement day but cannot become payable to the person before the first day in the period on which the person is qualified.

Note: for “provisional commencement day” see section 843.

**Backdating**—**new client**

**845.** If:

1. a young person becomes a client of an approved care organisation; and
2. the organisation’s provisional commencement day is within 1 month after the day on which the young person becomes a client of the organisation; and
3. the organisation is qualified for family allowance at some time in the period between the day the young person becomes a client and the provisional commencement day;

family allowance can become payable to the organisation before the provisional commencement day but cannot become payable to the organisation before the first day in the period on which the organisation is qualified.

Note: for “provisional commencement day” see section 843.

**Family allowance not payable to 2 people for the same child**

**846.** If:

1. 2 people are each qualified for family allowance for the same child; and
2. the Secretary has not made a declaration under subsection 868 (1) in respect of family allowance for the child; and
3. one of the people is receiving family allowance for the child; and

(d) the child is the only FA child of the other person;

family allowance is not payable to that other person.

**s. 847 Family Allowance**

***Division 3*—*Claim for family allowance***

**Need for a claim**

**847. (1)** A person who wants to be granted family allowance must make a proper claim for that allowance.

Note: for “proper claim”—see section 848 (form), section 849 (manner of lodgment) and section 850 (residence/presence in Australia).

1. An approved care organisation that wants to be granted family allowance must make a proper claim for that allowance.
2. For the purposes of subsections (1) and (2), where:
3. a claim for family allowance is made by or on behalf of a person or approved care organisation; and
4. at the time the claim is made, the claim cannot be granted because the person or approved care organisation is not qualified for family allowance;

the claim is to be taken to have not been made.

**Form of claim**

**848**. To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**849**. **(1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.
4. Subject to subsection (3), a place or person approved under subsection (1) must be a place or person in Australia.
5. The Secretary may approve a place or person outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

Note: for international agreements see Part 4.1.

**Claimant must be Australian resident and in Australia**

**850.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

**Family Allowance s. 851**

***Division 4***—***Determination of claim***

**Secretary to determine claim**

**851.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**852.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person or approved care organisation is qualified for a family allowance; and
2. the allowance is payable.

**Date of effect of determination**

**853. (1)** Subject to subsections (2), (3) and (4), a determination under section 852 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s or organisation’s claim for family allowance; and
2. a notice is given to the person or organisation advising the person or organisation of the making of the previous decision; and
3. the person or organisation applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting the person’s or organisation’s claim for family allowance; and
2. a notice is given to the person or organisation advising the person or organisation of the making of the previous decision; and
3. the person or organisation applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and

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(d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person or organisation sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s or organisation’s claim for family allowance; and
2. no notice is given to the person or organisation advising the person or organisation of the making of the previous decision; and
3. the person or organisation applies to the Secretary under section 1240 for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 5***—***Rate of family allowance***

**Rate struck for allowance period**

**854.** If the rate of the family allowance payable to a person in a calendar year has been worked out in accordance with the Family Allowance Rate Calculator at the end of section 1069, the rate of family allowance payable to the person only has to be worked out again during that calendar year if:

1. the person makes a request under section 859 (request to change appropriate tax year); or
2. the person notifies the Department or an officer that a notifiable event has occurred in relation to the person.

**How to work out a person’s family allowance rate**

*Individuals*

**855. (1)** The rate of family allowance payable to a person (other than an institution) with an FA child or FA children is worked out using the Family Allowance Rate Calculator at the end of section 1069.

*Approved care organisations*

**(2)** The rate of family allowance payable to an approved care organisation for a child is $24.80 per fortnight.

Note: the amount referred to in subsection (2) is indexed annually in line with CP1 increases (see sections 1191 to 1194).

**Family Allowance s. 856**

**Special determinations**

**856.** The Secretary may determine that an FA child of a person is an FA child to whom item 3 of Table B in point 1069-B1 of the Family Allowance Rate Calculator applies if:

1. the Secretary has directed under section 864 that the whole or a part of the family allowance payable to the person is to be paid to a specified person or group of people; and
2. the Secretary has directed under section 864 that the whole or a part of the family allowance payable to someone else is also to be paid to that specified person or group.

**Secretary may determine that an event is an FA assumed notifiable event**

**857.** The Secretary may determine that an event that is specified in some or all of the notices given under subsection 873 (1) is to be an FA assumed notifiable event for the purposes of point 1069-D4 of the Family Allowance Rate Calculator at the end of section 1069.

**Secretary may specify in a subsection 873 (1) notice that an event is an FA notifiable event**

**858.** If the Secretary gives a person a notice under subsection 873 (1) relating to the payment of family allowance to the person, the Secretary may specify in the notice that an event described in the notice is a notifiable event for the purposes of point 1069-D5 of the Family Allowance Rate Calculator at the end of section 1069.

**FA recipient may ask Secretary to change appropriate tax year**

**859. (1)** If:

1. the rate of a person’s family allowance has been reduced because of the taxable income test provided for in Module D of the Family Allowance Rate Calculator at the end of section 1069; and
2. the person asks the Secretary to make a determination under this section; and
3. the person’s taxable income for the tax year in which the request is made is likely to be less than 75% of the person’s taxable income for the tax year that is the appropriate tax year immediately before the request is made;

the Secretary must determine that the appropriate tax year, for the purposes of applying that Module to the person for a payday after the day on which the request is made, is the tax year in which the request is made.

**(2)** A request under paragraph (1) (b) must be made in writing, in accordance with a form approved by the Secretary.

**s. 860 Family Allowance**

***Division 6***—***Payment of family allowance***

**Commencement of family allowance**

**860.** Family allowance becomes payable to a person or an approved care organisation on the first day on which:

1. the person or organisation is qualified for the pension; and
2. no provision of this Act makes a pension not payable to the person or organisation.

Note 1: for qualification see sections 838 (person) and 839 (approved care organisation).

Note 2: for the circumstances when family allowance is not payable see section 841.

**Payment by instalments**

**861. (1)** A full instalment of family allowance is payable to a person or approved care organisation on each family payment payday on which:

1. the person or organisation is qualified for family allowance; and
2. family allowance is payable to a person or organisation.

**(2)** If the amount that is payable to a person or approved care organisation on a family payment payday is not a multiple of 5 cents, the amount is to be decreased to the nearest multiple of 5 cents.

**Effect on instalments of backdating claim**

**862.** If:

1. a person or approved care organisation lodges a claim for family allowance on a particular day (in this section called the **“claim day”**);and
2. the person’s or organisation’s provisional commencement day is before the claim day;

any instalment of family allowance that would, but for this section, be payable, is payable to the person:

1. if the claim day was a family payment payday—on that day; or
2. the first family payment payday after the claim.

Note: for “provisional commencement day” see section 843.

**Manner of payment**

**863.** A person’s or approved care organisation’s family allowance is, subject to section 864, to be paid:

1. to that person or organisation; and
2. in the manner directed by the Secretary.

**Nominee payments**

**864. (1)** The Secretary may direct that the whole, or a part, of the amount of family allowance payable to a person or approved care organisation is to be paid to someone else on behalf of the person or organisation.

**Family Allowance s. 864**

**(2)** If the Secretary makes a direction under subsection (1), the family allowance is to be paid in accordance with the direction.

**Payment into bank account etc.**

**865. (1)** The Secretary may direct that the whole or a part of the amount of family allowance payable to a person or approved care organisation is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person or organisation to whom the family allowance is payable.
2. The account may be an account that is maintained by a person or organisation to whom the family allowance is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the family allowance is to be payable in accordance with the direction.

**Where family payment payday would fall on public holiday etc.**

**866.** If the Secretary is satisfied that an amount of family allowance that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of allowance after death**

**867. (1)** Where:

1. a family allowance is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of family allowance payable to him or her; and
4. another person or approved care organisation applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person or organisation as the case may be, who, in the Secretary’s opinion, is best entitled to it.

**(2)** Where the Secretary pays an amount of family allowance under subsection (1), the Commonwealth has no further liability to any person or organisation in respect of that amount of family allowance.

**s. 868 Family Allowance**

**Secretary may make declaration where 2 people qualified for family allowance for the same child**

**868. (1)** If the Secretary is satisfied that 2 people are each qualified for family allowance for the same child, the Secretary is to make a declaration:

1. stating that the Secretary is satisfied that the 2 people are each qualified for family allowance for the child; and
2. specifying the share of the family allowance for the child that each of the 2 people is to receive.
3. If the child is one of 3 or more children who were born during the same multiple birth, the Secretary is to specify in the declaration under subsection (1) the manner in which multiple birth allowance under point 1069-C1 of the Family Allowance Rate Calculator is to be dealt with.
4. Without limiting subsection (2), the Secretary may specify that the whole of the multiple birth allowance is to be paid to one of the 2 people involved.
5. If the Secretary makes a declaration under subsection (1), the Secretary is to give each of the 2 people involved notice of the declaration.

Note 1: until the declaration under this section is made only one of the 2 people involved can receive family allowance for the child—see section 846.

Note 2: for the effect of a determination under this section on the calculation of family allowance rates see points 1069-B3 and 1069-C3 of the Family Allowance Rate Calculator.

***Division 7***—***Protection of family allowance***

**Family allowance to be absolutely inalienable**

**869. (1)** Subject to subsection (2) and section 1359, family allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of family allowance payable to a person or approved care organisation where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**870. (1)** If:

(a) a person or approved care organisation has an account with a financial institution; and

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1. instalments of family allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
2. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the total amount of family allowance payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 8***—***Recipient obligations***

**References to recipient**

**871.** In this Division, a reference to a **recipient** is a reference to:

1. a person to whom family allowance is being paid; or
2. an approved care organisation to which family allowance is being paid.

**Application of family allowance**

**872.** If family allowance is payable to a person or an approved care organisation for a child, the person or organisation must apply the allowance to the maintenance, training and advancement of the child.

**Secretary may require notice of the happening of an event or a change in circumstances**

**873. (1)** The Secretary may give a recipient of family allowance a notice that requires the recipient to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the recipient becomes aware that a specified event or change of circumstances is likely to occur.

**s.873 Family Allowance**

1. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the allowance.
2. A notice under subsection (1):
3. must be in writing; and
4. may be given personally or by post; and
5. must specify how the recipient is to give the information to the Department; and
6. must specify the period within which the recipient is to give the information to the Department; and
7. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the recipient becomes aware that the event or change of circumstances is likely to occur.

**(5)** A recipient must not refuse or fail to comply with a notice under subsection (1) to the extent that the recipient is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A recipient must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of family allowance**

**874. (1)** The Secretary may give a recipient of family allowance a notice that requires the recipient to give the Department a statement about a matter that might affect the payment of the allowance to the recipient.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and

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1. must specify the period within which the recipient is to give the statement to the Department; and
2. must specify that the notice is given under this section.
3. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
4. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
5. A recipient must not refuse or fail to comply with a notice under subsection (1) to the extent that the recipient is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A recipient must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Self incrimination**

**875. (1)** A recipient is not excused from giving information pursuant to a notice under section 873 or 874 on the ground that the information may tend to incriminate the recipient.

**(2)** Information given by a recipient pursuant to a notice under section 873 or 874 is not admissible in evidence against the recipient in a criminal proceeding other than a proceeding under, or arising out of, subsection 873 (5) or (6) or 874 (5) or (6).

***Division 9***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**876. (1)** A determination that:

(a) a person’s or an approved care organisation’s claim for family allowance is granted; or

(b) a family allowance is payable to a person or organisation; continues in effect until:

(c) the allowance ceases to be payable under section 877 or 878; or

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(d) a further determination in relation to the allowance under section 882 has taken effect.

Note 1: for paragraph (a) see section 852.

Note 2: for paragraph (b) see section 883—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of family allowance continues in effect until:

1. the allowance becomes payable at a lower rate under section 879; or
2. a further determination in relation to the allowance under section 880 or 881 has taken effect.

***Subdivision B*—*Automatic termination***

**Automatic termination—recipient *complying* with section 873 notification obligations**

**877.** If:

1. a person or an approved care organisation who is receiving family allowance is given a notice under section 873; and
2. the notice requires the person or organisation to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**); and
3. the event or change in circumstances occurs; and
4. the person or organisation informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

(i) the person or organisation ceases to be qualified for the allowance; or

(ii) the allowance would, but for this subsection, cease to be payable to the person or organisation;

the allowance continues to be payable to the person or organisation until the end of the notification period and then ceases to be payable to the person or organisation.

Note: if the person or organisation informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s or organisation’s allowance, there is no automatic rate reduction and a determination under section 881 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 873 notification obligations**

**878.** If:

(a) a person or an approved care organisation who is receiving family allowance is given a notice under section 873; and

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1. the notice requires the person or organisation to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
2. the event or change in circumstances occurs; and
3. the person or organisation does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
4. because of the occurrence of the event or the change in circumstances:

(i) the person or organisation ceases to be qualified for the allowance; or

(ii) the allowance ceases to be payable to the person or organisation;

the allowance ceases to be payable to the person or organisation immediately after the day on which the event or change in circumstances occurs.

***Subdivision C***—***Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 873 notification obligations**

**879.** If:

1. a person or approved care organisation who is receiving family allowance is given a notice under section 873; and
2. the notice requires the person or organisation to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person or organisation does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances, the person’s rate of allowance is to be reduced;

the allowance becomes payable to the person or organisation at the reduced rate immediately after the day on which the event or change in circumstances occurs.

***Subdivision D*—*Determinations***

**Rate increase determination**

**880.** If the Secretary is satisfied that the rate at which family allowance is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 884.

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**Rate reduction determination**

**881.** If the Secretary is satisfied that the rate at which family allowance is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 879 (see subsection 876 (2)).

Note 2: for the date of effect of a determination under this section see section 885.

**Cancellation or suspension determination**

**882.** If the Secretary is satisfied that family allowance is being, or has been, paid to a person or an approved care organisation to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 877 or 878 (see subsection 876 (1)).

Note 2: for the date of effect of a determination under this section see section 885.

**Resumption of payment after cancellation or suspension**

**883. (1)** If the Secretary:

1. cancels or suspends a person’s or an approved care organisation’s family allowance under section 882; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person or organisation did not receive family allowance that was payable to the person or organisation; or

(b) the person or organisation is not receiving family allowance that is payable to the person or organisation;

the Secretary is to determine that family allowance was or is payable to the person or organisation.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 884.

***Subdivision E*—*Date of effect of determinations***

**Date of effect of favourable determination**

**884. (1)** The day on which a determination under section 880 or 883 (in this section called the **“favourable determination”**)takes effect is worked out in accordance with this section.

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*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a family allowance; and
2. a notice is given to the person or an approved care organisation to whom the allowance is payable advising the person or organisation of the making of the previous decision; and
3. the person or organisation applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a family allowance; and
2. a notice is given to the person or organisation to whom the allowance is payable advising the person or organisation of the making of the previous decision; and
3. the person or organisation applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the person or organisation sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a family allowance; and
2. no notice is given to the person or organisation to whom the allowance is payable advising the person or organisation of the making of the previous decision; and
3. the person or organisation applies to the Secretary under section 1240 for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

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the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If the favourable determination is made following a person or organisation having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person or organisation, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person or organisation has since ceased to receive that payment; and
3. the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because

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of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**885. (1)** The day on which a determination under section 881 or 882 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person or approved care organisation whose allowance is affected by the adverse determination has contravened a provision of this Act (other than section 874, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person or organisation has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the allowance has been paid to a person or organisation when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

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*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person or organisation has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the allowance was paid to a person or organisation was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 10***—***Bereavement payments (death of dependent child)***

**Continuation of qualification for family allowance for bereavement rate continuation period where recipient’s only FA child dies**

**886.** If:

1. a person is receiving family allowance for a dependent child; and
2. the child dies; and
3. the child was the only FA child of the person; and
4. immediately before the child died:

(i) the person was receiving a social security pension or a benefit whose rate included:

(a) a dependent child add-on for the child; or

(b) guardian allowance for the child; or

(ii) the person was receiving family allowance supplement for the child; or

(iii) the person was receiving a service pension whose rate included:

(a) a dependent child add-on for the child; or

(b) guardian allowance in respect of the child;

the person is to be qualified for family allowance during the bereavement rate continuation period as if the child had not died.

**Bereavement payments on death of dependent child**

**887.** If:

1. a person is receiving family allowance; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s family allowance rate included a FAS child rate for the child; and
4. immediately before the child died:

(i) the person was receiving a social security pension or a benefit whose rate included:

(a) a dependent child add-on for the child; or

(b) guardian allowance for the child; or

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(ii) the person was receiving family allowance supplement for the child; or

(iii) the person was receiving a service pension whose rate included:

1. a dependent child add-on for the child; or
2. guardian allowance in respect of the child;

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

Note 1: section 888 provides for family allowance to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s taxable income test free areas.

Note *2:* section 889 provides for a lump sum to be paid to the person if the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new family allowance rate and the rate at which the allowance would have been paid if the child had not died but were disregarded for the purposes of working out the person’s income test free areas.

Note 3: section 890 provides for an additional lump sum in some circumstances.

**Continued payment of family allowance**

**888.** If a person is qualified for payments under this Division in relation to the death of a dependent child, the person’s family allowance rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s taxable income free area.

**Lump sum payable in some circumstances**

**889.** If:

1. a person is qualified for payments under this Division in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

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***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the person’s family allowance rate on the payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**.  Note: section 888 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the rate that would have been the person’s family allowance rate on the payday immediately before the first available bereavement adjustment payday if the person’s family allowance rate were not calculated under section 888: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Additional lump sum payable in some circumstances**

**890. (1)** A lump sum (worked out using the lump sum calculator at the end of this subsection) is payable to a person if:

1. the person is qualified for payments under this Subdivision in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, the only person receiving family allowance for the child; and
4. someone else was, immediately before the child died, receiving another child-related amount for the child.

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***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Add up all the child-related amounts that were payable to the other person on the payday immediately before the first available bereavement adjustment payday: the result is called the **other person’s continued rate**. |
| *Step 2.* | Add up all the child related amounts that would have been payable to the other person on the payday immediately before the first available bereavement adjustment payday if the other person’s pension or allowance rate were not calculated under a bereavement rate adjustment provision: the result is called the **other person’s new rate**. |
| *Step 3.* | Take the other person’s new rate away from the other person’s continued rate: the result is called the **other person’s deceased child component**. |
| *Step 4.* | Work out the number of paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the other person’s deceased child component by the number of paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the family allowance recipient under this section. |

**(2)** The person who is qualified for payments under this Division may be entitled to more than one lump sum under this section if:

1. there is more than one other person who was, immediately before the child died, receiving some other child-related amount in respect of the child; or
2. the other person was, immediately before the child died, receiving 2 or more child-related amounts for the child.

**(3)** For the purposes of applying the Lump Sum Calculator, the reference to a payday is a reference to a payday for the pension or allowance that constitutes or includes the child-related amount concerned.

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**PART 2.18—FAMILY ALLOWANCE SUPPLEMENT**

***Division 1*—*Family allowance supplement child status***

**Family allowance supplement child**

**891.** Subject to sections 892, 893 and 894, a dependent child of a person is also a family allowance supplement child of the person if the child is present in Australia and:

1. the person is receiving family allowance in respect of the child; or
2. the person is a member of a couple and the person’s partner:

(i) is outside Australia; and

(ii) is receiving family allowance in respect of the child.

Note: for family allowance see Part 2.17.

**FAS child—prescribed student child not included**

**892.** A dependent child cannot be a family allowance supplement child if the child:

1. has turned 16; and
2. is a prescribed student child.

**FAS child—receipt of other periodic payments for child**

**893. (1)** A dependent child of a person cannot be a family allowance supplement child of the person if:

1. the person or the person’s partner is receiving a periodic payment under a law of the Commonwealth and the law provides for an increase in the rate of payment by reference to the child; or
2. the person or the person’s partner is receiving a periodic payment under a scheme administered by the Commonwealth and the scheme provides for an increase in the rate of payment by reference to the child; or
3. the person or the person’s partner is receiving a payment under a law of a foreign country and the payment is similar in character to a payment referred to in paragraph (a) or (b).

**(2)** Subsection (1) does not apply to a periodic payment that is a compensation payment.

**FAS child—taxation of “unearned” income**

**894.** A dependent child cannot be a family allowance supplement child if subsection 13 (1) of the *Income Tax Rates Act 1986* applies or applied in relation to the last year of income of the child.

Note: subsection 13 (1) of the *Income Tax Rates Act 1986* applies to certain young people whose taxable income from certain sources (what may be loosely referred to as their “unearned” income) exceeds $416 a year.

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***Division 2*—*Qualification for and payability of family allowance supplement***

***Subdivision A*—*Qualification***

**Qualification for family allowance supplement**

**895. (1)** A person is qualified for family allowance supplement if:

1. the person has at least one family allowance supplement child; and
2. neither the person nor the person’s partner is receiving a social security pension or benefit; and
3. the person is in Australia; and
4. the value of the person’s assets does not exceed $322,750.

Note 1: for “Australian resident” see section 7.

Note 2: for the assets that are to be disregarded in valuing a person’s assets see section 1118.

Note 3: for the valuation of an asset that is subject to a charge or encumbrance see section 1121.

Note 4: the amount referred to in paragraph (1) (d) is indexed annually in line with CPI increases (see sections 1191 to 1194).

1. For the purposes of paragraph (1) (d), the value of the assets of a person who is a member of a couple is to be taken to include the value of the assets of the person’s partner.
2. A person is not qualified for family allowance supplement if:
3. the person’s taxable income for the appropriate tax year for the FAS period is unknown; or
4. the taxable income of the person’s partner for the appropriate tax year for the FAS period is unknown.

Note: for the circumstances in which a person’s taxable income is to be treated as “unknown” see points 1070-D10 and 1070-D11 of the Family Allowance Supplement Rate Calculator.

**(4)** Subsection (3) does not apply to a person who is receiving payments under:

1. the AUSTUDY scheme; or
2. the ABSTUDY scheme; or
3. the Post-Graduate Awards Scheme.

Note: a person receiving these payments is not subject to the family allowance supplement taxable income test (see point 1070-D1 of the Family Allowance Supplement Rate Calculator).

***Subdivision B***—***Payability***

**Family allowance supplement not payable in some circumstances**

**896. (1)** Even though a person is qualified for family allowance supplement, the family allowance supplement may not be payable to the person because:

(a) the family allowance supplement has not commenced to be payable (see sections 897 and 919); or

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(b) another person is receiving the full amount of family allowance supplement for the person’s child (see section 901).

**(2)** Family allowance supplement is not payable to a person if the person’s family allowance rate would be nil.

**Family allowance supplement generally not payable before claim**

**897.** Family allowance supplement is not payable to a person before the person’s provisional commencement day (identified under section 898).

**Provisional commencement day**

*General rule*

**898. (1)** Subject to subsection (2) and sections 899 and 900, a person’s provisional commencement day is the day on which the person claims family allowance supplement.

*Initial incorrect claim followed by claim for family allowance supplement*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**) for:

(i) a family allowance, a child disability allowance or a double orphan pension; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to family allowance supplement; and

1. on the day on which the person makes the initial claim, the person is qualified for family allowance supplement; and
2. the person subsequently makes a claim for family allowance supplement; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

**Claim within 4 weeks of birth**

**899. (1)** If:

1. a person has a dependent child; and
2. a person lodges a claim for family allowance supplement in respect of the dependent child within 4 weeks of the birth of the dependent child;

the person’s provisional commencement day is the day on which the dependent child is born.

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**(2)** If:

1. a person has 3 or more dependent children born during the same multiple birth; and
2. a person lodges a claim for family allowance supplement in respect of one of the dependent children within 13 weeks of the birth of the dependent children;

the person’s provisional commencement day is the day on which the dependent children are born.

**Claim within 6 weeks of ceasing other payments**

**900. (1)** If:

(a) either:

(i) a person or the person’s partner ceases receiving a periodic payment under a law of the Commonwealth and the law provides for an increase in the rate of payment by reference to a dependent child of the person; or

(ii) a person or the person’s partner ceases receiving a periodic payment under a scheme administered by the Commonwealth and the scheme provides for an increase in the rate of payment by reference to a dependent child of the person; or

(iii) a person or the person’s partner ceases receiving a payment under a law of a foreign country and the payment is similar in character to a payment referred to in subparagraph (i) or (ii); and

1. the person makes a claim for family allowance supplement within 6 weeks of ceasing to receive a payment referred to in paragraph (a); and
2. the person is qualified for family allowance supplement in respect of the dependent child on the day on which the payment referred to in paragraph (a) ceases;

the person’s provisional commencement day is the day on which the payment referred to in paragraph (a) ceased.

**(2)** Subsection (1) does not apply to a periodic payment that is a compensation payment.

**Family allowance supplement not payable to 2 people in respect of the same child**

**901.** If:

1. 2 people are each qualified for family allowance supplement for the same child; and
2. the Secretary has not made a declaration under subsection 927 (1) in respect of family allowance supplement for the child; and
3. one of the people is receiving family allowance supplement for the child; and

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(d) the child is the only FAS child of the other person;

family allowance supplement is not payable to that other person.

***Division 3*—*Claim for family allowance supplement***

**Need for a claim**

**902. (1)** A person who wants to be granted family allowance supplement must make a proper claim for that allowance.

Note 1: “proper claim”—sec section 903 (form), section 904 (mariner of lodgment) and section 905 (residence/presence in Australia).

Note 2: for people continuing on FAS from one calendar year to the next, a claim made during the first calendar year will be taken to have been lodged on the first day of the next calendar year (see section 906).

**(2)** For the purposes of subsection (1), where:

1. a claim for family allowance supplement is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for family allowance supplement;

the claim is to be taken to have not been made.

**Form of claim**

**903.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**904. (1)** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place approved for the purpose by the Secretary; or
3. with a person approved for the purpose by the Secretary.

**(2)** A place or person approved under subsection (1) must be a place or person in Australia.

**Claimant must be Australian resident and in Australia**

**905.** A claim by a person is not a proper claim unless the person is:

1. an Australian resident; and
2. in Australia;

on the day on which the claim is lodged.

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

**Date of lodgment of claim**

**906. (1)** If:

(a) a family allowance supplement is payable to a person; and

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(b) the person lodges another claim for family allowance supplement during the FAS period;

the claim referred to in paragraph (b) is to be taken to be lodged on the day immediately following the end of the FAS period.

**(2)** If:

1. a person has been paid family allowance supplement during the whole or a part of a FAS period; and
2. the person lodges another claim for family allowance supplement within the period of 4 weeks after the end of the FAS period;

the claim referred to in paragraph (b) is to be taken to have been lodged on the day immediately following the end of the FAS period.

***Division 4***—***Determination of claim***

**Secretary to determine claim**

**907.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**908.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

1. the person is qualified for family allowance supplement; and
2. the allowance is payable.

**Date of effect of determination**

**909. (1)** Subject to subsections (2), (3) and (4), a determination under section 908 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for family allowance supplement; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

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*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for family allowance supplement; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for family allowance supplement; and
2. no notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division* 5**—***Rate of family allowance supplement***

**How to work out the rate of a person’s family allowance supplement**

**910.** A person’s family allowance supplement rate is worked out using the Family Allowance Supplement Rate Calculator at the end of section 1070.

**Rate struck for allowance period**

**911**. If the rate of the family allowance supplement payable to a person in a calendar year has been worked out in accordance with the Family Allowance Supplement Rate Calculator at the end of section 1070, the rate of family allowance supplement payable to the person only has to be worked out again during that calendar year if:

1. the person makes a request under section 918; or
2. the person notifies the Department or an officer of the occurrence of a notifiable event in relation to the person; or

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1. the person’s family allowance supplement rate is to be recalculated under section 913 (amendment of tax assessment); or
2. the person’s family allowance supplement rate is to be recalculated under section 914 (underestimate of taxable income); or
3. the person’s family allowance supplement rate is to be recalculated under section 915 (failure to notify FAS notifiable event).

**Notice estimating taxable income**

**912. (1)** A person may give the Department or an officer a notice setting out the person’s estimate of the person’s taxable income for a tax year.

Note: for the consequences of underestimating taxable income see section 914.

**(2)** The Secretary is to accept the notice for the purpose of Module D of the Family Allowance Supplement Rate Calculator only if:

1. the person does not have an assessed taxable income for that tax year; and
2. either:

(i) that tax year has not ended; or

(ii) the Secretary is satisfied that the person is not required to lodge a return of income for that tax year under the Income Tax Assessment Act; or

(iii) the Secretary is satisfied that the person has lodged, or proposes to lodge, a return of income for that tax year under that Act.

**Effect of amendment of assessed taxable income**

**913.** If:

1. a person’s rate of family allowance supplement has been worked out on the basis of an assessment of the person’s taxable income for a tax year; and
2. the assessment is subsequently amended by:

(i) the Commissioner of Taxation; or

(ii) a tribunal; or

(iii) a court;

the person’s rate of family allowance supplement is to be recalculated on the basis of the person’s taxable income for that year according to the assessment as amended.

Note: for the date of effect of a determination by the Secretary giving effect to this section see sections 942 and 945.

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**Recalculation if taxable income underestimated by 25% or more**

**914.** If:

1. the Secretary makes a determination of a person’s family allowance supplement rate; and
2. in making the determination, the Secretary has regard to:

(i) the person’s taxable income for a tax year; or

(ii) the person’s partner’s taxable income for a tax year; and

1. that taxable income is an amount estimated by the person; and
2. the Commissioner of Taxation subsequently makes an assessment of that taxable income; and
3. the estimated amount is less than 75% of the amount assessed by the Commissioner;

the person’s family allowance supplement rate is to be recalculated on the basis of that taxable income as assessed by the Commissioner.

Note: for the date of effect of a determination giving effect to this section see section 946.

**Recalculation if failure to notify FAS notifiable event**

**915.** If:

1. an FAS notifiable event occurs in relation to a person; and
2. the person fails to notify the FAS notifiable event in accordance with section 930; and
3. the Commissioner of Taxation subsequently makes an assessment of:

(i) the person’s taxable income for the tax year in which the FAS notifiable event occurs; or

(ii) the person’s partner’s taxable income for that tax year; and

1. the person’s taxable income for that tax year is more than 125% of the person’s taxable income for the tax year that is, when the event occurs, the person’s base tax year; and
2. the Secretary is satisfied that more than 25% of the difference between the person’s taxable incomes for the 2 tax years is directly attributable to the FAS notifiable event;

the person’s family allowance supplement rate is to be recalculated on the basis that the person’s appropriate tax year is the tax year in which the FAS notifiable event occurred.

Note 1: if the person notifies the FAS notifiable event, the person’s family allowance supplement rate will be recalculated under paragraph 911 (b).

Note 2: for the date of effect of a determination giving effect to this section see section 947.

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**Secretary may determine that an event is an FAS assumed notifiable event**

**916.** The Secretary may determine that an event that is specified in some or all of the notices given under subsection 930 (1) is to be an FAS assumed notifiable event for the purposes of point 1070-D6 of the Family Allowance Supplement Rate Calculator at the end of section 1070.

**Secretary may specify in a subsection 930 (1) notice that an event is an FAS notifiable event**

**917.** If the Secretary gives a person a notice under subsection 930 (1) relating to the payment of family allowance supplement to the person, the Secretary may specify in the notice that an event described in the notice is an FAS notifiable event for the purposes of point 1070-D7 of the Family Allowance Supplement Rate Calculator at the end of section 1070.

**FAS recipient may ask Secretary to change appropriate tax year**

**918. (1)** If:

1. a person’s family allowance supplement rate has been reduced because of the taxable income test in Module D of the Family Allowance Supplement Rate Calculator; and
2. the person asks the Secretary to make a determination under this section; and
3. the person’s taxable income for the tax year in which the request is made is:

(i) less than 75% of the person’s taxable income for the appropriate tax year at the time when the request is made; or

(ii) less than the person’s taxable income free area;

the Secretary must determine that the appropriate tax year, for the purposes of applying that Module to the person from the first applicable FAS payday, is the tax year in which the request is made.

Note: for the date of effect of a determination increasing a person’s FAS rate because of a request under this section, see section 943.

**(2)** A request under paragraph (1) (b) must be made in writing and in accordance with a form approved by the Secretary.

***Division 6*—*Payment of family allowance supplement***

**Commencement of family allowance supplement**

**919.** Family allowance supplement becomes payable to a person on the first day on which:

1. the person is qualified for family allowance supplement; and
2. no provision of this Act makes family allowance supplement not payable to the person

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Note 1: for qualifications see section 895.

Note 2: for the circumstances in which family allowance is not payable see section 896.

**Payment by instalments**

**920. (1)** A full instalment of family allowance supplement is payable to a person on each family payment payday on which:

1. the person is qualified for the allowance; and
2. the allowance is payable to the person.

**(2)** If the amount that is payable to a person on a family payment payday would include 0.5 cent, the amount is to be increased by 0.5 cent.

**Effect on instalments of backdating claim**

**921.** If:

1. a person lodges a claim for family allowance supplement on a particular day (in this section called the **“claim day”**);and
2. the person’s provisional commencement day is before the claim day;

any instalment of family allowance supplement that would, but for this section, be payable, is payable to the person:

1. if the claim day was a family payment payday—on that day; or
2. the first family payment payday after the claim day.

Note: for “provisional commencement day” see section 898.

**Manner of payment**

**922.** A person’s family allowance supplement is, subject to section 923, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**923. (1)** The Secretary may direct that the whole, or a part, of the amount of family allowance supplement payable to a person is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the family allowance supplement is to be paid in accordance with the direction.

**Payment into bank account etc.**

**924. (1)** The Secretary may direct that the whole or a part of the amount of family allowance supplement payable to a person is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

**(2)** The account must be an account nominated and maintained by the person to whom the family allowance supplement is payable.

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1. The account may be an account that is maintained by a person to whom the family allowance supplement is payable jointly or in common with another person.
2. If the Secretary gives a direction under subsection (1), the family allowance supplement is to be payable in accordance with the direction.

**Where family payment payday would fall on public holiday etc.**

**925.** If the Secretary is satisfied that an amount of family allowance supplement that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**Payment of family allowance supplement after death**

**926. (1)** If:

1. a family allowance supplement is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of family allowance supplement payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of family allowance supplement under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of family allowance supplement.

**Secretary may make declaration where 2 people qualify for family allowance supplement for the same child**

**927. (1)** If 2 people are each qualified for, and have claimed, family allowance supplement for the same child, the Secretary is to make a declaration:

1. determining that family allowance supplement is payable to one of those people for the child; or
2. determining that family allowance supplement for the child is to be shared between those people in the percentages specified in the declaration.

**(2)** If the Secretary makes a declaration under subsection (1), the Secretary is to give each of the people involved notice of the declaration.

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Note 1: until a declaration is made family allowance supplement is payable to only one of the 2 people who are qualified for the family allowance supplement—see section 901.

Note 2: for the effect of a declaration under subsection (1) on the calculation of family allowance supplement rates, see points 1070-B2 and 1070-B3 of the Family Allowance Supplement Rate Calculator.

***Division 7*—*Protection of family allowance supplement***

**Family allowance supplement to be absolutely inalienable**

**928. (1)** Subject to subsection (2) and section 1359, family allowance supplement is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of family allowance supplement payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**929. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of family allowance supplement payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the total amount of the family allowance supplement payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 8*—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**930. (1)** The Secretary may give a person to whom a family allowance supplement is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the supplement.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

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1. acts, omissions, matters and things outside Australia whether of not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of family allowance supplement**

**931. (1)** The Secretary may give a person to whom a family allowance supplement is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the supplement to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality of citizenship.

**Self incrimination**

**932. (1)** A person is not excused from giving information pursuant to a notice under section 930 or 931 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 930 or 931 is not admissible in evidence against the person in

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a criminal proceeding other than a proceeding under, or arising out of, subsection 930 (5) or (6) or 931 (5) or (6).

***Division 9*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**933. (1)** A determination that:

1. a person’s claim for family allowance supplement is granted; or
2. a family allowance supplement is payable to a person;

continues in effect until:

1. the supplement ceases to be payable under section 934 or 935; or
2. a further determination in relation to the supplement under section 939 has taken effect.

Note 1: for paragraph (a) see section 908.

Note 2: for paragraph (b) see section 940—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of family allowance supplement continues in effect until:

1. the supplement becomes payable at a lower rate under section 936; or
2. a further determination in relation to the supplement under section 937 or 938 has taken effect.

***Subdivision B***—***Automatic termination***

**Automatic termination—recipient *complying* with section 930 notification obligations**

**934.** If:

1. a person who is receiving family allowance supplement is given a notice under section 930; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or change in circumstances:

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(i) the person ceases to be qualified for the supplement; or

(ii) the supplement would, but for this section, cease to be payable to the person;

the supplement continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s supplement, there is no automatic rate reduction and a determination under section 938 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 930 notification obligations**

**935.** If:

1. a person who is receiving family allowance supplement is given a notice under section 930; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
5. because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the supplement; or

(ii) the supplement ceases to be payable to the person;

the supplement ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

***Subdivision C*—*Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 930 notification obligations**

**936.** If:

1. a person who is receiving family allowance supplement is given a notice under section 930; and
2. the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and
3. the event or change in circumstances occurs; and
4. the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

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(e) because of the occurrence of the event or change in circumstances, the person’s rate of supplement is to be reduced;

the supplement becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

***Subdivision D*—*Determinations***

**Rate increase determination**

**937.** If the Secretary is satisfied that the rate at which family allowance supplement is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 941.

**Rate reduction determination**

**938.** If the Secretary is satisfied that the rate at which a family allowance supplement is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 936 (see subsection 933 (2)).

Note 2: for the date of effect of a determination under this section see section 944.

**Cancellation or suspension determination**

**939.** If the Secretary is satisfied that a family allowance supplement is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the supplement is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 934 or 935 (see subsection 933 (1)).

Note 2: for the date of effect of a determination under this section see section 944.

**Resumption of payment after cancellation or suspension**

**940. (1)** If the Secretary:

1. cancels or suspends a person’s family allowance supplement under section 939; and
2. reconsiders the decision to cancel or suspend; and
3. becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive family allowance supplement that was payable to the person; or

(b) the person is not receiving family allowance supplement that is payable to the person;

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the Secretary is to determine that family allowance supplement was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 941.

***Subdivision E***—***Date of effect of determinations***

**Date of effect of favourable determination**

**941. (1)** The day on which a determination under section 937 or 940 (in this section called the **“favourable determination”**)takes effect is worked out in accordance with this section and section 942.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a family allowance supplement; and
2. a notice is given to the person to whom the supplement is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”**)is made in relation to a family allowance supplement; and
2. a notice is given to the person to whom the supplement is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

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the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**) is made in relation to a family allowance supplement; and
2. no notice is given to the person to whom the supplement is payable advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, for review of the previous decision; and
4. a favourable determination is made as a result of the application for review; and
5. subsections (6), (7) and (8) do not apply to the determination;

the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Prescribed student child determination*

**(6)** If:

1. the favourable determination is made as a result of the Secretary forming the opinion for the purposes of subsections 5 (12) and (13) that a young person will not, or would not, receive payments under a prescribed educational scheme; and
2. the Secretary is notified that the young person has been refused payment under a prescribed educational scheme within 28 days after the person is notified of that refusal;

the determination takes effect on the day when the determination is made or on such earlier or later day as is specified in the determination.

**(7)** If:

1. the favourable determination is made because, under subsection 5 (13), a young person is not qualified to receive a payment under a prescribed educational scheme; and
2. the young person, or another person, was previously in receipt of a payment under a prescribed educational scheme in respect of that young person, and the young person or other person has since ceased to receive that payment; and
3. the Secretary was notified, within 28 days after the payment was granted, that it was no longer being received;

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the determination takes effect on the day when the determination is made or such earlier or later day as is specified in the determination.

**(8)** If:

1. the favourable determination is made because, under paragraph 5 (12) (c), a young person is not qualified to receive payments under any of the prescribed educational schemes; and
2. no applications have been made for payments in respect of that young person under any of the prescribed educational schemes; and
3. the Secretary is satisfied that it is reasonable for such applications not to be made; and
4. the young person ceased to be a prescribed student child because of the operation of paragraph 5 (12) (c) within 3 months after becoming a prescribed student child;

the determination takes effect on the day on which the young person became a prescribed student child.

*Other determinations*

**(9)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Amendment of assessment of taxable income**

**942.** If:

1. a determination of a person’s rate of family allowance supplement is made; and
2. the determination is based on an assessment of the person’s taxable income for a tax year; and
3. the assessment is subsequently amended by:

(i) the Commissioner of Taxation; or

(ii) a tribunal; or

(iii) a court; and

1. the person’s taxable income for that year according to the assessment as amended is less than the person’s taxable income for that year according to the assessment that was amended; and
2. the Secretary makes a determination varying the person’s rate of family allowance supplement to give effect to the recalculation required by section 913;

the later determination takes effect from:

(f) if the amendment of the assessment is made on application by the person—the day on which the earlier determination took effect; or

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(g) if the amendment of the assessment was made otherwise than on application by the person—the day on which the person notifies the Department or an officer of the amendment of the assessment.

Note: this subsection results in arrears being payable to the person for the period between the date of effect of the later determination and the day on which later determination is made.

**Determination following recipient’s request under section 918**

**943.** If:

1. a person makes a request under paragraph 918 (1) (b); and
2. as a result of the request, the Secretary determines that the person’s appropriate tax year is the tax year in which the request is made; and
3. the Secretary makes a determination of the person’s family allowance supplement rate to give effect to the determination referred to in paragraph (b);

the determination of the new rate takes effect on:

1. if the request was made within 60 days after the person is notified of the decision to reduce the person’s family allowance supplement rate under the taxable income test—the first family payment payday in the period starting on the day on which the decision was made; or
2. if the request is made more than 60 days after the person is notified of the decision to reduce the person’s family allowance supplement rate under the taxable income test—the first family payment payday in the period starting on the day on which the request is made.

**Date of effect of adverse determination**

*General*

**944. (1)** The day on which a determination under section 938 or 939 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

1. the day on which the determination is made; or
2. if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6) and sections 945 and 946, the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

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*Contravention of Act*

**(4)** If:

(a) the person whose supplement is affected by the adverse determination has contravened a provision of this Act (other than section 931, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination; the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the family allowance supplement has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

1. a person has made a false statement or misrepresentation; and
2. because of the false statement or misrepresentation, the rate at which the family allowance supplement was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

**Date of effect of variation of rate of family allowance supplement because of amendment of assessed taxable income**

**945.** If:

1. a determination of a person’s rate of family allowance supplement is made; and
2. the determination is based on an assessment of a taxable income for a tax year; and
3. the assessment is subsequently amended by:

(i) the Commissioner of Taxation; or

(ii) a tribunal; or

(iii) a court; and

1. the taxable income for that year according to the assessment as amended is more than 125% of the taxable income for that year according to the assessment that has been amended; and
2. the Secretary makes a determination varying the person’s rate of family allowance supplement to give effect to the recalculation required by section 913;

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the later determination takes effect on the day on which the earlier determination took effect.

Note 1: this subsection results in overpayments for the period between the earlier determination and the later determination and these overpayments may be recovered under Chapter 5 (Overpayments and debt recovery).

Note 2: if the amended assessment is not more than 125% of the original assessment, the date of effect of the determination made to give effect to the amendment is governed by section 944.

**Underestimate of taxable income—date of effect of section 914 determination**

**946.** If:

1. the Secretary makes a determination of a person’s family allowance supplement rate; and
2. in making the determination, the Secretary has regard to:

(i) the person’s taxable income for a tax year; or

(ii) the person’s partner’s taxable income for a tax year; and

1. that taxable income is an amount estimated by the person; and
2. the Commissioner of Taxation subsequently makes an assessment of that taxable income; and
3. the estimated amount is less than 75% of the amount assessed by the Commissioner; and
4. the Secretary makes a determination varying the person’s family allowance supplement rate, or cancelling the person’s family allowance supplement, to give effect to the recalculation required by section 914;

the later determination takes effect on the day on which the earlier determination took effect.

Note: this section gives rise to overpayments that may be recovered under Chapter 5.

**Failure to notify FAS notifiable event—date of effect of section 915 determination**

**947.** If:

1. an FAS notifiable event occurs in relation to a person; and
2. the person fails to notify the FAS notifiable event in accordance with section 930; and
3. the Commissioner of Taxation subsequently makes an assessment of:

(i) the person’s taxable income for the tax year in which the FAS notifiable event occurs; or

(ii) the person’s partner’s taxable income for that tax year; and

(d) the person’s taxable income for that tax year is more than 125% of the person’s taxable income for the tax year that is, when the FAS event occurs, the person’s base tax year; and

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1. the Secretary is satisfied that more than 25% of the difference between the person’s taxable incomes for the 2 tax years is directly attributable to the FAS notifiable event; and
2. the Secretary makes a determination varying the person’s family allowance supplement rate, or cancelling the person’s family allowance supplement, to give effect to the recalculation required by section 915;

the later determination takes effect on the day on which the FAS notifiable event occurs.

Note: this section gives rise to overpayments that may be recovered under Chapter 5.

***Division 10***—***Bereavement payments (death of dependent child)***

**Continuation of qualification for family allowance supplement for bereavement rate continuation period where recipient’s only FAS child dies**

**948.** If:

1. a person is receiving family allowance supplement for a dependent child; and
2. the child dies; and
3. the child was the only FAS child of the person;

the person is to be qualified for family allowance supplement during the bereavement rate continuation period as if the child had not died.

**Bereavement payments on death of dependent child**

**949.** If:

1. a person is receiving family allowance supplement; and
2. a dependent child of the person dies; and
3. immediately before the child died, the person’s family allowance supplement rate included a FAS child rate for the child;

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

Note 1: section 950 provides for family allowance supplement to be paid to the person, up to the first available bereavement adjustment payday, at the rate at which it would have been paid if the child had not died but were disregarded for the purposes of working out the person’s taxable income free area.

Note 2: section 951 provides for a lump sum to be paid to the person if the person was receiving family allowance for the child and the first available bereavement adjustment payday occurs before the end of the bereavement period: the lump sum represents the difference, over the bereavement lump sum period, between the person’s new family allowance supplement rate and the rate at which the supplement would have been paid if the child had not died but were disregarded for the purposes of working out the person’s taxable income free areas.

Note 3: the additional payments preserved by this Division are:

* FAS child rate;
* additional rent assistance.

**Family Allowance Supplement s. 950**

**Continued payment of family allowance supplement**

**950.** If a person is qualified for payments under this Division in relation to the death of a dependent child, the person’s family allowance supplement rate during the bereavement rate continuation period is to be calculated as if:

1. the child had not died; and
2. the child was disregarded in calculating the person’s taxable income free area.

**Lump sum payable in some circumstances**

**951.** If:

1. a person is qualified for payments under this Division in relation to the death of a dependent child; and
2. the first available bereavement adjustment payday occurs before the end of the bereavement period; and
3. the person was, immediately before the child died, receiving family allowance for the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Note: if the person qualified for payments under this Division was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**s. 951 Family Allowance Supplement**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the person’s family allowance supplement rate on the family payment payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**.  Note: section 950 applies in working out this rate because the payday on which it is payable is within the bereavement rate continuation period. |
| *Step 2.* | Work out the rate that would have been the person’s family allowance supplement rate on the payday immediately before the first available bereavement adjustment payday if the person’s family allowance supplement rate were not calculated under section 950: the result is called the **new rate**. |
| *Step 3.* | Take the new rate away from the continued rate: the result is called the **deceased child component**. |
| *Step 4.* | Work out the number of family payment paydays in the bereavement lump sum period. |
| *Step 5.* | Multiply the deceased child component by the number of family payment paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

**Child Disability Allowance s. 952**

**PART 2.19—CHILD DISABILITY ALLOWANCE**

***Division 1*—*CDA child status***

**Disabled child**

**952.** Subject to section 953, a young person is a disabled child if:

1. the young person has a physical, intellectual or pyschiatric disability; and
2. because of that disability, the young person:

(i) needs care and attention from another person on a daily basis; and

(ii) the care and attention needed by the young person is substantially more than that needed by a young person of the same age who does not have a physical, intellectual or psychiatric disability; and

(c) the young person is likely to need that care and attention permanently or for an extended period.

**CDA child status—family allowance requirement**

**953.** A disabled child is a CDA child of a person if:

1. a family allowance is payable to the person for the disabled child; or
2. a family allowance would be payable to the person for the disabled child but for:

(i) section 832 (prescribed student child cannot be FA child); or

(ii) section 837 (child is not FA child if payments similar to family allowance are made by a foreign country); or

(iii) Module D of the Family Allowance Rate Calculator (taxable income test—see section 1069); or

(iv) the child receiving income from employment in excess of $100 per week; or

(v) a proper claim not having been made.

Note: for family allowance see Part 2.17.

***Division 2*—*Qualification for and payability of child disability allowance***

***Subdivision A*—*Qualification***

**Qualification for child disability allowance**

**954.** A person is qualified for a child disability allowance for a young person if:

1. the young person is a CDA child of the person; and
2. the young person receives care and attention on a daily basis from:

**s. 954 Child Disability Allowance**

(i) if a person is a member of a couple—the person or the person’s partner; or

(ii) if the person is not a member of a couple—the person; in a private home that is the residence of the person and the young person.

Note 1: for “young person” see section 5.

Note 2: for “CDA child” see sections 952 and 953.

Note 3: a person may continue to be qualified for child disability allowance even if paragraph (b) is not satisfied—see section 955.

Note 4: where the young person is absent during school hours but is otherwise being cared for by the person on school days outside school hours, the person receives the full rate of allowance. Where the person does not provide care to the young person on school days because the young person is away (e.g. boarding), the person may remain qualified for the allowance (see subsection 955 (2)) but the person’s rate may be reduced under section 967.

**Qualification while person not providing care**

*28 days or less*

**955. (1)** If:

(a) for a period, or periods, in a particular calendar year, a person would, but for this subsection, stop being qualified for a child disability allowance for a CDA child because during the period, or periods, the child is not receiving care and attention on a daily basis from:

(i) if the person is a member of a couple—the person or the person’s partner; or

(ii) if the person is not a member of a couple—the person; in a private home that is the residence of the person and the young person; and

(b) the period, or the aggregate of the periods, does not exceed, or is not likely to exceed, 28 days in that calendar year;

the person continues to be qualified for a child disability allowance for the CDA child during the period or periods.

Note: a person who continues to be qualified because of subsection (1) will receive the full rate of child disability allowance.

*CDA child receiving education, training or treatment*

**(2)** If:

(a) for a period a person would, but for this subsection, stop being qualified for a child disability allowance for a CDA child because during the period the child is not receiving care and attention on a daily basis from:

(i) if the person is a member of a couple—the person or the person’s partner; or

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

in a private home that is the residence of the person and the child; and

**Child Disability Allowance s. 955**

1. subsection (1) does not apply to the period; and
2. during the period, the child is, or is likely to be receiving education, training or treatment on normal school days;

the person continues to be qualified for a child disability allowance for the CDA child during the period.

Note: a person who is qualified for child disability allowance because of subsection (2) may receive a reduced rate—see subsections 967 (2) and (3).

*More than 28 days*

**(3)** If:

(a) for a period a person would, but for this subsection, stop being qualified for a child disability allowance for a CDA child because during the period the child is not receiving care and attention on a daily basis from:

(i) if the person is a member of a couple—the person or the person’s partner; or

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

in a private home that is the residence of the person and the young person; and

1. neither subsection (1) nor (2) applies to the period; and
2. the loss of qualification is temporary having regard to:

(i) if the child is absent from his or her home—the purpose of the absence and of any other absences in the calendar year; and

(ii) the duration of the loss of qualification; and

(iii) the frequency of loss of qualification;

the Secretary may decide that the person continues to be qualified for a child disability allowance for the CDA child for a period determined by the Secretary.

Note: a person who is qualified for child disability allowance because of subsection (3) may receive a reduced rate—see subsection 967 (2).

***Subdivision B*—*Payability***

**Child disability allowance not payable in some circumstances**

**956. (1)** Even though a person is qualified for a child disability allowance for a CDA child, the allowance may not be payable to the person because the allowance has not yet commenced to be payable (see sections 957 and 968).

**(2)** Child disability allowance is not payable to a person if the person’s child disability allowance rate would be nil.

**s. 957 Child Disability Allowance**

**Child disability allowance generally not payable before claim**

**957.** Subject to sections 959 and 960, child disability allowance is not payable to a person before the person’s provisional commencement day (identified under section 958).

**Provisional commencement day**

**958. (1)** Subject to subsection (2) and sections 959 and 960, aperson’s **provisional commencement day** is the day on which the person claims child disability allowance.

*Initial incorrect claim followed by claim for child disability allowance.*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”** for:

(i) a family allowance, a family allowance supplement or a double orphan pension; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to child disability allowance; and

1. on the day on which the person makes the initial claim, the person is qualified for child disability allowance; and
2. the person subsequently makes a claim for child disability allowance; and
3. the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

**Backdating—claim within 12 months of becoming qualified**

**959.** If:

1. a person has a CDA child; and
2. the person’s provisional commencement day is within 12 months after the day on which the person became qualified for child disability allowance;

the allowance can become payable before the provisional commencement day but cannot become payable to the person before the first day in the period on which the person is qualified.

Note 1 : for “provisional commencement day” see section 958.

Note 2: the child disability allowance will not necessarily be backdated to the day on which the person becomes qualified—some other factor may make the allowance not payable at the time.

**Backdating—claim after 12 months of becoming qualified**

**960.** If:

(a) a person has a CDA child; and

**Child Disability Allowance s. 960**

(b) the person’s provisional commencement day is more than 12 months after the person became qualified for child disability allowance;

the allowance can become payable before the provisional commencement day, but cannot become payable before the day occuring 12 months before the person’s provisional commencement day.

Note 1: for “provisional commencement day” see section 958.

Note 2: the child disability allowance will not necessarily be backdated to the day occurring 12 months before the person’s provisional commencement day—some other factor may make the allowance not payable at that time.

***Division 3***—***Claim for child disability allowance***

**Need for a claim**

**961. (1)** A person who wants to be granted a child disability allowance must make a proper claim for that allowance.

Note: for “proper claim”—see section 962 (form) and section 963 (manner of lodgment).

**(2)** For the purposes of subsection (1), if:

1. a claim for child disability allowance is made by or on behalf of a person; and
2. at the time the claim is made, the claim cannot be granted because the person is not qualified for child disability allowance;

the claim is to be taken to have not been made.

**Form of claim**

**962.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**963.** To be a proper claim, a claim must be lodged:

1. at an office of the Department; or
2. at a place (whether inside or outside Australia) approved for the purpose by the Secretary; or
3. with a person (whether inside or outside Australia) approved for the purpose by the Secretary.

***Division 4*—*Determination of claim***

**Secretary to determine claim**

**964.** The Secretary must, in accordance with this Act, determine the claim.

**Grant of claim**

**965.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

(a) the person is qualified for child disability allowance; and

**s. 965 Child Disability Allowance**

(b) the allowance is payable.

Date of effect of determination

**966.** **(1)** Subject to subsections (2), (3) and (4), a determination under section 965 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

1. a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s claim for child disability allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

1. a decision (in this subsection called the **“previous decision”** is made rejecting a person’s claim for child disability allowance; and
2. a notice is given to the person advising the person of the making of the previous decision; and
3. the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
4. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

1. a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s claim for child disability allowance; and
2. no notice is given to the person advising the person of the making of the previous decision; and

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1. the person applies to the Secretary under section 1240 for review of the previous decision; and
2. a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 5***—***Rate of child disability allowance***

**Rate of child disability allowance**

*General rule*

**967. (1)** Subject to subsections (2) and (3), a person’s rate of child disability allowance for a CDA child is a fortnightly rate of $55.60.

Note: the rate of child disability allowance is indexed annually.

*Child inmate of institution*

**(2)** If on one or more days in the period of 14 days ending on a family payment payday:

1. a person would have stopped being qualified for a child disability allowance for a CDA child but for subsection 955 (2) (child receiving education, training or treatment) or (3) (person not providing care for more than 28 days); and
2. the CDA child was an inmate of an institution; and
3. a benefit under:

(i) Part Va of the *National Health Act 1953*;or

(ii) Part VII of the *Handicapped Persons Assistance Act 1974*;

was payable to the institution for the CDA child;

the rate of child disability allowance payable to the person on the family payment payday for the CDA child is to be reduced by the following amount for each day in the period to which this subsection applies:

|  |
| --- |
| **Amount specified in subsection (1)** |
| 14 |

*Child receiving education, training or treatment*

**(3)** If on at least one day in the period of 14 days ending on a family payment payday:

1. a person would have stopped being qualified for a child disability allowance for a CDA child but for subsection 955 (2) (child receiving education, training or treatment); and
2. if the CDA child was an inmate of an institution on a day covered by paragraph (a)—a benefit under neither:

(i) Part Va of the *National Health Act 1953*;nor

(ii) Part VII of the *Handicapped Persons Assistance Act 1974*;

was payable to the institution for the day;

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the Secretary may:

1. if the rate of child disability allowance payable to the person for the CDA child under subsection (1) on the family payment payday has not been reduced under subsection (2)—reduce the rate of child disability allowance payable to the person for the CDA child on the family payment payday; and
2. if the rate of child disability allowance payable to the person for the CDA child under subsection (1) on the family payment payday has been reduced under subsection (2)—further reduce the rate of child disability allowance payable to the person for the CDA child on the family payment payday;

by an amount determined by the Secretary.

*Factors affecting reduction under subsection (3)*

**(4)** In deciding:

(a) whether to reduce a person’s rate of child disability allowance under subsection (3); and

(b) the amount (if any) of the reduction;

the Secretary must have regard to:

1. if the CDA child is absent from his or her home—the duration of the absence; and
2. whether the CDA child is in the care of another person or an institution for the purposes of receiving education, training or treatment.

***Division 6*—*Payment of child disability allowance***

**Commencement of child disability allowance**

**968.** Child disability allowance becomes payable to a person on the first day on which:

1. the person is qualified for the allowance; and
2. no provision of this Act makes the allowance not payable to the person.

Note 1: for qualifications see sections 954 (qualification for child disability allowance) and 955 (qualification while person not providing care).

Note 2: for the circumstances in which child disability allowance is not payable see section 956.

**Payment by instalments**

**969.** A full instalment of child disability allowance is payable to a person on each family payment payday on which:

1. the person is qualified for the allowance; and
2. the allowance is payable to the person.

**Child Disability Allowance s. 970**

**Effect on instalments of backdating claim**

**970.** If:

1. a person lodges a claim for child disability allowance on a particular day (in this section called the **“claim day”**);and
2. the person’s provisional commencement day is before the claim day;

any instalment of child disability allowance that would, but for this section, be payable, is payable to the person:

1. if the claim day was a family payment payday—on that day; or
2. the first family payment payday after the claim day.

Note: for provisional commencement day see section 958.

**Manner of payment**

**971.** A person’s child disability allowance is, subject to section 972, to be paid:

1. to that person; and
2. in the manner directed by the Secretary.

**Nominee payments**

**972. (1)** The Secretary may direct that the whole, or a part, of the amount of child disability allowance payable to a person is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the child disability allowance is to be paid in accordance with the direction.

**Payment into bank account etc.**

**973. (1)** The Secretary may direct that the whole or a part of the amount of child disability allowance payable to a person is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

1. The account must be an account nominated and maintained by the person to whom the child disability allowance is payable.
2. The account may be an account that is maintained by a person to whom the child disability allowance is payable jointly or in common with another person.
3. If the Secretary gives a direction under subsection (1), the child disability allowance is to be payable in accordance with the direction.

**Where family payment payday would fall on public holiday etc.**

**974.** Ifthe Secretary is satisfied that an amount of child disability allowance that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**s. 975 Child Disability Allowance**

**Payment of allowance after death**

**975. (1)** If:

1. a child disability allowance is payable to a person; and
2. the person dies; and
3. at the date of the person’s death the person had not received an amount of child disability allowance payable to him or her; and
4. another person applies to receive that amount; and
5. the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of child disability allowance under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of child disability allowance.

***Division 7***—***Protection of child disability allowance***

**Child disability allowance to be absolutely inalienable**

**976. (1)** Subject to subsection (2) and section 1359, child disability allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of child disability allowance payable to a person where the recipient asks the Secretary:

1. to make the deductions; and
2. to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**977. (1)** If:

1. a person has an account with a financial institution; and
2. instalments of child disability allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and
3. a court order in the nature of a garnishee order comes into force in respect of the account;

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

**Child Disability Allowance s. 977**

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

|  |  |
| --- | --- |
|  | *Method statement* |
| *Step 1.* | Work out the total amount of child disability allowance payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

1. alone; or
2. jointly with another person; or
3. in common with another person.

***Division 8***—***Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**978. (1)** The Secretary may give a person to whom a child disability allowance is being paid a notice that requires the person to inform the Department if:

1. a specified event or change of circumstances occurs; or
2. the person becomes aware that a specified event or change of circumstances is likely to occur.
3. An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the allowance.
4. A notice under subsection (1):
5. must be in writing; and
6. may be given personally or by post; and
7. must specify how the person is to give the information to the Department; and
8. must specify the period within which the person is to give the information to the Department; and
9. must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

1. the day on which the event or change of circumstances occurs; or
2. the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**s. 978 Child Disability Allowance**

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of child disability allowance**

**979. (1)** The Secretary may give a person to whom a child disability allowance is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.

**(2)** A notice under subsection (1):

1. must be in writing; and
2. may be given personally or by post; and
3. must specify how the statement is to be given to the Department; and
4. must specify the period within which the person is to give the statement to the Department; and
5. must specify that the notice is given under this section.
6. The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.
7. A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
8. A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $ 1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $ 1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Child Disability Allowance s. 980**

**Self incrimination**

**980. (1)** A person is not excused from giving information pursuant to a notice under section 978 or 979 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 978 or 979 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 978 (5) or (6) or 979 (5) or (6).

***Division 9*—*Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**981. (1)** A determination that:

(a) a person’s claim for a child disability allowance is to be granted; or

a child disability allowance is to be paid to a person;

continues in effect until:

the pension ceases to be payable under section 982 or 983; or

(d) a further determination in relation to the allowance under section 987 has taken effect.

Note 1: for paragraph (a) see section 965.

Note 2: for paragraph (b) see section 988—this paragraph is relevant where the determination reverses an earlier cancellation or suspension.

*Rate determination*

**(2)** A determination of the rate of a child disability allowance continues in effect until:

the allowance becomes payable at a lower rate under section 984; or

a further determination in relation to the allowance under section 985 or 986 has taken effect.

***Subdivision B***—***Automatic termination***

**Automatic termination—recipient *complying* with section 978 notification obligations**

**982.** If:

a person who is receiving a child disability allowance is given a notice under section 978; and

the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a

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specified period (in this section called the **“notification period”**);and

the event or change in circumstances occurs; and

the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

because of the occurrence of the event or change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance would, but for this section, cease to be payable to the person;

the allowance continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: if the person informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person’s pension, there is no automatic rate reduction and a determination under section 986 must be made in order to bring the rate reduction into effect.

**Automatic termination—recipient *not complying* with section 978 notification obligations**

**983.** If:

a person who is receiving a child disability allowance is given a notice under section 978; and

the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and

the event or change in circumstances occurs; and

the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

because of the occurrence of the event or the change in circumstances:

(i) the person ceases to be qualified for the allowance; or

(ii) the allowance ceases to be payable to the person;

the allowance ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.

***Subdivision C***—***Automatic rate reduction***

**Automatic rate reduction—recipient *not complying* with section 978 notification obligations**

**984.** If:

(a) a person who is receiving a child disability allowance is given a notice under section 978; and

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the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the “notification **period”**);and

the event or change in circumstances occurs; and

the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

because of the occurrence of the event or change in circumstances, the person’s rate of allowance is to be reduced;

the allowance becomes payable to the person at the reduced rate immediately after the day on which the event or change in circumstances occurs.

***Subdivision D*—*Determinations***

**Rate increase determination**

**985.** If the Secretary is satisfied that the rate at which a child disability allowance is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: for the date of effect of a determination under this section see section 989.

**Rate reduction determination**

**986.** If the Secretary is satisfied that the rate at which a child disability allowance is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

Note 1: a determination under this section is not necessary in a case where an automatic rate reduction is produced by section 984 (see subsection 981 (2)).

Note 2: for the date of effect of a determination under this section see section 990.

**Cancellation or suspension determination**

**987.** If the Secretary is satisfied that a child disability allowance is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 982 or 983 (see subsection 981 (1)).

Note 2: for the date of effect of a determination under this section see section 990.

**Resumption of payment after cancellation or** suspension

**988. (1)** If the Secretary:

(a) cancels or suspends a person’s child disability allowance under section 987; and

(b) reconsiders the decision to cancel or suspend; and

**s. 988 Child Disability Allowance**

(c) becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive a child disability allowance that was payable to the person; or

(b) the person is not receiving a child disability allowance that is payable to the person;

the Secretary is to determine that a child disability allowance was or is payable to the person.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 989.

***Subdivision E***—***Date of effect of determinations***

**Date of effect of favourable determination**

**989. (1)** The day on which a determination under section 985 or 988 (in this subsection called the **“favourable determination”**)takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

a decision (in this subsection called the **“previous decision”**)is made in relation to a child disability allowance; and

a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and

the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

a decision (in this subsection called the **“previous decision”**)is made in relation to a child disability allowance; and

a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and

**Child Disability Allowance s. 989**

(d) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

a decision (in this subsection called the **“previous decision”**)is made in relation to a child disability allowance; and

no notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

the person applies to the Secretary under section 1240, for review of the previous decision; and

the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified change of circumstances*

**(5)** If the favourable determination is made following a person having advised the Department of a change in circumstances the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

*Other determinations*

**(6)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**990. (1)** The day on which a determination under section 986 or 987 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

the day on which the determination is made; or

if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4), (5) and (6), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

**s. 990 Child Disability Allowance**

*Contravention of Act*

**(4)** If:

(a) the person whose allowance is affected by the adverse determination has contravened a provision of this Act (other than section 979, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

a person has made a false statement or misrepresentation; and

because of the false statement or misrepresentation, the allowance has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*rate reduction*

**(6)** If:

a person has made a false statement or misrepresentation; and

because of the false statement or misrepresentation, the rate at which the allowance was paid to a person was more than it should have been;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

***Division 10*—*Bereavement payments (death of CDA child)***

**Continued child disability allowance during bereavement rate continuation period where CDA child dies**

**991. (1)** If:

(a) a person is receiving child disability allowance for a young person; and

(b) the young person dies; and

(c) immediately before the young person died:

(i) the person was receiving a social security pension or a benefit whose rate included:

(a) a dependent child add-on for the young person; or

(b) guardian allowance for the young person; or

(ii) the person was receiving family allowance supplement for the young person; or

(iii) the person was receiving a service pension whose rate included:

**Child Disability Allowance s. 991**

(a) a dependent child add-on for the young person; or

(b) guardian allowance in respect of the young person;

the person is to be qualified for child disability allowance for the young person during the bereavement rate continuation period as if:

the young person had not died; and

the young person had received the care and attention referred to in paragraph 954 (b).

**(2)** The rate at which the child disability allowance is to be paid during the bereavement rate continuation period is the rate at which the allowance was paid to the person on the payday immediately before the day on which the young person died.

**Lump sum payable in some circumstances**

**992.** If:

a person is qualified for child disability allowance under section 991 in relation to the death of a CDA child; and

the first available bereavement adjustment payday occurs before the end of the bereavement period; and

the person was, immediately before the child died, receiving family allowance for the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the rate at which child disability allowance was payable to the person on the family payment payday immediately before the CDA child died. |
| *Step 2.* | Work out the number of family payment paydays in the bereavement lump sum period. |
| *Step 3.* | Multiply the rate obtained in Step 1 by the number of family payment paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

Note: if the person qualified for payments under this Division was not receiving family allowance in respect of the dependent child and somebody else was receiving family allowance in respect of the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**s. 993 Double Orphan Pension**

**PART 2.20—DOUBLE ORPHAN PENSION**

***Division 1*—*DOP child status***

**Double orphan**—**not refugee**

**993. (1)** A young person is a double orphan if:

(a) the young person is not a refugee child; and

(b) each parent of the young person is dead.

Note 1: for “young person” and “parent” see section 5.

Note 2: for “refugee child” see section 995.

**(2)** A young person is a double orphan if:

(a) the young person is not a refugee child; and

(b) one parent of the young person is dead; and

(c) the other parent of the young person is:

(i) a long-term prisoner; or

(ii) a mental hospital patient on a long-term basis; or

(iii) a nursing home patient on a long-term basis; or

(iv) uncontactable.

Note 1: for “young person” and “parent” see section 5.

Note 2: for “refugee child” see section 995.

Note 3: for “long-term prisoner” see section 996.

Note 4: for “patient on a long-term basis” see section 997.

Note 5: for “uncontactable” see section 998.

**Double orphan**—**refugee**

**994.** A young person is a double orphan if:

(a) the young person is a refugee child; and

(b) one parent of the young person is:

(i) dead; or

(ii) living outside Australia; or

(iii) uncontactable; and

(c) the other parent, if any, is:

(i) dead; or

(ii) living outside Australia; or

(iii) uncontactable; or

(iv) a long-term prisoner; or

(v) a mental hospital patient on a long-term basis; or

(vi) a nursing home patient on a long-term basis.

Note 1: for “young person” and “parent” see section 5.

Note 2: for “refugee child” see section 995.

Note 3: for “uncontactable” see section 998.

Note 4: for “long-term prisoner” see section 996.

Note 5: for “patient on a long-term basis” see section 997.

**Double Orphan Pension s. 995**

**Refugee child**

**995. (1)** A young person is a refugee child if:

(a) the young person is not an adopted child by virtue of an adoption under a law in force in a State or Territory of the Commonwealth; and

(b) the young person has not, at any time, lived in Australia with one or both of his or her parents; and

(c) the young person:

(i) has been granted refugee status by the Australian Government; or

(ii) has, at any time, been admitted into Australia as a refugee by the Australian Government; or

(iii) the young person has been, at any time, admitted into Australia in accordance with the terms of a special humanitarian program of the Australian Government that has been approved by the Minister for the purposes of this definition.

**(2)** An approval of a special humanitarian program for the purposes of subparagraph (1) (c) (iii) may be expressed to have retrospective effect to the date of the establishment of the program.

**Long-term prisoner**

**996.** For the purposes of this Division, a person is a **long-term prisoner** if the person:

(a) has been convicted of an offence; and

(b) has been sentenced to imprisonment:

(i) for life; or

(ii) for a term of at least 10 years; and

(c) is serving the sentence.

**Patient on a long-term basis**

*Mental hospital patient*

**997. (1)** For the purposes of this Division, a person is a **mental hospital patient on a long-term basis** if:

(a) the person is a mental hospital patient; and

(b) the Secretary is satisfied that the person will require care and treatment for an indefinite period.

Note: for “mental hospital patient” see section 23.

*Nursing home patient*

**(2)** For the purposes of this Division, a person is a **nursing home patient on a long-term basis if:**

(a) the person is a nursing home patient; and

**s. 997 Double Orphan Pension**

(b) the Secretary is satisfied that the person will require care or treatment for an indefinite period.

**Person uncontactable**

**998.** For the purposes of this Division, a person is **uncontactable** if the person’s whereabouts are not known to the person or approved care organisation claiming or receiving the double orphan pension concerned.

***Division 2*—*Qualification for and payability of double orphan pension***

***Subdivision A*—*Qualification***

**Qualification for double orphan pension**

*Persons other than approved care organisations*

**999. (1)** A person is qualified for a double orphan pension for a young person if:

(a) a family allowance is payable to the person for the young person or would be payable to the person for the young person but for:

(i) section 832 (prescribed student child is not FA child); or

(ii) section 837 (child is not FA child if payments similar to family allowance are made by a foreign country); or

(iii) Module D of the Family Allowance Rate Calculator (taxable income test—see section 1069); and

(b) on the day on which the person claims the double orphan pension, the young person is a double orphan; and

(c) either:

(i) the young person continues to be a double orphan; or

(ii) if the young person is no longer a double orphan—the person has not become aware that the young person is no longer a double orphan.

Note 1: for “double orphan” see sections 993 and 994.

Note 2: for family allowance see Part 2.17.

*Approved care organisations*

**(2)** An approved care organisation is qualified for a double orphan pension for a young person if:

(a) a family allowance is payable to the organisation for the young person or would be payable to the organisation for the young person but for section 832 (prescribed student child is not FA child); and

(b) on the day on which the organisation claims the double orphan pension, the young person is a double orphan; and

(c) either:

(i) the young person continues to be a double orphan; or

(ii) if the young person is no longer a double orphan—the

**Double Orphan Pension s. 999**

organisation has not become aware that the young person is no longer a double orphan.

Note 1: for “double orphan” see sections 993 and 994.

Note 2: for “approved care organisation” sec sections 6 and 35.

Note 3: for family allowance see Part 2.17.

***Subdivision B***—***Payability***

**Double orphan pension not payable in some circumstances**

**1000.** Even though a person or approved care organisation is qualified for double orphan pension, the pension may not be payable to the person because:

(a) the pension has not commenced to be payable (see sections 1001 and 1011); or

(b) the child is receiving a pension under Part II or Part IV of the Veterans’ Entitlements Act (see section 1003).

**Double orphan pension generally not payable before claim**

**1001.** A double orphan pension is not payable to a person or approved care organisation before the person’s or organisation’s provisional commencement day (identified under section 1002).

**Provisional commencement day**

*General rule*

**1002. (1)** Subject to subsection (2), a person’s or approved care organisation’s **provisional commencement day** is the day on which the person or organisation claims the double orphan pension.

*Initial incorrect claim followed by claim for double orphan pension*

**(2)** If:

(a) a person or organisation makes a claim (in this subsection called the **“initial claim”**)for:

(i) family allowance, family allowance supplement or child disability allowance; or

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth that is similar in character to a double orphan pension; and

on the day on which the person or organisation makes the initial claim, the person is qualified for double orphan pension; and

the person or organisation subsequently makes a claim for double orphan pension; and

the Secretary is satisfied that it is reasonable for this subsection to apply to the person or organisation;

**s. 1002 Double Orphan Pension**

the person’s or organisation’s provisional commencement day is the day on which the person or organisation made the initial claim.

**Double orphan pension not payable for child receiving a pension under the Veterans’ Entitlements Act**

**1003.** A double orphan pension is not payable for a child on a family payment payday if the child is receiving a pension under Part II or IV of the Veterans’ Entitlements Act.

***Division 3***—***Claim for double orphan pension***

**Need for a claim**

**1004. (1)** A person who wants to be granted a double orphan pension must make a proper claim for that pension.

**(2)** An approved care organisation that wants to be granted a double orphan pension must make a proper claim for that pension.

**(3)** For the purposes of subsection (1), if:

(a) a claim for double orphan pension is made by or on behalf of a person or approved care organisation; and

(b) at the time the claim is made, the claim cannot be granted because the person or organisation is not qualified for double orphan pension;

the claim is to be taken to have not been made.

Note 1: for “proper claim” see section 1005 (form) and section 1006 (manner of lodgment).

Note 2: for “approved care organisation” see sections 6 and 35.

**Form of claim**

**1005.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**1006.** To be a proper claim, a claim must be lodged:

(a) at an office of the Department; or

(b) at a place (whether inside or outside Australia) approved for the purpose by the Secretary; or

(c) with a person (whether inside or outside Australia) approved for the purpose by the Secretary.

***Division 4*—*Determination of claim***

**Secretary to determine claim**

**1007.** The Secretary must, in accordance with this Act, determine the claim.

**Double Orphan Pension s. 1008**

**Grant of claim**

**1008.** The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

(a) the person or approved care organisation is qualified for a double orphan pension; and

(b) the pension is payable.

**Date of effect of determination**

**1009. (1)** Subject to subsections (2), (3) and (4), a determination under section 1008 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

*Notified decision*—*review sought within 3 months*

**(2)** If:

(a) a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s or approved care organisation’s claim for double orphan pension; and

(b) a notice is given to the person or organisation advising the person or organisation of the making of the previous decision; and

(c) the person or organisation applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and

(d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

(a) a decision (in this subsection called the **“previous decision”**) is made rejecting a person’s or organisation’s claim for double orphan pension; and

(b) a notice is given to the person or organisation advising the person or organisation of the making of the previous decision; and

(c) the person or organisation applies to the Secretary under section 1240, more than three months after the notice is given, for review of the previous decision; and

(d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the person or organisation sought the review.

**s. 1009 Double Orphan Pension**

*Decision not notified*

**(4)** If:

(a) a decision (in this subsection called the **“previous decision”**)is made rejecting a person’s or organisation’s claim for double orphan pension; and

(b) no notice is given to the person or organisation advising the person or organisation of the making of the previous decision; and

(c) the person or organisation applies to the Secretary under section 1240 for review of the previous decision; and

(d) a determination granting the claim is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 5***—***Rate of double orphan pension***

**Rate of double orphan pension**

**1010.** The double orphan pension rate is $29.80 per fortnight.

Note: the double orphan pension rate is indexed annually in line with CPI increases (see sections 1191 to 1194).

***Division 6*—*Payment of double orphan pension***

**Commencement of double orphan pension**

**1011.** Double orphan pension becomes payable to a person or approved care organisation on the first day on which:

(a) the person or organisation is qualified for the pension; and

(b) no provision of this Act makes the pension not payable to the person or organisation.

Note 1: for qualification see section 999.

Note 2: for the circumstances where double orphan pension is not payable see section 1000.

**Payment by instalments**

**1012.** A full instalment of double orphan pension is payable to a person or approved care organisation on each family payment payday on which:

(a) the person or organisation is qualified for the pension; and

(b) the pension is payable to the person or organisation.

**Effect on instalments of backdating claim**

**1013.** Where:

(a) a person or approved care organisation lodges a claim for double orphan pension on a particular day (in this section called the **“claim day”**);and

**Double Orphan Pension s. 1013**

(b) the person’s or organisation’s provisional commencement day is before the claim day;

any instalment of double orphan pension that would, but for this section, be payable, is payable to the person or organisation:

(c) if the claim day was a family payment payday—on that day; or

(d) the first family payment payday after the claim day.

Note: for “provisional commencement day” see section 1002.

**Manner of payment**

**1014.** A person’s or approved care organisation’s double orphan pension is, subject to section 1015, to be paid:

(a) to that person or organisation; and

(b) in the manner directed by the Secretary.

**Nominee payments**

**1015. (1)** The Secretary may direct that the whole, or a part, of the amount of double orphan pension payable to a person or approved care organisation is to be paid to someone else on behalf of the person or organisation.

**(2)** If the Secretary makes a direction under subsection (1), the double orphan pension is to be paid in accordance with the direction.

**Payment into bank account etc.**

**1016. (1)** The Secretary may direct that the whole or a part of the amount of a double orphan pension payable to a person or approved care organisation is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

**(2)** The account must be an account nominated and maintained by the person or organisation to whom the double orphan pension is payable.

**(3)** The account may be an account that is maintained by a person or organisation to whom the double orphan pension is payable jointly or in common with another person or organisation.

**(4)** If the Secretary gives a direction under subsection (1), the double orphan pension is to be payable in accordance with the direction.

**Where family payment payday would fall on public holiday etc.**

**1017.** If the Secretary is satisfied that an amount of double orphan pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

**s. 1018 Double Orphan Pension**

**Payment of pension after death**

**1018. (1)** If:

(a) a double orphan pension is payable to a person; and

(b) the person dies; and

(c) at the date of the person’s death the person had not received an amount of double orphan pension payable to him or her; and

(d) another person or an approved care organisation applies to receive that amount; and

(e) the application is made:

(i) within 6 months after the death; or

(ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person or approved care organisation who, in the Secretary’s opinion, is best entitled to it.

**(2)** If the Secretary pays an amount of double orphan pension under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of double orphan pension.

***Division 7*—*Protection of double orphan pension***

**Double orphan pension to be absolutely inalienable**

**1019. (1)** Subject to subsection (2) and section 1359, double orphan pension is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of double orphan pension payable to a person or approved care organisation where the recipient asks the Secretary:

(a) to make the deductions; and

(b) to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**Effect of garnishee or attachment order**

**1020. (1)** If:

(a) a person or approved care organisation has an account with afinancial institution; and

(b) instalments of double orphan pension payable to the person (whether on the person’s own behalf or not) or organisation are being paid to the credit of that account; and

(c) a court order in the nature of a garnishee order comes into force in respect of the account;

**Double Orphan Pension s. 1020**

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of double orphan pension payable to the person or organisation that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

**(3)** This section applies to an account whether it is maintained by a person or organisation:

(a) alone; or

(b) jointly with another person; or

(c) in common with another person.

***Division 8*—*Recipient obligations***

**Recipient**

**1021.** A reference in this Division to a **recipient** is a reference to:

(a) a person to whom a double orphan pension is being paid; or

(b) an approved care organisation to which a double orphan pension is being paid.

**Double orphan pension to be applied for benefit of child**

**1022.** If a double orphan pension is payable to a person or an approved care organisation in respect of a young person, the double orphan pension must be applied by the person or the organisation to the maintenance, training and advancement of that young person.

**Secretary may require notice of the happening of an event or a change in circumstances**

**1023. (1)** The Secretary may give a recipient a notice that requires the recipient to inform the Department if:

(a) a specified event or change of circumstances occurs; or

(b) the recipient becomes aware that a specified event or change of circumstances is likely to occur.

**(2)** An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the double orphan pension.

**(3)** A notice under subsection (1):

(a) must be in writing; and

**s. 1023 Double Orphan Pension**

(b) may be given personally or by post; and

(c) must specify how the recipient is to give the information to the Department; and

(d) must specify the period within which the recipient is to give the information to the Department; and

(e) must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end at least 14 days after:

(a) the day on which the event or change of circumstances occurs; or

(b) the day on which the recipient becomes aware that the event or change of circumstances is likely to occur.

**(5)** A recipient must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A recipient must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

(b) all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of double orphan pension**

**1024. (1)** The Secretary may give a recipient a notice that requires the recipient to give the Department a statement about a matter that might affect the payment of the double orphan pension to the recipient.

**(2)** A notice under subsection (1):

(a) must be in writing; and

(b) may be given personally or by post; and

(c) must specify how the statement is to be given to the Department; and

(d) must specify the period within which the recipient is to give the statement to the Department; and

(e) must specify that the notice is given under this section.

**(3)** The period specified under paragraph (2) (d) must end at least 14 days after the day on which the notice is given.

**Double Orphan Pension s. 1024**

**(4)** A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.

**(5)** A recipient must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A recipient must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

(b) all persons irrespective of their nationality or citizenship.

**Self incrimination**

**1025. (1)** A recipient is not excused from giving information pursuant to a notice under section 1023 or 1024 on the ground that the information may tend to incriminate the recipient.

**(2)** Information given by a recipient pursuant to a notice under section 1023 or 1024 is not admissible in evidence against the recipient in a criminal proceeding other than a proceeding under, or arising out of, subsection 1023 (5) or (6) or 1024 (5) or (6).

***Division 9***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

*Entitlement determination*

**1026.** A determination that:

(a) a person’s or approved care organisation’s claim for a double orphan pension is granted; or

(b) a double orphan pension is payable to a person or organisation; continues in effect until:

(c) the pension ceases to be payable under section 1027, or 1028; or

(d) a further determination in relation to the pension under section 1029 has taken effect.

Note 1: for paragraph (a) see section 1008.

Note 2: for paragraph (b) see section 1030—this paragraph is relevant where the determination reverses an earlier cancellation or suspension.

**s. 1027 Double Orphan Pension**

***Subdivision B***—***Automatic termination***

**Automatic termination—recipient *complying* with section 1023 notification obligations**

**1027.** If:

(a) a person or approved care organisation who is receiving a double orphan pension is given a notice under section 1023; and

(b) the notice requires the person or organisation to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and

(c) the event or change in circumstances occurs; and

(d) the person or organisation informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

(e) because of the occurrence of the event or change in circumstances:

(i) the person or organisation ceases to be qualified for the pension; or

(ii) the pension would, but for this section, cease to be payable to the person or organisation;

the pension continues to be payable to the person or organisation until the end of the notification period and then ceases to be payable to the person or organisation.

**Automatic termination—recipient *not complying* with section 1023 notification obligations**

**1028.** If:

(a) a person or approved care organisation who is receiving a double orphan pension is given a notice under section 1023; and

(b) the notice requires the person or organisation to inform the Department of the occurrence of an event or change in circumstances within a specified period (in this section called the **“notification period”**);and

(c) the event or change in circumstances occurs; and

(d) the person or organisation does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

(e) because of the occurrence of the event or the change in circumstances:

(i) the person or organisation ceases to be qualified for the pension; or

**Double Orphan Pension s. 1028**

(ii) the pension ceases to be payable to the person or organisation;

the pension ceases to be payable to the person or organisation immediately after the day on which the event or change in circumstances occurs.

***Subdivision C*—*Determinations***

**Cancellation or suspension determination**

**1029.** If the Secretary is satisfied that a double orphan pension is being, or has been, paid to a person or approved care organisation to whom it is not, or was not, payable under this Act, the Secretary is to determine that the pension is to be cancelled or suspended.

Note 1: a determination under this section is not necessary in a case where an automatic termination is produced by section 1027 or 1028 (see section 1026).

Note 2: for the date of effect of a determination under this section see section 1032.

**Resumption of payment after cancellation or suspension**

**1030. (1)** If the Secretary:

(a) cancels or suspends a person’s or approved care organisation’s double orphan pension under section 1029; and

(b) reconsiders the decision to cancel or suspend; and

(c) becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person or organisation did not receive double orphan pension that was payable to the person or organisation; or

(b) the person or organisation is not receiving double orphan pension that is payable to the person or organisation;

the Secretary is to determine that double orphan pension was or is payable to the person or organisation.

**(2)** The reconsideration referred to in paragraph (1) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

Note: for the date of effect of a determination under this section see section 1031.

***Subdivision D*—*Date of effect of determinations***

**Date of effect of favourable determination**

**1031. (1)** The day on which a determination under section 1030 (in this section called the **“favourable determination”**) takes effect is worked out in accordance with this section.

**s. 1031 Double Orphan Pension**

*Notified decision*—*review sought within 3 months*

**(2)** If:

(a) a decision (in this subsection called the **“previous decision”**)is made in relation to a double orphan pension; and

(b) a notice is given to the person or approved care organisation to whom the pension is payable advising the person or organisation of the making of the previous decision; and

(c) the person or organisation applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and

(d) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

(a) a decision (in this subsection called the **“previous decision”**)is made in relation to a double orphan pension; and

(b) a notice is given to the person or organisation to whom the pension is payable advising the person or organisation of the making of the previous decision; and

(c) the person or organisation applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and

(d) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the person or organisation sought the review.

*Decision not notified*

**(4)** If:

(a) a decision (in this subsection called the **“previous decision”**)is made in relation to a double orphan pension; and

(b) no notice is given to the person or organisation to whom the pension is payable advising the person or organisation of the making of the previous decision; and

(c) the person or organisation applies to the Secretary under section 1240 for review of the previous decision; and

(d) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

**Double Orphan Pension s. 1031**

*Other determinations*

**(5)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**1032. (1)** The day on which a determination under section 1029 (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person or organisation affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

(a) the day on which the determination is made; or

(b) if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4) and (5), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person or approved care organisation whose double orphan pension is affected by the adverse determination has contravened a provision of this Act (other than sections 1024 and 1304 to 1307); and

(b) the contravention causes a delay in making the determination;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

(a) a person or organisation has made a false statement or misrepresentation; and

(b) because of the false statement or misrepresentation, the pension has been paid when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

**s. 1033 Double Orphan Pension**

***Division 10*—*Bereavement payments (death of DOP child)***

**Continued double orphan pension during bereavement rate continuation period where DOP child dies**

**1033.** If:

(a) a person is receiving double orphan pension for a young person; and

(b) the young person dies; and

(c) immediately before the young person died:

(i) the person was receiving a social security pension or a benefit whose rate included:

(a) a dependent child add-on for the young person; or

(b) guardian allowance in respect of the young person; or

(ii) the person was receiving family allowance supplement for the young person; or

(iii) the person was receiving a service pension whose rate included:

(a) a dependent child add-on for the young person; or

(b) guardian allowance in respect of the young person;

the person is to be qualified for double orphan pension for the young person during the bereavement rate continuation period as if the young person had not died.

**Lump sum payable in some circumstances**

**1034.** If:

(a) a person is qualified for double orphan pension under section 1033 in relation to the death of a DOP child; and

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

(c) the person was, immediately before the child died, receiving family allowance for the child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

**Double Orphan Pension s. 1034**

***LUMP SUM CALCULATOR***

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the rate of double orphan pension on the family payment payday immediately before the first available bereavement adjustment payday: the result is called the **continued rate**. |
| *Step 2.* | Work out the number of family payment paydays in the bereavement lump sum period. |
| *Step 3.* | Multiply the continued rate by the number of family payment paydays in the bereavement lump sum period: the result is the amount of the lump sum payable to the person under this section. |

Note: if the person qualified for payments under this Division was not receiving family allowance for the dependent child and somebody else was receiving family allowance for the dependent child, a corresponding lump sum may be payable to the other person under section 890.

**s. 1035 Mobility Allowance**

**PART 2.21—MOBILITY ALLOWANCE**

***Division 1*—*Qualification for and payability of mobility allowance***

***Subdivision A*—*Qualification***

**Qualification for mobility allowance**

**1035.** A person is qualified for a mobility allowance if either:

(a) all of the following apply:

(i) the person is a handicapped person;

(ii) the person is engaged in gainful employment;

(iii) the Secretary is of the opinion that:

(a) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

(b) the person’s inability to use public transport without substantial assistance is because of the person’s physical or mental disability; and

(c) the person is engaged in gainful employment for at least 20 hours a week on a continuing basis;

(iv) the person is physically present in Australia;

(v) the person is an Australian resident; or

(b) all of the following apply:

(i) the person is a handicapped person;

(ii) the person is undertaking vocational training (other than training provided as part of a rehabilitation program or follow-up program under Part III of the *Disability Services Act 1986*);

(iii) the Secretary is of the opinion that:

(a) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

(b) the person’s inability to use public transport without substantial assistance is because of the person’s physical or mental disability; and

(c) the person is undertaking the vocational training, or a combination of the vocational training and gainful employment, for at least 20 hours a week on a continuing basis; and

(d) the vocational training will assist the person to find gainful employment or to carry on a profession, trade or business;

(iv) the person is physically present in Australia;

(v) the person is an Australian resident.

**Mobility Allowance s. 1035**

Note 1: for “handicapped person”, “gainful employment”, and “vocational training” see section 19.

Note 2: for “Australian resident” see section 7.

***Subdivision B*—*Payability***

**Mobility allowance not payable in some circumstances**

**1036.** Even though a person is qualified for a mobility allowance, the allowance may not be payable to the person because:

(a) the allowance has not commenced to be payable (see sections 1038 and 1045); or

(b) the person is in gaol (see Part 3.13).

**Mobility allowance not payable where person receiving motor vehicle assistance**

**1037.** A mobility allowance is not payable to a person:

(a) if the person is provided with a motor vehicle under the Vehicle Assistance Scheme prepared under section 105 of the VEA— during any period during which the vehicle is provided; or

(b) if the person receives the benefit of an exemption under item 135 or 135a of the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* (other than an exemption in respect of parts for a motor vehicle)—during the period of 2 years starting on the day on which the person received the benefit of the exemption.

Note: for “VEA” see section 23.

**Mobility allowance generally not payable before claim**

**1038.** Mobility allowance is not payable to a person before the person’s provisional commencement day (identified under sections 1039 and 1045).

**Provisional commencement day**

*General rule*

**1039. (1)** Subject to subsection (2), a person’s **provisional commencement day** is the day on which the person claims mobility allowance.

*Initial incorrect claim followed by claim for mobility allowance*

**(2)** If:

(a) a person makes a claim (in this subsection called the **“initial claim”**)for a pension, benefit, allowance or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to a mobility allowance; and

(b) on the day on which the person makes the initial claim, the person is qualified for mobility allowance; and

**s. 1039 Mobility Allowance**

(c) the person subsequently makes a claim for mobility allowance; and

(d) the Secretary is satisfied that it is reasonable for this subsection to apply to the person;

the person’s provisional commencement day is the day on which the person made the initial claim.

***Division 2*—*Claim for mobility allowance***

**Need for a claim**

**1040. (1)** A person who wants to be granted a mobility allowance must make a proper claim for that allowance.

Note: for “proper claim”—see section 1041 (form) and section 1042 (manner of lodgment).

**(2)** For the purposes of subsection (1), where:

(a) a claim for mobility allowance is made by or on behalf of a person; and

(b) at the time the claim is made, the claim cannot be granted because the person is not qualified for mobility allowance;

the claim is to be taken to have not been made.

**Form of claim**

**1041.** To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

**Lodgment of claim**

**1042.** To be a proper claim, a claim must be lodged:

(a) at an onice of the Department; or

(b) at a place approved for the purpose by the Secretary; or

(c) with a person approved for the purpose by the Secretary.

***Division 3*—*Determination of claim***

**Determination granting claim**

**1043. (1)** Where the Secretary is satisfied that a person is qualified for a mobility allowance and the allowance is payable, the Secretary is to determine that the claim is to be granted.

*Date of effect*

**(2)** Subject to subsections (3), (4) and (5), a determination under subsection (1) takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

**Mobility Allowance s. 1043**

*Notified decision*—*review sought within 3 months*

**(3)** If:

(a) a decision (in this paragraph called the **“previous decision”**) is made in relation to a mobility allowance; and

(b) a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

(c) a person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and

(d) the determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(4)** If:

(a) a decision (in this paragraph called the **“previous decision”**) is made in relation to a mobility allowance; and

(b) a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

(c) a person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and

(d) the determination is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(5)** If:

(a) a decision (in this paragraph called the **“previous decision”**)is made in relation to a mobility allowance; and

(b) no notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

(c) the determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

***Division 4*—*Rate of mobility allowance***

**Rate of mobility allowance**

**1044.** The mobility allowance rate is $22 per fortnight.

**s. 1045 Mobility Allowance**

***Division* 5**—***Payment of mobility allowance***

**Commencement of mobility allowance**

**1045.** A mobility allowance becomes payable to a person on the first day on which:

(a) the person is qualified for the allowance; and

(b) no provision of this Act makes the allowance not payable to the person.

Note 1: for qualification, see section 1035.

Note 2: for the circumstances in which a mobility allowance is not payable, see sections 1036 and 1037.

Note 3: for the impact on payment of mobility allowance when a person ceases to be qualified, see section 1058.

**Payment by instalments**

**1046.** If a person is qualified for a mobility allowance, a full instalment of mobility allowance is payable to the person on each allowance payday on which:

(a) the person is qualified for the allowance; and

(b) the allowance is payable to the person.

**Effect on instalments of backdating claim**

**1047.** If:

(a) a person lodges a claim for a mobility allowance; and

(b) because of subsection 1039 (2), the mobility allowance is not payable to the person before the day on which the person made a claim for another pension, benefit, allowance or other payment; and

(c) allowance payday or paydays occur on or after the day on which the claim referred to in paragraph (b) was lodged and before the day on which the claim referred to in paragraph (a) was lodged;

the instalments of mobility allowance that would, but for this section, be payable to the person on the allowance payday or paydays referred to in paragraph (c) are payable to the person:

(d) if the day referred to in paragraph (a) is an allowance payday— on that day; or

(e) in any other case—on the first allowance payday that occurs after the day referred to in paragraph (a).

**Manner of payment**

**1048.** A person’s mobility allowance is, subject to section 1049, to be paid:

(a) to that person; and

(b) in the manner directed by the Secretary.

**Mobility Allowance s. 1049**

**Nominee payments**

**1049. (1)** The Secretary may direct that the whole, or a part, of the amount of mobility allowance payable to a person is to be paid to someone else on behalf of the person.

**(2)** If the Secretary makes a direction under subsection (1), the mobility allowance is to be paid in accordance with the direction.

**Payment into bank account etc.**

**1050. (1)** The Secretary may direct that the whole, or a part, of the amount of mobility allowance payable to a person is to be paid, at the intervals that the Secretary specifies, to the credit of an account with a bank, credit union or building society.

**(2)** The account must be an account nominated and maintained by the person to whom the mobility allowance is payable.

**(3)** The account may be an account that is maintained by a person to whom the mobility allowance is payable jointly or in common with another person.

**(4)** If the Secretary gives a direction under subsection (1), the mobility allowance is to be payable in accordance with the direction.

**Where allowance payday would fall on public holiday etc.**

**1051.** If the Secretary is satisfied that an amount of mobility allowance that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

***Division 6***—***Protection of mobility allowance***

**Mobility allowance to be absolutely inalienable**

**1052. (1)** Subject to subsection (2) and section 1359, mobility allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

*Payments to Commissioner of Taxation at recipient’s request*

**(2)** The Secretary may make deductions from the instalments of mobility allowance payable to a person where the recipient asks the Secretary:

(a) to make the deductions; and

(b) to pay the amounts to be deducted to the Commissioner of Taxation.

Note: the Secretary must make deductions from a person’s pension, benefit or allowance if requested by the Commissioner of Taxation—see section 1359.

**s. 1053 Mobility Allowance**

**Effect of garnishee or attachment order**

**1053. (1)** If:

(a) a person has an account with a financial institution; and

(b) instalments of mobility allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of that account; and

(c) a court order in the nature of a garnishee order comes into force in respect of the account;

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

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

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the total amount of mobility allowance payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force. |
| *Step 2.* | Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount. |

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

(a) alone; or

(b) jointly with another person; or

(c) in common with another person.

***Division 7*—*Recipient obligations***

**Secretary may require notice of the happening of an event or a change in circumstances**

**1054. (1)** The Secretary may give a person to whom a mobility allowance is being paid a notice that requires the person to inform the Department if:

(a) a specified event or change of circumstances occurs; or

(b) the person becomes aware that a specified event or change of circumstances is likely to occur.

**(2)** An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the allowance.

**(3)** A notice under subsection (1):

(a) must be in writing; and

(b) may be given personally or by post; and

**Mobility Allowance s. 1054**

(c) must specify how the person is to give the information to the Department; and

(d) must specify the period within which the person is to give the information to the Department; and

(e) must specify that the notice is given under this section.

**(4)** The period specified under paragraph (3) (d) must end more than 14 days after:

(a) the day on which the event or change of circumstances occurs; or

(b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

(b) all persons irrespective of their nationality or citizenship.

**Secretary may require recipient to give particular information relevant to payment of mobility allowance**

**1055. (1)** The Secretary may give a person to whom a mobility allowance is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.

**(2)** A notice under subsection (1):

(a) must be in writing; and

(b) may be given personally or by post; and

(c) must specify how the statement is to be given to the Department; and

(d) must specify the period within which the person is to give the statement to the Department; and

(e) must specify that the notice is given under this section.

**(3)** The period specified under paragraph (2) (d) must end more than 14 days after the day on which the notice is given.

**s. 1055 Mobility Allowance**

**(4)** A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.

**(5)** A person must not refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(6)** A person must not, in purporting to comply with a notice under subsection (1), knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: $1,000 or imprisonment for 6 months, or both.

**(7)** This section extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

(b) all persons irrespective of their nationality or citizenship.

**Self incrimination**

**1056. (1)** A person is not excused from giving information pursuant to a notice under section 1054 or 1055 on the ground that the information may tend to incriminate the person.

**(2)** Information given by a person pursuant to a notice under section 1054 or 1055 is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 1054 (5) or (6) or 1055 (5) or (6).

***Division 8***—***Continuation, variation and termination***

***Subdivision A*—*General***

**Continuing effect of determination**

**1057.** A determination that:

(a) a person’s claim for a mobility allowance is to be granted; or

(b) a mobility allowance is to be paid to a person;

continues in effect until:

(c) the allowance ceases to be payable under section 1058; or

(d) a further determination in relation to the allowance under section 1059 has taken effect.

Note 1: for paragraph (a) see section 1043.

Note 2: for paragraph (b) see subsection 1059 (2)—this paragraph may be relevant where, for example, the determination in question reverses an earlier cancellation or suspension.

**Mobility Allowance s. 1058**

***Subdivision B*—*Automatic termination***

**Effect on mobility allowance when person ceases to be qualified**

**1058. (1)** If:

(a) a mobility allowance is payable to a person; and

(b) the person ceases to be qualified for the mobility allowance because he or she ceases, in the Secretary’s opinion:

(i) to be engaged in gainful employment; or

(ii) to undertake vocational training or a combination of vocational training and gainful employment;

for at least 20 hours a week on a continuing basis;

the mobility allowance:

(c) continues to be payable to the person on each of the first 6 allowance paydays after the day on which the person ceases to be qualified for the mobility allowance; and

(d) then ceases to be payable.

**(2)** If:

(a) a mobility allowance is payable to a person who is qualified for the allowance; and

(b) the person ceases to be qualified for the allowance because of circumstances other than those described in paragraph (1) (b);

the mobility allowance:

(c) is payable to the person on the first allowance payday after the day on which the person ceases to be qualified for the mobility allowance; and

(d) then ceases to be payable.

**(3)** If:

(a) a mobility allowance is payable to a person because of subsection (1); and

(b) circumstances occur that would, if the person were still qualified for the allowance, result in the person ceasing to be qualified;

the mobility allowance ceases to be payable to the person from the day those circumstances occur.

***Subdivision C*—*Determinations***

**Cancellation or suspension determination and resumption of payment after incorrect cancellation or suspension**

**1059. (1)** If the Secretary is satisfied that a mobility allowance is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note: for the date of effect of a determination under this subsection see section 1061.

**s. 1059 Mobility Allowance**

**(2)** If the Secretary:

(a) cancels or suspends a person’s mobility allowance under subsection (1); and

(b) reconsiders the decision to cancel or suspend; and

(c) becomes satisfied that:

(i) the decision to cancel or suspend was incorrect; and

(ii) because of the decision to cancel or suspend:

(a) the person did not receive mobility allowance that was payable to the person; or

(b) the person is not receiving mobility allowance that is payable to the person;

the Secretary is to determine that mobility allowance was or is payable to the person.

Note: for the date of effect of a determination under this subsection see section 1060.

**(3)** The reconsideration referred to in paragraph (2) (b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary’s own initiative.

***Subdivision D***—***Date of effect of determinations***

**Date of effect of favourable determination**

**1060. (1)** The day on which a determination under subsection 1059 (2) (in this section called the **“favourable determination”**)takes effect is worked out in accordance with this section.

*Notified decision*—*review sought within 3 months*

**(2)** If:

(a) a decision (in this paragraph called the **“previous decision”**)is made in relation to a mobility allowance; and

(b) a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

(c) a person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and

(d) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Notified decision*—*review sought after 3 months*

**(3)** If:

(a) a decision (in this paragraph called the **“previous decision”**)is made in relation to a mobility allowance; and

(b) a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

**Mobility Allowance s. 1060**

(c) a person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and

(d) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

*Decision not notified*

**(4)** If:

(a) a decision (in this paragraph called the **“previous decision”**)is made in relation to a mobility allowance; and

(b) no notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and

(c) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

*Other determinations*

**(5)** In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

**Date of effect of adverse determination**

*General*

**1061. (1)** The day on which a determination under subsection 1059 (1) (in this section called the **“adverse determination”**)takes effect is worked out in accordance with this section.

Note: if the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review: see section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

**(2)** The adverse determination takes effect on:

(a) the day on which the determination is made; or

(b) if another day is specified in the determination—on that day.

**(3)** Subject to subsections (4) and (5), the day specified under paragraph (2) (b) must be later than the day on which the determination is made.

*Contravention of Act*

**(4)** If:

(a) the person whose mobility allowance is affected by the adverse

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determination has contravened a provision of this Act (other than section 1055, 1304, 1305, 1306 or 1307); and

(b) the contravention causes a delay in making the determination;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

*False statement or misrepresentation*—*suspension or cancellation*

**(5)** If:

(a) a person has made a false statement or misrepresentation; and

(b) because of the false statement or misrepresentation, the mobility allowance has been paid to a person when it should have been cancelled or suspended;

the day specified under paragraph (2) (b) may be earlier than the day on which the determination is made.

**Rate Calculators (General) s. 1062**

**CHAPTER 3—GENERAL PROVISIONS RELATING TO PAYABILITY AND RATES**

**PART 3.1—RATE CALCULATORS (GENERAL)**

**Steps in rate calculation**

**1062. (1)** The following are the usual steps in the rate calculation process:

(a) start with a maximum basic rate;

(b) add any additional amounts that are subject to income or assets testing;

(c) apply the income and assets tests;

(d) add any additional amounts that are not subject to income or assets testing.

**(2)** The overall rate calculation process is usually described in an early Module of the relevant Rate Calculator.

**Standard categories of family situations**

**1063. (1)** The Rate Calculators use the following standard categories of family situations:

* not member of a couple;
* member of a couple (or partnered);
* partnered (partner getting neither pension nor benefit);
* partnered (partner getting pension or benefit);
* partnered (partner getting pension);
* partnered (partner getting benefit).

Note: see section 4 for definitions of those terms.

**(2)** If it is necessary to distinguish between the members of subcategories of these standard categories further words of description are added to the standard category label.

**s. 1064 Pension Rate Calculator A**

**PART 3.2—PENSION RATE CALCULATOR A**

**Rate of age, invalid, wife and carer pensions (people who are not blind)**

**1064. (1)** The rate of:

(a) age pension; and

(b) invalid pension; and

(c) wife pension; and

(d) carer pension; and

(e) sole parent pension in a case where the recipient is qualified for the pension because of subparagraph 249 (1) (a) (iv) (illness separation);

is, subject to subsection (2), to be calculated in accordance with the Rate Calculator at the end of this section.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

Note 2: the rate obtained by applying the Rate Calculator may be reduced because of:

* the receipt of compensation (see Part 3.14); or
* overseas portability (see Part 4.2—Division 3); or
* the receipt of payments under the New Enterprise Incentive Scheme (see Part 3.15).

**(2)** Subsection (1) does not apply to a person’s age or invalid pension if the person is permanently blind.

Note: the rate for an age pension or invalid pension payable to a person who is permanently blind is dealt with in section 1065.

**(3)** If:

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

(b) the person’s partner:

(i) is not receiving a social security or service pension; and

(ii) is receiving a social security benefit;

the person’s pension rate is not to exceed twice the rate at which a pension would be payable to that person if the person’s partner were receiving a pension or benefit of that kind.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

**(4)** If:

(a) a person is living with another person as the spouse of that other person on a genuine domestic basis although not legally married to the other person; and

(b) the other person is of the opposite sex; and

(c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the person’s pension rate is not to exceed the rate at which it would be payable to the person if the other person were the person’s partner.

Note: this provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

**Pension Rate Calculator A s. 1064**

*Rate limited for armed service widow*

**(5)** If:

(a) an armed services widow is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act; and

(b) one of the following is payable to the widow:

(i) an age pension;

(ii) an invalid pension;

(iii) a wife pension;

(iv) a carer pension;

the widow’s pension rate is not to exceed:

(c)if:

(i) the widow has been receiving the payment referred to in paragraph (a) continuously since before 1 November 1986; and

(ii) immediately before 1 November 1986, the widow was receiving a payment referred to in paragraph (b) at a rate exceeding $3,122.60; and

(iii) the pension referred to in paragraph (b) is of the same type as the one which was payable to the person before 1 November 1986;

the rate of pension received by the widow immediately before 1 November 1986; and

(d) in any other case—$3,122.60.

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

**s. 1064 Pension Rate Calculator A**

***PENSION RATE CALCULATOR A***

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Method of calculating rate*

1064-A1. The rate of pension is an annual rate (fortnightly amounts are provided for information only).

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the person’s **maximum basic rate** using MODULE B below. |
| *Step 2.* | Work out the amount per year (if any) for dependent children using MODULE C below. |
| *Step 3.* | Work out the amount per year (if any) for rent using MODULE D below. |
| *Step 4.* | Add up the amounts obtained in Steps 1, 2 and 3: the result is called the **maximum payment rate**. |
| *Step 5.* | Apply the ordinary income test using MODULE E below to work out the reduction for ordinary income. |
| *Step 6.* | Apply the maintenance income test using MODULE F below to work out the reduction for maintenance income. |
| *Step 7.* | Add up the reduction for ordinary income and the reduction for maintenance income: the result is called the total income reduction. |
| *Step 8.* | Take the total income reduction away from the maximum payment rate: the result is called the **income reduced rate**. |
| *Step 9.* | Apply the assets test using MODULE G below to work out the reduction for assets. |
| *Step 10.* | Take the reduction for assets away from the maximum payment rate: the result is called the **assets reduced rate**. |
| *Step 11.* | Compare the income reduced rate and the assets reduced rate: the rate of pension is: |
|  | (a) the income reduced rate if it is lower than the assets reduced rate; or |
|  | (b) the assets reduced rate if it is lower than the income reduced rate; or |
|  | (c) the income reduced rate if the income reduced rate and the assets reduced rate are exactly equal; |
|  | plus any amount per year payable by way of remote area allowance (see MODULE H below) and any amount per year payable by way of incentive allowance (see MODULE J below). |

Note 1: if a person’s assets reduced rate is less than the person’s income reduced rate, the person may be able to take advantage of provisions dealing with:

**Pension Rate Calculator A s. 1064**

* financial hardship (sections 1129 and 1130);
* pensions loan scheme (section 1133).

Note 2: if a person’s rate is reduced under Step 11 the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1207 (maximum basic rate first, then rent assistance and finally child amounts).

Note 3: the rate calculation for a member of a couple is affected by the operation of points 1064-A2 and 1064-A3.

Note 4: points 1064-A4 and 1064-A5 explain the special treatment given to certain members of couples with dependent children.

*Members of a couple*

1064-A2. Where 2 people are members of a couple, they will be treated as pooling their resources (income and assets) and sharing them on a 50/50 basis (see points 1064-E2, 1064-F2 and 1064-G2 below). They will also be treated as sharing expenses (e.g. for rent) on a 50/50 basis (see points 1064-D7 and 1064-D8 below).

*Application of Rate Calculator to sole parent pension recipient*

1064-A3. In applying this Rate Calculator in working out a person’s sole parent pension rate, treat any maintained child of the person as if the child were a dependent child of the person.

Note: for “maintained child” see subsection 5 (1) and section 250.

*Explanation/background information*—*pensioner couples with dependent children*

1064-A4. This Rate Calculator has special income and assets test rules for pensioner couples with dependent children (see points 1064-E10 to 1064-E12, points 1064-F4 to 1064-F13 and points 1064-G4 to 1064-G7 below). Without these special rules, pensioner couples with dependent children could, in some circumstances, receive unfairly favourable treatment compared with other couples. This could arise because:

(a) the member of a pensioner couple to whom dependent children are allocated (see point 1064-C2 below) starts from a maximum payment rate that is higher than that of the other member of the couple (see Module C below); and

(b) the ordinary income, maintenance income and assets of the couple are taken to be shared between them on a 50/50 basis (see points 1064-E2, 1064-F2 and 1064-G2 below); and

(c) the member of the couple who starts from the lower maximum payment rate could reach a nil income reduced rate or a nil assets reduced rate while the other member has an income reduced rate or an assets reduced rate higher than nil; and

(d) if this occurs, part of the couple’s ordinary income, maintenance income or assets would not be “taken into account” in the operation of the income and assets tests.

1064-A5. To remove this potentially unfairly favourable treatment, this Rate Calculator provides for:

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(a) an initial double reduction for excess income or assets against the additional amounts for dependent children (these are in the hands of the member who is receiving those additional amounts); and

(b) if any excess income or assets remains—a normal reduction for the remaining excess against the maximum payment rate of each member.

Under these rules, both members of pensioner couples with dependent children should always reach a nil income reduced rate or a nil assets reduced rate at the same time.

*MODULE B—MAXIMUM BASIC RATE*

*Maximum basic rate*

1064-B1. A person’s maximum basic rate depends on the person’s family situation. Work out which family situation in Table B applies to the person. The maximum basic rate is the corresponding amount in column 3.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE B  MAXIMUM BASIC RATES | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s family situation | rate per year | rate per fortnight |
| 1. | Not member of a couple | $7,584.20 | $291.70 |
| 2. | Partnered (partner getting neither pension nor benefit) | $7,584.20 | $291.70 |
| 3. | Partnered (partner getting pension or benefit) | $6,323.20 | $243.20 |
| 4. | Member of an illness separated or respite care couple | $7,584.20 | $291.70 |

Note 1: for “member of a couple”, “partnered (partner getting neither pension nor benefit)”, “partnered (partner getting pension or benefit)”, “illness separated couple” and “respite care couple” see section 4.

Note 2: the maximum basic rates are indexed 6 monthly in line with CP1 increases (see sections 1191 to 1194).

*MODULE C—ADDITIONAL AMOUNTS FOR DEPENDENT CHILDREN*

*Additional amounts for dependent children*

1064-C1. This is how to work out the amount per year to be added to a person’s maximum basic rate for dependent children:

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|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the dependent child add-on (if any) for each dependent child of the person using points 1064-C3 to 1064-C6. |
| *Step 2.* | Work out the amount per year of the person’s guardian allowance (if any) using points 1064-C7 to 1064-C10. |
| *Step 3.* | Add up all of the amounts obtained in Steps 1 and 2: the result is called the **DC total** and is the amount to be added to the person’s maximum basic rate under this Module. |

Note 1: a dependent child add-on may not apply to a dependent child if reasonable action has not been taken to obtain maintenance in respect of the child (see point 1064-C4), the child is covered by the Veterans’ Entitlements Act (see point 1064-C5) or is a prescribed student child (see point 1064-C6).

Note 2: guardian allowance is a single amount per year for parents who are not members of a couple or who are members of illness separated couples.

*Children of a couple*

1064-C2. If either or both members of a couple have dependent children, this is how the children are taken into account for the purposes of this Module:

(a) a dependent child of the man is to be taken into account as a dependent child of the woman and not of the man unless:

(i) the woman is not receiving a social security pension; or

(ii) the couple is an illness separated couple because of the illness or infirmity of the woman; and

(b) a dependent child of the woman is to be taken into account as a dependent child of the man and not of the woman if:

(i) the woman is not receiving a social security pension; or

(ii) the couple is an illness separated couple because of the illness or infirmity of the woman.

Note 1: “social security pension” includes a sheltered employment or rehabilitation allowance.

Note 2: the following Table summarises the rules established by this point: work out which column applies to the man’s payment entitlements (if any); work out the item that applies to the woman’s payment entitlements (if any); find the box in that column that corresponds to that item; if the box contains the word “woman”, the dependent children are allocated to the woman; if the box contains the word “man”, the dependent children are allocated to the man:

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|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ALLOCATION OF DEPENDENT CHILDREN TABLE | | | | |
| column 1 | column 2 | column 3  man | | |
|  |  | column 3a | column 3b | column 3c |
| item | woman | social security pension | social security pension (illness separation) | nothing |
| 1. | social security pension | woman | woman | woman |
| 2. | social security pension (illness separation) | man | — | woman |
| 3. | nothing | man | man | — |

|  |  |
| --- | --- |
| social security pension | = the person is receiving a social security pension and the couple is not an illness separated couple because of the person’s illness or infirmity. |
| social security pension (illness separation) | = the person is receiving a social security pension and the couple is an illness separated couple because of the person’s illness or infirmity. |
| nothing | = the person is not receiving a social security pension (but may be receiving a social security benefit or a service pension). |

Note 3: if the woman is receiving a social security pension and the man is receiving an age service pension or an invalid service pension, the Veterans’ Entitlements Act will allocate the dependent children to the man; the woman, although allocated the dependent children under point 1064-C2, will not receive additional amounts for the children because of point 1064-C5.

Note 4: if one partner is receiving a social security pension and the other is receiving a social security benefit, the Benefit Rate Calculators operate to deny the social security benefit recipient from receiving anything for the dependent children (see point 1067-E3 of Benefit Rate Calculator A and point 1068-E3 of Benefit Rate Calculator B).

*Dependent child add-ons*

1064-C3. If a person has a dependent child, there is, subject to points 1064-C4, 1064-C5 and 1064-C6, a dependent child add-on for the child. The amount of the add-on depends on the child’s age and is worked out using Table C.

**Pension Rate Calculator A s. 1064**

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE C | | | |
| ADD-ON FOR DEPENDENT CHILD | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | child’s age | rate per year | rate per fortnight |
| 1. | under 13 | $1,255.80 | $48.30 |
| 2. | 13 or over but under 16 | $1,833 | $70.50 |
| 3. | 16 or over | $884 | $34 |

Note 1: the item 1 rate is adjusted annually so that the combined family allowance and additional pension amounts for children covered by this item do not fall below 15% of the combined pensioner couple maximum basic rate (see subsections 1200 (1) and (2).

Note 2: the item 2 rate is adjusted annually so that the combined family allowance and additional pension amounts for children covered by this item do not fall below 20% of the combined pensioner couple maximum basic rate (see subsections 1200 (3) and (4).

Note 3: the item 3 rate is not indexed.

*Failure to reasonably pursue maintenance claim*

1064-C4. If:

(a) a person’s sole parent pension rate is being worked out using this Rate Calculator (see paragraph 1064 (1) (e)); and

(b) the person is entitled to claim maintenance from someone else for a dependent child of the person; and

(c) the Secretary considers that it is reasonable that the person should have taken action to obtain the maintenance; and

(d) the person has not taken action that the Secretary considers reasonable to obtain the maintenance;

there is no dependent child add-on for the dependent child.

*No add-on for child covered by Veterans’ Entitlements Act*

1064-C5. There is no dependent child add-on for a dependent child if the maximum rate of someone’s service pension is increased because of the child under paragraph 47 (3) (b) of the VEA.

*No add-on for prescribed student children*

1064-C6. Once a dependent child of a person turns 16, there is no dependent child add-on for the child if the child is a prescribed student child.

Note 1: for “prescribed student child” and “dependent child” see section 5.

Note 2: even though no child add-on applies to a particular dependent child the child:

(a) may attract guardian allowance under points 1064-C7 to 1064-C10; and

(b) will attract additional free area under point 1064-E4 for the purposes of the ordinary income test.

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*Guardian allowance*

1064-C7. Subject to points 1064-C8 and 1064-C9, a person who has a dependent child or dependent children is to have a single amount per year by way of guardian allowance if:

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

(b) the person is a member of an illness separated couple.

*No guardian allowance in respect of certain dependent children who have turned 18*

1064-C8. Once a dependent child of a person turns 18, the child is not to be taken into account for the purposes of point 1064-C7 unless:

(a) the child is a student child but not a prescribed student child; or

(b) the person receives child disability allowance in respect of the child.

*Failure to reasonably pursue maintenance claim*

1064-C9. If:

(a) a person’s sole parent pension rate is being worked out using this Rate Calculator (see paragraph 1064 (1) (e)); and

(b) the person is entitled to claim maintenance from someone else for a dependent child of the person; and

(c) the Secretary considers that it is reasonable that the person should have taken action to obtain the maintenance; and

(d) the person has not taken action that the Secretary considers reasonable to obtain the maintenance;

the dependent child is not to be taken to account for the purposes of point 1064-C7.

*Rate of guardian allowance*

1064-C10. The rate of guardian allowance is $670.80 a year ($25.80 a fortnight).

Note: the rate of guardian allowance is indexed annually in line with CPI increases (see sections 1191 to 1194).

*MODULE D—RENT ASSISTANCE*

*Qualification for rent assistance*

1064-D1. An additional amount to help cover the cost of rent is to be added to a person’s maximum basic rate if:

(a) the person is not an ineligible homeowner; and

(b) the person is not receiving incentive allowance; and

(c) the person pays, or is liable to pay, rent (other than Government rent); and

**Pension Rate Calculator A s. 1064**

(d) the rent is payable at a rate of more than $1,040 per year ($40 per fortnight); and

(e) the person is in Australia.

Note: for “rent”, “Government rent” and “ineligible homeowner” see section 13.

*No rent assistance if partner getting incentive allowance*

1064-D2. If a person is a member of a couple and the person’s partner is living with the person in their home, an additional amount is not to be added to the person’s maximum basic rate under point 1064-D1 if an amount by way of incentive allowance is being added to the maximum basic rate of the person’s partner.

*Factors affecting rate of rent assistance*

1064-D3. The rate of rent assistance depends on:

(a) the annual rent paid or payable by the person; and

(b) the number of pension increase children (if any) that the person has; and

(c) whether or not the person has a partner with a rent increased pension.

Note: for “pension increase child” see subsection 5 (15).

*Partner with rent increased pension*

1064-D4. A person has a **partner with a rent increased pension**,for the purposes of this Module, if:

(a) the partner is living with the person in their home; and

(b) the partner is in receipt of a social security or service pension; and

(c) the rate of the pension is increased to take account of rent paid or payable by the person.

Note 1: “social security pension” includes a sheltered employment or rehabilitation allowance.

Note 2: for the treatment of rent paid by a member of a couple see point 1064-D7.

*Rate of rent assistance*

1064-D5. The rate of rent assistance per fortnight is worked out using Table D. Work out the person’s family situation and calculate Rate A for the person using the corresponding formula in column 3. This will be the person’s rate of rent assistance but only up to the person’s maximum rent assistance rate. The person’s maximum rent assistance rate is Rate B for the person worked out using column 4 of the Table.

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE D | | | | | |
| RATE OF RENT ASSISTANCE | | | | | |
| col. 1 | column 2 | column 3 | column 4 | | |
| item | family situation | Rate A | Rate B | | |
|  |  |  | column 4a | column 4b | column 4c |
|  |  |  | No pension increase children | 1 or 2 pension increase children | 3 or more pension increase children |
| 1. | Not member of a couple | **Annual rent**-$1,040  2 | $1,560 | $1,820 | $2,080 |
| 2. | Partnered—partner does not have rent increased pension | **Annual rent**-$1,040  2 | $1,560 | $1,820 | $2,080 |
| 3. | Partnered—partner has rent increased pension | **Annual rent**-$1,040  4 | $780 | $910 | $1,040 |

Note 1: for “member of a couple” and “partnered” see section 4.

Note 2: for “partner with a rent increase pension” see point 1064-D4.

Note 3: the Rate B amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Annual rent*

1064-D6. **Annual rent** is the annual rent paid or payable by the person whose pension rate is being calculated.

*Rent paid by a member of a couple*

1064-D7. If a person is a member of a couple and the person’s partner is living with the person in their home, any rent that the person’s partner pays or is liable to pay in respect of the home is to be treated as paid or payable by the person.

Note: for “member of a couple” see section 4.

*Rent paid by a member of an illness separated or respite care couple*

1064-D8. If a person is a member of an illness separated or respite care couple, any rent that the person’s partner pays or is liable to pay in respect of the premises occupied by the person is to be treated as paid or payable by the person.

Note: for “illness separated couple” and “respite care couple” see section 4.

**Pension Rate Calculator A s. 1064**

RENT ASSISTANCE EXAMPLES (using rates to 19.9.90)

*Example 1:*

*Facts*

Jane is a pensioner who is not a member of a couple. She does not have any children and pays $55.00 a week for a small bedsitter.

*Application*

Item 1 of Table D in Point 1064-D5 applies to Jane.

Rate A for Jane is:

|  |  |  |  |
| --- | --- | --- | --- |
| ($55 × 52)-$1,040 = | $2,860 − $1,040 = | $1,820 = | $910 |
| 2 | 2 | 2 |  |

Rate B for Jane is $1,560. The lesser rate is $910. This is the yearly rate of Jane’s rent assistance amount.

*Example 2:*

*Facts*

Martha and Fred are both pensioners and are a couple. They rent a flat for $100 a week. They do not have any children.

*Application*

Rate A for Martha is:

|  |  |  |  |
| --- | --- | --- | --- |
| ($100 × 52) − $1,040 = | $5,200 − $1,040 = | $4,160 = | $1,040 |
| 4 | 4 | 4 |  |

Rate B for Martha is $780. The lesser rate is $780. This is the yearly rate of Martha’s rent assistance amount.

The same calculation applies to Fred’s yearly rate of rent assistance amount.

Together they get $1,560 of annual rent assistance.

*Example 3:*

*Facts*

Janet and Damian are both pensioners and are a couple. They rent a house for $120 a week. They have a son Boris for whom Janet gets a dependent child add-on under point 1064-C3.

*Application*

Item 3 of Table D in point 1064-D5 applies to both Janet and Damian.

Rate A for Janet is:

|  |  |  |  |
| --- | --- | --- | --- |
| ($120 × 52) − $1,040 = | $6,240 − $1,040 = | $5,200 = | $1,300 |
| 4 | 4 | 4 |  |

Rate B for Janet is $910. The lesser rate is $910. This is the yearly rate of Janet’s rent assistance amount.

The same calculation applies to Damian’s yearly rate of rent assistance.

Together they get $1,820 of annual rent assistance.

**s. 1064 Pension Rate Calculator A**

*MODULE E—ORDINARY INCOME TEST*

*Effect of income on maximum payment rate*

1064-E1. This is how to work out the effect of a person’s ordinary income on the person’s maximum payment rate:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the person’s ordinary income on a yearly basis.  Note: for the treatment of the ordinary income of members of a couple see point 1064-E2. |
| *Step 2.* | Work out the person’s ordinary free area limit (see points 1064-E4 to 1064-E9 below).  Note: a person’s ordinary income free area is the maximum amount of ordinary income the person can have without affecting the person’s pension rate. |
| *Step 3.* | *Work out whether the person’s ordinary income exceeds the person’s ordinary income free area.* |
| *Step 4.* | If the person’s ordinary income does not exceed the person’s ordinary income free area, the person’s ordinary income excess is nil. |
| *Step 5.* | If the person’s ordinary income exceeds the person’s ordinary income free area, the person’s ordinary income excess is the person’s ordinary income less the person’s ordinary income free area. |
| *Step 6.* | Use the person’s ordinary income excess to work out the person’s reduction for ordinary income using points 1064-E10 to 1064-E12 below. |

Note 1: see point 1064-A1 (Steps 5 to 8) for the significance of the person’s reduction for ordinary income.

Note 2: the application of the ordinary income test is affected by provisions concerning:

* investment income (sections 1073 to 1099);
* disposal of income (sections 1106 to 1112);
* earnings credit (sections 1113 to 1115).

*Ordinary incomes of members of couples*

1064-E2. If a person is a member of a couple, add the couple’s ordinary incomes (on a yearly basis) and divide by 2 to work out the amount of the person’s ordinary income for the purposes of this Module.

*Ordinary free area limit*

1064-E3. A person’s ordinary income free area is the amount of ordinary income the person can have without any deduction being made from the person’s maximum payment rate.

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*How to calculate a person’s ordinary free area limit*

1064-E4. A person’s ordinary free area limit is worked out using Table E-1. Work out which family situation in Table E-1 applies to the person. The ordinary free area limit is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each dependent child of the person.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE E-1 | | | | | |
| ORDINARY FREE AREA LIMITS | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | category of person | basic free area per year | basic free area per fortnight | additional free area per year | additional free area per fortnight |
| 1. | Not member of a couple | $2,080 | $80 | $624 | $24 |
| 2. | Partnered (partner getting neither pension nor benefit) | $1,820 | $70 | $624 | $24 |
| 3. | Partnered (partner getting benefit) | $1,820 | $70 | $624 | $24 |
| 4. | Partnered (partner getting pension) | $1,820 | $70 | $312 | $12 |

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

Note 2: for “dependent child” see section 5.

Note 3: items 2, 3 and 4 of Table E-l apply to members of illness separated and respite care couples.

Note 4: the basic free area limits are indexed annually in line with CPI increases (see sections 1191 to 1194).

*No additional free area for certain prescribed student children*

1064-E5. No additional free area is to be added for a dependent child who:

(a) has turned 18; and

(b) is a prescribed student child;

unless the person whose rate is being calculated, or the person’s partner, receives child disability allowance for the child.

*Reduction of additional free area for dependent children*

1064-E6. The additional free area for a dependent child of a person to whom item 1, 2 or 3 of Table E-l applies is reduced by the annual amount of any payment received by the person or the person’s partner for or in respect of that particular child. The payments referred to in point 1064-E8 do not result in a reduction.

1064-E7. The additional free area for a dependent child of a person to whom item 4 of Table E-1 applies is reduced by 50% of the annual

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amount of any payment received by the person or the person’s partner for or in respect of that particular child. The payments referred to in point 1064-E8 do not result in a reduction.

1064-E8. No reduction is to be made under point 1064-E6 or 1064-E7 for a payment:

1. under this Act; or
2. of maintenance income; or
3. under the VEA; or
4. under the AUSTUDY scheme; or
5. under the Assistance for Isolated Children Scheme; or
6. that is similar to family allowance and that prevents a family allowance from being paid under section 837.

1064-E9. Examples of the kinds of payments that result in a reduction under points 1064-E6 and 1064-E7 are:

1. amounts received from State authorities or benevolent societies in respect of the “boarding out” of the child; or
2. amounts of superannuation or compensation paid in respect of the child; or
3. amounts (other than amounts covered by point 1064-E8 above) paid in respect of the child under educational schemes; or
4. a family allowance or similar payment made by another country where this does not preclude payment of Australian family allowance; or
5. foster care allowance payments made by a State welfare authority.

ORDINARY FREE AREA LIMIT EXAMPLES

*Example 1:*

*Facts*

Wayne and Mary are members of a couple. They both receive pensions. They have 2 dependent children—Max and Angela. Angela is being fostered by Wayne and Mary and they receive $15 per week from the NSW Government by way of a foster care payment in respect of Angela.

*Application*

The foster care payment calculated on a yearly basis is $15 × 52 = $780. As point 1064-E7 applies to Wayne and Mary (they are covered by item 4 of Table E-1 in point 1064-E4), the reduction is at the 50% rate (i.e. $390 per year). The possible additional amount for Angela ($312) is therefore reduced to nil.

The amount that Wayne gets for Max is not subject to reduction and is $312 per year. Mary gets $312 for Max as well.

Wayne’s ordinary free area limit is $1,820 + $312 = $2,132. Mary’s ordinary free area limit is the same.

*Example 2:*

*Facts*

The same facts as in example 1 except that Wayne and Mary receive only $10 a week ($520 a year) foster care payment for Angela.

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*Application*

The amount that each person would be allowed for Angela is:

|  |  |  |  |
| --- | --- | --- | --- |
| $312 − | 520 | = $312 − 260 = | $52 |
| 2 |

Then each would have an ordinary free area limit of $1,820 + $312 + $52 = $2,184.

*Pension reduction for ordinary income in excess of ordinary free area limit*

1064-E10. A person’s reduction for ordinary income is worked out using Table E-2. Work out which family situation applies to the person. The reduction for ordinary income is the amount per year worked out using the corresponding calculation in column 3.

|  |  |  |
| --- | --- | --- |
| TABLE E-2 | | |
| REDUCTION FOR ORDINARY INCOME | | |
| column 1 | column 2 | column 3 |
| item | person’s family situation | reduction |
| 1. | Not member of a couple | **ordinary income excess**  2 |
| 2. | Partnered (partner getting neither pension nor benefit) | **ordinary income excess**  2 |
| 3. | Partnered (partner getting benefit) | **ordinary income excess**  2 |
| 4. | Partnered (partner getting pension) *neither person nor partner* has additional amounts for dependent children | **ordinary income excess**  2 |
| 5. | Partnered (partner getting pension) *person* has additional amounts for dependent children | **DC excess + remaining excess**  2 |
| 6. | Partnered (partner getting pension) *partner* has additional amounts for dependent children | **remaining excess**  2 |

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

Note 2: for “additional amounts for dependent children” see subsection 23 (1).

Note 3: “social security pension” includes a sheltered employment or rehabilitation allowance.

Note 4: for “ordinary income excess” see point 1064-E11 below.

Note 5: for “DC excess” and “remaining excess” see point 1064-E12 below.

Note 6: for background information on the special treatment given to people covered by items 5 and 6 of Table E-2 see points 1064-A4 and 1064-A5 above.

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*Ordinary income excess*

1064-E11. A person’s **ordinary** income excess is the person’s ordinary income less the person’s ordinary free area limit.

*Working out DC excess and remaining excess*

1064-E12. For the purposes of Table E-2, if a member of a couple (in this point called the **“DC partner”**)has additional amounts for dependent children:

(a) the additional amounts for dependent children total (the **“DC total”**)is the sum of the amounts the DC partner has by way of additional amounts for dependent children; and

(b) if the DC partner’s ordinary income excess (see point 1064-E11 above) is less than or equal to the DC total:

(i) the DC excess is the DC partner’s ordinary income excess; and

(ii) the **remaining** excess is nil; and

(c) if the DC partner’s ordinary income excess (see point 1064-E11 above) is greater than the DC total:

(i) the **DC** **excess** is the DC total; and

(ii) the **remaining excess** is the DC partner’s ordinary income excess less the DC total.

Note: for “additional amount for dependent children” see subsection 23 (1).

*MODULE F—MAINTENANCE INCOME TEST*

*Effect of maintenance income on maximum payment rate*

1064-F1. This is how to work out the effect of a person’s maintenance income on the person’s maximum payment rate:

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|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the person’s maintenance income on a yearly basis. |
|  | Note 1: for the treatment of the maintenance income of members of a couple see points 1064-F2 and 1064-F3. |
|  | Note 2: “special maintenance income” (see subsection 10 (1)) can in some circumstances be disregarded under points 1064-F4 to 1064-F6. |
| *Step 2.* | Work out the person’s maintenance income free area limit (see points 1064-F9 and 1064-F10 below). |
|  | Note: a person’s maintenance income free area is the maximum amount of maintenance income the person can have without affecting the person’s pension rate. |
| *Step 3.* | Work out whether the person’s maintenance income exceeds the person’s maintenance income free area. |
| *Step 4.* | If the person’s maintenance income does not exceed the person’s maintenance income free area, the person’s maintenance income excess is nil. |
| *Step 5.* | If the person’s maintenance income exceeds the person’s maintenance income free area, the person’s maintenance income excess is the person’s maintenance income less the person’s maintenance income free area. |
| *Step 6.* | Use the person’s maintenance income excess to work out the person’s reduction for maintenance income using points 1064-F11 to 1064-F13 below. |

Note 1: see point 1064-A1 (Steps 5 to 8) for the significance of the person’s reduction for maintenance income.

Note 2: the application of the maintenance income test is affected by provisions concerning:

* apportionment of capitalised maintenance income (section 1116);
* non-cash housing maintenance—value of substitute for family home (section 1117).

*Dependent child*

1064-F1a. In working out whether a young person is a dependent child for the purposes of this Module, disregard subsection 5 (3).

*Maintenance incomes of members of couples*

1064-F2. If the person is a member of a couple, add the couple’s maintenance incomes (on a yearly basis) and divide by 2 to work out the amount of the person’s maintenance income for the purposes of this Module.

1064-F3. Point 1064-F2 does not apply to a person if the person’s partner:

(a) is not in receipt of:

(i) a social security or service pension; or

(ii) a social security benefit; and

(b) does not have maintenance income.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

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*Special maintenance income*

1064-F4. Subject to points 1064-F7 and 1064-F8, if a person has special maintenance income in excess of the ceiling applicable to the person, the excess is disregarded for the purposes of this Module.

Note: see subsection 10 (1) for “special maintenance income”.

1064-F5. If a person:

(a) is a member of a couple; and

(b) has a dependent child; and

(c) the person’s partner is in receipt of a social security or service pension;

the **ceiling** applicable to the person is the amount equal to the person’s maintenance income free area limit plus:

|  |
| --- |
| **combined maximum rates** |
| 4 |

where:

**combined maximum rates** is the sum of:

(a) the maximum payment rate of pension applicable to the person; and

(b) the maximum payment rate of social security or service pension applicable to the person’s partner; and

(c) any incentive allowance payable to the person or the person’s partner.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

1064-F6. If a person is not covered by point 1064-F5, the **ceiling** applicable to the person is the amount equal to the person’s maintenance income free area limit plus:

|  |
| --- |
| **person’s maximum basic rate + incentive allowance** |
| 2 |

*Special maintenance income not disregarded where child support available*

1064-F7. No amount is to be disregarded under point 1064-F4 if:

(a) child support is not payable under the *Child Support (Assessment) Act 1989* to the person for a child; and

(b) the person is entitled to make an application for assessment of child support under Part V of that Act for the child payable by another person; and

(c) the person has:

(i) neither:

(a) properly made such an application; nor

(b) properly made an application under Part VI of

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that Act for acceptance of an agreement in relation to the child; or

(ii) the person has properly made an application of either kind, but:

(a) the person has subsequently withdrawn the application; or

(b) after child support has become payable by the other person under that Act for the child, the person has ended the entitlement to child support.

1064-F8. No amount is to be disregarded under point 1064-F4 if:

(a) child support is payable under the *Child Support (Assessment) Act 1989* to the person for a child; and

(b) the person is entitled to make an application under section 128 of that Act; and

(c) an application by the person under that section is not in force.

*How to calculate a person’s maintenance income free area limit*

1064-F9. A person’s maintenance income free area limit is worked out using Table F-1. Work out which family situation in Table F-1 applies to the person. The maintenance income free area limit is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each dependent child after the first.

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE F-1 | | | | | |
| MAINTENANCE INCOME FREE AREA LIMIT | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | person’s family situation | basic free area per year | basic free area per fortnight | additional free area per year | additional free area per fortnight |
| 1. | Not member of a couple | $780.00 | $30.00 | $260.00 | $10.00 |
| 2. | Partnered (partner getting neither pension nor benefit) | $780.00 | $30.00 | $260.00 | $10.00 |
| 3. | Partnered (partner getting pension or benefit)—both the person and the partner are receiving maintenance income | $780.00 | $30.00 | $130.00 | $5.00 |
| 4. | Partnered (partner getting pension or benefit)—either the person or the partner (but not both) are receiving maintenance income | $390.00 | $15.00 | $130.00 | $5.00 |

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

Note 2: for “dependent child” see section 5.

Note 3: items 2, 3 and 4 of Table F-1 apply to members of illness separated and respite care couples.

1064-F10. In determining whether or not item 3 or 4 of Table F-1 applies to a person point 1064-F2 is to be disregarded. This has the effect of taking into account only maintenance income that the person actually receives rather than any income that the person is to be taken to receive because of maintenance income received by the person’s partner.

*Pension reduction for maintenance income in excess of maintenance free area limit*

1064-F11. A person’s reduction for maintenance income is worked out using Table F-2. Work out which family situation applies to the person. The reduction for maintenance income is the amount per year worked out using the corresponding calculation in column 3.

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|  |  |  |
| --- | --- | --- |
| TABLE F-2 | | |
| REDUCTION FOR MAINTENANCE INCOME | | |
| column 1 | column 2 | column 3 |
| item | person’s family situation | reduction |
| 1. | Not member of a couple | **maintenance income excess**  2 |
| 2. | Partnered (partner getting neither pension nor benefit) | **maintenance income excess**  2 |
| 3. | Partnered (partner getting benefit) | **maintenance income excess**  2 |
| 4. | Partnered (partner getting pension) *neither person nor partner* has additional amounts for dependent children | **maintenance income excess**  2 |
| 5. | Partnered (partner getting pension) *person* has additional amounts for dependent children | **DC excess + remaining excess**  2 |
| 6. | Partnered (partner getting pension) *partner* has additional amounts for dependent children | **remaining excess**  2 |

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

Note 2: for “additional amounts for dependent children” see subsection 23 (1).

Note 3: “social security pension” includes a sheltered employment or rehabilitation allowance.

Note 4: for “maintenance income excess” see point 1064-F12 below.

Note 5: for “DC excess” and “remaining excess” see point 1064-F13 below.

Note 6: for background information on the special treatment given to people covered by items 5 and 6 of Table F-2 see points 1064-A4 and 1064-A5 above.

*Maintenance income excess*

1064-F12. A person’s **maintenance income** excess is the person’s maintenance income less the person’s maintenance free area limit.

*Working out DC excess and remaining excess*

1064-F13. For the purposes of Table F-2, if a member of a couple (in this point called the “child **“DC partner”**)has additional amounts for dependent children:

the additional amounts for dependent children total (the **“DC total”**)is the sum of the amounts the DC partner has by way of additional amounts for dependent children; and

if the DC partner’s ordinary income excess (see point 1064-E11 above) plus the DC partner’s maintenance income excess (see point 1064-F12 above) are less than or equal to the DC total:

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(i) the DC excess is the DC partner’s maintenance income excess; and

(ii) the remaining excess is nil; and

(c) if:

(i) the DC partner’s ordinary income excess (see point 1064-E11 above) plus the DC partner’s maintenance income excess (see point 1064-F12 above) is greater than the DC total; and

(ii) the notional DC partner’s ordinary income excess is greater than or equal to the DC total;

then:

(iii) the **DC excess** is nil; and

(iv) the **remaining excess** is the DC partner’s maintenance income excess; and

(d) if:

(i) the DC partner’s ordinary income excess (see point 1064-E11 above) plus the DC partner’s maintenance income excess (see point 1064-F12 above) is greater than the DC total; and

(ii) the DC partner’s ordinary income excess is less than the DC total;

then:

(iii) the **DC excess** is the DC total less the DC partner’s ordinary income excess; and

(iv) the **remaining excess** is the DC partner’s maintenance income excess less the DC excess.

Note: for “additional amount for dependent children” see subsection 23 (1).

*MODULE G—ASSETS TEST*

*Effect of assets on maximum payment rate*

1064-G1. This is how to work out the effect of a person’s assets on the person’s maximum payment rate:

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|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the value of the person’s assets. |
|  | Note 1: for the treatment of the assets of members of a couple see point 1064-G2. |
|  | Note 2: for the assets that are to be disregarded in valuing a person’s assets see section 1118. |
|  | Note 3: for the valuation of an asset that is subject to a charge or encumbrance see section 1121. |
| *Step 2.* | Work out the person’s assets value limit (see point 1064-G3 below). |
|  | Note: a person’s assets value limit is the maximum value of assets the person can have without affecting the person’s pension rate. |
| *Step 3.* | Work out whether the value of the person’s assets exceeds the person’s assets value limit. |
| *Step 4.* | If the value of the person’s assets does not exceed the person’s assets value limit, the person’s assets excess is nil. |
| *Step 5.* | If the value of the person’s assets exceeds the person’s assets value limit, the person’s assets excess is the value of the person’s assets less the person’s assets value limit. |
| *Step 6.* | Use the person’s assets excess to work out the person’s reduction for assets using points 1064-G4 to 1064-G7 below. |

Note 1: see point 1064-A1 (steps 9 and 10) for the significance of the person’s reduction for assets.

Note 2: the application of the assets test is affected by provisions concerning:

* disposal of assets (sections 1123 to 1128);
* retirement villages (sections 1145 to 1157);
* financial hardship (sections 1129 and 1130);
* the pensions loans scheme (sections 1133 to 1144).

*Value of assets of members of couples*

1064-G2. For the purposes of this Module:

(a) the value of the assets of a member of a couple is to be taken to be 50% of the sum of:

(i) the value of the person’s assets; and

(ii) the value of the person’s partner’s assets; and

(b) the value of the assets of a particular kind of a member of a couple is to be taken to be 50% of the sum of:

(i) the value of the person’s assets of that kind; and

(ii) the value of the person’s partner’s assets of that kind.

*Assets value limit*

1064-G3. A person’s assets value limit is worked out using Table G-1. Work out the person’s family situation and home ownership

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situation. The assets value limit is the corresponding amount in column 3.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE G-1 | | | |
| ASSETS VALUE LIMIT | | | |
| column 1 | column 2 | column 3 | |
|  |  | assets value limit | |
| item | person’s family situation | column 3a  either person or partner homeowner | column 3b  neither person nor partner homeowner |
| 1. | Not member of a couple | $103,500 | $177,500 |
| 2. | Partnered (partner getting neither pension nor benefit) | $73,750 | $110,750 |
| 3. | Partnered (partner getting pension or benefit) | $73,750 | $110,750 |

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

Note 2: for “homeowner” see section 11.

Note 3: items 2 and 3 apply to members of illness separated and respite care couples.

Note 4: the assets value limits are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1203).

*Pension reduction for assets in excess of assets value limit*

1064-G4. A person’s reduction for assets is worked out using Table G-2. Work out which family situation applies to the person. The reduction for assets is the amount per year worked out using the corresponding calculation in column 3.

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|  |  |  |
| --- | --- | --- |
| TABLE G-2 | | |
| REDUCTION FOR ASSETS | | |
| column 1 | column 2 | column 3 |
| item | person’s family situation | reduction |
| 1. | Not member of a couple | [**assets excess**] × 26  250 |
| 2. | Partnered (partner getting neither pension nor benefit) | [**assets excess**] × 26  250 |
| 3. | Partnered (partner getting benefit) | [**assets excess**] × 26  250 |
| 4. | Partnered (partner getting pension) *neither person nor partner* has additional amounts for dependent children | [**assets excess**] × 26  250 |
| 5. | Partnered (partner getting pension) *person* has additional amounts for dependent children | [**DC excess**] **×** 52 + [**remaining excess**] × 26  250 250 |
| 6. | Partnered (partner getting pension) *partner* has additional amounts for dependent children | [**remaining excess**] **×** 26  250 |

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

Note 2: for “additional amount for dependent children” see subsection 23 (1).

Note 3: “social security pension” includes a sheltered employment or rehabilitation allowance.

Note 4: for “assets excess” see point 1064-G5 below.

Note 5: for “DC excess” and “remaining excess” see point 1064-G6 below.

Note 6: for background information on the special treatment given to people covered by items 5 and 6 of Table G-2 see points 1064-A4 and 1064-A5 above.

*Assets excess*

1064-G5. A person’s **assets excess** is the value of the person’s assets less the person’s assets value limit.

*Working out DC excess and remaining excess*

1064-G6. For the purposes of Table G-2, if a member of a pensioner couple (in this point called the **“DC partner”**)has additional amounts for dependent children:

(a) the additional amounts for dependent children total (the **“DC total”**)is the sum of the amounts that the DC partner has by way of additional amounts for dependent children; and

(b) the assets equivalent of the DC total (the **“DC assets total”**)is:

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|  |  |
| --- | --- |
| **DC total** × 250 | ; and |
| 52 |

(c) if the DC partner’s assets excess (see point 1064-G5 above) is less than or equal to the DC assets total:

(i) the **DC excess** is the assets excess; and

(ii) the **remaining excess** is nil; and

(d) if the **DC** partner’s assets excess (see point 1064-G5 above) is greater than the DC assets total:

(i) the **DC excess** is the DC assets total; and

(ii) the **remaining excess** is the assets excess less the DC assets total.

Note: for “additional amount for dependent children “see subsection 23 (1).

1064-G7. In calculating a person’s assets excess under point 1064-G5 disregard any part of the excess that is not a multiple of $250.

*MODULE H—REMOTE AREA ALLOWANCE*

*Remote area allowance*

1064-H1. An amount by way of remote area allowance is to be added to a person’s rate of pension if:

(a) the person’s usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: for “remote area” and “physically present in the remote area” see section 14.

*Rate of remote area allowance*

1064-H2. The rate of remote area allowance payable to a person is worked out using Table H. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each pension or benefit increase child of the person.

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE H | | | | | |
| REMOTE AREA ALLOWANCE | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | person’s family situation | basic allowance per year | basic allowance per fortnight | additional allowance per year | additional allowance per fortnight |
| 1. | Not member of a couple | $364.00 | $14.00 | $182.00 | $7.00 |
| 2. | Partnered—partner receiving remote area allowance | $312.00 | $12.00 | $182.00 | $7.00 |
| 3. | Partnered—partner not receiving remote area allowance | $364.00 | $14.00 | $182.00 | $7.00 |

Note 1: for “member of a couple” and “partnered” see section 4.

Note 2: for “dependent child” see section 5.

Note 3: for “pension increase child” see subsection 5 (15).

Note 4: for “benefit increase child” see subsection 5 (16).

*Sole parent pensioner*—*member of illness separated couple*

1064-H3. For the purposes of Table H in point 1064-H2, a person who is qualified for sole parent pension because of subparagraph 249 (1) (a) (iv) (illness separation) is to be treated as not being a member of a couple.

*Dependent children must be physically present in Australia*

1064-H4. Additional allowance is not payable for a pension or benefit increase child unless the child is physically present in Australia.

*Additional remote area allowance for dependent children not available to both members of a pensioner couple*

1064-H5. Additional allowance is not to be included in a person’s pension rate for a pension increase child if:

(a) the person’s partner’s pension rate includes additional allowance for the child; and

(b) the person’s partner has a dependent child add-on for the child.

*MODULE J—INCENTIVE ALLOWANCE*

*Qualifications for incentive allowance*

1064-J1. A person is entitled to incentive allowance if the person:

(a) is receiving an invalid pension; and

(b) is undertaking:

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(i) training at an activity therapy centre or an adult training centre; or

(ii) independent living training.

Note 1: for “activity therapy centre”, “adult training centre” and “independent living training” see section 18.

Note 2: where this Module is used to calculate the rate of invalid pension that would be payable to a person who is qualified for a sheltered employment allowance, an amount for incentive allowance is added to the person’s rate regardless of this point—see section 423.

*Pension increase child*

1064-J2. A child is a **pension increase child** in relation to a person, for the purposes of this module, if the child is taken into account so as to increase:

(a) the person’s maximum basic rate of pension; or

(b) if the person is a member of a couple—the person’s partner’s rate of:

(i) social security pension other than sheltered employment allowance; or

(ii) service pension under paragraph 47 (3) (a), (b) or (c) of the VEA.

*Rate of incentive allowance*

1064-J3. A person’s incentive allowance rate depends on how many pension increase children (if any) the person has. Work out which situation in Table J applies to the person. The rate of incentive allowance is the corresponding amount in column 3.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE J | | | |
| RATE OF INCENTIVE ALLOWANCE | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s situation | rate per year | rate per fortnight |
| 1. | No pension increase children | $1,560 | $60 |
| 2. | 1 or 2 pension increase children | $1,820 | $70 |
| 3. | 3 or more pension increase children | $2,080 | $80 |

Note: for “pension increase child” see point 1064-J2.

**Pension Rate Calculator B s. 1065**

**PART 3.3—PENSION RATE CALCULATOR B**

**Rate of age and invalid pension (blind people)**

**1065. (1)** The rate of:

(a) age pension payable to a person who is permanently blind; and

(b) invalid pension payable to a person who is permanently blind;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

**(2)** If:

(a) a person who is permanently blind is a member of a couple; and

(b) the person’s partner:

(i) is not receiving a social security or service pension; and

(ii) is not receiving a social security benefit;

the rate of the pension payable to the person who is permanently blind is not to exceed twice the rate at which an age or invalid pension would be payable to the person if the person’s partner were receiving a pension or benefit of that kind.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

**(3)** Where:

(a) a person who is permanently blind is living with another person as the spouse of that other person on a genuine domestic basis although not legally married to that other person; and

(b) the other person is of the opposite sex; and

(c) that other person is under the age of consent applicable in the State or Territory in which the person is living;

the rate of pension payable to the person who is permanently blind is not to exceed the rate at which it would be payable to the person if the other person were the person’s partner.

Note: this provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

*Rate limited for certain armed services widows*

**(4)** If:

(a) an armed services widow is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and*

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*Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act; and

(b) an age or invalid pension is payable to the widow; the rate of pension payable to the widow is not to exceed:

(c) if:

(i) the widow has been receiving the payment referred to in paragraph (a) continuously since before 1 November 1986; and

(ii) immediately before 1 November 1986, the widow was receiving a payment referred to in paragraph (b) at a rate exceeding $3,122.60; and

(iii) the pension referred to in paragraph (b) is of the same type as the one which was payable to the person before 1 November 1986;

the rate of pension received by the widow immediately before 1 November 1986; and

(d) in any other case—$3,122.60.

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

***PENSION RATE CALCULATOR B***

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Method of calculating rate*

1065-A1. The rate of pension is an annual rate (fortnightly amounts are provided for information only).

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the person’s **maximum basic rate** using MODULE B below). |
| *Step 2.* | Work out the amount per year (if any) for dependent children using MODULE C below. |
| *Step 3.* | Work out the amount per year (if any) for rent using MODULE D below. |
| *Step 4.* | Add up the amounts obtained in Steps 1, 2 and 3: the result is called the **maximum payment rate**. |
| *Step 5.* | Add to the maximum payment rate any amount per year payable by way of remote area allowance (see MODULE E below) and any amount per year payable by way of incentive allowance (see MODULE F below). |

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*Income test, maintenance income test and assets test generally not to apply*

1065-A2. The pension is not subject to an income test (compare Module E of Pension Rate Calculator A), a maintenance income test (compare Module F of Pension Rate Calculator A) or an assets test (compare Module G of Pension Rate Calculator A).

*MODULE B—MAXIMUM BASIC RATE*

*Maximum basic rate*

1065-B1. A person’s maximum basic rate depends on the person’s family situation. Work out which family situation in Table B applies to the person. The maximum basic rate is the corresponding amount in column 3 of the Table.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE B | | | |
| MAXIMUM BASIC RATE | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s family situation | rate per year | rate per fortnight |
| 1. | Not member of a couple | $7,584.20 | $291.70 |
| 2. | Partnered (partner getting neither pension nor benefit) | $7,584.20 | $291.70 |
| 3. | Partnered (partner getting pension or benefit) | $6,323.20 | $243.20 |
| 4. | Member of an illness separated or respite care couple | $7,584.20 | $291.70 |

Note 1: for “member of a couple”, “partnered (partner getting neither pension nor benefit)”, “partnered (partner getting pension or benefit)”, “illness separated couple” and “respite care couple” see section 4.

Note 2: the maximum basic rates are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*MODULE C—ADDITIONAL AMOUNTS FOR DEPENDENT CHILDREN*

*Children of a couple*

1065-C1. If either or both members of a couple have dependent children, this is how the children are taken into account for the purposes of this Module:

(a) a dependent child of the man is to be taken into account as a dependent child of the woman and not of the man unless:

(i) the woman is not receiving a social security pension; or

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(ii) the couple is an illness separated couple because of the illness or infirmity of the woman; and

(b) a dependent child of the woman is to be taken into account as a dependent child of the man and not of the woman if:

(i) the woman is not receiving a social security pension; or

(ii) the couple is an illness separated couple because of the illness or infirmity of the woman.

Note 1: “social security pension” includes a sheltered employment or rehabilitation allowance.

Note 2: the following Table summarises the rules established by this point: work out which column applies to the man’s payment entitlements (if any); work out the item that applies to the woman’s payment entitlements (if any); find the box in that column that corresponds to that item; if the box contains the word “woman” the dependent children are allocated to the woman; if the box contains the word “man”, the dependent children are allocated to the man:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ALLOCATION OF DEPENDENT CHILDREN TABLE | | | | |
| column 1 | column 2 | column 3  man | | |
|  |  | column 3a | column 3b | column 3c |
| item | woman | social security pension | social security pension (illness separation) | nothing |
| 1. | social security pension | woman | woman | woman |
| 2. | social security pension (illness separation) | man | — | woman |
| 3. | nothing | man | man | — |

|  |  |
| --- | --- |
| social security pension | = the person is receiving a social security pension and the couple is not an illness separated couple because of the person’s illness or infirmity |
| social security pension (illness separation) | = the person is receiving a social security pension and the couple is an illness separated couple because of the person’s illness or infirmity. |
| Nothing | = the person is not receiving a social security pension (but may be receiving a social security benefit or a service pension). |

Note 3: if the woman is receiving a social security pension and the man is receiving an age service pension or an invalid service pension, the Veterans’ Entitlements Act will allocate the dependent children to the man; the woman, although allocated the dependent children under point 1065-C1, will not receive additional amounts for the children because of point 1065-C5.

Note 4: if one partner is receiving a social security pension and the other is receiving a social security benefit, the Benefit Rate Calculators operate to deny the social security benefit recipient from receiving anything for the dependent children (see point 1067-E3 of Benefit Rate Calculator A and point 1068-E3 Benefit Rate Calculator B).

**Pension Rate Calculator B s. 1065**

*Additional amounts for dependent children*

1065-C2. This is how to work out the amount per year to be added to a person’s maximum basic rate for dependent children:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out which one of the amounts applicable to the person under point 1065-C3 is the highest: the result is called the **provisional add-on**. |
| *Step 2.* | Work out the amount that the person would receive under Module C of Pension Rate Calculator A if that Rate Calculator applied to the person: the result is called the **notional income/assets tested add-on**. |
|  | Note: this requires the application of the income and assets tests in Pension Rate Calculator A (Modules E, F and G) and of section 1207 (order of reduction against components of the maximum payment rate: first against MBR then against rent then against dependent child amount). |
| *Step 3.* | Compare the provisional add-on and the notional income/assets tested add-on: the amount to be added to the person’s maximum basic rate is: |
|  | (a) the provisional add-on if the provisional add-on is greater than or equal to the notional income/assets tested add-on; or |
|  | (b) the notional income/assets tested add-on if that addon is greater than the provisional add-on. |

*Applicable amounts*

1065-C3. If a person has a dependent child or dependent children, the amounts (if any) applicable to the person under this point are, subject to points 1065-C4 to 1065-C7, worked out using Table C.

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|  |  |  |  |
| --- | --- | --- | --- |
| TABLE C | | | |
| APPLICABLE AMOUNT FOR DEPENDENT CHILDREN | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | additional amount | rate per year | rate per fortnight |
| 1. | amount applicable if person has a dependent child who has not turned 13 | $1,255.80 | $48.30 |
| 2. | amount applicable if person has a dependent child who has turned 13 but has not turned 16 | $1,833 | $70.50 |
| 3. | amount applicable if person has a dependent child who has turned 16 (over 16 child add-on) | $884 | $34 |
| 4. | amount applicable if the person has a dependent child or dependent children and either is not a member of a couple or is a member of an illness separated couple | $670.80 | $25.80 |

Note 1: the item 1 rate is adjusted annually so that the combined family allowance and additional pension amounts for children covered by this item do not fall below 15% of the combined pensioner couple maximum basic rate (see subsections 1200 (1) and (2)).

Note 2: the item 2 rate is adjusted annually so that the combined family allowance and additional pension amounts for children covered by this item do not fall below 20% of the combined pensioner couple maximum basic rate (see subsections 1200 (3) and (4)).

Note 3: the item 3 rate is not adjusted.

Note 4: the item 4 rate is indexed annually in line with CP1 increases (see sections 1191 to 1194).

*Failure to reasonably pursue maintenance claim*

1065-C4. If:

(a) a person is entitled to claim maintenance from someone else for a dependent child of the person; and

(b) the Secretary considers that it is reasonable that the person should have taken action to obtain the maintenance; and

(c) the person has taken action that the Secretary considers reasonable to obtain the maintenance;

items 1, 2, 3 and 4 of Table C in point 1065-C3 do not apply to the dependent child.

*No additional amounts for children covered by Veterans’ Entitlements Act*

1065-C5. Items 1, 2 and 3 of Table C do not apply to a child if the maximum rate of someone’s service pension is increased because of the child under paragraph 47 (3) (b) of the Veterans’ Entitlements Act.

**Pension Rate Calculator B s. 1065**

*No additional amount for prescribed student children*

1065-C6. Once a dependent child of a person turns 16, the child is not to be taken into account for the purposes of item 3 of Table C if the child is a prescribed student child.

Note 1: for “prescribed student child” and “dependent child” see section 5.

Note 2: even though a young person does not attract an additional amount under items 1, 2 and 3 of Table C in point 1065-C3, the young person may attract guardian allowance under item 4 of the Table.

*No guardian allowance for dependent children who have turned 18*

1065-C7. Once a dependent child of a person turns 18, the child is not to be taken into account for the purposes of item 4 of Table C unless:

(a) the child is a student child but not a prescribed student child; or

(b) the person receives child disability allowance in respect of the child.

*MODULE D—RENT ASSISTANCE*

*Qualification for rent assistance*

1065-D1. An additional amount to help cover the cost of rent is to be added to the person’s maximum basic rate if:

(a) the person is not an ineligible homeowner; and

(b) the person is not receiving incentive allowance; and

(c) the person pays, or is liable to pay, rent (other than Government rent); and

(d) the rent is payable at a rate of more than $1,040 per year ($40 per fortnight); and

(e) the person is in Australia; and

(f) the person would be entitled to an additional amount by way of rent assistance under Module D of Pension Rate Calculator A if that Rate Calculator applied to the person.

Note 1: for “ineligible homeowner”, “rent” and “Government rent” see section 13.

Note 2: Pension Rate Calculator A is found in section 1064.

*No rent assistance if partner getting incentive allowance*

1065-D2. If a person is a member of a couple and the person’s partner is living with the person in their home, an additional amount is not to be added to the person’s maximum basic rate under point 1065-D1 if person’s partner is receiving incentive allowance.

**s. 1065 Pension Rate Calculator B**

*Rate of rent assistance*

1065-D3. The rate of rent assistance is the rate at which rent assistance would be payable to the person if Pension Rate Calculator A applied to the person.

Note 1: if Pension Rate Calculator A (see section 1064) applied to the person, the person would be subject to an ordinary income test (Module E), a maintenance income test (Module F) and an assets test (Module G).

Note 2: if Pension Rate Calculator A applied to a person and there was to be a reduction in pension rate because of the application of the ordinary income test, the maintenance income test or the assets test, section 1207 would govern the order in which the reduction would be made against the components of the maximum payment rate (first again MBR. then against the rent, then against dependent child amount).

*MODULE E—REMOTE AREA ALLOWANCE*

*Remote area allowance*

1065-E1. An amount by way of remote area allowance is to be added to a person’s rate of pension if:

(a) the person’s usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: for “remote area” and “physically present in the remote area” see section 14.

*Rate of remote area allowance*

1065-E2. The rate of remote area allowance payable to a person is worked out using Table E. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each pension or benefit increase child of the person.

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE E | | | | | |
| REMOTE AREA ALLOWANCE | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | person’s family situation | basic allowance per year | basic allowance per fortnight | additional allowance per year | additional allowance per fortnight |
| 1. | Not member of a couple | $364.00 | $14.00 | $182.00 | $7.00 |
| 2. | Partnered—partner eligible to receive remote area allowance | $312.00 | $12.00 | $182.00 | $7.00 |
| 3. | Partnered—partner not eligible to receive remote area allowance | $364.00 | $14.00 | $182.00 | $7.00 |

Note 1: for “member of a couple” and “partnered” see section 4.

Note 2: for “dependent child” see section 5.

Note 3: for “pension increase child” see subsection 5 (15).

Note 4: for “benefit increase child” see subsection 5 (16).

*Dependent children must be physically present in Australia*

1065-E3. Additional allowance is not payable for a pension or benefit increase child unless the child is physically present in Australia.

*Additional remote area allowance for dependent children not available to both members of a pensioner couple*

1065-E4. Additional allowance is not to be included in a person’s pension rate for a pension increase child if:

(a) the person’s partner’s pension rate includes additional allowance for the child; and

(b) the person’s partner has a child add-on for the child.

*MODULE F—INCENTIVE ALLOWANCE*

*Qualifications for incentive allowance*

1065-F1. A person is entitled to incentive allowance if the person:

(a) is receiving an invalid pension; and

(b) is undertaking:

(i) training at an activity therapy centre or an adult training centre; or

(ii) independent living training.

Note 1: for “activity therapy centre”, “adult training centre” and “independent living training” see section 18.

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Note 2: where this Module is used to calculate the rate of invalid pension that would be payable to a person who is qualified for a sheltered employment allowance, an amount for incentive allowance is added to the person’s rate regardless of this point—see section 423.

*Pension increase child*

1065-F2. For the purposes of this Module, a young person is a **pension increase child** in relation to another person (in this point called the **“adult”**)if the young person is taken into account so as to increase:

(a) the person’s maximum payment rate; or

(b) if the person is a member of a couple—the person’s partner’s rate of:

(i) social security pension other than sheltered employment allowance; or

(ii) service pension under paragraph 47 (3) (a), (b) or (c) of the VEA.

*Rate of incentive allowance*

1065-F3. A person’s incentive allowance rate depends on how many pension increase children (if any) the person has. Work out which situation in Table F applies to the person. The rate of incentive allowance is the corresponding amount in column 3.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE F | | | |
| RATE OF INCENTIVE ALLOWANCE | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s situation | rate per year | rate per fortnight |
| 1. | No pension increase children | $1,560 | $60 |
| 2. | 1 or 2 pension increase children | $1,820 | $70 |
| 3. | 3 or more pension increase children | $2,080 | $80 |

Note: for “pension increase child” see point 1064-J2.

**Pension Rate Calculator C s. 1066**

**PART 3.4—PENSION RATE CALCULATOR C**

**Rate of sole parent pension, widowed person allowance and widow B pension**

**1066. (1)** The rate of:

(a) sole parent pension; and

(b) widowed person allowance; and

(c) widow B pension;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

**(2)** Subsection (1) does not apply to a sole parent pension if the recipient is qualified for the pension under subparagraph 249 (1) (a) (iv) (illness separation).

**(3)** If:

(a) a person is living with another person as the spouse of that other person on a genuine domestic basis although not legally married to that other person; and

(b) the other person is of the opposite sex; and

(c) that other person is under the age of consent applicable in the State or Territory in which the person is living;

the person’s pension rate is not to exceed the rate at which it would be payable to the person if the other person were the person’s partner.

Note: although there is only 1 maximum basic rate specified in point 1066-B1 of Pension Rate Calculator C, the ordinary income test (Module E), maintenance income test (Module F) and assets test (Module G) do depend on whether the recipient is a member of a couple or not.

***PENSION RATE CALCULATOR*** *C*

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Method of calculating rate*

1066-A1. The rate of pension is an annual rate (fortnightly amounts are provided for information only).

**s. 1066 Pension Rate Calculator C**

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the person’s **maximum basic rate** using MODULE B below. |
| *Step 2.* | Work out the amount per year (if any) for dependent or maintained children using MODULE C below. |
| *Step 3.* | Work out the amount per year (if any) for rent using MODULE D below. |
| *Step 4.* | Add up the amounts obtained in Steps 1, 2 and 3: the result is called the **maximum payment rate**. |
| *Step 5.* | Apply the ordinary income test using MODULE E below to work out the reduction for ordinary income. |
| *Step 6.* | Apply the maintenance income test using MODULE F below to work out the reduction for maintenance income. |
| *Step 7.* | Add up the reduction for ordinary income and the reduction for maintenance income: the result is called the total income reduction. |
| *Step 8.* | Take the total income reduction away from the maximum payment rate: the result is called the **income reduced rate**. |
| *Step 9.* | Apply the assets test using MODULE G below to work out the reduction for assets. |
| *Step 10.* | Take the reduction for assets away from the maximum payment rate: the result is called the **assets reduced rate**. |
| *Step 11.* | Compare the income reduced rate and the assets reduced rate: the rate of pension is: |
|  | (a) the income reduced rate if it is lower than the assets reduced rate; or |
|  | (b) the assets reduced rate if it is lower than the income reduced rate; or |
|  | (c) the income reduced rate if the income reduced rate and the assets reduced rate are exactly equal; |
|  | plus any amount per year payable by way of remote area allowance (see MODULE H below). |

Note 1: if a person’s assets reduced rate is less than the person’s income reduced rate, the person may be able to take advantage of provisions dealing with:

* financial hardship (sections 1129 and 1130);
* pensions loan scheme (sections 1133 to 1144).

Note 2: if a person’s rate is reduced under Step 11, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1207 (maximum basic rate first, then rent assistance and finally child amounts).

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Note 3: although most of the categories of person whose rate is to be worked out using this Rate Calculator will not be members of a couple, some categories are persons who are members of a couple (see subparagraphs 249 (1) (a) (ii) and (iii)).

*Members of a couple*

1066-A2. If 2 people are members of a couple, they will be treated as pooling their resources (income and assets) and sharing them on a 50/50 basis (see points 1066-E2, 1066-F2 and 1066-G2).

*MODULE B—MAXIMUM BASIC RATE*

*Maximum basic rate*

1066-B1. A person’s maximum basic rate is $7,584.20 per year ($291.70 per fortnight).

Note: the maximum basic rate is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*MODULE* C—*ADDITIONAL AMOUNTS FOR DEPENDENT OR MAINTAINED CHILDREN*

*Additional amounts for children*

1066-C1. This is how to work out the amount per year to be added to a person’s maximum basic rate for dependent or maintained children.

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the child add-on (if any) for each dependent or maintained child of the person using points 1066-C2 to 1066-C3. |
| *Step 2.* | Work out the amount per year of the person’s guardian allowance using point 1066-C5. |
| *Step 3.* | Add up all of the amounts obtained in Steps 1 and 2: the result is called the **DC total** and is the amount to be added to the person’s maximum basic rate under this Module. |

Note: a child add-on may not apply to a dependent or maintained child if the child is a prescribed student child (see point 1066-C3).

*Child add-ons*

1066-C2. If a person has a dependent or maintained child, there is, subject to point 1066-C3, a child add-on for the child. The amount of the add-on depends on the child’s age and is worked out using Table C.

**s. 1066 Pension Rate Calculator C**

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE C | | | |
| ADD-ON FOR DEPENDENT OR MAINTAINED CHILD | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | child’s age | rate per year | rate per fortnight |
| 1. | under 13 | $1,255.80 | $48.30 |
| 2. | 13 or over but under 16 | $1,833 | $70.50 |
| 3. | 16 or over | $884 | $34 |

Note 1: the item 1 rate is adjusted annually so that the combined family allowance and additional pension amounts for children covered by this item do not fall below 15% of the combined pensioner couple maximum basic rate (see subsections 1200 (1) and (2)).

Note 2: the item 2 rate is adjusted annually so that the combined family allowance and additional pension amounts for children covered by this item do not fall below 20% of the combined pensioner couple maximum basic rate (see subsections 1200 (3) and (4)).

Note 3: the item 3 rate is not indexed.

*No add-on for prescribed student children*

1066-C3. Once a dependent or maintained child of a person turns 16, there is no dependent child add-on for the child if the child is a prescribed student child.

Note 1: for “prescribed student child”, “dependent child” and “maintained child” see section 5.

Note 2: even though no child add-on applies to a particular dependent child the child:

(a) may attract guardian allowance under point 1066-C4; and

(b) will attract additional free area under point 1066-E4 for the purposes of the ordinary income test.

*Guardian allowance*

1066-C4. A person who has a dependent or maintained child or dependent or maintained children is to have a single amount per year by way of guardian allowance.

*Rate of guardian allowance*

1066-C5. The rate of guardian allowance is $670.80 a year ($25.80 a fortnight).

Note: the rate of guardian allowance is indexed annually in line with CPI increases (see sections 1191 to 1194).

*MODULE D—RENT ASSISTANCE*

*Qualification for rent assistance*

1066-D1. An additional amount to help cover the cost of rent is to be added to a person’s maximum basic rate if:

(a) the person is not an ineligible homeowner; and

(b) the person pays, or is liable to pay, rent (other than Government rent); and

**Pension Rate Calculator C s. 1066**

(c) the rent is payable at a rate of more than $1,040 per year ($40 per fortnight); and

(d) the person is in Australia.

Note: for “rent”, “Government rent” and “ineligible homeowner” sec section 13.

*Pension increase child*

1066-D2. A young person is a **pension increase child** in relation to another person (in this point called the **“adult”**)if the young person is taken into account so as to increase the adult’s maximum payment rate under Module C.

*Factors affecting rate of rent assistance*

1066-D3. The rate of rent assistance depends on:

(a) the annual rent paid or payable by the person; and

(b) the number of pension increase children (if any) in relation to the person.

*Rate of rent assistance*

1066-D4. The rate of rent assistance per fortnight is worked out using Table D. Calculate Rate A for the person using the formula in column 1. This will be the person’s rate of rent assistance but only up to the person’s maximum rent assistance rate. The person’s maximum rent assistance rate is Rate B for the person worked out using column 2 of the Table.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE D | | | |
| RATE OF RENT ASSISTANCE | | | |
| column 1 | column 2  Rate B | | |
| Rate A |
|  | column 2a | column 2b | column 2c |
|  | No pension increase children | 1 or 2 pension increase children | 3 or more pension increase children |
| **Annual rent**−$1,040  2 | $1,560 | $1,820 | $2,080 |

Note 1: for “pension increase child” see point 1066-D2.

Note 2: the Rate B amounts are indexed 6 monthly in line with CP1 increases (see sections 1191 to 1194).

*Annual rent*

1066-D5. **Annual rent** is the annual rent paid or payable by the person.

**s. 1066 Pension Rate Calculator C**

*MODULE E—ORDINARY INCOME TEST*

*Effect of income on maximum payment rate*

*1066-E1. This is how to work out the effect of a person’s ordinary income on the person’s maximum payment rate:*

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the person’s ordinary income on a yearly basis.  Note: for the treatment of the ordinary income of members of a couple see point 1066-E2. |
| *Step 2.* | Work out the person’s ordinary free area limit (see points 1066-E4 to 1066-E7 below). |
|  | Note: a person’s ordinary income free area is the maximum amount of ordinary income the person can have without affecting the person’s pension rate. |
| *Step 3.* | Work out whether the person’s ordinary income exceeds the person’s ordinary income free area. |
| *Step 4.* | If the person’s ordinary income does not exceed the person’s ordinary income free area, the person’s ordinary income excess is nil. |
| *Step 5.* | If the person’s ordinary income exceeds the person’s ordinary income free area, the person’s ordinary income excess is the person’s ordinary income less the person’s ordinary income free area. |
| *Step 6.* | Use the person’s ordinary income excess to work out the person’s reduction for ordinary income using points 1066-E8 to 1066-E9 below. |

Note 1: see point 1066-A1 (Steps 5 to 8) for the significance of the person’s reduction for ordinary income.

Note 2: the application of the ordinary income test is affected by provisions concerning:

* investment income (sections 1073 to 1099);
* disposal of income (sections 1106 to 1112):
* earnings credit (sections 1113 to 1115).

*Ordinary incomes of members of couples*

1066-E2. If a person is a member of a couple, add the couple’s ordinary incomes (on a yearly basis) and divide by 2 to work out the amount of the person’s ordinary income for the purposes of this Module.

*Ordinary free area limit*

1066-E3. A person’s ordinary income free area is the amount of ordinary income the person can have without any deduction being made from the person’s maximum payment rate.

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*How to calculate a person’s ordinary free area limit*

1066-E4. A person’s ordinary free area limit is worked out using Table E. The ordinary free area limit is the amount in column 1 plus an additional amount in column 3 for each dependent or maintained child of the person.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE E | | | |
| ORDINARY FREE AREA LIMIT | | | |
| column 1 | column 2 | column 3 | column 4 |
| basic free area per year | basic free area per fortnight | additional free area per year | additional free area per fortnight |
| $2,080 | $80 | $624 | $24 |

Note 1: for “dependent child” see section 5.

Note 2: Table E applies to members of illness separated couples.

Note 3: the basic free area per year is indexed annually in line with CPI increases (see sections 1191 to 1194).

*Reduction of additional free area for dependent or maintained children*

1066-E5. The additional free area for a dependent or maintained child is reduced by the annual amount of any payment received by the person for or in respect of that particular child. The payments referred to in point 1066-E6 do not result in a reduction.

1066-E6. No reduction is to be made under point 1066-E5 for a payment:

(a) under this Act; or

(b) of maintenance income; or

(c) under the Veterans’ Entitlements Act; or

(d) under the AUSTUDY scheme; or

(e) under the Assistance for Isolated Children Scheme; or

(f) that are similar to family allowance and that prevent a family allowance from being paid under section 837.

1066-E7. Examples of the kinds of payments that result in a reduction under point 1066-E5 are:

(a) amounts received from State authorities or benevolent societies in respect of the “boarding out” of the child; or

(b) amounts of superannuation or compensation paid in respect of the child; or

(c) amounts (other than amounts covered by point 1066-E5 above) paid in respect of the child under educational schemes; or

(d) a family allowance or similar payment made by another country where this does not preclude payment of Australian family allowance; or

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(e) foster care allowance payments made by a State welfare authority.

ORDINARY FREE AREA LIMIT EXAMPLE

*Example*

*Facts*

Mary is a sole parent with 2 dependent children, Jim and Susan. Mary is getting a family allowance payment from another country for Jim at the rate of $40 a month. On a yearly basis, this amounts to $480.

*Application*

Point 1066-E4 applies to Mary (see paragraph 1066-E7 (d)). As a result, the possible additional free area per year for Jim ($624) must be reduced by $480.

Mary’s ordinary free area limit per year is therefore:

$2,080 + ($624 - $480) + $624 (for Susan) = $2,848.

*Reduction for ordinary income*

1066-E8. A person’s reduction for ordinary income is:

**ordinary income excess**

2

*Ordinary income excess*

1066-E9. A person’s **ordinary income excess** is the person’s ordinary income less the person’s ordinary free area limit.

**Pension Rate Calculator C s. 1066**

*MODULE F—MAINTENANCE INCOME TEST*

*Effect of maintenance income on maximum payment rate*

1066-F1. This is how to work out the effect of a person’s maintenance income on the person’s maximum payment rate:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the person’s maintenance income on a yearly basis. |
|  | Note 1: for the treatment of the maintenance income of members of a couple see points 1066-F2 and 1066-F3. |
|  | Note 2: “special maintenance income” (see subsection 10(1)) can in some circumstances be disregarded under points 1066-F4 and 1066-F5. |
| *Step 2.* | Work out the person’s maintenance income free area limit (see points 1066-F8 to 1066-F9 below). |
|  | Note: a person’s maintenance income free area is the maximum amount of maintenance income the person can have without affecting the person’s pension rate. |
| *Step 3.* | Work out whether the person’s maintenance income exceeds the person’s maintenance income free area. |
| *Step 4.* | If the person’s maintenance income does not exceed the person’s maintenance income free area, the person’s maintenance income excess is nil. |
| *Step 5.* | If the person’s maintenance income exceeds the person’s maintenance income free area, the person’s maintenance income excess is the person’s maintenance income less the person’s maintenance income free area. |
| *Step 6.* | Use the person’s maintenance income excess to work out the person’s reduction for maintenance income using points 1066-F10 to 1066-F11 below. |

Note 1: see point 1066-A1 (Steps 5 to 8) for the significance of the person’s reduction for maintenance income.

Note 2: the application of the maintenance income test is affected by provisions concerning:

* apportionment of capitalised maintenance income (section 1116);
* non-cash housing maintenance—value of substitute for family home (section 1117).

*Dependent child*

1066-F1a. In working out whether a young person is a dependent child for the purposes of this Module, disregard subsection 5 (3).

*Maintenance incomes of members of couples*

1066-F2. If the person is a member of a couple, add the couple’s maintenance incomes (on a yearly basis) and divide by 2 to work out the amount of the person’s maintenance income for the purposes of this Module.

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1066-F3. Point 1066-F2 does not apply to a person if the person’s partner:

(a) is not in receipt of:

(i) a social security or service pension; or

(ii) a social security benefit; and

(b) does not have maintenance income.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

*Special maintenance income*

1066-F4. If a person has special maintenance income in excess of the ceiling applicable to the person, the excess is disregarded for the purposes of this Module.

Note: for “special maintenance income” see subsection 10 (1).

1066-F5. The **ceiling** applicable to a person is the amount equal to the person’s maintenance income free area limit plus:

**person’s maximum payment rate**

2

*Special maintenance income not disregarded where child support available*

1066-F6. No amount is to be disregarded under point 1066-F4 if:

(a) child support is not payable under the *Child Support (Assessment) Act 1989* to the person for a child; and

(b) the person is entitled to make an application for assessment of child support under Part V of that Act for the child payable by another person; and

(c) the person has:

(i) neither:

(a) properly made such an application; nor

(b) properly made an application under Part VI of that Act for acceptance of an agreement in relation to the child; or

(ii) the person has properly made an application of either kind, but:

(a) the person has subsequently withdrawn the application; or

(b) after child support has become payable by the other person under that Act for the child, the person has ended the entitlement to child support.

1066-F7. No amount is to be disregarded under point 1066-F4 if:

(a) child support is payable under the *Child Support (Assessment) Act 1989* to the person for a child; and

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(b) the person is entitled to make an application under section 128 of that Act; and

(c) an application by the person under that section is not in force.

*How to calculate a person’s maintenance income free area limit*

1066-F8. A person’s maintenance income free area limit is worked out using Table F. Work out which family situation in Table F applies to the person. The maintenance income free area limit is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each dependent or maintained child after the first.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE F | | | | | |
| MAINTENANCE INCOME FREE AREA LIMIT | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
|  |  | basic free area per year | basic free area per fortnight | additional free area per year | additional free area per fortnight |
| item | person’s family situation |
| 1. | Not member of a couple | $780.00 | $30.00 | $260.00 | $10.00 |
| 2. | Partnered (partner getting neither pension nor benefit) | $780.00 | $30.00 | $260.00 | $10.00 |
| 3. | Partnered (partner getting pension or benefit)—*both* the person and the partner are receiving maintenance income | $780.00 | $30.00 | $130.00 | $5.00 |
| 4. | Partnered (partner getting pension or benefit)— *either* the person or the partner (but not both) are receiving maintenance income | $390.00 | $15.00 | $130.00 | $5.00 |

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

Note 2: for “dependent child” see section 5.

Note 3: items 2, 3 and 4 of Table F apply to members of an illness separated couple.

1066-F9. In determining whether or not item 3 or 4 of Table F applies to a person, point 1066-F2 is to be disregarded. This has the effect of taking into account only maintenance income that the person actually receives rather than any income that the person is to be taken to receive because of maintenance income received by the person’s partner.

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*Pension reduction for maintenance income in excess of maintenance free area limit*

1066-F10. A person’s reduction for maintenance income is:

**maintenance income excess**

2

*Maintenance income excess*

1066-F11. A person’s **maintenance income excess** is **the person’s** maintenance income less the person’s maintenance free area limit.

*MODULE G—ASSETS TEST*

*Effect of assets on maximum payment rate*

1066-G1. This is how to work out the effect of a person’s assets on the person’s maximum payment rate:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the value of the person’s assets. |
|  | Note 1: for the treatment of the assets of members of a couple see point 1066-G2. |
|  | Note 2: for the assets that are to be disregarded in valuing a person’s assets see section 1118. |
|  | Note 3: for the valuation of an asset that is subject to a charge or encumbrance see section 1121. |
| *Step 2.* | Work out the person’s assets value limit (see point 1066-G3 below). |
|  | Note: a person’s assets value limit is the maximum value of assets the person can have without affecting the person’s pension rate. |
| *Step 3.* | Work out whether the value of the person’s assets exceeds the person’s assets value limit. |
| *Step 4.* | If the value of the person’s assets does not exceed the person’s assets value limit, the person’s assets excess is nil. |
| *Step 5.* | If the value of the person’s assets exceeds the person’s assets value limit, the person’s assets excess is the value of the person’s assets less the person’s assets value limit. |
| *Step 6.* | Use the person’s assets excess to work out the person’s reduction for assets using points 1066-G4 to 1066-G6 below. |

Note 1: see point 1066-A1 (Steps 9 and 10) for the significance of the person’s reduction for assets.

Note 2: the application of the assets test is affected by provisions concerning:

* disposal of assets (sections 1123 to 1128);
* retirement villages (sections 1145 to 1157);
* financial hardship (sections 1129 and 1130);
* the pensions loans scheme (sections 1133 to 1144).

**Pension Rate Calculator C s. 1066**

*Value of assets of members of couples*

1066-G2. For the purposes of this Module:

(a) the value of the assets of a member of a couple is to be taken to be 50% of the sum of:

(i) the value of the person’s assets; and

(ii) the value of the person’s partner’s assets; and

(b) the value of the assets of a particular kind of a member of a couple is to be taken to be 50% of the sum of:

(i) the value of the person’s assets of that kind; and

(ii) the value of the person’s partner’s assets of that kind.

*Assets value limit*

1066-G3. A person’s assets value limit is worked out using Table G. Work out which family situation applies to the person. The assets value limit is the corresponding amount in column 3.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE G | | | |
| ASSETS VALUE LIMIT | | | |
| column 1 | column 2 | column 3 | |
|  |  | assets value limit | |
|  |  | column 3a | column 3b |
| item | person’s family situation | either person or partner homeowner | neither person nor partner homeowner |
| 1. | Not member of a couple | $103,500 | $177,500 |
| 2. | Partnered (partner getting neither pension nor benefit) | $73,750 | $110,750 |
| 3. | Partnered (partner getting pension or benefit) | $73,750 | $110,750 |

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

Note 2: for “homeowner” see section 11.

Note 3: items 2 and 3 apply to members of illness separated couples.

Note 4: the assets value limits are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1203).

*Pension reduction for assets in excess of assets value limit*

1066-G4. A person’s reduction for assets is:

|  |
| --- |
| **assets excess** × 26 |
| 250 |

**s. 1066 Pension Rate Calculator C**

*Assets excess*

1066-G5. A person’s **assets** excess is the value of the person’s assets less the person’s assets value limit.

1066-G6. In calculating a person’s assets excess under points 1066-G4 and 1066-G5 disregard any part of that excess which is not a multiple of $250.

*MODULE H—REMOTE AREA ALLOWANCE*

*Remote area allowance*

1066-H1. An amount by way of remote area allowance is to be added to a person’s rate of pension if:

(a) the person’s usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: for “remote area” and “physically present in the remote area” see section 14.

*Rate of remote area allowance*

1066-H2. The rate of remote area allowance payable to a person is worked out using Table H. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each pension or benefit increase child of the person.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE H | | | | | |
| REMOTE AREA ALLOWANCE | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | person’s family situation | basic allowance per year | basic allowance per fortnight | additional allowance per year | additional allowance per fortnight |
| 1. | Not member of a couple | $364.00 | $14.00 | $182.00 | $7.00 |
| 2. | Partnered—partner receiving remote area allowance | $312.00 | $12.00 | $182.00 | $7.00 |
| 3. | Partnered—partner not receiving remote area allowance | $364.00 | $14.00 | $182.00 | $7.00 |

Note 1: for “member of a couple” and “partnered” see section 4.

Note 2: for “dependent child” see section 5.

Note 3: for “pension increase child” see subsection 5 (15).

Note 4: for “benefit increase child” see subsection 5 (16).

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*Dependent children must be physically present in Australia*

1066-H3. Additional allowance is not payable for a pension or benefit increase child unless the child is physically present in Australia.

*Additional remote area allowance for dependent children not available to both members of a pensioner couple*

1066-H4. Additional allowance for a pension increase child is not to be included in a person’s pension rate if:

(a) the person’s partner’s pension rate includes additional allowance for the child; and

(b) the person’s partner has a child add-on for the child.

**s. 1067 Benefit Rate Calculator A**

**PART 3.5—BENEFIT RATE CALCULATOR A**

**Rate of job search allowance and sickness benefit (under 18)**

**1067. (1)** The rate of:

(a) job search allowance; and

(b) sickness benefit of a person who has not turned 18;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

**(2)** If:

(a) person is living with another person as the spouse of that other person on a genuine domestic basis although not legally married to the other person; and

(b) the other person is of the opposite sex; and

(c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the person’s benefit rate is not to exceed the rate at which it would be payable to the person if the other person were the person’s partner.

Note: this provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

***BENEFIT RATE CALCULATOR A***

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Method of calculating rate*

1067-A1. The rate of benefit is a fortnightly rate.

**Benefit Rate Calculator A s. 1067**

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the person’s **maximum basic rate** using MODULE B below. |
| *Step 2.* | Work out any additional payment for a dependent partner using MODULE C below. |
| *Step 3.* | Work out any supplementary amount in respect of the person using MODULE D below. |
| *Step 4.* | Work out any applicable additional amount for dependent children using MODULE E below. |
| *Step 5* | If the person has a dependent child or is a member of a couple, work out any applicable additional amount for rent using MODULE F below. |
| *Step 6.* | Add up the amounts obtained in Steps 1 to 5: the result is called the **maximum payment rate**. |
| *Step 7.* | If the parental means test applies to the person (see points 1067-G2 to 1067-G7), work out the reduction for parental assets and income using MODULE G below. |
| *Step 8.* | Take the reduction for parental assets and income away from the maximum payment rate: the result is called the **parental means test reduced rate**. |
| *Step 9.* | Apply the ordinary income test using MODULE H below to work out the reduction for ordinary income. |
| *Step 10.* | Apply the maintenance income test using MODULE J below to work out the reduction for maintenance income. |
| *Step 11.* | Add up the reductions for ordinary income and maintenance income: the result is called the **total income reduction**. |
| *Step 12.* | The rate of benefit is worked out by taking the total income reduction away from: |
|  | (a) if the parental means test does not apply to the person—the maximum payment rate; or |
|  | (b) if the parental means test applies to the person— the parental means test reduced rate; |
|  | and adding any amount payable by way of remote area allowance (see Module K below). |
|  | Note: if a person’s rate is reduced under Step 8 or Step 12, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1207 (maximum basic rate and additional amount for partner first, then rent assistance and finally child amounts). |

*Rate of benefit where benefit not payable to partner*

1067-A2. If:

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

(b) an unemployment benefit or a job search allowance is:

**s. 1067 Benefit Rate Calculator A**

(i) not payable to the person’s partner; or

(ii) would not be payable to the person’s partner if a claim were duly made;

because of an industrial action preclusion provision or deferment provision;

the person’s maximum basic rate (Module B), additional payment for partner (Module C) and additional amounts for children (Module E) are to be calculated as if a person were not a member of a couple. Modules F, G, H and J are to be applied on the basis that the person is a member of a couple. Module D does not apply.

Note 1: for “deferment provision” see point 1067-A4.

Note 2: a person covered by point 1067-A3 will have a maximum payment rate (other than for rent assistance) calculated as if the person were not a member of a couple but the income of the person’s partner will be taken into account to reduce the person’s maximum payment rate.

*Industrial action preclusion provision*

1067-A3. For the purposes of point 1067-A2, sections 514 (unemployment benefit) and 590 (job search allowance) are industrial action preclusion provisions.

*Deferment provisions*

1067-A4. For the purposes of point 1067-A2, the following are deferment provisions:

(a) a JSA automatic or discretionary deferment provision;

(b) a UB automatic or discretionary deferment provision.

Note: for “JSA automatic deferment provision”, “JSA discretionary deferment provision”, “UB automatic deferment provision” and “UB discretionary deferment provision” see subsection 23 (1).

*MODULE B—MAXIMUM BASIC RATE*

*Maximum basic rate*

1067-B1. A person’s maximum basic rate is to be worked out using Table B. Work out the family situation and whether the person has a dependent child. The maximum basic rate is the corresponding amount in column 3.

**Benefit Rate Calculator A s. 1067**

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE B | | | |
| MAXIMUM BASIC RATES | | | |
| column 1  item | column 2  person’s family situation | column 3  rate | |
|  |  | column 3a | column 3b |
|  |  | person with dependent child | person without dependent child |
| 1. | Not member of a couple and person is: | $291.70 | $115.20 |
|  | (a) not a homeless person; and |  |  |
|  | (b) not an independent young person |  |  |
| 2. | Not member of a couple and person is: | $291.70 | $190.20 |
|  | (a) a homeless person; or |  |  |
|  | (b) an independent young person |  |  |
| 3. | Partnered (partner getting neither pension nor benefit) | $243.20 | $190.20 |
| 4. | Partnered (partner getting pension or benefit) | $243.20 | $190.20 |
| 5. | Member of illness separated couple | $291.70 | $291.70 |

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

Note 2: for “dependent child”, “homeless person” and “independent young person” see section 5.

Note 3: a person to whose partner an unemployment benefit or a job search allowance is not payable is in some circumstances treated as not being a member of a couple—see point I067-A2.

Note 4: the item 1 to 4 rates in column 3b are indexed annually in line with CPI increases (see sections 1191 to 1194).

Note 5: the other rates are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 6: if item 3 applies to the person, see Module D: a supplementary amount might need to be added to the person’s maximum basic rate under that Module.

*MODULE C—ADDITIONAL PAYMENT FOR PARTNER*

*Amount for partner*

1067-C1. Subject to point 1067-C2, an amount is to be added to a person’s maximum basic rate if:

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

(b) the person has a dependent child; and

(c) the person’s partner is:

(i) an Australian resident; and

(ii) in Australia.

**s. 1067 Benefit Rate Calculator A**

Note: a person to whose partner an unemployment benefit or a job search allowance is not payable is in some circumstances treated as not being a member of a couple—see point 1067-A2.

*No additional amount if partner getting pension or benefit*

1067-C2. An additional amount is not to be added under point 1067-C1 if:

(a) the person’s partner is receiving a social security or service pension or a social security benefit; or

(b) a social security pension or benefit would be payable to the person’s partner but for Part 3.14 (which deals with the effect of compensation payments); or

(c) the person’s partner is receiving an AUSTUDY allowance.

*Rate of additional amount*

1067-C3. Subject to point 1067-C4 the amount to be added under point 1067-C1 is:

(a) if the person is not a member of an illness separated couple— $243.20; or

(b) if the person is a member of an illness separated couple— $291.70.

*Amount for partner where person separated from partner and paying maintenance*

1067-C4. If:

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

(b) the person is living apart from the person’s partner, and

(c) the person is making a payment to the partner, for or towards the maintenance of the partner; and

(d) the fortnightly rate of the payment is less than the amount that would, apart from this point, be added to the person’s maximum basic rate under this Module;

the Secretary may determine that the amount to be added to the person’s maximum basic rate under this Module is not to exceed the fortnightly rate of the payment that the person makes to the spouse.

*Presence of partner in Australia*

1067-C5. If a person’s partner is temporarily absent from Australia, the partner is to be treated for the purposes of point 1067-C1 as if the partner were in Australia:

(a) if the period of temporary absence is not longer than 3 months— throughout that period; and

(b) in any other case—throughout the first 3 months of that period.

**Benefit Rate Calculator A s. 1067**

*Factors to be considered in determining if absence is temporary*

1067-C6. For the purposes of point 1067-C5, in determining if an absence is temporary, regard must be had to the following factors:

(a) the purpose of any such absence;

(b) the intended duration of any such absence;

(c) the frequency of any such absences.

*MODULE D—SUPPLEMENTARY AMOUNT FOR MEMBER OF COUPLE IN SOME CIRCUMSTANCES*

*Interim total of members of couples to whom item 3 of Table B applies not to fall below comparable “single” MBR*

1067-D1. A supplementary amount is to be added to a person’s maximum basic rate if:

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

(b) the person’s partner:

(i) is not receiving a social security pension; and

(ii) is not receiving a service pension; and

(iii) is not receiving a social security benefit; and

(iv) is not receiving an AUSTUDY allowance; and

(c) either:

(i) no amount is to be added to the person’s maximum basic rate under point 1067-C1; or

(ii) the amount to be added to the person’s maximum basic rate under point 1067-C1 is reduced under point 1067-C4; and

(d) the person’s interim total is less than the comparable “single” MBR for the person.

Note 1: for “interim total” see point 1067-D2 below.

Note 2: for “comparable ‘single’ MBR” see point 1067-D3 below.

*Interim total*

1067-D2. A person’s **interim total** is the sum of the person’s maximum basic rate and the amount (if any) to be added under Module C.

*Comparable “single” MBR*

1067-D3. The **comparable “single” MBR** for a person is:

(a) if the person has a dependent child—the rate specified under column 3a against item 1 in Table B in point 1067-B1; or

(b) if the person does not have a dependent child—the rate specified under column 3b against item 3 in Table B in point 1068-B1 of Benefit Rate Calculator B.

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*Rate of supplementary amount*

1067-D4. The supplementary amount is the difference between the person’s interim total and the comparable “single” MBR for the person.

*MODULE E—ADDITIONAL AMOUNTS FOR CHILDREN*

*Additional amounts for children*

1067-E1. This is how to work out the amount per fortnight to be added to a person’s maximum basic rate for children:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the dependent child add-on (if any) for each dependent child of the person using points 1067-E2 to 1067-E4. |
| *Step 2.* | Work out the amount per fortnight of the person’s guardian allowance (if any) using points 1067-E5 to 1067-E8. |
| *Step 3.* | Add up all of the amounts obtained in Steps 1 and 2: the result is called the **DC total** and is the amount to be added to the person’s maximum basic rate under this Module. |

Note 1: a dependent child add-on may not apply to a dependent child if the full amount for that child is paid to another person (see point 1067-E3) or is a prescribed student child (see point 1067-E4).

Note 2: guardian allowance is a single amount per fortnight for parents who are not members of a couple or who are members of illness separated couples.

*Dependent child add-ons*

1067-E2. If a person has a dependent child, there is, subject to points 1067-E3 and 1067-E4, a dependent child add-on for the child. The amount of the add-on depends on the child’s age and is worked out using Table E.

|  |  |  |
| --- | --- | --- |
| TABLE E | | |
| DEPENDENT CHILD ADD-ON | | |
| column 1 | column 2 | column 3 |
| item | child’s age | amount per fortnight |
| 1. | under 13 | $48.30 |
| 2. | 13 or over but under 16 | $70.50 |
| 3. | 16 or over | $34.00 |

Note 1: the item 1 rate is adjusted annually so that the combined family allowance and additional benefit amounts for children covered by this item do not fall below 15% of the combined pensioner couple maximum basic rate (see subsections 1201 (1) and (2)).

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Note 2: the item 2 rate is adjusted annually so that the combined family allowance and additional benefit amounts for children covered by this item do not fall below 20% of the combined pensioner couple maximum basic rate (see subsections 1201 (3) and (4)).

Note 3: the item 3 rate is not indexed.

*Child add-on may be reduced or not paid in certain circumstances*

1067-E3. If, but for this point, an amount would be added to a person’s maximum basic rate under point 1067-E2 in respect of a child or children and:

(a) an amount would be added to another person’s maximum basic rate in respect of the child or children under:

(i) point 1067-E2; or

(ii) point 1068-E2 of Benefit Rate Calculator B at the end of section 1068; or

(b) the child has been taken into account in fixing the rate of a person’s social security or service pension;

the Secretary may direct that:

(c) no amount be added to the person’s maximum basic rate under point 1067-E2; or

(d) the amount to be added to the person’s maximum basic rate under point 1067-E2 is to be limited to the amount determined by the Secretary.

*No add-on for prescribed student children*

1067-E4. Once a dependent child of a person turns 16, there is no dependent child add-on for the child if the child is a prescribed student child.

Note 1: for “prescribed student child” and “dependent child” see section 5.

Note 2: even though no child add-on applies to a particular dependent child, the child may attract guardian allowance under points 1067-E5 to 1067-E8.

*Guardian allowance for dependent children*

1067-E5. A person is to have a single amount per year by way of guardian allowance if:

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

(b) the person has at least one dependent child.

Note: a person to whose partner an unemployment benefit or a job search allowance is not payable is in some circumstances treated as not being a member of a couple—see point 1067-A2.

*Guardian allowance may be reduced or not paid in certain circumstances*

1067-E6. If, but for this point, an amount would be added to a person’s maximum basic rate under point 1067-E5 in respect of a child or children and:

(a) the child, or each of the children, is a person in respect of

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whom an amount would be added to another person’s maximum basic rate under:

(i) point 1067-E5; or

(ii) point 1068-E5 of Benefit Rate Calculator B at the end of section 1068; or

(b) the child, or each of the children, would be taken into account in fixing the rate of a social security or service pension;

the Secretary may direct that:

(c) no amount is to be added to the person’s maximum basic rate under point 1067-E5; or

(d) the amount to be added to the person’s maximum basic rate under point 1067-E5 is to be limited to the amount that the Secretary determines.

*No guardian allowance in respect of certain dependent children who have turned 18*

1067-E7. Once a dependent child of a person turns 18, the child is not to be taken into account for the purposes of point 1067-E5 unless:

(a) the child is a student child but not a prescribed student child; or

(b) the person receives child disability allowance in respect of the child.

*Rate of guardian allowance*

1067-E8. The rate of guardian allowance is $25.80 a fortnight.

Note: the rate of guardian allowance is indexed annually in line with CPI increases (see sections 1191 to 1194).

*MODULE F—RENT ASSISTANCE*

*Rent assistance*

1067-F1. Subject to points 1067-F3 and 1067-F4, an amount to help cover the cost of rent is to be added to the maximum basic rate of:

(a) a member of a couple; or

(b) a person who has a benefit increase child; for a period if:

(c) the person is not an ineligible homeowner; and

(d) the person pays, or is liable to pay, rent (other than Government rent) in respect of the period; and

(e) the rent is payable at a rate of more than $40 per fortnight; and

(f) the person is in Australia throughout the period; and

(g) the person does not have a partner with a rent increased pension.

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Note 1: for “benefit increase child” sec point 1067-F11 below.

Note 2: for “partner with a rent increased pension” see point 1067-F2 below.

Note 3: for “rent”, “Government rent” and “ineligible homeowner” see section 13.

*Partner with rent increased pension*

1067-F2. A person has a partner with a rent increased pension, for the purposes of point 1067-F1, if:

(a) the partner is living with the person in their home; and

(b) the partner is receiving a social security or service pension; and

(c) the partner’s pension rate is increased to take account of rent.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

*No rent assistance if partner getting incentive allowance*

1067-F3. If the person is a member of a couple and the person’s partner is living with the person in their home, an amount is not to be added to the person’s maximum basic rate under point 1067-F1 if the person’s partner is receiving incentive allowance.

Note: for “incentive allowance” see Module J of Pension Rate Calculator A and Module F of Pension Rate Calculator B.

*Rent assistance waiting period*

1067-F4. Subject to point 1067-F5, no amount is to be added to a person’s maximum basic rate under point 1067-F1 unless the person has a current accumulated rent assistance waiting period credit of at least 26 weeks.

Note: for “current accumulated rent assistance waiting period credit” see points 1067-F7 to 1067-F9 below.

*Some people do not have to serve rent assistance waiting period*

1067-F5. A person does not have to satisfy point 1067-F4 if:

(a) the person has a benefit increase child; or

(b) the person was, immediately before becoming qualified for the job search allowance or sickness benefit receiving:

(i) a social security or service pension or a social security benefit; and

(ii) an amount by way of:

(a) rent assistance; or

(b) incentive allowance.

Note: for “benefit increase child” see point 1067-F11 below.

*Serving the rent assistance waiting period*

1067-F6. A person acquires an accumulated rent assistance waiting period credit by accumulating 26 weeks of eligible rent assistance waiting periods.

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*Accumulated eligible rent assistance waiting periods*

1067-F7. For the purposes of point 1067-F4, a person is to be taken to have accumulated 26 weeks of eligible rent assistance waiting periods if:

(a) the person has an eligible waiting period that is a continuous period of 26 weeks; or

(b) the person has eligible waiting periods that together form a continuous period of 26 weeks; or

(c) the person has eligible waiting periods that add up to 26 weeks and none of the eligible waiting periods start more than 4 weeks after the end of the immediately preceding waiting period.

*Eligible rent assistance waiting period*

1067-F8. A period is an eligible waiting period for a person if during the whole of the period the person:

(a) is receiving of a social security or service pension or a social security benefit; or

(b) would, but for the application of an ordinary income test or maintenance income test or assets test, be receiving a sickness benefit, special benefit or a job search allowance; or

(c) is receiving of payments as a trainee in full-time training under a program included in the programs known as Labour Force Programs; or

(d) is in continuous full-time training under a program included in the programs known as Labour Force Programs and is receiving payments by way of remuneration in respect of that training; or

(e) is receiving of payments under the Adult Migrant Education Program; or

(f) is in gaol.

Note: for “in gaol” see subsection 23 (5).

*Credit ceases to be current in some circumstances*

1067-F9. A person’s accumulated rent assistance credit ceases to be current at a particular time if the person’s last eligible rent assistance waiting period ended more than 4 weeks before that time.

*Factors affecting rate of rent assistance*

1067-F10. The rate of rent assistance depends on:

(a) the fortnightly rent paid or payable by the person; and

(b) the number of benefit increase children in relation to the person; and

(c) whether or not the person has a partner who has a rent increased benefit.

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*Benefit increase child*

1067-F11. A child is a **benefit increase child** in relation to a person for the purposes of this Module if the child attracts a dependent child add-on under Module E.

*Partner with rent increased benefit*

1067-F12. A person’s partner has a **rent increased benefit** for the purposes of this Module if the partner:

(a) is living with the person in their home; and

(b) is receiving an unemployment benefit, job search allowance or sickness benefit the rate of which is increased to take account of rent.

Note: for the treatment of rent paid by a member of a couple see point 1067-F15.

*Rate of rent assistance*

1067-F13. The rate of rent assistance per fortnight is worked out using Table F. Work out the person’s family situation and calculate Rate A for the person using the corresponding formula in column 3. This will be the person’s rate of rent assistance but only up to the person’s maximum rent assistance rate. The person’s maximum rent assistance rate is Rate B for the person worked out using column 4 of the Table.

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE F | | | | | |
| RATE OF RENT ASSISTANCE | | | | | |
| column 1 | column 2 | column 3 | column 4 | | |
| item | family situation | Rate A | Rate B | | |
|  |  |  | column 4a | column 4b | column 4c |
|  |  |  | No benefit increase children | 1 or 2 benefit increase children | 3 or more benefit increase children |
| 1. | Not member of a couple | **fortnightly rent**−$40  2 | NIL | $70 | $80 |
| 2. | Partnered—partner does not have rent increased benefit | **fortnightly rent**−$40  2 | $60 | $70 | $80 |
| 3. | Partnered—partner has rent increased benefit | **fortnightly rent**−$40  4 | $30 | $35 | $40 |
| 4. | Partnered—member of illness separated couple where person’s rate is increased for partner under Module C | **fortnightly rent**−$40 | $120 | $140 | $160 |
| 5. | Partnered—member of illness separated couple where person’s rate is not increased for partner under Module C and partner is getting neither pension nor benefit | **fortnightly rent**−$40  2 | $60 | $70 | $80 |

Note 1: for “member of a couple”, “illness separated couple” and “partnered” see section 4.

Note 2: for partner with a “rent increased benefit” see point 1067-F12.

Note 3: the Rate B amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Fortnightly rent*

1067-F14. **Fortnightly rent** is the fortnightly rent paid or payable by the person whose rate of job search allowance is being calculated.

*Rent paid by a member of a couple*

1067-F15. If a person is a member of a couple and the person’s partner is living with the person in their home, any rent that the person’s partner pays or is liable to pay in respect of the home is to be treated as paid or payable by the person.

Note: for “member of a couple” see section 4.

*Rent paid by a member of an illness separated couple*

1067-F16. If a person is a member of an illness separated couple, any rent that the person’s partner pays or is liable to pay in respect of the premises or lodgings occupied by the person is to be treated as paid or payable by the person.

Note: for “illness separated couple” see section 4.

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*MODULE G—PARENTAL MEANS TEST*

*Effect of parental assets and income on maximum payment rate*

1067-G1. This is how to work out the effect (if any) of the assets and income of a person’s parent or parents on the person’s maximum payment rate:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out whether the parental means test applies to the person using points 1067-G2 to 1067-G7. |
| *Step 2.* | If the parental means test applies to the person, identify the person’s means test parent or parents using points 1067-G4 to 1067-G7. |
| *Step 3.* | Work out the person’s combined parental assets value using point 1067-G9. |
| *Step 4.* | Work out the person’s parental assets value limit using point 1067-G10. |
| *Step 5.* | Work out the amount of the person’s reduction for parental assets using point 1067-G11. |
| *Step 6.* | Work out the amount of the person’s combined parental income using points 1067-G12 to 1067-G15. |
| *Step 7.* | Work out the amount of the parental income free area limit using points 1067-G16 to 1067-G18. |
| *Step 8.* | Take the limit away from the combined parental income: the result is called the annual parental income excess. |
| *Step 9.* | Convert the annual parental income excess into a fortnightly parental income excess using point 1067-G20. |
| *Step 10.* | Work out the amount of the person’s reduction for parental income using points 1067-G21 and 1067-G22. |
| *Step 11.* | The person’s reduction for parental assets and income is: |
|  | (a) if the person’s reduction for parental assets is not nil—the person’s reduction for parental assets; or |
|  | (b) if the person’s reduction for parental assets is nil— the person’s reduction for parental income. |

Note: see point 1067-A1 (Steps 7, 8 and 12) for the significance of the person’s reduction for parental assets and income.

*Persons affected by the parental means test*

1067-G2. The parental means test applies to a person unless the person:

(a) is a member of a couple; or

(b) has a dependent child; or

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(c) is an independent young person; or

(d) is a homeless person; or

(e) has an income test parent to whom a social security or service pension or a social security benefit is payable; or

(f) lives at the home of foster parents, or a foster parent, of the person; or

(g) does not have a means test parent.

Note 1: for “member of a couple” see section 4.

Note 2: for “dependent child”, “homeless person” and “independent young person” see subsection 5 (1).

Note 3: for “means test parent” see points 1067-G4 to 1067-G6 below and for “foster parent” see point 1067-G3.

*Foster parent*

1067-G3. For the purposes of this Module, a foster parent is a person who has been authorised to act as, or certified as, a foster parent by an authority of the State or Territory in which the person is living.

*Means test parent*

1067-G4. If the recipient lives with a parent, that parent is a means test parent of the recipient.

1067-G5. If the recipient does not live with a parent, a parent with whom the recipient last lived is a means test parent.

1067-G6. If 2 people are means test parents because of point 1067-G5 and those people are not living together, the recipient may choose which of those persons is to be a means test parent.

1067-G7. For the purposes of points 1067-G4 to 1067-G6:

(a) the **recipient** is the person whose rate of benefit or allowance is being calculated; and

(b) a reference to a **parent** of the recipient is a reference to:

(i) a natural parent; or

(ii) an adoptive parent; or

(iii) a step-parent;

of that person; and

(c) if the recipient is temporarily living apart from a parent of the recipient, the recipient is to be taken to be **living with** the parent.

Note: “parent”, when used in this Act, does not normally include a step-parent (see the definition of “parent” in subsection 5 (1)).

*Parental means test minimum rate*

1067-G8. The parental means test minimum rate is $53.80.

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*Combined parental assets value*

1067-G9. A person’s **combined parental** assets **value** is the amount of:

(a) if the person has only one means test parent—the value of that parent’s assets; or

(b) if the person has more than one means test parent—the sum of the value of the assets of each of those parents.

*Parental assets value limit*

1067-G10. The parental assets value limit is $322,750.

*Reduction for parental assets*

1067-G11. A person’s **reduction for parental assets** is:

(a) if the person’s combined parental assets value does not exceed the parental assets value limit—nil; or

(b) if the person’s combined parental assets value exceeds the parental assets value limit—the difference between the person’s maximum payment rate and the parental means test minimum rate.

Note 1: the parental means test minimum rate is indexed annually in line with average weekly earnings (see sections 1195 to 1198).

Note 2: for “parental means test minimum rate” see point 1067-G8 above.

*Combined parental income*

1067-G12. If a person has only one means test parent and that parent does not have a partner, the person’s combined parental income is the sum of the taxable income and the exempt income of the person’s means test parent for the appropriate tax year.

Note 1: for “means test parent” see points 1067-G4 to 1067-G7 above.

Note 2: for “taxable income” and “exempt income” see section 23.

Note 3: for “appropriate tax year” see point 1067-G15 below.

1067-G13. If a person has only one means test parent and that parent has a partner, the person’s combined parental income is the sum of the taxable income and the exempt income of the person’s means test parent and the means test parent’s partner for the appropriate tax year.

Note 1: for “means test parent” see points 1067-G4 to 1067-G7 above.

Note 2: for “taxable income” and “exempt income” see section 23.

Note 3: for “appropriate tax year” see point 1067-G15 below.

1067-G14. If a person has two means test parents, the person’s combined parental income is the sum of the taxable income and the exempt income of both of the person’s means test parents for the appropriate tax year.

Note 1: for “means test parent” see points 1067-G4 to 1067-G7 above.

Note 2: for “taxable income” and “exempt income” see section 23.

Note 3: for “appropriate tax year” see point 1067-G15 below.

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*Appropriate tax year*

1067-G15. For the purposes of this Module, the appropriate tax year is:

(a) if there is no determination under section 632—in relation to a person in relation to a particular time, the tax year of the person that ended on the last 30 June that preceded that time; or

(b) if there is a determination under section 632—the tax year in which the person requested the determination.

Note 1: the parental income test is usually based on income from the last tax year. If the income of the means test parent or parents has dropped by more than 25% since the end of the last tax year, section 632 allows the recipient to request that income for the current tax year be considered instead.

Note 2: for “tax year” see section 23.

*Parental income free area limit*

1067-G16. The amount of the parental income free area limit in relation to a person depends on the number of dependent children there are in relation to the person’s means test parent or parents.

1067-G17. The parental income free area limit is worked out using Table G. The parental income free area limit is the amount in column 1 plus:

(a) an additional amount in column 2 for the first dependent child of the means test parent or parents; and

(b) an additional amount in column 3 for each dependent child of the means test parent or parents after the first.

|  |  |  |
| --- | --- | --- |
| TABLE G | | |
| PARENTAL INCOME FREE AREA LIMIT | | |
| column 1 | column 2 | column 3 |
| basic free area limit | additional free area for first dependent child | additional free area for each dependent child after the first |
| $18,150 | $1,200 | $2,500 |

Note 1: the person whose rate of benefit or allowance is being calculated is not a dependent child—see section 5 for the definition of “dependent child”.

Note 2: the basic free area limit is indexed annually in line with average weekly earnings (see sections 1195 to 1198).

*Dependent child*

1067-G18. For the purposes of applying point 1067-G17 in working out a person’s Social Security benefit rate, a young person is to be treated as a dependent child of an income test parent if:

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(a) the young person is not the person whose social security benefit rate is being worked out; and

(b) the young person would, but for subsection 5 (6), be a dependent child of the income test parent; and

(c) the young person is a person to whom the parental means test applies.

*Annual parental income excess*

1067-G19. The annual parental income excess is the combined parental income less the parental income free area limit.

*Fortnightly parental income excess*

1067-G20. The fortnightly parental income excess is the annual parental income excess divided by 26.

*Reduction for parental income*

1067-G21. Subject to point 1067-G22, the reduction for parental income is:

|  |
| --- |
| **fortnightly parental income excess** |
| 4 |

*Limit on amount of reduction for parental income*

1067-G22. A person’s reduction for parental income is not to exceed the difference between the person’s maximum payment rate and the parental means test minimum rate.

Note 1: the parental means test minimum rate is indexed annually in line with average weekly earnings (see sections 1195 to 1198).

Note 2: for “parental means test minimum rate” see point 1067-G8 above.

*MODULE H—ORDINARY INCOME TEST*

*Effect of ordinary income on maximum payment rate*

1067-H1. This is how to work out the effect of a person’s ordinary income on the person’s maximum payment rate:

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|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the person’s ordinary income on a fortnightly basis. |
|  | Note 1: for the treatment of the ordinary income of members of couples see points 1067-H2 and 1067-H3. |
|  | Note 2: for the treatment of amounts received from friendly societies see point 1067-H4. |
| *Step 2.* | Work out the person’s ordinary free area limit using points 1067-H9 and 1067-H10. |
|  | Note: a person’s ordinary income free area is the maximum amount of ordinary income the person can have without affecting the person’s benefit rate. |
| *Step 3.* | Work out whether the person’s ordinary income exceeds the person’s ordinary income free area. |
| *Step 4.* | If the person’s ordinary income does not exceed the person’s ordinary income free area, the person’s ordinary income excess is nil. |
| *Step 5.* | If the person’s ordinary income exceeds the person’s ordinary income free area, the person’s ordinary income excess is the person’s ordinary income less the person’s ordinary income free area. |
| *Step 6.* | Use the person’s ordinary income excess to work out the person’s reduction for ordinary income using points 1067-H11 and 1067-H12 below. |

Note 1: for “ordinary income” see section 8.

Note 2: see point 1067-A1 (Steps 9 to 12) for the significance of the person’s reduction for ordinary income.

Note 3: the application of the ordinary income test is affected by provisions concerning:

* investment income (sections 1073 to 1099);
* disposal of income (sections 1106 to 1112).

*Ordinary income of members of couples*

1067-H2. For the purposes of this Module, the ordinary income of a person who is a member of a couple is to be taken to include the ordinary income (other than any AUSTUDY allowance received by the person’s partner) of the person’s partner.

*Income disregarded under earnings credit provisions*

1067-H3. If, in applying the ordinary income test to a person’s partner, the whole or a part of a payment to which the partner has become entitled is to be disregarded under section 1113 (earnings credit), the whole of that amount, or that part of that amount, is also to be disregarded in working out the ordinary income of the person for the purposes of point 1067-H2.

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*Friendly society amounts*

1067-H4. The ordinary income of a person:

(a) to whom a sickness benefit is payable; or

(b) to whom a job search allowance is payable because of subsection 589 (2) (person previously receiving job search allowance who become incapacitated for work); or

(c) who is the partner of a person to whom paragraph (a) or (b) applies;

is not to include any amount received from an approved friendly society in respect of the incapacity because of which the person is qualified for the sickness benefit or job search allowance.

Note: for “approved friendly society” see sections 23 and 29.

*Termination payments*

1067-H5. If:

(a) a person’s employment has been terminated; and

(b) as a result the person is entitled to a lump sum payment from the person’s former employer;

the person is taken to have received the lump sum payment on the day on which the person’s employment was terminated.

*Ordinary income includes certain periodical payments from relatives*

1067-H6. Subject to point 1067-H7, in this Module, a person’s ordinary income includes a periodical payment or benefit by way of gift or allowance from the father, mother, son, daughter, brother or sister of the person.

Note: point 1067-H6 reverses paragraph 8 (9) (z) which excludes these amounts.

*Board and lodging*

1067-H7. A person’s ordinary income is not to include a payment to the person for board or lodging provided by the person to the person’s father, mother, son, daughter, brother or sister.

*Ordinary income received at intervals longer than one fortnight* 1067-H8. If:

(a) a person earns, derives or receives income for a period (in this point called the **“work period”**);and

(b) the person earns, derives or receives the income at intervals longer than 1 fortnight;

the person is to be taken to earn, derive or receive (as the case may be) in a fortnight falling within the work period an amount calculated by:

(c) dividing the amount earned, derived or received by the number of days in the work period (the result is to be called the **“daily rate”**);and

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(d) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

EXAMPLE OF ORDINARY INCOME RECEIVED AT INTERVAL LONGER THAN ONE FORTNIGHT

*Facts:*

Fred earns $600 for the period 1 to 24 July inclusive i.e. for 25 days. The 25 days are spread over 3 fortnights as follows:

* Fred worked 5 days of the first fortnight;
* he worked each working day of the second fortnight;
* he worked 6 days of the third fortnight.

*Application:*

To work out the amount that Fred is taken to earn in the first fortnight first divide the amount he earned ($600) by the number of days in the work period (25). This gives a daily rate. The daily rate is:

|  |  |
| --- | --- |
| $600 | = $24 |
| 25 |

Then multiply the daily rate ($24) by the number of days in the fortnight that are also within the work period. The result is:

$24 × 5 = $120

For the second fornight the calculation is:

$24 × 14 = $336

For the third fortnight the calculation is:

$24 × 6 = $144

Fred is taken to earn:

* $120 in the first fortnight; and
* $336 in the second fortnight; and
* $144 in the third fortnight.

*Ordinary free area limit*

1067-H9. A person’s ordinary free area limit is, subject to point 1067-H10, $60.

1067-H10. If:

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

(b) the person’s ordinary income exceeds $60; and

(c) the person’s ordinary income includes income from personal exertion by the person or the person’s partner;

the person’s ordinary free area limit is worked out using Table H-1. Take the amount in column 1 and add:

(d) if the person has income from personal exertion—whichever is the lesser of Rate A and Rate B in column 2; and

(e) if the person’s partner has income from personal exertion— whichever is the lesser of Rate A and Rate B in column 3.

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|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| TABLE H-1 | | | | |
| FREE AREA FOR MEMBERS OF COUPLE WITH INCOME FROM PERSONAL EXERTION | | | | |
| column 1 | column 2 | | column 3 | |
| basic free area | person’s income from personal exertion | | partner’s income from personal exertion | |
|  | column 2a | column 2b | column 3a | column 3b |
|  | Rate A | Rate B | Rate A | Rate B |
| $60 | rate of income from personal exertion | $30 | rate of income from personal exertion | $30 |

Note: for “income from personal exertion” see subsection 8 (1).

*Reduction for ordinary income in excess of the ordinary free area limit*

1067-H11. A person’s reduction for ordinary income is worked out using Table H-2. Work out which family situation applies to the person. The reduction for ordinary income is the amount worked out using the corresponding calculation in the “lower range excess reduction” column plus the amount (if any) worked out using the corresponding calculation in the “upper range excess reduction” column.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE H-2 | | | |
| REDUCTION FOR ORDINARY INCOME | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s family situation | lower range excess reduction | upper range excess reduction |
| 1. | Not member of a couple | **lower range excess**  2 | **upper range excess** |
| 2. | Partnered (partner getting neither pension nor benefit)—partner not getting AUSTUDY allowance | **lower range excess**  2 | **upper range excess** |
| 3. | Partnered (partner getting neither pension nor benefit)—partner getting AUSTUDY allowance | **lower range excess**  4 | **upper range excess**  2 |
| 4. | Partnered (partner getting pension or benefit) | **lower range excess**  4 | **upper range excess**  2 |

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

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*Lower range excess/upper range excess*

1067-H12. If a person has an ordinary income excess:

(a) the part of the excess that does not exceed $80 is the person’s **lower range** excess; and

(b) the part (if any) of the excess that exceeds $80 is the person’s **upper range excess**.

*Ordinary income excess*

1067-H13. A person’s **ordinary income excess** is the person’s ordinary income less the person’s ordinary free area limit.

*MODULE J—MAINTENANCE INCOME TEST*

*Effect of maintenance income on maximum payment rate*

1067-J1. This is how to work out the effect of a person’s maintenance income on the person’s maximum payment rate:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the person’s maintenance income on a fortnightly basis. |
|  | Note 1: for the treatment of the maintenance income of members of a couple see points 1067-J3 to 1067-J5. |
|  | Note 2: for maintenance income received at intervals longer than a fortnight see point 1067-J6. |
|  | Note 3: “special maintenance income” (see subsection 10 (1)) can in some circumstances be disregarded under points 1067-J7 and 1067-J8. |
| *Step 2.* | Work out the person’s maintenance free area limit using points 1067-J11 and 1067-J12 below. |
|  | Note: a person’s maintenance income free area is the maximum amount of maintenance income the person can have without affecting the person’s benefit rate. |
| *Step 3.* | Work out whether the person’s maintenance income exceeds the person’s maintenance income free area. |
| *Step 4.* | If the person’s maintenance income does not exceed the person’s maintenance income free area, the person’s maintenance income excess is nil. |
| *Step 5.* | If the person’s maintenance income exceeds the person’s maintenance income free area, the person’s maintenance income excess is the person’s maintenance income less the person’s maintenance income free area. |
| *Step 6.* | Use the person’s maintenance income excess to work out the person’s reduction for maintenance income using points 1067-J13 and 1067-J14 below. |

Note: see point 1067-A1 (Steps 10 to 12) for the significance of the person’s reduction for maintenance income.

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*Dependent child*

1067-J2. In working out whether a young person is a dependent child for the purposes of this Module, disregard subsection 5 (3).

*Maintenance income of members of couples*

1067-J3. For the purposes of this Module, if:

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

(b) the person’s rate is increased under Module C (additional payment for dependent partner);

the person’s maintenance income is the sum of the maintenance income of the person and the person’s partner.

1067-J4. For the purposes of this Module, if:

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

(b) the person’s partner is receiving:

(i) a social security or service pension; or

(ii) a social security benefit;

the person’s maintenance income is the sum of the maintenance income of the person and the person’s partner divided by 2.

1067-J5. For the purposes of this Module, if:

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

(b) the person’s partner is not receiving:

(i) a social security or service pension; or

(ii) a social security benefit; and

(c) the person’s rate of benefit or allowance is not increased under Module C (additional payment for dependent partner);

the person’s maintenance income is:

(d) if the partner is receiving maintenance income—the sum of the maintenance income of the person and the person’s partner divided by 2; and

(e) if the partner is not receiving maintenance income—the amount of maintenance income which the person receives.

*Maintenance income received at intervals longer than a fortnight*

1067-J6. If:

(a) a person receives maintenance income for a period (in this point called the **“maintenance period”**);and

(b) the person receives the maintenance income at intervals longer than 1 fortnight;

the person is to be taken to receive in a fortnight falling within the maintenance period an amount calculated by:

(c) dividing the amount received by the number of days in the

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maintenance period (the result is the **daily rate**);and

(d) multiplying the daily rate by the number of days in the fortnight that are also within the maintenance period.

EXAMPLE OF MAINTENANCE INCOME RECEIVED AT INTERVAL LONGER THAN ONE FORTNIGHT

|  |  |
| --- | --- |
| *Facts:* | Mary has 3 children. She receives $600 for the period 1 to 24 July inclusive i.e. for 25 days. The 25 days are spread over 3 fortnights as follows: |
|  | • Mary receives maintenance for 5 days of the first fortnight; |
|  | • each day of the second fortnight; |
|  | • 6 days of the third fortnight. |
| *Application:* | To work out the amount that Mary is taken to receive in the first fortnight first divide the amount she received ($600) by the number of days in the maintenance period (25). This gives a daily rate. The daily rate is: |

|  |  |
| --- | --- |
| $600 | = $24 |
| 25 |

Then multiply the daily rate ($24) by the number of days in the fortnight that are also within the maintenance period. The result is:

$24 × 5 = $120

For the second fortnight the calculation is:

$24 × 14 = $336

For the third fortnight the calculation is:

$24 × 6 = $144

Mary is taken to receive:

• $120 in the first fortnight; and

• $336 in the second fortnight; and

• $144 in the third fortnight.

*Special maintenance income*

1067-J7. Subject to points 1067-J9 and 1067-J10, if a person has special maintenance income in excess of the ceiling applicable to the person, the excess is disregarded for the purposes of this Module.

Note: for “special maintenance income” see subsection 10 (1).

1067-J8. The **ceiling** applicable to a person is the amount equal to the person’s maintenance income free area limit plus:

|  |
| --- |
| **person’s maximum payment rate** |
| 2 |

*Special maintenance income not disregarded where child support available*

1067-J9. No amount is to be disregarded under point 1067-J7 if:

(a) child support is not payable under the *Child Support (Assessment) Act 1989* to the person for a child; and

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(b) the person is entitled to make an application for assessment of child support under Part V of that Act for the child payable by another person; and

(c) the person has:

(i) neither:

(a) properly made such an application; nor

(b) properly made an application under Part VI of that Act for acceptance of an agreement in relation to the child; or

(ii) the person has properly made an application of either kind, but:

(a) the person has subsequently withdrawn the application; or

(b) after child support has become payable by the other person under that Act for the child, the person has ended the entitlement to child support.

1067-J10. No amount is to be disregarded under point 1067-J7 if:

(a) child support is payable under the *Child Support (Assessment) Act 1989* to the person for a child; and

(b) the person is entitled to make an application under section 128 of that Act; and

(c) an application by the person under that section is not in force.

*How to calculate a person’s maintenance income free area limit*

1067-J11. A person’s maintenance income free area limit is worked out using Table J. Work out which family situation applies to the person. The maintenance income free area limit is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each dependent child after the first.

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|  |  |  |  |
| --- | --- | --- | --- |
| TABLE J | | | |
| MAINTENANCE INCOME FREE AREA LIMIT | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s family situation | basic free area per fortnight | additional free area per fortnight |
| 1. | Not member of a couple | $30 | $10 |
| 2. | Partnered (partner getting neither pension nor benefit)—person gets no increase for partner under Module C | $30 | $10 |
| 3. | Partnered—person gets increase for partner under Module C and both the person and the partner are receiving maintenance | $60 | $10 |
| 4. | Partnered—person gets increase for partner under Module C and either the person or the partner (but not both) is receiving maintenance income | $30 | $10 |
| 5. | Partnered (partner getting pension or benefit)—both the person and the partner are receiving maintenance income | $30 | $5 |
| 6. | Partnered (partner getting pension or benefit)—either the person or the partner (but not both) are receiving maintenance income | $15 | $5 |

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

Note 2: for “dependent child” see section 5.

Note 3: items 2, 3, 4, 5 and 6 of Table H apply to members of illness separated couples.

1067-J12. In determining whether or not item 3, 4, 5 or 6 of Table J applies to a person, points 1067-J3 to 1067-J5 are to be disregarded. This has the effect of taking into account only maintenance income that the person actually receives rather than any income that the person is to be taken to receive because of maintenance income received by the person’s partner.

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*Benefit reduction for maintenance income in excess of maintenance free area limit*

1067-J13. A person’s reduction for maintenance income is:

|  |
| --- |
| **maintenance income excess** |
| 2 |

Note: for “maintenance income excess” see point 1067-J14 below.

*Maintenance income excess*

1067-J14. A person’s **maintenance income** excess is the person’s maintenance income less the person’s maintenance free area limit.

*MODULE K—REMOTE AREA ALLOWANCE*

*Remote area allowance*—*person physically in remote area*

1067-K1. An amount by way of remote area allowance is to be added to a person’s rate if:

(a) the person’s usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note 1: for “remote area” see subsection 14 (1).

Note 2: a person may be considered to be physically present in a remote area during temporary absences—see subsection 14 (2).

*Remote area allowance*—*partner physically present in remote area*

1067-K2. An amount by way of remote area allowance is to be added to a person’s rate if:

(a) the person’s usual place of residence is in the remote area; and

(b) the person is absent from the remote area for a period exceeding 8 weeks (disregarding the operation of subsection 14 (2)); and

(c) the person has a partner:

(i) in respect of whom the person’s benefit rate is increased under Module C; and

(ii) whose usual place of residence is in the remote area; and

(iii) who is physically present in the remote area.

*Rate of remote area allowance*

1067-K3. The rate of remote area allowance payable to a person is worked out using Table K. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each pension or benefit increase child of the person.

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|  |  |  |  |
| --- | --- | --- | --- |
| TABLE K | | | |
| REMOTE AREA ALLOWANCE | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | family situation | basic allowance | additional allowance for each pension or benefit increase child |
| 1. | Not member of couple | $14.00 | $7.00 |
| 2. | Partnered—remote area allowance payable to partner | $12.00 | $7.00 |
| 3. | Illness separated couple—partner not benefit increase partner | $14.00 | $7.00 |
| 4. | Partnered—remote area allowance not payable to partner and partner not benefit increase partner | $14.00 | $7.00 |
| 5. | Partnered—partner is a benefit increase partner and both person and partner are in the remote area | $24.00 | $7.00 |
| 6. | Partnered—partner is a benefit increase partner and either the person or the partner in the remote area (but not both) | $14.00 | $7.00 |

Note 1: for “benefit increase partner” see subsection 4(10).

Note 2: item 5 includes illness separated couples.

*Meaning of remote area allowance*

1067-K4. In Table K, **remote area allowance** means:

(a) an amount added to a person’s social security pension or benefit by way of remote area allowance; or

(b) a remote area allowance payable under section 57 of the VEA.

*In remote area*

1067-K5. For the purposes of Table K in point 1067-K3, a person is **in the remote area** if:

(a) the person’s usual place of residence is in the remote area; and

(b) the person is physically present in the remote area.

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*Dependent children must be physically present in Australia*

1067-K6. Additional allowance is not payable for a dependent child unless the dependent child is physically present in Australia.

*Additional allowance for dependent children only payable to one parent*

1067-K7. If additional allowance would otherwise be payable in respect of a pension or benefit increase child to 2 persons, the additional allowance is payable only:

(a) if a dependent child add-on is payable to only one of those persons—to that person; or

(b) in any other case—to the person to whom the Secretary directs that the additional allowance should be paid.

*Notice of decision*

1067-K8. If the Secretary gives a direction under paragraph 1067-K7 (b), the Secretary must give each of the persons affected by the direction notice in writing of the giving of the direction.

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**PART 3.6—BENEFIT RATE CALCULATOR B**

**Rate of unemployment and sickness benefit (18 or over)**

**1068. (1)** The rate of:

(a) unemployment benefit; and

(b) sickness benefit for a person who has turned 18;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

**(2)** Where:

(a) a person is living with another person as the spouse of the other person on a genuine domestic basis although not legally married to the other person; and

(b) the other person is of the opposite sex; and

(c) the other person is under the age of consent applicable in the State or Territory in which the person is living;

the person’s benefit rate is not to exceed the rate at which it would be payable to the person if the other person were the person’s partner.

Note: this provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

*Rate of benefit limited for certain armed services widows*

**(3)** Where a person:

(a) an armed services widow is receiving:

(i) a pension under Part II or IV of the Veterans’ Entitlements Act at a rate determined under or by reference to subsection 30 (1) of that Act; or

(ii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* at a rate determined under subsection 18 (2) of that Act; and

(b) the widow has been receiving a payment referred to in subparagraph (a) (i) or (a) (ii) continuously since before 1 November 1986; and

(c) before 1 November 1986 the widow was also receiving a social security benefit;

the rate of benefit payable to the widow is not to be increased:

(d) if, immediately before 1 November 1986, the widow was receiving a social security benefit at a rate less than $120.10 per fortnight—to a rate greater than $120.10 per fortnight; or

(e) if, immediately before 1 November 1986, the widow was receiving a social security benefit at a rate equal to or greater

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than $120.10 per fortnight—to a rate greater than the rate at which it was payable immediately before 1 November 1986.

Note 1: a benefit is not payable to a widow who starts to get a payment referred to in subsection (3) after 1 November 1986—see sections 533 and 675.

Note 2: for “armed services widow” see subsection 4 (1).

***BENEFIT RATE CALCULATOR B***

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Method of calculating rate*

1068-A1. The rate of benefit is a fortnightly rate.

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the person’s **maximum basic rate** using MODULE B below. |
| *Step 2.* | Work out any additional payment for a dependent partner using MODULE C below. |
| *Step 3.* | Work out any supplementary amount in respect of the person using MODULE D below. |
| *Step 4.* | Work out any applicable additional amount for children using MODULE E below. |
| *Step 5.* | Work out any applicable additional amount for rent using MODULE F below. |
| *Step 6.* | Add up the amounts obtained in Steps 1 to 4: the result is called the **maximum payment rate**. |
| *Step* 7. | Apply the ordinary income test using MODULE G below to work out the reduction for ordinary income. |
| *Step 8.* | Apply the maintenance income test using MODULE H below to work out the reduction for maintenance income. |
| *Step 9.* | Add up the reductions for ordinary income and maintenance income: the result is called **the total income reduction**. |
| *Step 10.* | The rate of benefit is the difference between: |
|  | (a) the maximum payment rate; and |
|  | (b) the total income reduction; |
|  | plus any amount payable by way of remote area allowance (see MODULE J below). |

Note: if a person’s rate is reduced under Step 10, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1207 (maximum basic rate and additional amount for partner first, then rent assistance and finally child amounts).

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*Rate of benefit where benefit not payable to partner*

1068-A2. If:

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

(b) an unemployment benefit or a job search allowance is:

(i) not payable to the person’s partner; or

(ii) would not be payable to the person’s partner if a claim were duly made;

because of an industrial action preclusion provision or deferment provision;

the person’s maximum basic rate (Module B), additional payment for partner (Module C) and additional amounts for children (Module E) are to be calculated as if a person were not a member of a couple. Modules F, G, H and J are to be applied on the basis that the person is a member of a couple. Module D does not apply.

Note 1: for “deferment provision” see point 1068-A4.

Note 2: a person covered by point 1068-A2 will have a maximum payment rate (other than for rent assistance) calculated as if the person were not a member of a couple but the income of the person’s panner will be taken into account to reduce the person’s maximum payment rate.

*Industrial action preclusion provision*

1068-A3. For the purposes of point 1068-A2, sections 514 (unemployment benefit) and 590 (job search allowance) are industrial action preclusion provisions.

*Deferment provisions*

1068-A4. For the purposes of point 1068-A2, the following are deferment provisions:

(a) a UB automatic or discretionary deferment provision;

(b) a JSA automatic or discretionary deferment provision.

Note: for “UB automatic deferment provision”, “UB discretionary deferment provision”, “JSA automatic deferment provision” and “JSA discretionary deferment provision” see subsection 23(1).

*MODULE B—MAXIMUM BASIC RATE*

*Maximum basic rate*

1068-B1. A person’s maximum basic rate is worked out using Table B. Work out the person’s family situation and whether the person has a dependent child or not. The maximum basic rate is the corresponding amount in the “rate” column.

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|  |  |  |  |
| --- | --- | --- | --- |
| TABLE B | | | |
| MAXIMUM BASIC RATES | | | |
| column l | column 2 | column 3  rate | |
|  |  | column 3a | column 3b |
| item | person’s family situation | person with a dependent child | person without a dependent child |
| 1. | Not member of a couple and person:  (a) has turned 18 but not 21; and  (b) is not living at the home of parent or parents | $291.70 | $210.30 |
| 2. | Not member of a couple and person:  (a) has turned 18 but not 21 ; and  (b) is living at the home of parent or parents | $291.70 | $138.40 |
| 3. | Not member of a couple and person has turned 21 but has not turned 60 | $291.70 | $268.60 |
| 4. | Not member of a couple and person:  (a) has turned 60; and  (b) has not been receiving social security benefit continuously for at least 6 months | $291.70 | $268.60 |
| 5. | Not member of a couple and person:  (a) has turned 60; and  (b) has been receiving social security benefit continuously for at least 6 months | $291.70 | $291.70 |
| 6. | Partnered (partner getting neither pension nor benefit) and person has turned 18 but not 21 | $243.20 | $210.30 |
| 7. | Partnered (partner getting neither pension nor benefit) and person has turned 21 | $243.20 | $243.20 |
| 8. | Partnered (partner getting pension or benefit) and person has turned 18 but not 21 | $243.20 | $210.30 |
| 9. | Partnered (partner getting pension or benefit) and person has turned 21 | $243.20 | $243.20 |
| 10. | Member of illness separated couple | $291.70 | $291.70 |

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

Note 2: for “dependent child” see section 5.

Note 3: a person to whose partner an unemployment benefit or a job search allowance is not payable is in some circumstances treated as not being a member of a couple—see point 1068-A2.

Note 4: the item 1, 2, 6 and 8 rates in column 3b are indexed annually in line with CPI increases (see sections 1191 to 1194).

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Note 5: the other rates are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 6: if item 6 or 7 applies to the person, see Module D: a supplementary amount might need to be added to the person’s maximum basic rate under that Module.

*MODULE* C—*ADDITIONAL PAYMENT FOR PARTNER*

*Amount for partner*

1068-C1. Subject to points 1068-C2 and 1068-C3, an amount is to be added to a person’s maximum basic rate if:

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

(b) the person’s partner is:

(i) an Australian resident; and

(ii) in Australia.

Note: a person to whose partner an unemployment benefit or a job search allowance is not payable is in some circumstances treated as not being a member of a couple—see point 1068-A2.

*Recipient under 21*—*no additional amount unless recipient has dependent child*

1068-C2. If the person has not turned 21, an additional amount is not to be added under point 1068-C1 unless the person has a dependent child.

*No additional amount if partner getting pension or benefit*

1068-C3. An additional amount is not to be added under point 1068-C1 if:

(a) the person’s partner is receiving a social security or service pension or a social security benefit; or

(b) a social security pension or benefit would be payable to the person’s partner but for Part 3.14 (which deals with the effect of compensation payments); or

(c) the person’s partner is receiving an AUSTUDY allowance.

*Rate of additional amount*

1068-C4. Subject to point 1068-C5, the amount to be added under point 1068-C1 is:

(a) if the person is not a member of an illness separated couple— $243.20; or

(b) if the person is a member of an illness separated couple— $291.70.

Note: for “illness separated couple” see subsection 4 (7).

*Amount for partner where person separated from partner and paying maintenance*

1068-C5. If:

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

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(b) the person is living apart from the person’s partner; and

(c) the person is making a payment to the partner, for or towards the maintenance of the partner; and

(d) the fortnightly rate of the payment is less than the amount that would, apart from this point, be added to the person’s maximum basic rate under this Module;

the Secretary may determine that the amount to be added to the person’s maximum basic rate under this Module is not to exceed the fortnightly rate of the payment that the person makes to the spouse.

*Presence of partner in Australia*

1068-C6. If a person’s partner is temporarily absent from Australia, the partner is to be taken for the purposes of point 1068-C1, as if the partner were in Australia:

(a) if the period of temporary absence is not longer than 3 months—throughout that period; and

(b) in any other case—throughout the first 3 months of that period.

*Factors to be considered in determining if absence is temporary*

1068-C7. For the purposes of point 1068-C6, in determining if an absence is temporary, regard must be had to the following factors:

(a) the purpose of any such absence;

(b) the intended duration of any such absence;

(c) the frequency of any such absences.

*MODULE D—SUPPLEMENTARY AMOUNT FOR MEMBER OF COUPLE IN SOME CIRCUMSTANCES*

*Interim total of members of couples to whom items 6 and 7 of Table B in point 1068-B1 applies not to fall below comparable “single” MBR*

1068-D1. A supplementary amount is to be added to a person’s maximum basic rate if:

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

(b) the person’s partner:

(i) is not receiving a social security pension; and

(ii) is not receiving a service pension; and

(iii) is not receiving a social security benefit; and

(iv) is not receiving an AUSTUDY allowance; and

(c) either:

(i) no amount is to be added to the person’s maximum basic rate under point 1068-C1; or

(ii) the amount to be added to the person’s maximum basic rate under point 1068-C1 is reduced under point 1068-C5; and

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(d) the person’s interim total is less than the comparable “single” MBR for the person.

Note 1: for “interim total” see point 1068-D2 below.

Note 2: for “comparable ‘single’ MBR” see point 1068-D3 below.

*Interim total*

1068-D2. A person’s **interim total** is the sum of the person’s maximum basic rate and the amount (if any) to be added under Module C.

*Comparable “single” MBR*

1068-D3. The **comparable “single” MBR** for a person is:

(a) if the person has a dependent child—the rate specified under column 3a against item 1 in Table B in point 1067-B1 of Benefit Rate Calculator A; or

(b) if the person does not have a dependent child—the rate specified under column 3b against item 3 in Table B in point 1068-B1 of this Benefit Rate Calculator.

*Rate of supplementary amount*

1068-D4. The supplementary amount is the difference between the person’s interim total and the comparable “single” MBR for the person.

*MODULE E—ADDITIONAL AMOUNT FOR CHILDREN*

*Additional amounts for children*

1068-E1. This is how to work out the amount per fortnight to be added to a person’s maximum basic rate for children:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the dependent child add-on (if any) for each dependent child of the person using points 1068-E2 and 1068-E4. |
| *Step 2.* | Work out the amount per year of the person’s guardian allowance (if any) using points 1068-E5 to 1068-E9. |
| *Step 3.* | Add up all of the amounts obtained in Steps 1 and 2: the result is called the **DC total** and is the amount to be added to the person’s maximum basic rate under this Module. |

Note 1: a dependent child add-on may not apply to a dependent child if the full amount for that child is paid to another person (see point 1068-E3) or if the child is a prescribed student child (see point 1068-E4).

Note 2: guardian allowance is a single amount per fortnight for parents who are not members of a couple or who are members of illness separated couples.

Note 3: a young person does not need to be a dependent child to attract guardian allowance: see point 1068-E6 below.

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*Dependent child add-ons*

1068-E2. If a person has a dependent child, there is, subject to points 1068-E3 and 1068-E4, a dependent child add-on for the child. The amount of the add-on depends on the child’s age and is worked out using Table E.

|  |  |  |
| --- | --- | --- |
| TABLE E | | |
| DEPENDENT CHILD ADD-ON | | |
| column 1 | column 2 | column 3 |
| item | child’s age | amount per fortnight |
| 1. | under 13 | $48.30 |
| 2. | 13 or over but under 16 | $70.50 |
| 3. | 16 or over | $34.00 |

Note 1: the item 1 rate is adjusted annually so that the combined family allowance and additional benefit amounts for children covered by this item do not fall below 15% of the combined pensioner couple maximum basic rate (see subsections 1201 (1) and (2)).

Note 2: the item 2 rate is adjusted annually so that the combined family allowance and additional benefit amounts for children covered by this item do not fall below 20% of the combined pensioner couple maximum basic rate (see sections 1201 (3) and (4)).

Note 3: the item 3 rate is not indexed.

*Amount of child add-on may be reduced or not paid in certain circumstances*

1068-E3. If, but for this point, an amount would be added to a person’s maximum basic rate under point 1068-E2 and:

(a) an amount would be added to the maximum basic rate of another person under:

(i) point 1068-E2; or

(ii) point 1067-E2 of Benefit Rate Calculator A at the end of section 1067; or

(b) the child has been taken into account in fixing a person’s social security or service pension rate;

the Secretary may direct that:

(c) no amount be added to the person’s maximum basic rate under. point 1068-E2; or

(d) the amount to be added to the person’s maximum basic rate under point 1068-E2 is to be limited to the amount determined by the Secretary.

*No add-on for prescribed student children*

1068-E4. Once a dependent child of a person turns 16, there is no dependent child add-on for the child if the child is a prescribed student child.

Note 1: for “prescribed student child” and “dependent child” see section 5.

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Note 2: even though no child add-on applies to a particular dependent child, the child may attract guardian allowance under points 1068-E5 to 1068-E9.

*Guardian allowance for dependent children*

1068-E5. A person is to have a single amount per fortnight by way of guardian allowance if:

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

(b) the person has at least one dependent child.

Note: a person to whose partner an unemployment benefit or a job search allowance is not payable is in some circumstances treated as not being a member of a couple—see point 1068-A2.

*Guardian allowance for some benefit recipients in respect of children who are not dependent children*

1068-E6. A person is to have a single amount per fortnight by way of guardian allowance if:

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

(b) the person has at least one natural or adopted child who has turned 16 but has not turned 18; and

(c) the child is not a dependent child of the person; and

(d) a social security benefit:

(i) is payable to the child; or

(ii) would be payable to the child if the child were not required to serve a waiting period.

Note: for “waiting period” see subsection 23 (1).

*Amount of guardian allowance may be reduced or not paid in certain circumstances*

1068-E7. If, but for this point, an amount would be added to a person’s maximum basic rate under point 1068-E5 or 1068-E6 for a child or children and:

(a) the child, or each of the children, is a person in respect of whom an amount would be added to another person’s maximum basic rate under:

(i) point 1068-E5 or 1068-E6; or

(ii) point 1067-E5 of Benefit Rate Calculator A at the end of section 1067; or

(b) the child, or each of the children, would be taken into account in fixing the rate of a social security or service pension;

the Secretary may direct that:

(c) no amount is to be added to the person’s maximum basic rate under point 1068-E5 or 1068-E6; or

(d) the amount is to be added to the person’s maximum basic rate under point 1068-E5 or 1068-E6 is to be limited to the amount that the Secretary determines.

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*No guardian allowance in respect of certain dependent children who have turned 18*

1068-E8. Once a dependent child of a person turns 18, the child is not to be taken into account for the purposes of point 1068-E5 unless:

(a) the child is a student child but not a prescribed student child; or

(b) the person receives child disability allowance in respect of the child.

*Rate of guardian allowance*

1068-E9. The rate of guardian allowance is $25.80 a fortnight.

Note: the rate of guardian allowance is indexed annually in line with CPI increases (see sections 1191 to 1194).

*MODULE F—RENT ASSISTANCE*

*Rent assistance*

1068-F1. Subject to points 1068-F3, 1068-F4 and 1068-F6, an amount to help cover the cost of rent is to be added to a person’s maximum basic rate for a period if:

(a) the person is not an ineligible homeowner; and

(b) the person pays, or is liable to pay, rent (other than Government rent) in respect of the period; and

(c) the rent is payable at a rate of more than $40 per fortnight; and

(d) the person is in Australia throughout the period; and

(e) the person does not have a partner with a rent increased pension.

Note: for “rent”, “Government rent” and “ineligible homeowner” see section 13.

*Partner with rent increased pension*

1068-F2. A person has a **partner with a rent increased pension**,for the purposes of point 1068-F1, if:

(a) the partner is living with the person in their home; and

(b) the partner is receiving a social security or service pension; and

(c) the rate of pension is increased to take account of rent.

Note: “social security pension” includes a sheltered employment or rehabilitation allowance.

*No rent assistance if partner getting incentive allowance*

1068-F3. If the person is a member of a couple and the person’s partner is living with the person in their home, an amount is not to be added to the person’s maximum basic rate under point 1068-F1 if the person’s partner is receiving incentive allowance.

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*Age test applies to some people*

1068-F4. If a person:

(a) does not have a benefit increase child; and

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

(c) is not living permanently or indefinitely away from the principal home of a parent of the person;

an amount is not to be added to the person’s maximum basic rate under point 1068-F1 unless the person has turned 25.

Note: for “benefit increase child” see point 1068-F13 below.

*Parent*

1068-F5. For the purposes of point 1068-F4 a step-parent or guardian is to be taken to be a parent.

Note: “parent”, when used in this Act, does not normally include a step-parent or guardian (see subsection 5 (1)).

*Rent assistance waiting period*

1068-F6. Subject to point 1068-F7, no amount is to be added to a person’s maximum basic rate under point 1068-F1 unless the person has a current accumulated rent assistance waiting period credit of at least 26 weeks.

*Some people do not have to serve rent assistance waiting period*

1068-F7. A person does not have to satisfy point 1068-F6 if:

(a) the person has a benefit increase child; or

(b) the person has turned 60; or

(c) the person was, immediately before becoming qualified for the unemployment benefit or sickness benefit receiving:

(i) a social security or service pension or a social security benefit; and

(ii) an amount by way of:

(a) rent assistance; or

(b) incentive allowance; or

(d) the person was previously receiving a social security benefit whose rate included an amount by way of rent assistance and:

(i) the person ceased to receive that other social security benefit; and

(ii) the person ceased to receive that other social security benefit otherwise than because of the operation of an ordinary income, maintenance income or assets test; and

(iii) the person ceased to receive that other social security benefit not more than 4 weeks before commencing to receive the social security benefit whose rate is being worked out.

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*Serving the rent assistance waiting period*

1068-F8. A person acquires an accumulated rent assistance waiting period credit by accumulating 26 weeks of eligible rent assistance waiting periods.

*Accumulated eligible rent assistance waiting periods*

1068-F9. For the purposes of point 1068-F6, a person is to be taken to have accumulated 26 weeks of eligible rent assistance waiting periods if:

(a) the person has an eligible waiting period that is a continuous period of 26 weeks; or

(b) the person has eligible waiting periods that together form a continuous period of 26 weeks; or

(c) the person has eligible waiting periods that add up to 26 weeks and none of the eligible waiting periods start more than 4 weeks after the end of the immediately preceding waiting period.

*Eligible rent assistance waiting period*

1068-F10. A period is an eligible waiting period for a person if during the whole of the period the person:

(a) is receiving a social security or service pension or a social security benefit; or

(b) would, but for the application of an ordinary income, maintenance income, or assets test, be receiving a social security benefit; or

(c) is receiving payments as a trainee in full-time training under a program included in the programs known as Labour Force Programs; or

(d) is in continuous full-time training under a program included in the programs known as Labour Force Programs and is receiving payments by way of remuneration in respect of that training; or

(e) is receiving payments under the Adult Migrant Education Program; or

(f) is in gaol.

*Credit ceases to be current in some circumstances*

1068-F11. A person’s accumulated rent assistance credit ceases to be current at a particular time if the person’s last eligible rent assistance waiting period ended more than 4 weeks before that time.

*Factors affecting rate of rent assistance*

1068-F12. The rate of rent assistance depends on:

(a) the fortnightly rent paid or payable by the person; and

(b) the number of benefit increase children in relation to the person; and

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(c) whether or not the person has a partner who has a rent increased benefit.

*Benefit increase child*

1068-F13. A child is a **benefit increase child** in relation to a person for the purposes of this Module if the child attracts a dependent child add-on under Module E.

*Partner with rent increased benefit*

1068-F14. A person’s partner has a **rent increased benefit** for the purposes of this Module if the partner:

(a) is living with the person in their home; and

(b) is receiving a social security benefit the rate of which is increased to take account of rent.

Note: for the treatment of rent paid by a member of a couple see point 1068-F17.

*Rate of rent assistance*

1068-F15. The rate of rent assistance per fortnight is worked out using Table F. Work out the person’s family situation and calculate Rate A for the -person using the corresponding formula in column 3. This will be the person’s rate of rent assistance but only up to the person’s maximum rent assistance rate. The person’s maximum rent assistance rate is Rate B for the person worked out using column 4 of the Table.

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE F | | | | | |
| RATE OF RENT ASSISTANCE | | | | | |
| column 1 | column 2 | column 3 | column 4 | | |
| item | family situation | Rate A | Rate B | | |
|  |  |  | column 4a | column 4b | column 4c |
|  |  |  | No benefit increase children | 1 or 2 benefit increase children | 3 or more benefit increase children |
| 1. | Not member of a couple | **fortnightly rent**−$40  2 | $60 | $70 | $80 |
| 2. | Partnered—partner does not have rent increased benefit | **fortnightly rent**−$40  2 | $60 | $70 | $80 |
| 3. | Partnered—partner has rent increased benefit | **fortnightly rent**−$40  4 | $30 | $35 | $40 |
| 4. | Partnered—member of illness separated couple where person’s rate is increased for partner under Module C | **fortnightly rent**−$40 | $120 | $140 | $160 |
| 5. | Partnered—member of illness separated couple where person’s rate is not increased for partner under Module C and partner is getting neither pension nor benefit | **fortnightly rent**−$40  2 | $60 | $70 | $80 |

Note 1: for “member of a couple”, “illness separated couple” and “partnered” see section 4.

Note 2: for partner with a “rent increased benefit” see point 1068-F14.

Note 3: the Rate B amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Fortnightly rent*

1068-F16. **Fortnightly rent** is the fortnightly rent paid or payable by the person whose unemployment benefit rate is being calculated.

*Rent paid by a member of a couple*

1068-F17. If a person is a member of a couple and the person’s partner is living with the person in their home, any rent that the person’s partner pays or is liable to pay in respect of the home is to be treated as paid or payable by the person.

Note: for “member of a couple” see section 4.

*Rent paid by a member of an illness separated couple*

1068-F18. If a person is a member of an illness separated couple, any rent that the person’s partner pays or is liable to pay in respect of the premises or lodgings occupied by the person is to be treated as paid or payable by the person.

Note: for “illness separated couple” see section 4.

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*MODULE G—ORDINARY INCOME TEST*

*Effect of ordinary income on maximum payment rate*

1068-G1. This is how to work out the effect of a person’s ordinary income on the person’s maximum payment rate:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the person’s ordinary income on a fortnightly basis. |
|  | Note 1: for the treatment of the ordinary income of members of couples see points 1068-G2 and 1068-G3. |
|  | Note 2: for the treatment of amounts received from friendly societies see point 1068-G4. |
| *Step 2.* | Work out the person’s ordinary free area limit using points 1068-G9 and 1068-G10. |
|  | Note: a person’s ordinary income free area is the maximum amount of ordinary income the person can have without affecting the person’s benefit rate. |
| *Step 3.* | Work out whether the person’s ordinary income exceeds the person’s ordinary income free area. |
| *Step 4.* | If the person’s ordinary income does not exceed the person’s ordinary income free area, the person’s ordinary income excess is nil. |
| *Step 5.* | If the person’s ordinary income exceeds the person’s ordinary income free area, the person’s ordinary income excess is the person’s ordinary income less the person’s ordinary income free area. |
| *Step 6.* | Use the person’s ordinary income excess to work out the person’s reduction for ordinary income using points 1068-G11 and 1068-G12 below. |

Note 1: for “ordinary income” see section 8.

Note 2: see point 1068-A1 (Steps 7 to 10) for the significance of the person’s reduction for ordinary income.

Note 3: the application of the ordinary income test is affected by provisions concerning:

investment income (sections 1073 to 1099);

disposal of income (sections 1106 to 1112).

*Ordinary income of members of couples*

1068-G2. For the purposes of this Module, the ordinary income of a person who is a member of a couple is to be taken to include the ordinary income (other than any AUSTUDY allowance received by the person’s partner).

*Income disregarded under earnings credit provisions*

1068-G3. If, in applying the ordinary income test to a person’s partner, the whole or a part of a payment to which the partner has become entitled is to be disregarded under section 1113 (earnings

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credit), the whole of that amount, or that part of that amount, is also to be disregarded in working out the ordinary income of the person for the purposes of point 1068-G2.

*Friendly society amounts*

1068-G4. The ordinary income of a person:

(a) to whom a sickness benefit is payable; or

(b) who is the partner of a person to whom paragraph (a) applies;

is not to include any amount received by the person from an approved friendly society in respect of the incapacity because of which the person is qualified for the sickness benefit.

Note: for “approved friendly society” see section 23.

*Ordinary income includes certain periodical payments from relatives*

1068-G5. Subject to point 1068-G6, in this Module, a person’s ordinary income includes a periodical payment or benefit by way of gift or allowance from the father, mother, son, daughter, brother or sister of the person.

Note: point 1068-G5 reverses paragraph 8 (9) (z) which excludes these amounts.

*Board and lodging*

1068-G6. A person’s ordinary income is not to include a payment to the person for board or lodging provided by the person to the person’s father, mother, son, daughter, brother or sister.

*Termination payments*

1068-G7. If:

(a) a person’s employment has been terminated; and

(b) as a result the person is entitled to a lump sum payment from the person’s former employer;

the person is taken to have received the lump sum payment on the day on which the person’s employment was terminated.

*Ordinary income received at intervals longer than one fortnight* 1068-G8. If:

(a) a person earns, derives or receives income for a period (in this point called the **“work period”**);and

(b) the person earns, derives or receives the income at intervals longer than 1 fortnight;

the person is to be taken to earn, derive or receive (as the case may be) in a fortnight falling within the work period an amount calculated by:

(c) dividing the amount earned, derived or received by the number of days in the work period (the result is to be called the **daily rate**);and

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(d) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

EXAMPLE OF ORDINARY INCOME RECEIVED AT INTERVAL LONGER THAN ONE FORTNIGHT

*Facts:*

Fred earns $600 for the period 1 to 24 July inclusive i.e. for 25 days. The 25 days are spread over 3 fortnights as follows:

* Fred worked 5 days of the first fortnight;
* he worked each working day of the second fortnight;
* he worked 6 days of the third fortnight.

*Application:*

To work out the amount that Fred is taken to earn in the first fortnight first divide the amount he earned ($600) by the number of days in the work period (25). This gives a daily rate. The daily rate is:

|  |  |
| --- | --- |
| $600 | = $24 |
| 25 |

Then multiply the daily rate ($24) by the number of days in the fortnight that are also within the work period. The result is:

$24 × 5 = $120

For the second fortnight the calculation is:

$24 × 14 = $336

For the third fortnight the calculation is:

$24 × 6 = $144

Fred is taken to earn:

* $120 in the first fortnight; and
* $336 in the second fortnight; and
* $144 in the third fortnight.

*Ordinary free area limit*

1068-G9. A person’s ordinary free area limit is, subject to point 1068-G10, $60.

1068-G10. If:

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

(b) the person’s ordinary income exceeds $60; and

(c) the person’s ordinary income includes income from personal exertion by the person or the person’s partner;

the person’s ordinary free area limit is worked out using Table G-1. Take the amount in column 1 and add:

(d) if the person has income from personal exertion—whichever is the less of Rate A and Rate B in column 2; and

(e) if the person’s partner has income from personal exertion— whichever is the lesser of Rate A and Rate B in column 3.

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|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| TABLE G-1 | | | | |
| FREE AREA FOR MEMBERS OF COUPLE WITH INCOME FROM PERSONAL EXERTION | | | | |
| column 1 | column 2 | | column 3 | |
|  | person’s income from personal exertion | | partner’s income from personal exertion | |
|  | column 2a | column 2b | column 3a | column 3b |
| basic free area | Rate A | Rate B | Rate A | Rate B |
| $60 | rate of income from personal exertion | $30 | rate of income from personal exertion | $30 |

Note: for “income from personal exertion” see subsection 8 (1).

*Benefit reduction for ordinary income in excess of the ordinary free area limit*

1068-G11. A person’s reduction for ordinary income is worked out using Table G-2. Work out which family situation applies to the person. The reduction for ordinary income is the amount worked out using the corresponding calculation in column 3 plus the amount (if any) worked out using the corresponding calculation in column 4.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE G-2 | | | |
| REDUCTION FOR ORDINARY INCOME | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s family situation | lower range excess reduction | upper range excess reduction |
| 1. | Not member of a couple | **lower range excess**  2 | **upper range excess** |
| 2. | Partnered (partner getting neither pension nor benefit)—partner not getting AUSTUDY allowance | **lower range excess**  2 | **upper range excess** |
| 3. | Partnered (partner getting neither pension nor benefit)—partner getting AUSTUDY allowance | **lower range excess**  4 | **upper range excess**  2 |
| 4. | Partnered (partner getting pension or benefit) | **lower range excess**  4 | **upper range excess**  2 |

Note: for “partnered (partner getting neither pension nor benefit)” and “partnered (partner getting pension or benefit)” see section 4.

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*Lower range excess/upper range excess*

1068-G12. If a person has an ordinary income excess:

(a) the part of the excess that does not exceed $80 is the person’s **lower range** excess; and

(b) the part (if any) of the excess that exceeds $80 is the person’s **upper range** excess.

*Ordinary income excess*

1068-G13. A person’s **ordinary income** excess is the person’s ordinary income less the person’s ordinary free area limit.

*MODULE H—MAINTENANCE INCOME TEST*

*Effect of maintenance income on maximum payment rate*

1068-H1. This is how to work out the effect of a person’s maintenance income on the person’s maximum payment rate:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the amount of the person’s maintenance income on a fortnightly basis. |
|  | Note 1: for the treatment of the maintenance income of members of a couple see points 1068-H2 to 1068-H4. |
|  | Note 2: for the treatment of maintenance income received at intervals longer than 2 weeks see point 1068-H5. |
|  | Note 3: “special maintenance income” (see subsection 10 (1)) can in some circumstances be disregarded under points 1068-H6 and 1068-H7. |
| *Step 2.* | Work out the person’s maintenance free area limit using points 1068-H10 and 1068-H11 below. |
|  | Note: a person’s maintenance income free area is the maximum amount of maintenance income the person can have without affecting the person’s benefit rate. |
| *Step 3.* | Work out whether the person’s maintenance income exceeds the person’s maintenance income free area. |
| *Step 4.* | If the person’s maintenance income does not exceed the person’s maintenance income free area, the person’s maintenance income excess is nil. |
| *Step 5.* | If the person’s maintenance income exceeds the person’s maintenance income free area, the person’s maintenance income excess is the person’s maintenance income less the person’s maintenance income free area. |
| *Step 6.* | Use the person’s maintenance income excess to work out the person’s reduction for maintenance income using points 1068-H12 and 1068-H13 below. |

Note: see point 1068-A1 (Steps 8 to 10) for the significance of the person’s reduction for ordinary income.

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*Dependent child*

1068-H1A. In working out whether a young person is a dependent child for the purposes of this Module, disregard subsection 5 (3).

*Maintenance income of members of couples*

1068-H2. For the purposes of this Module, if:

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

(b) the person’s rate is increased under Module C (additional payment for dependent partner);

the person’s maintenance income is the sum of the maintenance income of the person and the person’s partner.

1068-H3. For the purposes of this Module, if:

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

(b) the person’s partner is receiving:

(i) a social security or service pension; or

(ii) a social security benefit;

the person’s maintenance income is the sum of the maintenance income of the person and the person’s partner divided by 2.

1068-H4. For the purposes of this Module, if:

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

(b) the person’s partner is not receiving:

(i) a social security or service pension; or

(ii) a social security benefit; and

(c) the person’s rate of benefit is not increased under Module C (additional payment for dependent partner);

the person’s maintenance income is:

(d) if the partner is receiving maintenance income—the sum of the maintenance income of the person and the person’s partner divided by 2; and

(e) if the partner is not receiving maintenance income—the amount of maintenance income which the person receives.

*Maintenance income received at intervals longer than a fortnight*

1068-H5. If:

(a) a person receives maintenance income for a period (in this point called the **“maintenance period”**);and

(b) the peson receives the maintenance income at intervals longer than 1 fortnight;

the person is to be taken to receive in a fortnight falling within the maintenance period an amount calculated by:

(c) dividing the amount received by the number of days in the maintenance period (the result is the **daily rate**);and

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(d) multiplying the daily rate by the number of days in the fortnight that are also within the maintenance period.

EXAMPLE OF MAINTENANCE INCOME RECEIVED AT INTERVAL LONGER THAN ONE FORTNIGHT

|  |  |  |  |
| --- | --- | --- | --- |
| *Facts:* | Mary has 3 children. She receives $600 for the period 1 to 24 July inclusive i.e. for 25 days. The 25 days are spread over 3 fortnights as follows: | | |
|  | • Mary receives maintenance for 5 days of the first fortnight; | | |
|  | • each day of the second fortnight; | | |
|  | • 6 days of the third fortnight. | | |
| *Application:* | To work out the amount that Mary is taken to receive in the first fortnight first divide the amount she received ($600) by the number of days in the maintenance period (25). This gives a daily rate. The daily rate is: | | |
| $600 | | = $24 |
| 25 | |

Then multiply the daily rate ($24) by the number of days in the fortnight that are also within the maintenance period. The result is:

$24 × 5 = $120

For the second fortnight the calculation is:

$24 × 14 = $336

For the third fortnight the calculation is:

$24 × 6 = $144

Mary is taken to receive:

• $120 in the first fortnight; and

• $336 in the second fortnight; and

• $144 in the third fortnight.

*Special maintenance income*

1068-H6. Subject to points 1068-H8 and 1068-H9, if a person has special maintenance income in excess of the ceiling applicable to the person, the excess is disregarded for the purposes of point 1068-H12.

Note: for “special maintenance income” see subsection 10 (1).

*Special maintenance income ceiling*

1068-H7. The **ceiling** applicable to a person is the amount equal to the person’s maintenance income free area limit plus:

|  |
| --- |
| **person’s maximum payment rate** |
| 2 |

*Special maintenance income not disregarded where child support available*

1068-H8. No amount is to be disregarded under point 1068-H6 if:

(a) child support is not payable under the *Child Support (Assessment) Act 1989* to the person for a child; and

**Benefit Rate Calculator B s. 1068**

(b) the person is entitled to make an application for assessment of child support under Part V of that Act for the child payable by another person; and

(c) the person has:

(i) neither:

(a) properly made such an application; nor

(b) properly made an application under Part VI of that Act for acceptance of an agreement in relation to the child; or

(ii) the person has properly made an application of either kind, but:

(a) the person has subsequently withdrawn the application; or

(b) after child support has become payable by the other person under that Act for the child, the person has ended the entitlement to child support.

1068-H9. No amount is to be disregarded under point 1068-H6 if:

(a) child support is payable under the *Child Support (Assessment) Act 1989* to the person for a child; and

(b) the person is entitled to make an application under section 128 of that Act; and

(c) an application by the person under that section is not in force.

*How to calculate a person’s maintenance income free area limit*

1068-H10. A person’s maintenance income free area limit is worked out using Table H. Work out which family situation in Table H applies to the person. The maintenance income free area limit is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each dependent child after the first.

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|  |  |  |  |
| --- | --- | --- | --- |
| TABLE H | | | |
| MAINTENANCE INCOME FREE AREA LIMIT | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s family situation | basic free area per fortnight | additional free area per fortnight |
| 1. | Not member of a couple | $30 | $10 |
| 2. | Partnered (partner getting neither pension nor benefit)—person gets no increase for partner under Module C | $30 | $10 |
| 3. | Partnered—person gets increase for partner under Module C and both the person and the partner are receiving maintenance | $60 | $10 |
| 4. | Partnered—person gets increase for partner under Module C and either the person or the partner (but not both) is receiving maintenance income | $30 | $10 |
| 5. | Partnered (partner getting pension or benefit)—both the person and the partner are receiving maintenance income | $30 | $5 |
| 6. | Partnered (partner getting pension or benefit)—either the person or the partner (but not both) are receiving maintenance income | $15 | $5 |

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

Note 2: for “dependent child” see section 5.

Note 3: items 2 to 6 of Table G apply to members of illness separated couples.

1068-H11. In determining whether or not item 3, 4, 5 or 6 of Table H applies to a person, points 1068-H2 to 1068-H4 are to be disregarded. This has the effect of taking into account only maintenance income that the person actually receives rather than any income that the person is to be taken to receive because of maintenance income received by the person’s partner.

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*Benefit reduction for maintenance income in excess of maintenance free area limit*

1068-H12. A person’s reduction for maintenance income is:

|  |
| --- |
| **maintenance income excess** |
| 2 |

Note: for “maintenance income excess” see point 1068-H13 below.

*Maintenance income excess*

1068-H13. A person’s **maintenance income excess** is the person’s maintenance income less the person’s maintenance free area limit.

*MODULE J—REMOTE AREA ALLOWANCE*

*Remote area allowance*—*person physically in remote area*

1068-J1. An amount by way of remote area allowance is to be added to a person’s rate if:

(a) the person’s usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note 1: for “remote area” see subsection 14(1).

Note 2: a person may be considered to be physically present in a remote area during temporary absences—see subsection 14 (2).

*Remote area allowance*—*partner physically present in remote area*

1068-J2. An amount by way of remote area allowance is to be added to a person’s rate if:

(a) the person’s usual place of residence is in the remote area; and

(b) the person is absent from the remote area for a period exceeding 8 weeks (disregarding the operation of subsection 14 (2)); and

(c) the person has a partner:

(i) in respect of whom the person’s benefit rate is increased under Module C; and

(ii) whose usual place of residence is in the remote area; and

(iii) who is physically present in the remote area.

*Rate of remote area allowance*

1068-J3. The rate of remote area allowance payable to a person is worked out using Table J. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each pension or benefit increase child of the person.

**s. 1068 Benefit Rate Calculator B**

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE J | | | |
| REMOTE AREA ALLOWANCE | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | family situation | basic allowance | additional allowance for each pension or benefit increase child |
| 1. | Not member of couple | $14.00 | $7.00 |
| 2. | Partnered—remote area allowance payable to partner | $12.00 | $7.00 |
| 3. | Illness separated couple—partner not benefit increase partner | $14.00 | $7.00 |
| 4. | Partnered—remote area allowance not payable to partner and partner not benefit increase partner | $14.00 | $7.00 |
| 5. | Partnered—partner is a benefit increase partner and both person and partner are in the remote area | $24.00 | $7.00 |
| 6. | Partnered—partner is a benefit increase partner and either the person or the partner in the remote area (but not both) | $14.00 | $7.00 |

Note 1: for “benefit increase partner” see subsection 4 (10).

Note 2: item 5 includes illness separated couples.

*Meaning of remote area allowance*

1068-J4. In Table J, **remote area allowance** means:

(a) an amount added to a person’s social security pension or benefit by way of remote area allowance; or

(b) a remote area allowance payable under section 57 of the VEA.

*In remote area*

1068-J5. For the purposes of Table J in point 1068-J3, a person is **in the remote area** if:

(a) the person’s usual place of residence is in the remote area; and

(b) the person is physically present in the remote area.

*Dependent children must be physically present in Australia*

1068-J6. Additional allowance is not payable for a dependent child unless the dependent child is physically present in Australia.

**Benefit Rate Calculator B s. 1068**

*Additional allowance for dependent children only payable to one parent*

1068-J7. If additional allowance would otherwise be payable in respect of a pension or benefit increase child to 2 persons, the additional allowance is payable only:

(a) if a dependent child add-on is payable to only one of those persons—to that person; or

(b) in any other case—to the person to whom the Secretary directs that the additional allowance should be paid.

*Notice of decision*

1068-J8. If the Secretary gives a direction under paragraph 1068-J7 (b), the Secretary must give each of the persons affected by the direction notice in writing of the giving of the direction.

**s. 1069 Family Allowance Rate Calculator**

**PART 3.7—FAMILY ALLOWANCE RATE CALCULATOR**

**Rate of family allowance**

**1069.** The rate of a person’s family allowance is to be calculated in accordance with the Rate Calculator at the end of this section.

***FAMILY ALLOWANCE RATE CALCULATOR***

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Method of calculating rate*

1069-A1. The rate of family allowance of a person with an FA child or FA children is a fortnightly rate calculated as follows:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the person’s **maximum basic rate** using MODULE B below. |
| *Step 2.* | Add to the maximum basic rate any applicable amounts for multiple birth using MODULE C below: the result is the **maximum payment rate**. |
| *Step 3.* | Apply the taxable income test using MODULE D below to work out the person’s reduction for taxable income. |
| *Step 4.* | Take the person’s reduction for taxable income away from the person’s maximum payment rate: the result is the person’s rate of family allowance. |

*MODULE B—MAXIMUM BASIC RATE*

*Maximum basic rate*

1069-B1. A person’s maximum basic rate is worked out using Table B. Work out which category applies to each FA child of the person. The FA child rate for that child is the corresponding rate in column 3. The maximum basic rate is the sum of the FA child rates.

|  |  |  |
| --- | --- | --- |
| TABLE B | | |
| MAXIMUM BASIC RATE | | |
| column 1 | column 2 | column 3 |
| item | category of FA child | rate per fortnight |
| 1. | first, second or third FA child of the person | $18.60 |
| 2. | fourth or subsequent FA child of the person | $24.80 |
| 3. | FA child specified in a determination under point 260-B3 | $24.80 |

Note: for “FA child” see sections 831 to 837.

**Family Allowance Rate Calculator s. 1069**

1069-B2. If:

(a) a dependent child of a person is not an FA child of the person because of section 837; and

(b) the person has an FA child or FA children;

then, for the purposes of working out, under point 1069-B1, the FA child rate for the person’s FA child or FA children referred to in paragraph (b), the child referred to in paragraph (a) is to be treated as if the child were an FA child of the person.

*Sharing family allowance (determination under subsection 868 (1))* 1069-B3. If:

(a) 2 people are each qualified for family allowance for the same child; and

(b) the Secretary has made a declaration under subsection 868 (1); and

(c) the declaration specifies the percentage of family allowance in respect of the child that a person is to receive;

the FA child rate for that child, in working out the rate of family allowance payable to that person, is the specified percentage of the FA child rate that would otherwise apply to the child.

*2 people qualify for family allowance for same child (no determination under subsection 868 (1))*

1069-B4. If:

(a) 2 people are each qualified for family allowance for the same child; and

(b) the Secretary has not made a declaration under subsection 868 (1) in respect of the family allowance for the child; and

(c) the family allowance rate of one of the people includes an FA child rate for the child;

an FA child rate for the child is not to be included in the family allowance rate of the other person.

*MODULE C—MULTIPLE BIRTH ALLOWANCE*

*Qualification for multiple birth allowance*

1069-C1. An amount by way of a multiple birth allowance is to be added to a person’s maximum basic rate for a family payment payday if:

(a) the person has 3 or more FA children; and

(b) at least 3 of those children were born during the same multiple birth and are under the age of 6 years.

**s. 1069 Family Allowance Rate Calculator**

*Rate of multiple birth allowance*

1069-C2. The rate of multiple birth allowance is:

(a) where the number of the FA children born during the same multiple birth is 3—$74.50; and

(b) where the number of the FA children born during the same multiple birth is 4 or more—$99.40.

Note: the multiple birth allowances are indexed annually in line with CPI increases (see sections 1191 to 1194).

*Sharing family allowance between 2 people (declaration under subsection 868 (1))*

1069-C3. If:

(a) 2 people are each qualified for family allowance for the same child; and

(b) the Secretary has made a declaration under subsection 868 (1) in respect of the family allowance payable in respect of the child; and

(c) the child is one of at least 3 children who were born during the same multiple birth;

multiple birth allowance under this Module in respect of the multiple birth is to be dealt with in accordance with the declaration.

*2 people qualified for family allowance for the same child (no declaration under subsection 868 (1))*

1069-C4. If:

(a) 2 people are each qualified for family allowance for the same child; and

(b) the child is one of at least 3 children who were born during the same multiple birth; and

(c) the Secretary has not made a declaration under subsection 868 (1) in respect of family allowance payable in respect of the child; and

(d) the family allowance rate of one of the people includes a multiple birth allowance in respect of the child;

the family allowance rate of the other person is not to include any amount by way of multiple birth allowance under this Module.

*MODULE D—TAXABLE INCOME TEST*

*Effect of taxable income on maximum payment rate*

1069-D1. This is how to work out the effect of a person’s taxable income on the person’s maximum payment rate on a family payment payday.

**Family Allowance Rate Calculator s. 1069**

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out which tax year is the appropriate one for that payday using points 1069-D2 to 1069-D6 below. |
| *Step 2.* | Work out the person’s taxable income for that tax year. |
|  | Note: for the treatment of the taxable incomes of members of couples see point 1069-D7. |
| *Step 3.* | Work out the person’s taxable income free area limit using point 1069-D8 below. |
| *Step 4.* | Take the person’s taxable income free area limit away from the person’s taxable income for that tax year: the result is the person’s taxable income excess. |
| *Step 5.* | Use the person’s taxable income excess to work out the person’s reduction for taxable income under points 1069-D9 and 1069-D11. |

*Appropriate tax year*

1069-D2. Subject to points 1069-D4, 1069-D5 and 1069-D6, the appropriate tax year for a family payment payday is the base tax year for that payday.

*Base tax year*

1069-D3. The base tax year for a family payment payday is the tax year that ended on 30 June in the calendar year that came immediately before the calendar year in which the payday occurs.

*Example:* a family payment payday occurs on 25 January 1990—this day occurs in the calendar year 1 January 1990 to 31 December 1990—the calendar year that came immediately before this one is the calendar year 1 January 1989 to 31 December 1989—the base tax year is the tax year that ended on 30 June 1989 (i.e. the year of income that commenced on 1 July 1988).

*Change to appropriate tax year because of assumed notifiable event*

1069-D4. If:

(a) an assumed notifiable event in relation to the person occurs after the end of the base tax year and before the beginning of the FA period; and

(b) the person’s taxable income for the tax year in which the assumed notifiable event occurs:

(i) exceeds 125% of the person’s taxable income for the base tax year; and

(ii) exceeds the person’s taxable income free area limit;

the appropriate tax year, for the purposes of applying this Module to the person from the beginning of the FA period, is the tax year in which the assumed notifiable event occurs.

Note: for “assumed notifiable event” see section 857.

**s. 1069 Family Allowance Rate Calculator**

*Change to appropriate tax year because of notifiable event* 1069-D5. If:

(a) a notifiable event occurs in relation to a person; and

(b) the person’s taxable income for the tax year in which the notifiable event occurs:

(i) exceeds 125% of the person’s taxable income for the base tax year; and

(ii) exceeds the person’s taxable income free area limit; the appropriate tax year, for the purposes of applying this Module to the person for a family payment payday that occurs after the notifiable event, is the tax year in which the notifiable event occurs.

Note: for “notifiable event” see section 858.

*Change to appropriate tax year at recipient’s request* 1069-D6. If:

(a) a person requests the Secretary to make a determination under section 859; and

(b) as a result, the Secretary determines under that section that the appropriate tax year, for the purposes of applying this Module to the person for a family payment payday after the day on which the request is made, is the tax year in which the person makes the request;

the appropriate tax year, for those purposes, is the tax year in which the person makes the request.

*Person’s taxable income for base year*—*member of a couple*

1069-D7. If a person is a member of a couple, the person’s taxable income for a tax year is to be taken to include the taxable income of the person’s partner for that year.

*Taxable income free area limit*

1069-D8. A person’s taxable income free area limit for a family payment payday is worked out using Table D. The taxable income free area limit is the amount in column 1 plus an additional amount in column 2 for each FA child (after the first).

|  |  |
| --- | --- |
| TABLE D | |
| TAXABLE INCOME FREE AREA LIMITS | |
| column 1 | column 2 |
| basic free area | additional free area for each FA child (after the first) |
| $57,620 | $2,882 |

Note: these amounts are indexed annually in line with CPI increases (see sections 1191 to 1194).

**Family Allowance Rate Calculator s. 1069**

*Reduction for taxable income*

1069-D9. Subject to point 1069-D10 below, a person’s taxable income reduction for a family payment payday is:

**taxable income excess**

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Note 1: for taxable income excess see point 1069-D11 below.

Note 2: derivation of taxable income reduction formula—start with the person’s taxable income excess—divide by 26 to convert from a yearly to a fortnightly basis—divide by 4 to give a 25% taper.

*Amounts for certain children not affected by taxable income test*

1069-D10. If a person has an exempt FA child or exempt FA children, the person’s family allowance rate for a family payment payday is not to fall below the amount, or the sum of the amounts, included in the person’s maximum basic rate under point 1069-B1 in respect of the exempt FA child or the exempt FA children.

Note: for “exempt FA child” see subsection 5 (1).

*Taxable income excess*

1069-D11. A person’s taxable income excess for a family payment payday is the person’s taxable income for the appropriate tax year for the family allowance payday less the person’s taxable income free area limit for that payday.

Note: if the person’s taxable income for the appropriate tax year does not exceed the person’s taxable income free area limit, the person’s taxable income excess and reduction for taxable income are both nil.

**s. 1070 Family Allowance Supplement Rate Calculator**

**PART 3.8—FAMILY ALLOWANCE SUPPLEMENT RATE CALCULATOR**

**Rate of family allowance supplement**

**1070.** The rate of a person’s family allowance supplement is to be calculated in accordance with the Rate Calculator at the end of this section.

***FAMILY ALLOWANCE SUPPLEMENT RATE CALCULATOR***

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Method of calculating rate*

1070-A1. The rate of family allowance supplement is a fortnightly rate calculated as follows:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the person’s maximum basic rate using MODULE B below. |
| *Step 2.* | Work out any applicable additional amount for rent assistance using MODULE C below. |
| *Step 3.* | Add up the amounts obtained in Steps 1 and 2: the result is the maximum payment rate. |
| *Step 4.* | If the taxable income test applies to the person (see point 1070-D1), work out the person’s reduction for taxable income. |
| *Step 5.* | Take the person’s reduction for taxable income away from the person’s maximum basic rate: the result is the person’s rate of family allowance supplement. |

*MODULE B—MAXIMUM BASIC RATE*

*Maximum basic rate*

1070-B1. A person’s maximum basic rate is worked out using Table B. Work out which category applies to each FAS child of the person. The FAS child rate is the corresponding amount in column 3. The maximum basic rate is the sum of the FAS child rates.

**Family Allowance Supplement Rate Calculator s. 1070**

|  |  |  |
| --- | --- | --- |
| TABLE B | | |
| MAXIMUM BASIC RATE | | |
| column 1 | column 2 | column 3 |
| item | category of FAS child | rate per fortnight |
| 1. | child who has not turned 13 | $48.30 |
| 2. | child who has turned 13 but has not turned 16 | $70.50 |
| 3. | child who has turned 16 | $34.00 |

Note 1: for FAS child see sections 891 to 894.

Note 2: the item 1 rate is adjusted annually so that the combined family allowance and family allowance supplement for children covered by this item do not fall below 15% of the combined pensioner couple maximum basic rate (see subsections 1199 (1) and (2)).

Note 3: the item 2 rate is adjusted annually so that the combined family allowance and family allowance supplement for children covered by this item do not fall below 20% of the combined pensioner couple maximum basic rate (see subsections 1199 (3) and (4)).

*2 people sharing family allowance supplement for the same child (declaration under subsection 927 (1))*

1070-B2. If:

(a) 2 people are each qualified for family allowance supplement for the same child; and

(b) the Secretary has made a declaration under subsection 927 (1) in respect of family allowance supplement for the child; and

(c) the declaration specifies the percentage of the family allowance supplement that one of the people is to receive;

the FAS child rate for the child, in working out that person’s family allowance supplement rate, is to be the specified percentage of the amount that would otherwise have been the FAS child rate for the child.

*2 people qualified for family allowance supplement for the same child (declaration under subsection 927 (1) directs the whole of family allowance supplement to one of those people)*

1070-B3. If:

(a) 2 people are each qualified for family allowance supplement for the same child; and

(b) the Secretary has made a declaration under subsection 927 (1) in respect of family allowance supplement for the child; and

(c) the declaration includes a determination that the family allowance supplement is payable to only one of those people;

the other person’s family allowance supplement rate is not to include any FAS child rate for the child.

**s. 1070 Family Allowance Supplement Rate Calculator**

*2 people qualified for family allowance supplement for the same child (no declaration under subsection 927 (1))*

1070-B4. If:

(a) 2 people are each qualified for family allowance supplement for the same child; and

(b) the Secretary has not made a declaration under subsection 927 (1) in respect of family allowance supplement for the child; and

(c) the family allowance supplement rate of one of the people includes an FAS child rate for the child;

the family allowance supplement rate of the other person is not to include any FAS child rate for the child.

*MODULE C—RENT ASSISTANCE*

*Rent assistance*

1070-C1. A person is entitled to an additional amount to help cover the cost of rent if:

(a) the person is not an ineligible homeowner; and

(b) the person pays, or is liable to pay, rent (other than Government rent); and

(c) the rent is payable at a rate of more than $40 per fortnight.

Note: for “rent”, “Government rent” and “ineligible homeowner” see section 13.

*Rate of rent assistance*

1070-C2. The rate of rent assistance per fortnight is worked out using Table C. Work out the number of FAS children the person has and calculate Rate A for the person using the corresponding formula in column 3. This will be the person’s rate of rent assistance but only up to the person’s maximum rent assistance rate. The person’s maximum rent assistance rate is Rate B for the person worked out using column 4 of the Table.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE C | | | |
| RATE OF RENT ASSISTANCE | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | number of FAS children | Rate A | Rate B |
| 1. | 1 or 2 | **fortnightly rent**-$40  2 | $70 |
| 2. | 3 or more | **fortnightly rent**—$40  2 | $80 |

Note 1: for “FAS child” see section 6.

Note 2: the Rate B amounts are indexed 6 monthly in line with CP1 increases (see sections 1191 to 1194).

**Family Allowance Supplement Rate Calculator s. 1070**

*Fortnightly rent*

1070-C3. **Fortnightly rent** in Table C is the fortnightly rent paid or payable by the person whose allowance is being calculated.

*Rent paid by a member of a couple*

1070-C4. If a person is a member of a couple and is living with his or her partner in their home, any rent paid or payable by the partner is to be treated as paid or payable by the person.

*MODULE D—TAXABLE INCOME TEST*

*Persons affected by the taxable income test*

1070-D1. The taxable income test applies to a person unless the person is receiving payments under:

(a) the AUSTUDY scheme; or

(b) the ABSTUDY scheme; or

(c) the Post-Graduate Awards Scheme.

*Effect of taxable income on maximum payment rate*

1070-D2. This is how to work out the effect of a person’s taxable income on the person’s maximum payment rate for a FAS allowance period:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out which tax year is the appropriate one for that payday using points 1070-D3 to 1070-D8 below. |
| *Step 2.* | Work out the person’s taxable income for that tax year using points 1070-D9 to 1070-D13 below. |
| *Step 3.* | Work out the person’s taxable income free area limit using point 1070-D14 below. |
| *Step 4.* | Take the person’s taxable income free area limit away from the person’s taxable income for that tax year: the result is the person’s taxable income excess. |
| *Step 5.* | Use the person’s taxable income excess to work out the person’s reduction for taxable income under points 1070-D15 and 1070-D16. |

*Appropriate tax year*

1070-D3. Subject to points 1070-D5 to 1070-D8, the appropriate tax year for a FAS period is the base tax year for that period.

*Base tax year*

1070-D4. The base tax year for a FAS period is the tax year that ended on 30 June in the calendar year that came immediately before the calendar year in which the FAS period occurs.

**s. 1070 Family Allowance Supplement Rate Calculator**

*Current tax year to be retained for consecutive calendar years in certain circumstances*

1070-D5. If:

(a) a family allowance supplement is payable to a person:

(i) on the last family payment payday in one calendar year; and

(ii) on the first family payment payday in the next calendar year; and

(b) the person’s family allowance supplement rate on the last family payment payday in the earlier of the 2 calendar years is worked out on the basis that the person’s appropriate tax year is the tax year in which that payday occurs (in this point called the **“current tax year”**); and

(c) the person’s family allowance supplement rate on that payday was worked out on that basis because the person had made a request under section 918; and

(d) the person’s taxable income for the current tax year is less than the person’s taxable income for the base tax year;

the person’s appropriate tax year, as from the beginning of the later calendar year, is the current tax year and not the base tax year.

*Change to appropriate tax year because of assumed notifiable event*

1070-D6. If:

(a) an assumed notifiable event occurs in relation to a person after the end of the base tax year and before the beginning of the FAS period; and

(b) the person’s taxable income for the tax year in which the assumed notifiable event occurs:

(i) exceeds 125% of the person’s taxable income for the base tax year; and

(ii) exceeds the person’s taxable income free area limit; and

(c) the Secretary is satisfied that more than 25% of the difference between the person’s taxable incomes for those 2 tax years is directly attributable to the assumed notifiable event;

the appropriate tax year, for the purposes of applying this Module to the person from the beginning of the FAS period, is the tax year in which the assumed notifiable event occurs.

Note: for “assumed notifiable event” see section 916.

*Change to appropriate tax year because of notifiable event*

1070-D7. If:

(a) a notifiable event occurs in relation to a person; and

(b) the person’s taxable income for the tax year in which the notifiable event occurs:

**Family Allowance Supplement Rate Calculator s. 1070**

(i) exceeds 125% of the person’s taxable income for the base tax year; and

(ii) exceeds the person’s taxable income free area limit; and

(c) the Secretary is satisfied that more than 25% of the difference between the person’s taxable incomes for those 2 tax years is directly attributable to the notifiable event;

the appropriate tax year, for the purposes of applying this Module to the person for the remainder of the FAS period, is the tax year in which the notional notifiable event occurs.

Note: for “notifiable event” see section 917.

*Change to appropriate tax year at recipient’s request*

1070-D8. If:

(a) a person requests the Secretary to make a determination under section 918; and

(b) as a result the Secretary determines under that section that the appropriate tax year, for the purposes of applying this Module to the person for a family allowance payday after the day on which the request is made, is the tax year in which the person makes the request;

the appropriate tax year, for those purposes, is the tax year in which the person makes the request.

*Person’s taxable income for tax year*—*member of a couple*

1070-D9. If the person is a member of a couple, the person’s taxable income for a tax year is to be taken to include the taxable income of the person’s partner for that year.

*Person’s taxable income for tax year*—*ascertainment*

1070-D10. If the person does not have a taxable income for a tax year in accordance with point 1070-D11, the person is to be taken to have an unknown taxable income for that year.

Note: a person is not qualified for FAS if the person’s taxable income for the tax year is unknown.

*Taxable income for tax year*

1070-D11. The person’s taxable income for a tax year is:

(a) the person’s assessed taxable income for that year; or

(b) if the person does not have an assessed taxable income for that year—the person’s accepted estimated taxable income for that year.

*Assessed taxable income*

1070-D12. For the purposes of this Module, a person’s **assessed taxable income** for a tax year at a particular time is the most recent of:

(a) if, at that time, the Commissioner of Taxation has an assessment

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or an amended assessment of that taxable income—that taxable income according to the assessment or amended assessment; or

(b) if, at that time, a tribunal has amended an assessment or amended assessment made by the Commissioner—that taxable income according to the amendment made by the tribunal; or

(c) if, at that time, a court has amended an assessment or amended assessment made by the Commissioner or an amended assessment made by the tribunal—that taxable income according to the amendment made by the court.

*Accepted estimated taxable income*

1070-D13. For the purposes of this Module, a person’s accepted estimated taxable income for a tax year is that taxable income according to the most recent notice given by the person under section 912 and accepted by the Secretary for the purposes of this Module.

*Taxable income free area limit*

1070-D14. A person’s taxable income free area limit for a FAS period is worked out using Table D. The taxable income free area limit is the amount in column 1 plus an additional amount in column 2 for each FAS child of the person (after the first).

|  |  |
| --- | --- |
| TABLE D | |
| TAXABLE INCOME FREE AREA LIMITS | |
| column 1 | column 2 |
| basic free area | additional free area |
| $16,750 | $624 |

Note: the basic free area is indexed annually in line with CPI increases (see sections 1191 to 1194).

*Reduction for taxable income*

1070-D15. A person’s taxable income reduction for a FAS period is:

|  |
| --- |
| **taxable income excess** |
| 52 |

Note 1: for “taxable income excess” see point 1070-D16 below.

Note 2: explanation of derivation of taxable income reduction formula—start with the person’s taxable income excess—divide by 26 to convert from a yearly to a fortnightly basis— divide by 2 to give a 50% taper.

*Taxable income excess*

1070-D 16. A person’s **taxable income excess** for a FAS period is the person’s taxable income for the appropriate tax year for the FAS period less the person’s taxable income free area limit for the FAS period.

**Family Allowance Supplement Rate Calculator s. 1070**

Note: if the person’s taxable income for the appropriate tax year does not exceed the person’s taxable income free area limit, the person’s taxable income excess and reduction for taxable income are both nil.

**s. 1071 Fringe Benefits Means Test Calculators**

**PART 3.9—FRINGE BENEFITS MEANS TEST CALCULATORS**

**Fringe Benefits Ordinary Income Test Calculator**

**1071.** The Fringe. Benefits Ordinary Income Test Calculator at the end of this section is to be used in working out whether a person satisfies the fringe benefits ordinary income test for the purposes of this Act.

***FRINGE BENEFITS ORDINARY INCOME TEST CALCULATOR***

*Satisfying the fringe benefits ordinary income test*

1071-1. A person satisfies the fringe benefits ordinary income test if the person’s annual rate of ordinary income does not exceed the fringe benefits ordinary income free area.

Note 1: for “annual rate of ordinary income” see points 1071-2 and 1071-3 below.

Note 2: for “fringe benefits ordinary income free area” see point 1071-4 below.

*Financial hardship cases*

1071-2. For the purposes of point 1071-1, a person’s ordinary income is to be taken to include an amount per year that is taken into account under subsection 1130 (5).

*Changes in income rate (13 week buffer)*

1071-3. If on a particular day a person’s annual rate of ordinary income increases from a rate below or equal to the person’s fringe benefits ordinary income free area to a rate not more than 25% above that free area, the person is to be taken to satisfy the fringe benefits ordinary income test until:

(a) the period of 13 weeks starting on that day ends; or

(b) the person’s annual rate of ordinary income exceeds 125% of that free area;

whichever happens first.

*Ordinary income free area*

1071-4. A person’s fringe benefits ordinary income free area is worked out using the Table. Work out which family situation in the Table applies to the person. The fringe benefits ordinary income free area is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each dependent child of the person.

**Fringe Benefits Means Test Calculators s. 1071**

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE | | | |
| FRINGE BENEFITS ORDINARY INCOME FREE AREA | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | person’s family situation | basic free area | additional free area |
| 1. | not a member of a couple | $5,148 | $1,040 |
| 2. | member of a couple | $4,420 | $520 |

Note: the basic free area is indexed in line with CPI increases (see sections 1191 to 1194).

**Fringe Benefits Assets Test Calculator**

**1072.** The Fringe Benefits Assets Test Calculator at the end of this section is to be used in working out whether a person satisfies the fringe benefits assets test for the purposes of this Act.

***FRINGE BENEFITS ASSETS TEST CALCULATOR***

*Satisfying the fringe benefits assets test*

1072-1. A person satisfies the fringe benefits assets test if the value of the person’s assets does not exceed the person’s fringe benefits assets value limit.

Note: for “fringe benefits assets value limit” see point 1072-2 below.

*Fringe benefits assets value limit*

1072-2. A person’s fringe benefits assets value limit is worked out using the Table. Work out which family situation applies to the person. The fringe benefits assets value limit is the corresponding amount in column 3.

**s. 1072 Fringe Benefits Means Test Calculators**

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE | | | |
| FRINGE BENEFITS ASSETS VALUE LIMIT | | | |
| column 1 | column 2 | column 3 | |
|  |  | assets value limit | |
|  |  | column 3a | column 3b |
| item | person’s family situation | either person or partner homeowner | neither person nor partner homeowner |
| 1. | not a member of a couple | $118,000 | $192,000 |
| 2. | member of a couple | $84,500 | $121,500 |

Note 1: the column 3a amounts are indexed in line with CPI increases (see sections 1191 to 1194).

Note 2: the column 3b amounts are adjusted annually (see section 1206).

**General Provisions Relating to the Ordinary Income Test s. 1073**

**PART 3.10—GENERAL PROVISIONS RELATING TO THE ORDINARY INCOME TEST**

***Division 1***—***Investment income***

***Subdivision A*—*Introduction***

**Structure of Division**

**1073. (1)** This Division sets out the way that certain types of investment income are taken into account in applying the ordinary income test: if a person has any of the types of income referred to in column 2 of the following Table, the rules relating to that type of income are found in the corresponding sections referred to in column 3.

|  |  |  |
| --- | --- | --- |
| TABLE | | |
| STRUCTURE OF DIVISION | | |
| column 1 | column 2 | column 3 |
| Item | Investment | Section(s) |
| 1. | Accruing return investments made before 1 January 1988 | 1075-1076 |
| 2. | Accruing return investments made after 1 January 1988 | 1077 |
| 3. | Market-linked investments made before 9 September 1988 | 1082-1083 |
| 4. | Market-linked investments made after 9 September 1988 | 1084 |
| 5. | Compulsorily preserved superannuation | 1097 |
| 6. | Immediate annuities | 1098 |
| 7. | Superannuation pensions | 1099 |

Note: for definitions of the terms used in the Table see section 9.

**(2)** If the person’s income is not covered by any of the other Subdivisions, it may be covered by section 1074 below.

**Certain capital amounts not covered by other Subdivisions taken to be received over 12 months**

**1074. (1)** Where a person becomes entitled, whether before or after the commencement of this section, to receive an amount of income that:

(a) is of a capital nature; and

(b) is not income from remunerative work undertaken by the person; and

(c) is not a return from an accruing return investment; and

(d) is not a return from a market-linked investment made on or after 9 September 1988;

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the person is, for the purposes of this Act, to be taken to receive one fifty-second of that amount as income of the person during each week in the period of 12 months commencing on the day on which the person becomes entitled to receive that amount.

**(2)** A reference in subsection (1) to a person becoming entitled to receive an amount includes a reference to the person becoming entitled to receive an amount under arrangement of the kind referred to in the definition of “accruing return investment” in subsection 9 (1) to the extent to which section 1076 or 1077 does not apply to that entitlement.

***Subdivision B***—***Accruing return investments***

**Investments made before 1 January 1988 with friendly societies or where no immediate return**

**1075. (1)** If:

(a) a person has made, at any time before 1 January 1988, an accruing return investment; and

(b) the investment is:

(i) an investment with a friendly society; or

(ii) an investment of a kind where a return is not available:

(a) until the end of a period of at least 12 months after that investment was made; or

(b) until realisation of that investment; and

(c) the person becomes entitled to receive an amount by way of a return on that investment;

the person is, for the purposes of this Act, to be taken to receive one fifty-second of that amount as income of the person during each week in the assumed receipt period.

**(2)** In this section:

**“assumed receipt period”** means the period of 12 months commencing on the day on which the person becomes entitled to receive an amount by way of a return from an accruing return investment referred to in subparagraphs (1) (b) (i) and (ii).

**Investments made before 1 January 1988 not with friendly societies or where return is not deferred**

**1076.** If:

(a) a person has made, at any time before 1 January 1988, an accruing return investment; and

(b) the investment is not:

(i) an investment with a friendly society; or

(ii) an investment of a kind where a return is not available:

(a) until the end of a period of at least 12 months after the investment was made; or

(b) until realisation of the investment;

**General Provisions Relating to the Ordinary Income Test s. 1076**

the person is to be taken, for the purposes of this Act, to receive the current annual rate of return on that investment as ordinary income of the person from the day on which that investment was made.

**Investments made after 1 January 1988**

**1077.** If a person makes, on or after 1 January 1988, an accruing return investment, the person is, for the purposes of this Act, to be taken to receive the current annual rate of return on that investment as ordinary income of the person from the day on which that investment was made.

**Actual return not to be treated as income**

**1078.** If:

(a) a person is to be taken, because of this Subdivision, to have received income from an investment in respect of a period; and

(b) the person actually receives a return from the investment in respect of that period;

the return actually received is to be taken, for the purposes of this Act, not to be ordinary income of the person.

**Rate of return where it can only be approximated**

**1079.** If the rate of return on an accruing return investment is not a fixed rate or a quantifiable rate, for the purposes of this Subdivision, the current annual rate of return on that investment is a reasonable approximation of the rate of return.

**Reduction of rate of return for investment costs**

**1080. (1)** Where, under another provision of this Subdivision, a person is to be taken to receive a rate of return on an investment as income, the amount that the person is taken to receive is, during each week in the assumed receipt period, to be reduced by one fifty-second of the total amount of the person’s reasonable investment costs.

**(2)** For the purposes of subsection (1), the person’s **reasonable investment costs** for the investment are the reasonable costs that any person making an identical investment would be required to pay as a condition of being permitted to make that investment.

**(3)** Subsection (1) does not apply in respect of investment costs incurred in respect of investments made before 9 September 1988.

**(4)** In this section, **“assumed receipt period”** means the period of 12 months after the day from which the person is to be taken to receive a rate of return on the investment as income under another provision of this Subdivision.

**s. 1081 General Provisions Relating to the Ordinary Income Test**

**Conversion of investment to accruing return investment**

**1081. (1)** If an investment that was not an accruing return investment (in this subsection called the **“original investment”**)is converted into an accruing return investment then, for the purposes of this Subdivision:

(a) the accruing return investment is to be taken to have been made on the day the original investment was so converted; and

(b) the original investment is to be taken to have been realised on that day.

**(2)** Subsection (1) applies to an investment whether or not the investment was able to be converted into an accruing return investment because of a provision of the agreement relating to the making of the original investment.

***Subdivision C***—***Market-linked investments***

**Investments made before 9 September 1988**

**1082.** If a person becomes entitled to receive an amount by way of a return from a market-linked investment made before 9 September 1988, the person is, for the purposes of this Act, to be taken to receive one fifty-second of that amount as ordinary income of the person during each week in the period of 12 months commencing on the day on which the person becomes entitled to receive that amount.

**Special provisions about certain investments made before 9 September 1988**

**1083. (1)** If:

(a) before 9 September 1988, a person has made a market-linked investment; and

(b) under an agreement made before 9 September 1988, dividends payable to the person in respect of that investment are not paid to the person directly but are invested in the person’s name in market-linked investments included in the same investment product;

any market-linked investment arising from the investment of a dividend pursuant to that agreement on or after 9 September 1988 is to be taken, for the purposes of this Subdivision, to have been made before 9 September 1988.

**(2)** Subsections (3) and (4) apply if, at any time after 9 September 1988:

(a) a person held, or holds, 2 or more market-linked investments included in the same investment product; and

(b) at least one of the investments was made before 9 September 1988 and at least one of the investments was made on or after that day; and

**General Provisions Relating to the Ordinary Income Test s. 1083**

(c) the person disposed, or disposes, of any of those investments.

**(3)** If the amount received in respect of the disposal is or was greater than or equal to:

(a) the value or amount, at the time of the disposal, of the investment made before 9 September 1988; or

(b) the sum of the values or amounts, at the time of the disposal, of the investments made before 9 September 1988;

as the case requires, the person is to be taken, for the purposes of this Subdivision, to have disposed of the whole of that investment or those investments.

**(4)** If the amount received in respect of the disposal (in this subsection called the **“disposal amount”**)is or was less than:

(a) the value or amount, at the time of the disposal, of the investment made before 9 September 1988; or

(b) the sum of the values or amounts, at the time of the disposal, of the investments made before 9 September 1988;

as the case requires, the person is to be taken, for the purposes of this Subdivision, to have disposed of so much of that investment or those investments as is equal to the disposal amount.

**Investments made after 9 September 1988**

**1084.** If, on or after 9 September 1988, a person makes a market-linked investment, the person is, for the purposes of this Act, to be taken to receive the product rate of return on that investment as ordinary income of the person from:

(a) the day on which that investment was made; or

(b) the commencement of this section; whichever is later.

Note: for “product rate of return” see section 1086 below.

**Actual return not to be treated as income**

**1085.** If:

(a) a person is to be taken, because of this Subdivision, to have received ordinary income from an investment in respect of a period; and

(b) the person actually receives a return from the investment in respect of that period;

the return actually received is to be taken, for the purposes of this Act, not to be ordinary income of the person.

**Product rate of return**

**1086.** The **product rate of return** on a market-linked investment is:

(a) except where paragraph (b) applies—the statutory rate of return for that investment; or

**s. 1086 General Provisions Relating to the Ordinary Income Test**

(b) if a determination by the Secretary under subsection 1088 (1) is in force in relation to that investment—the percentage per year specified in that determination.

**Statutory rate of return**

**1087. (1)** The Minister may from time to time, by notice in writing, determine a rate of return for market-linked investments that is less than 11% but not less than 0% per year.

Note: the statutory rate of return is set at 11% (see section 9) unless there is a determination in force under section 1087.

**(2)** A notice by the Minister under subsection (1) is a disallowable instrument for the purposes of section 46a of the *Acts Interpretation Act 1901.*

Note: in general terms, section 46a of the *Acts* *Interpretation Act 1901* provides for Parliamentary scrutiny of disallowable instruments. A disallowable instrument must be laid before Parliament and if either House of Parliament disallows it, the instrument ceases to have effect. For the precise terms of the provisions relating to disallowable instruments see sections 46a, 48, 48a, 48b, 49 and 50 of the *Acts Interpretation Act 1901.*

**Current rate of return may apply instead of statutory rate of return in some cases**

**1088. (1)** If the Secretary is satisfied that the current annual rate of return on market-linked investments included in an investment product is less than the statutory rate of return on those market-linked investments, the Secretary must determine the rate that is to be the current annual rate of return on market-linked investments included in that investment product.

**(2)** A determination under subsection (1) may be made either on an application made under section 1089 or otherwise.

**(3)** In making a determination under subsection (1) of a current annual rate of return on market-linked investments included in an investment product, the Secretary must have regard to all information that is available to the Secretary about the return (if any) on those market-linked investments during the immediately preceding period of 12 months.

**Application for determination under section 1088**

**1089. (1)** An application for a determination under section 1088 in relation to market-linked investments included in an investment product may be made by:

(a) the fund manager for the investment product; or

(b) a natural person who holds a market-linked investment included in the investment product.

**(2)** An application under subsection (1) must be made in writing.

**General Provisions Relating to the Ordinary Income Test s. 1090**

**Secretary not to be required to consider applications in certain circumstances**

**1090. (1)** This section applies to an investment product if:

(a) on application under subsection 1089 (1), the Secretary has made or refused to make a determination under subsection 1088 (1) in relation to the investment product; or

(b) in any other case—the Secretary has made a determination under subsection 1088 (1) in relation to the investment product.

**(2)** If this section applies to an investment product, the Secretary is not required to consider any application made in relation to that investment product that is made:

(a) within the period of 3 months after the making of the application referred to in paragraph (1) (a), or of the determination referred to in paragraph (1) (b), as the case requires; or

(b) if, within that period of 3 months, the Minister determines a new rate of return as mentioned in subsection 1087(1) in relation to that investment product—within the period of 3 months after the date of the Minister’s determination.

**Duration of determination under section 1088**

**1091. (1)** A determination under subsection 1088 (1) comes into force, or is to be taken to have come into force:

(a) unless paragraph (b) applies—on the date of the determination; or

(b) if the determination is made on application under subsection 1089 (1)—on the day when the application was received by the Secretary.

**(2)** A determination by the Secretary under subsection 1088 (1) in relation to an investment product remains in force until:

(a) the Minister determines a new rate of return under section 1087 that is lower than the rate of return provided for by the Secretary’s determination; or

(b) a new determination by the Secretary under subsection 1088 (1) in relation to that investment product comes into force; or

(c) the determination is revoked by the Secretary under section 1092;

whichever happens first.

**Revocation of determination under section 1088**

**1092.** The Secretary may revoke a determination under subsection 1088 (1) of the current annual rate of return on market-linked investments included in an investment product if and only if .the Secretary ceases to be satisfied that the current annual rate of return on those investments is lower than the statutory rate of return on those investments.

**s. 1093 General Provisions Relating to the Ordinary Income Test**

**Notices in relation to exercise of powers under sections 1088 to 1092**

**1093. (1)** If the Secretary:

(a) is considering an application under subsection 1089 (1) in relation to an investment product; or

(b) otherwise than on an application under that subsection, proposes to make a determination under subsection 1088 (1) in relation to an investment product;

the Secretary must notify the fund manager, in writing, accordingly.

**(2)** If the Secretary makes a determination under subsection 1088 (1) the Secretary must cause the determination to be notified in the *Gazette.*

**(3)** A failure to comply with subsection (2) in relation to a determination does not invalidate the determination.

**(4)** If the Secretary:

(a) makes a determination under subsection 1088 (1) in relation to an investment product; or

(b) revokes a determination under subsection 1088 (1) in relation to an investment product; or

(c) refuses, on an application under subsection 1089 (1), to make a determination under subsection 1088(1) in relation to an investment product;

the Secretary must notify the fund manager, in writing, accordingly.

**Determination of entitlement of person holding market-linked investment**

**1094. (1)** If a determination of entitlement is made in relation to a person who has a market-linked investment that was made on or after 9 September 1988, the Secretary must:

(a) make that determination having regard to the current product rate of return for that market-linked investment; and

(b) re-assess the rate at which pension, benefit or allowance under this Act should have been payable to the person in respect of any period:

(i) that occurs after the immediately preceding determination of the person’s entitlement; and

(ii) during which the product rate of return for that market-linked investment was less than the product rate of return that was used for the purposes of that immediately preceding determination of entitlement.

Note: for “determination of entitlement” see subsection 9(1): a determination of entitlement includes a determination of rate.

**(2)** If, under paragraph (1) (b), the Secretary re-assesses the rate at which pension, benefit or allowance under this Act should have been payable to a person in respect of a period, there is payable to the person the amount worked out using the formula:

**correct amount − amount paid**

**General Provisions Relating to the Ordinary Income Test s. 1094**

where:

**correct amount** is the amount of pension, benefit or allowance that should have been payable to the person for the period;

**amount paid** is the amount of pension, benefit or allowance that was paid to the person for the period.

**Reduction of rate of return for investment costs**

**1095. (1)** Where, under another provision of this Subdivision, a person is to be taken to receive a rate of return on an investment as income, the amount that the person is taken to receive is, during each week in the assumed receipt period, to be reduced by one fifty-second of the total amount of the person’s reasonable investment costs.

**(2)** For the purposes of subsection (1), the person’s **reasonable investment costs** for the investment are the reasonable costs that any person making an identical investment would be required to pay as a condition of being permitted to make that investment.

**(3)** Subsection (1) does not apply in respect of investment costs incurred in respect of investments made before 9 September 1988.

**(4)** In this section, **“assumed receipt period”** means the period of 12 months after the day from which the person is to be taken to receive a rate of return on the investment as income under another provision of this Subdivision.

**Conversion of investments to market-linked investments**

**1096. (1)** If an investment that was not a market-linked investment (in this subsection called the **“original investment”**)is converted into a market-linked investment then, for the purposes of this Subdivision:

(a) the market-linked investment is to be taken to have been made on the day the original investment was so converted; and

(b) the original investment is to be taken to have been realised on that day.

**(2)** Subsection (1) applies to an investment whether or not the investment was able to be converted into a market-linked investment because of a provision of the agreement relating to the making of the original investment.

***Subdivision D*—*Compulsorily preserved superannuation***

**Superannuation benefits received before pension age**

**1097. (1)** If:

(a) a person becomes entitled to receive an amount that was, until the person became so entitled, a compulsorily preserved superannuation benefit; and

**s. 1097 General Provisions Relating to the Ordinary Income Test**

(b) the person has not reached pension age;

the person is, for the purposes of this Act, to be taken to receive one fifty-second of the assessable growth component of that amount as ordinary income of the person during each week in the period of 12 months starting on the day when the person becomes entitled to receive that amount.

**(2)** Subsection (1) does not apply in relation to any amount received by a person by way of a superannuation pension or a payment under an immediate annuity.

***Subdivision E***—***Immediate annuities and superannuation pensions***

**Immediate annuities**

**1098.** For the purpose of working out the annual rate of ordinary income of a person from an immediate annuity, the person is to be taken to receive from that annuity each year an amount worked out by reducing the amount payable each year by the deductible amount in relation to the annuity.

**Superannuation pensions**

**1099.** For the purpose of working out the annual rate of ordinary income of a person from a superannuation pension, the person is to be taken to receive from that pension each year an amount worked out by reducing the amount payable each year by the deductible amount in relation to the superannuation pension.

***Division 2*—*Conversion of foreign currency amounts***

**Application of Division**

**1100. (1)** The Secretary may determine in writing that this Division applies in relation to a foreign currency.

**(2)** This Division applies in relation to a foreign currency in relation to which a determination under subsection (1) is in force.

**(3)** This Division applies for the purposes of:

(a) sections 1064, 1065 and 1066 (Pension Rate Calculators A, B and C); and

(b) section 796 (Special Needs Proportional Rate Calculator); and

(c) section 1210 (International Agreement Portability Rate); and

(d) section 1221 (Pension Portability Rate Calculator).

**Conversion of foreign currency amounts**

**1101.** The value in Australian currency of a payment received by a person in foreign currency is to be worked out using:

(a) if section 1103 applies—the re-assessed exchange rate; or

(b) in any other case—the base exchange rate (see section 1102).

**General Provisions Relating to the Ordinary Income Test s. 1102**

**Base exchange rate**

**1102.** The base exchange rate for a foreign currency for a foreign exchange period is the average (calculated to 4 decimal places) of the actual market exchange rates available on each working day of the first month of the year to start during the immediately preceding foreign exchange period.

**Re-assessed exchange rate**

**1103. (1)** If for 10 consecutive working days:

(a) starting after a month of the year in relation to which section 1102 operates; and

(b) ending before the next month of the year in relation to which section 1102 operates;

the actual market exchange rate available differs, by at least 10%, from:

(c) unless paragraph (d) applies—the base exchange rate for the next foreign exchange period; or

(d) if a re-assessed exchange rate has already been worked out under this subsection for the purposes of the next foreign exchange period—the last re-assessed exchange rate so worked out;

the re-assessed exchange rate for a foreign currency is the average (calculated to 4 decimal places) of the actual market exchange rates available on those consecutive working days.

**(2)** Subsection (1) does not apply to a working day if the actual market exchange rate available on that day has been used to work out a re-assessed exchange rate in a previous application of that subsection.

**Applicability of re-assessed exchange rate**

**1104. (1)** The Secretary must determine in writing the day on which a re-assessed exchange rate becomes applicable.

**(2)** The day determined under subsection (1) is to be no later than 6 weeks after the tenth consecutive working day covered by subsection 1103(1).

**(3)** A re-assessed exchange rate:

(a) becomes applicable on the day determined under subsection (1), unless a new re-assessed exchange rate has already become applicable; and

(b) remains applicable until:

(i) a new re-assessed exchange rate becomes applicable; or

(ii) the commencement of the next exchange period the base exchange rate for which has been worked out by reference to working days later than those by reference to which the re-assessed exchange rate was worked out.

**s. 1105 General Provisions Relating to the Ordinary Income Test**

**Rounding off exchange rates**

**1105.** If an exchange rate worked out under this Division would, if it were calculated to 5 decimal places, end in a number greater that 4, the rate worked out is to be taken to be the rate calculated to 4 decimal places and increased by 0.0001.

***Division 3***—***Disposal of ordinary income***

**Disposal of ordinary income**

**1106.** For the purposes of this Act, a person **disposes of income** of the person if the person engages in a course of conduct that diminishes, directly or indirectly, the rate of the person’s income and either:

(a) the person receives no consideration in money or money’s worth for the diminution; or

(b) the person receives inadequate consideration in money or money’s worth for the diminution; or

(c) the Secretary is satisfied that the purpose, or the dominant purpose, of the person in engaging in that course of conduct was:

(i) to obtain or enable the person’s partner to obtain a social security or service pension or a social security benefit; or

(ii) to obtain or enable the person’s partner to obtain a social security or service pension or a social security benefit at a higher rate than that which would otherwise have been payable; or

(iii) to ensure that the person or the person’s partner would be qualified for fringe benefits for the purposes of this Act or the Veterans’ Entitlements Act.

Note 1: for “amount of disposition” see section 1107.

Note 2: for the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

**Amount of disposition**

**1107.** If a person disposes of income, the **amount of the disposition** is the amount that, in the Secretary’s opinion, is:

(a) if the person receives no consideration for the diminution in the rate of the person’s income—the annual rate of the diminution of the person’s income; or

(b) if the person receives consideration for the diminution in the rate of the person’s income—the annual rate of the diminution less the part (if any) of the consideration that the Secretary considers to be fair and reasonable in all the circumstances of the case.

**General Provisions Relating to the Ordinary Income Test s. 1108**

**Disposal of ordinary income—individuals**

**1108.** If a person who is not a member of a couple has, on or after 1 June 1984 disposed of ordinary income of the person, the amount of that disposition is to be included in the person’s ordinary income for the purposes of this Act.

Note 1: for “disposes of income” see section 1106.

Note 2: for “amount of disposition” see section 1107.

Note 3: for “ordinary income” see subsection 8(1): “ordinary income” includes investment income but does not include maintenance income.

**Disposal of ordinary income—members of couples**

**1109. (1)** Subject to subsections (2), (3) and (4), if a person who is a member of a couple has, on or after 1 June 1984, disposed of ordinary income of the person:

(a) 50% of the amount of the disposition is to be included in the person’s ordinary income; and

(b) 50% of the amount of the disposition is to be included in the person’s partner’s ordinary income.

Note 1: for “disposes of income” see section 1106.

Note 2: for “amount of disposition” see section 1107.

Note 3: for transactions that constitute both a disposal of ordinary income and a disposal of an asset see section 1110.

**(2)** If:

(a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person’s partner’s ordinary income because the person has disposed of ordinary income; and

(b) the person and the person’s partner cease to be members of the same couple;

any amount that was included in the ordinary income of the person’s former partner because of the disposition is to be included in the person’s ordinary income.

**(3)** If:

(a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person’s partner’s ordinary income because the person has disposed of ordinary income; and

(b) the person dies;

no amount is to be included in the ordinary income of the person’s partner because of the disposition.

**(4)** If:

(a) an amount is included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person’s partner’s ordinary income because the person has disposed of ordinary income; and

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(b) the person’s partner dies;

any amount that would, if the person’s partner had not died, be included in the ordinary income of the person’s partner because of the disposition is to be included in the person’s ordinary income.

Note: for “ordinary income” see subsection 8 (1): “ordinary income” includes investment income but does not include maintenance income.

**Treatment of transactions that constitute both a disposal of ordinary income and a disposal of assets**

**1110. (1)** This section applies if:

(a) a person disposes, on or after 1 June 1984, of an asset of the person; and

(b) the course of conduct that constituted the disposition of the asset also constituted a disposition of ordinary income; and

(c) the ordinary income disposed of is attributable, in whole or in part, to the asset.

**(2)** If:

(a) this section applies; and

(b) no amount is included in the value of the person’s assets under section 1125 or 1126 because of the disposition of the asset;

no amount is, for the purposes of sections 1108 and 1109, to be included in the person’s ordinary income because of the disposition of ordinary income.

**(3)** If:

(a) this section applies; and

(b) the amount that is included in the value of the person’s assets under section 1125 or 1126 because of the disposition of the asset is:

(i) if section 1126 applies—less than 50% of the amount of the disposition of the asset; or

(ii) if section 1125 applies—less than the amount of the disposition;

the amount to be included in the person’s ordinary income because of the disposition of ordinary income is to be worked out disregarding so much of the amount of the disposition of ordinary income as the Secretary decides is attributable to the part of the amount of the disposition of the asset that is not included in the value of the person’s assets under section 1125 or 1126.

**Dispositions more than S years old to be disregarded**

**1111.** This Division does not apply to a disposition of ordinary income that took place:

(a) more than 5 years before the time when:

(i) the person who disposed of the ordinary income; or

**General Provisions Relating to the Ordinary Income Test s. 1111**

(ii) if the person who disposed of the ordinary income was, at the time of disposition, a member of a couple—the person’s partner;

became qualified for a social security pension or a family allowance supplement; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Secretary is satisfied that the person who disposed of the ordinary income could reasonably have expected that the person or the person’s partner would become qualified for such a pension or allowance.

**Modified operation of Division in relation to benefits and family allowance supplement**

**1112. (1)** This Division applies for the purposes of Parts 2.11, 2.12, 2.14 and 2.15 (unemployment benefit, job search allowance, sickness benefit and special benefit) as if references in this Division to 1 June 1984 were references to 14 May 1987.

**(2)** This Division applies for the purposes of Part 2.18 (family allowance supplement) as if references in this Division to 1 June 1984 were references to 15 May 1988.

***Division 4*—*Earnings credit***

**Earnings credit account balance may be set-off against ordinary income from remunerative work**

**1113.** If:

(a) a person is receiving a social security pension (other than a carer pension); and

(b) the person earns an amount of money for remunerative work done by the person during an earnings credit accounting period; and

(c) in that period, the person’s annual rate of ordinary income exceeds the person’s ordinary income free area; and

(d) immediately before the beginning of that period, the person’s earnings credit account balance is greater than nil; and

(e) the person’s pension or allowance rate is not reduced by reference to the value of the person’s assets;

then, in applying the ordinary income test to the person, disregard:

(f) if the person’s earnings credit account balance equals or exceeds the amount earned—the whole of the amount; or

(g) if the person’s earnings credit account balance is less than the amount earned—the part of the amount that does not exceed the earnings credit balance.

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**Earnings credit account**

**1114.** If a person is receiving a social security pension (other than a carer pension), the person has an earnings credit account.

**Earnings credit account balance**

**1115.** The person’s earnings credit account balance is worked out using the Earnings Credit Account Balance Calculator at the end of this section.

***EARNINGS CREDIT ACCOUNT BALANCE CALCULATOR***

*MODULE A—OVERALL ACCOUNT BALANCE CALCULATION*

*Account balance calculation*

1115-A1. This is how to work out the balance of the person’s earnings credit account:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the person’s opening balance using MODULE B below. |
| *Step 2.* | If the person has an earnings credit, add the amount of the earnings credit to the account: see MODULE C below. |
| *Step 3.* | If the person draws on the account, deduct from the account the amount drawn: see MODULE D below. |

*Balance not to exceed $1,000*

1115-A2. The balance of the account is not to exceed $1,000.

*Balance not to be in debit*

1115-A3. The balance of the account is not to fall below nil.

*EC accounting periods*

1115-A4. The earnings credit accounting periods are the weeks that end on each Wednesday on or after 1 July 1991.

*MODULE B—OPENING BALANCE*

*General rule*

1115-B1. If:

(a) the person commences to receive the pension on or after 1 July 1991; and

(b) the person was not receiving a social security pension (other than a carer pension) or a service pension immediately before commencing to receive the pension;

the opening balance of the person’s earnings credit account is nil.

**General Provisions Relating to the Ordinary Income Test s. 1115**

*Carry-over of earnings credit accumulated before 1 July 1991*

1115-B2. If the person has continued to receive the pension from immediately before 1 July 1991, the opening balance of the person’s earnings credit account is the amount of the person’s earnings credit under section 12a of the 1947 Act immediately before 1 July 1991.

*Transferees from social security or service pensions*

1115-B3. If:

(a) the person commences to receive the pension on or after 1 July 1991; and

(b) immediately before commencing to receive the pension, the person was receiving social security pension (other than a carer pension) or a service pension and had an earnings credit account balance under this Act or section 49b of the Veterans’ Entitlements Act;

the opening balance of the person’s earnings credit account is the amount of that account balance.

*MODULE C—EARNINGS CREDIT*

*When earnings credit arises*

1115-C1. The person has an earnings credit for an EC accounting period if during that period the person’s ordinary income on a yearly basis is less than the person’s ordinary income free area.

Note 1: for “EC (earnings credit) accounting period” see point 1115-A4 above.

Note 2: for “ordinary income free area” see Module E of Pension Rate Calculator A or C.

*Amount of earnings credit*

1115-C2. The amount of an earnings credit for an EC accounting period is:

**Person’s ordinary income free area**

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*MODULE D—DRAWING ON ACCOUNT*

*Drawing on account*

1115-D1. The person draws on the account if:

(a) during an EC accounting period:

(i) the person earns an amount of money for remunerative work done by the person during that period; and

(ii) the person’s annual rate of ordinary income exceeds the person’s ordinary income free area; and

(iii) the person’s pension rate is not reduced by reference to the value of the person’s assets; and

(b) immediately before the beginning of the EC accounting period, the person’s earnings credit account balance was greater than nil.

**s. 1115 General Provisions Relating to the Ordinary Income Test**

*Amount to be deducted*

1115-D2. The amount to be deducted is the amount earned.

**General Provisions Relating to the Maintenance Income Test s. 1116**

**PART 3.11—GENERAL PROVISIONS RELATING TO THE MAINTENANCE INCOME TEST**

**Apportionment of capitalised maintenance income**

**1116. (1)** The object of this section is to spread capitalised maintenance income so that it is taken into account over the whole of the period in respect of which it is received.

**(2)** If a person receives capitalised maintenance income, the maintenance income of the person that is attributable to the capitalised maintenance income during any period (in this subsection called the **“relevant period”**)in the capitalisation period is the amount calculated in accordance with the formula:

|  |  |
| --- | --- |
| **capitalised maintenance income ×** | **relevant period** |
| **capitalisation period** |

*Capitalisation period*—*court order or registered or approved maintenance agreement*

**(3)** If:

(a) the capitalised maintenance income is received under or as a result of:

(i) the order of a court; or

(ii) a maintenance agreement registered in, or approved by, a court under the *Family Law Act 1975* or the law of a State or Territory; and

(b) the order or agreement specified the period in relation to which the capitalised maintenance income was to be provided; and

(c) the length of the period could be ascertained with reasonable certainty when the order was made or the agreement was so registered or approved;

the **capitalisation period** is, subject to subsection (6), the period specified in the order or agreement.

*Capitalisation period*—*dependent child under 18*

**(4)** If:

(a) the capitalised maintenance income relates to the maintenance of a dependent child of the person; and

(b) the child has not turned 18 on the day on which the income is received; and

(c) subsection (3) does not apply to the capitalised maintenance income;

the **capitalisation period** is, subject to subsection (6), the period that starts on the day on which the income is received and ends on the day immediately before the day on which the child turns 18.

**s. 1116 General Provisions Relating to the Maintenance Income Test**

*Capitalisation period*—*partner under 65*

**(5)** If:

(a) the capitalised maintenance income relates to the maintenance of the person by the person’s partner or former partner; and

(b) the person has not turned 65 on the day on which the income is received; and

(c) subsection (3) does not apply to the capitalised maintenance income;

the **capitalisation period** is, subject to subsection (6), the period that starts on the day on which the income is received and ends on the day immediately before the day on which the person turns 65.

*Capitalisation period*—*other cases*

**(6)** If:

(a) the Secretary considers:

(i) in a case falling within subsection (3) where the period referred to in that subsection was specified in an order of a court that was made by consent or in a maintenance agreement—that the period is not appropriate in the circumstances of the case; or

(ii) in a case falling within subsection (4) or (5)—that the period referred to in that subsection is not appropriate in the circumstances of the case; or

(b) no capitalisation period is applicable in relation to the capitalised maintenance income under subsection (3), (4) or (5);

the **capitalisation period** is such period as the Secretary considers appropriate in the circumstances of the case.

**(7)** In working out whether a young person is a dependent child for the purposes of this section, disregard subsection 5 (3).

**Non-cash housing maintenance—value of substitute for family home**

**1117. (1)** If:

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

(b) a person has separated from the person’s partner or former partner; and

(c) immediately before the separation a residence (in this section called the **“former family home”)** was the principal home of both the person and the person’s partner or former partner; and

(d) the person is receiving non-cash housing maintenance in relation to the provision of a residence other than the former family home; and

(e) the value of the other residence exceeds the value, at the time the maintenance is received, of the former family home;

**General Provisions Relating to the Maintenance Income Test s. 1117**

only so much of the maintenance as does not exceed the maintenance that would be assessed if it were based on the value of the former family home is to be treated as special maintenance income for the purposes of this Act.

**(2)** For the purposes of subsection (1), the Secretary may:

(a) determine that a time specified in the determination is to be substituted for the time at which the non-cash housing maintenance is received; or

(b) determine that a specified part of non-cash housing maintenance is to be deducted from the amount that would otherwise be the amount of that maintenance.

Note: paragraph (a) is intended to cover situations where there is not enough information about the current market value of the former family home.

**(3)** If a person has more than one former partner, a reference in subsection (1) to the person’s former partner is a reference to the person’s last former partner.

**s. 1118 General Provisions Relating to the Assets Test**

**PART 3.12—GENERAL PROVISIONS RELATING TO THE ASSETS TEST**

***Division 1***—***Value of person’s assets***

**Certain assets to be disregarded in calculating the value of a person’s** assets

**1118. (1)** In calculating the value of a person’s assets for the purposes of this Act (other than subparagraph 263 (1) (c) (iv) and sections 1125 and 1126), disregard the following:

(a) if the person is not a member of a couple—the value of any right or interest of the person in the person’s principal home that:

(i) is a right or interest that gives the person reasonable security of tenure in the home; and

(ii) is not a granny flat interest in the home;

(b) if the person is a member of a couple—the value of any right or interest of the person in one residence that is the principal home of the person, of the person’s partner or of both of them that:

(i) is a right or interest that gives the person or the person’s partner reasonable security of tenure in the home; and

(ii) is not a granny flat interest in the home;

(c) the value of any life interest of the person (other than a life interest in the principal home of the person, of the person’s partner or of both of them or a life interest created by the person, by the person’s partner or by both of them);

(d) the value of any superannuation pension of the person;

(e) any amount that is:

(i) received by the person within the immediately preceding period of 90 days; and

(ii) is excluded from the definition of “income” in subsection 8 (1) by subsection 8 (4) or (5);

(f) if the person has not reached pension age—the value of any compulsorily preserved superannuation benefit of the person;

(g) if:

(i) the person has a granny flat interest in the person’s principal home; and

(ii) the granny flat interest gives the person reasonable security of tenure in the home;

the value of the granny flat interest;

(h) the value of any contingent, remainder or reversionary interest of the person (other than an interest created by the person, by the person’s partner or by both of them);

(j) the value of any assets (other than a contingent, remainder or

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reversionary interest) to which the person is entitled from the estate of a deceased person but which has not been, and is not able to be, received;

(k) the value of any medal or other decoration awarded (whether to the person or another person) for valour that is owned by the person otherwise than for the purposes of investment or a hobby;

(m) the value of:

(i) any cemetery plot acquired by the person for the burial of the person or the person’s partner; and

(ii) any funeral expenses paid in advance by the person in respect of the funeral of the person or the person’s partner;

(n) if:

(i) personal property of the person is designed for use by a disabled person; and

(ii) the person, the person’s partner, a dependent child of the person or a dependent child of the person’s partner is disabled;

the value of the property;

(p) if:

(i) personal property of the person is modified so that it can be used by a disabled person; and

(ii) the person, the person’s partner, a dependent child of the person or a dependent child of the person’s partner is disabled;

the part of the value of the property that is attributable to the modifications;

(q) if the person is provided with a motor vehicle under the scheme administered by the Commonwealth known as the gift car scheme—the value of that motor vehicle;

(r) if the person has sold a residence that was the principal home of the person on terms and has purchased, also on terms, another residence that is the principal home of the person—so much of the balance due to the person in respect of the sale as will be applied by the person in respect of the purchase of the other residence.

**(2)** If:

(a) a person sells the person’s principal home; and

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

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so much of the proceeds of the sale as the person is likely to apply in acquiring the other residence is to be disregarded during that period for the purposes of this Act.

**(3)** For the purposes of this section, if:

(a) the value of any assets of a person or, if the person is a member of a couple, of the person and the person’s partner, that consists of the contents of a principal home and of other personal effects that are used primarily within the principal home does not exceed $10,000; and

(b) the assets are used primarily for private or domestic purposes;

the value of the assets is to be taken to be $10,000 unless the person satisfies the Secretary that the value of the assets is less than $10,000.

**(4)** This section has effect subject to sections 1145 to 1157 (retirement villages).

**Value of annuities**

*Value of certain annuities to be disregarded*

**1119. (1)** Subject to subsection (2), in calculating the value of a person’s assets for the purposes of this Act (other than subparagraph 263 (1) (c) (iv) and sections 1125 and 1126), disregard the value of any annuity of the person.

**(2)** Subsection (1) does not apply to:

(a) a disposable or deferrable annuity; or

(b) an immediate annuity purchased on or after 15 August 1989; or

(c) an annuity that became presently payable on or after 15 August 1989.

*Disposable or deferrable annuity*

**(3)** For the purposes of subsection (2), an annuity is a **disposable or deferrable annuity** if:

(a) either:

(i) the annuity is able to be disposed of; or

(ii) a substantial part of the income under the annuity is deferred; or

(iii) a substantial part of the income under the annuity may be deferred; and

(b) the Secretary is satisfied that the annuity should not be disregarded under paragraph 1118 (1) (e).

*Value of certain post-15 August 1989 annuities*

**(4)** The value of:

(a) an immediate annuity purchased on or after 15 August 1989; or

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(b) an annuity that became presently payable on or after 15 August 1989;

is worked out using the Annuity Value Calculator at the end of this section.

***ANNUITY VALUE CALCULATOR***

*Overall value calculation*

1119-1. This is how to work out the value of the annuity:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the residual capital value of the annuity. |
| *Step 2.* | Work out the balance of the purchase price of the annuity using point 1119-2. |
| *Step 3.* | Work out the adjustment factor using point 1119-3. |
| *Step 4.* | Multiply the balance obtained under Step 2 by the adjustment factor obtained in Step 3: the result is called the adjusted balance. |
| *Step 5.* | Add the adjusted balance to the residual capital value: the result is called the adjusted value of the annuity. |
| *Step 6.* | The value of the annuity is the higher of the adjusted value and the residual capital value. |

Note: for “residual capital value” see subsection 9 (1).

*Balance of purchase price*

1119-2. The balance of the purchase price of the annuity is:

**purchase price − residual capital value**

Note: for “purchase price” and “residual capital value” see subsection 9 (1).

*Adjustment factor*

1119-3. The adjustment factor is:

|  |
| --- |
| **relevant number −** (**years elapsed +** 1) |
| **relevant number** |

where:

**relevant number** is the relevant number for the annuity;

**years elapsed** is the number of full years that have elapsed since the annuity became presently payable.

Note: for “relevant number” see subsection 9 (1).

**Value of annuity—change of relevant number**

**1120. (1)** If:

(a) a determination of entitlement is made in relation to a person; and

(b) the determination is made having regard to a relevant number for an annuity; and

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(c) the number was determined as mentioned in paragraph (c) of the definition of “relevant number” in section 27h of the Income Tax Assessment Act; and

(d) the person appeals against the determination of the relevant number; and

(e) on appeal, a lower number is substituted for the original relevant number;

the Secretary must make a new determination of entitlement in relation to the person.

**(2)** In making a new determination under subsection (1), the Secretary must have regard to the lower relevant number for the annuity concerned.

**(3)** If the Secretary makes a new determination of entitlement in relation to a person under subsection (1), there is payable to the person the amount worked out using the formula:

**new amount − actual amount**

where:

**new amount** is the amount of pension, benefit or allowance that would have been payable to the person for the underpayment period at the new rate determined under subsection (1);

**actual amount** is the amount of pension, benefit or allowance that is paid to the person for the underpayment period;

**underpayment period** is the period that:

(a) starts either:

(i) if the appeal concerned is instituted within 3 months after the person is notified of the original determination of the relevant number—when that determination is made; or

(ii) in any other case—when the appeal is instituted; and

(b) ends when the new determination of entitlement takes effect.

**Effect of charge or encumbrance on value of assets**

**1121. (1)** If there is a charge or encumbrance over a particular asset of the person, the value of the asset, for the purposes of calculating the value of the person’s assets for the purposes of this Act, is to be reduced by the value of that charge or encumbrance.

**(2)** Subsection (1) does not apply to a charge or encumbrance that is an excluded security.

**(3)** Subsection (1) does not apply to a charge or encumbrance over assets that are to be disregarded under section 1118.

**General Provisions Relating to the Assets Test s. 1121**

**(4)** If:

(a) there is a charge or encumbrance over assets; and

(b) the charge does not arise under section 1138; and

(c) the assets consist of assets whose value is to be disregarded under section 1118 and other assets;

the amount to be deducted under subsection (1) is:

|  |
| --- |
| **value of the charge or encumbrance × value of the other assets** |
| **value of all the assets** |

**(5)** For the purpose of this section, a charge or encumbrance is an **excluded security** 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 a person who is not a party, or the partner of a party, to the charge or encumbrance.

**(6)** This section has effect subject to sections 1145 to 1157 (retirement villages).

**Loans**

**1122.** If a person lends an amount after 27 October 1986, the **value of the assets** of the person for the purposes of this Act includes so much of that amount as remains unpaid but does not include any amount payable by way of interest under the loan.

***Division 2***—***Disposal of assets***

**Disposal of assets**

**1123. (1)** For the purposes of this Act, a person **disposes of assets** of the person if the person engages in a course of conduct that diminishes, directly or indirectly, the value of the person’s assets and:

(a) the person receives no consideration in money or money’s worth for the diminution in the value of the person’s assets; or

(b) the person receives inadequate consideration in money or money’s worth for the diminution in the value of the person’s assets; or

(c) the Secretary is satisfied that the purpose, or the dominant purpose, of the person in engaging in that course of conduct was:

(i) to obtain or enable the person’s partner to obtain a social security or service pension or a social security benefit; or

(ii) to obtain or enable the person’s partner to obtain a social security or service pension or a social security benefit at a higher rate than that which would otherwise have been payable; or

(iii) to ensure that the person or the person’s partner would be qualified for fringe benefits for the purposes of this Act or the Veterans’ Entitlements Act.

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**(2)** For the purposes of subsection (1), the value of the person’s granny flat interest is to be taken not to be consideration received by the person.

Note: for “granny flat interest” see subsection 11 (9).

**Amount of disposition**

**1124.** If a person disposes of assets, the **amount** of the disposition is:

(a) if the person receives no consideration for the diminution in the value of the person’s assets—an amount equal to the amount of the diminution in the value of the person’s assets; or

(b) if the person receives consideration for the diminution in the value of the person’s assets—an amount equal to the amount of the diminution in the value of the person’s assets less the amount of the consideration received by the person in respect of the diminution.

**Disposal of assets—individuals**

**1125. (1)** Subject to subsection (2), if, on or after 1 June 1984:

(a) a person who is not a member of a couple has, during a pension year of the person, disposed of an asset of the person; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds $2,000;

then, for the purposes of this Act, there is to be included in the value of the person’s assets:

(c) the amount by which the sum of the amount of the first-mentioned disposition of assets, and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds $2,000; or

(d) the amount of the first-mentioned disposition; whichever is the lesser amount.

Note 1: for “disposes of assets” see section 1123.

Note 2: for “amount of disposition” see section 1124.

Note 3: for the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

**(2)** If an amount (in this subsection called the **“relevant amount”**)is included in the value of a person’s assets under subsection (1) because of a disposition of an asset, the amount that is to be included in that value under that subsection is to be reduced, on each anniversary of the day on which the disposition took place, by an amount equal to 10% of the relevant amount.

Note 1: for “disposes of assets” see section 1123.

Note 2: for “amount of disposition” see section 1124.

**General Provisions Relating to the Assets Test s. 1126**

**Disposal of assets—members of couples**

**1126. (1)** Subject to subsections (2), (3) and (4), if, on or after 1 June 1984:

(a) a person who is a member of a couple has disposed of an asset of the person:

(i) during a pension year of the person; or

(ii) if the person is not receiving a pension, benefit or allowance of a kind referred to in subsection 11 (10) but the person’s partner is receiving such a pension, benefit or allowance—during a pension year of the person’s partner; and

(b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during that pension year, exceeds $4,000;

then, for the purposes of this Act:

(c) there is to be included in the value of the person’s assets:

(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during the pension year exceeds $4,000; or

(ii) 50% of the amount of the first-mentioned disposition; whichever is the lesser amount; and

(d) there is to be included in the value of the assets of the person’s partner:

(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person’s partner during the pension year exceeds $4,000; or

(ii) 50% of the amount of the first-mentioned disposition; whichever is the lesser amount.

Note 1: for “disposes of assets” see section 1123.

Note 2: for “amount of disposition” see section 1124.

Note 3: for the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

**(2)** If an amount (in this subsection called the **“relevant amount”)** is included in the value of a person’s assets under subsection (1) because of a disposition of an asset, the amount that is to be included in that value under that subsection is to be reduced, on each anniversary of the day on which the disposition took place, by an amount equal to 10% of the relevant amount.

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**(3)** If:

(a) amounts are included under subsection (1) in the value of a person’s assets who is a member of a couple and in the assets of the person’s partner because of a disposition of an asset by the person; and

(b) the person and the person’s partner cease to be members of the same couple;

any amount that was included in the value of the person’s former partner’s assets because of that disposition is to be included in the value of the person’s assets.

**(4)** If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person’s partner because of a disposition of an asset by the person; and

(b) the person dies;

no amount is to be included in the value of the assets of the person’s partner because of that disposition.

**Dispositions more than 5 years old to be disregarded**

**1127.** This Division does not apply to a disposition of an asset that took place:

(a) more than 5 years before the time when:

(i) the person who disposed of the asset; or

(ii) if that person was, at the time when that disposition took place, a member of a couple—the person’s partner;

became qualified for a social security pension or a family allowance supplement; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Secretary is satisfied that the person who disposed of the asset could reasonably have expected that the person or the person’s partner would become qualified for such a pension, benefit or allowance.

**Modified operation of Division in relation to benefits and family allowance supplement**

**1128. (1)** For the purposes of the application of this Division to Parts 2.11, 2.12, 2.14 and 2.15 (unemployment benefit, job search allowance, sickness benefit and special benefit), references in this Division to 1 June 1984 shall be read as references to 14 May 1987.

**(2)** For the purposes of the application of this Division to Part 2.18 (family allowance supplement), references in this Division to 1 June 1984 shall be read as references to 15 May 1988.

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***Division 3*—*Financial hardship***

**Access to financial hardship rules—pensions**

**1129. (1)** If:

(a) either:

(i) a social security pension is not payable to a person because of the application of an assets test; or

(ii) a person’s social security pension rate is determined by the application of an assets test; and

(b) either:

(i) sections 1108 and 1109 (disposal of income) and 1125 and 1126 (disposal of assets) do not apply to the person; or

(ii) the Secretary determines that the application of those sections to the person should, for the purposes of this sectionne disregarded; and

(c) the person, or the person’s partner, has an unrealisable asset; and

(d) the person lodges with the Department, in a form approved by the Secretary, a request that this section apply to the person; and

(e) the Secretary is satisfied that the person would suffer severe financial hardship if this section did not apply to the person;

the Secretary must determine that this section applies to the person.

Note 1: “social security pension” includes sheltered employment and rehabilitation allowance.

Note 2: for “unrealisable asset” see subsections 11 (12) and (13).

**(2)** A decision under subsection (1) takes effect:

(a) on the day on which the request under paragraph (1) (d) was lodged with the Department; or

(b) if the Secretary so decides in the special circumstances of the case—on a day not more than 6 months before the day referred to in paragraph (a).

**Application of financial hardship rules—pensions**

*Value of unrealisable asset to be disregarded*

**1130. (1)** If section 1129 applies to a person, the value of:

(a) any unrealisable asset of the person; and

(b) any unrealisable asset of the person’s partner;

is to be disregarded in working out the person’s social security pension rate.

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*Deduction from social security pension maximum payment rate*

**(2)** If section 1129 applies to a person, there is to be deducted from the person’s social security pension maximum payment rate an amount equal to the person’s adjusted annual rate of ordinary income.

*Adjusted annual rate of ordinary income*

**(3)** A person’s **adjusted annual rate of ordinary income** is an amount per year equal to the sum of:

(a) the person’s annual rate of ordinary income (other than income from assets); and

(b) the person’s annual rate of ordinary income from assets that are not assets tested; and

(c) either:

(i) the person’s annual rate of ordinary income from unrealisable assets; or

(ii) the person’s notional annual rate of ordinary income from unrealisable assets;

whichever is the greater; and

(d) an amount per year equal to $26 for each $250 of the value of the person’s assets (other than disregarded assets).

*Assets tested asset*

**(4)** For the purposes of subsection (3), an asset is **not assets tested** if the value of the asset is to be disregarded under subsection 1118 (1) or if it is an unrealisable asset.

*Notional annual rate of ordinary income from unrealisable assets*

**(5)** A person’s **notional annual rate of ordinary income** from unrealisable assets is:

(a) the amount per year equal to 2.5% of the value of the person’s and the person’s partner’s unrealisable assets; or

(b) the amount per year that could reasonably be expected to ,be obtained from a purely commercial application of the person’s and the person’s partner’s unrealisable assets;

whichever is the less.

*Family farms*

**(6)** If:

(a) an unrealisable asset is a farm; and

(b) the farm is operated by a person who is a family member of the person to whom this section applies; and

(c) it is not reasonable to expect the farm to be used for another purpose;

the Secretary, in working out the amount per year that could reasonably be expected to be obtained from a purely commercial application of

**General Provisions Relating to the Assets Test s. 1130**

the farm, is to have regard to the overall financial situation of the person operating the farm.

**(7)** Subsection (6) does not limit the matters to which the Secretary may have regard in exercising the powers under paragraph (5) (b).

**(8)** Subsection (2) applies:

(a) subject to subsection (10); and

(b) despite sections 1064 and 1066.

**(9)** If:

(a) a person has disposed of assets and section 1125 or 1126 applies to the disposition; and

(b) the Secretary has made a determination under subparagraph 1129 (1) (b) (ii) in relation to the disposition;

this section applies to the person as if the person had not disposed of the assets.

**(10)** If the sum of the rate of pension that would, apart from this subsection, be payable to a person and the annual rate of income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per annum of the excess.

**Access to financial hardship rules—benefits**

**1131. (1)** If:

(a) a social security benefit is not payable to a person because of the application of an assets test; and

(b) the person is not receiving and is not eligible to apply for acceptable alternative Commonwealth income support; and

(c) the person’s partner is not receiving and is not eligible to apply for acceptable alternative Commonwealth income support; and

(d) sections 1108 and 1109 (disposal of income) and 1125 and 1126 (disposal of assets) do not apply in relation to the person or the Secretary decides that the application of those sections in relation to the person, for the purposes of this section, be disregarded; and

(e) the person, or the person’s partner, has an unrealisable asset; and

(f) the person lodges with the Department, in a form approved by the Secretary, a request that this section apply in relation to the person; and

(g) the Secretary is satisfied that the person would suffer severe financial hardship if this section did not apply in relation to the person;

the Secretary must determine that this section applies in relation to the person.

Note: for “unrealisable asset” see subsections 11 (12) and (13).

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**(2)** A reference in subsection (1) to **acceptable alternative Commonwealth income support** in relation to a person is a reference to payments:

(a) that are made available by the Commonwealth by way of income support; and

(b) the rate of which is not less than the rate of unemployment benefit that would be applicable to the person if unemployment benefit were payable to the person.

**(3)** A decision under subsection (1) takes effect:

(a) on the day on which the request under paragraph (1) (f) was lodged with the Department; or

(b) if the Secretary so decides in the special circumstances of the case—on a day not more than 6 months before the day on which the request under paragraph (1) (f) was lodged with the Department.

**Application of financial hardship rules**—**benefits**

*Value of unrealisable asset to be disregarded*

**1132. (1)** If section 1131 applies to a person, the value of:

(a) any unrealisable asset of the person; and

(b) any unrealisable asset of the person’s partner;

is to be disregarded in working out whether a social security benefit is payable to the person.

*Deduction from social security benefit maximum payment rate*

**(2)** If section 1131 applies to a person, there is to be deducted from the person’s social security benefit maximum payment rate an amount equal to the person’s adjusted fortnightly rate of ordinary income.

*Adjusted fortnightly rate of ordinary income*

**(3)** A person’s adjusted fortnightly rate of ordinary income is an

amount per fortnight equal to the sum of:

(a) the person’s fortnightly rate of ordinary income (other than income from assets); and

(b) the person’s fortnightly rate of ordinary income from assets that are not assets tested; and

(c) either:

(i) the person’s fortnightly rate of ordinary income from unrealisable assets; or

(ii) the person’s notional fortnightly rate of ordinary income from unrealisable assets;

whichever is the greater; and

(d) an amount per fortnight equal to $1 for each $250 of the value of the person’s assets (other than disregarded assets).

**General Provisions Relating to the Assets Test s. 1132**

*Assets tested asset*

**(4)** For the purposes of subsection (3), an asset is **not assets tested** if the value of the asset is to be disregarded under subsection 1118 (1) or the asset is an unrealisable asset.

*Notional fortnightly rate of ordinary income from unrealisable assets*

**(5)** A person’s **notional fortnightly rate of ordinary income** from unrealisable assets is:

1. the amount per fortnight equal to one twenty-sixth of 2.5% of the value of the person’s and the person’s partner’s unrealisable assets; or
2. the amount per fortnight that could reasonably be expected to be obtained from a purely commercial application of the person’s and the person’s partner’s unrealisable assets;

whichever is the less.

**(6)** Subsection (2) applies:

1. subject to subsection (8); and
2. despite sections 530, 601, 671, 733, 1067 and 1068.

**(7)** If:

1. a person has disposed of assets and section 1125 or 1126 applies to the disposition; and
2. the Secretary has made a determination under paragraph 1131 (1) (d) in relation to the disposition;

this section applies to the person as if the person had not disposed of the assets.

**(8)** If the sum of the rate of benefit that would, apart from this subsection, be payable to a person and the fortnightly rate of ordinary income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per fortnight of the excess.

***Division 4***—***Pension loans scheme***

**Qualification for participation in pension loans scheme**

*Person not member of a couple*

**1133. (1)** A person who is not a member of a couple is qualified to participate in the pension loans scheme if:

(a) the person is receiving or is qualified for:

(i) age pension; or

(ii) invalid pension; or

(iii) carer pension; or

(iv) sole parent pension; or

(v) widow B pension; or

(vi) widowed person allowance; or

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(vii) sheltered employment allowance; or

(viii) rehabilitation allowance; and

1. the rate of that pension or allowance is, or is to be, an assets reduced rate; and
2. the person has turned:

(i) if a woman—60; or

(ii) if a man—65; and

1. the person’s assets consist of, or include, PLS assets; and
2. the value of the PLS assets is not less than 70% of the value of the person’s assets.

Note 1: for “assets reduced rate” see Pension Rate Calculator A or C.

Note 2: for “assets” and “PLS assets” see subsection 11 (1).

Note 3: in calculating the value of the person’s assets, the value of the person’s exempt assets is disregarded—see subsections 11 (1) and 1118 (1).

*Person member of a couple*

**(2)** A person who is a member of a couple is qualified to participate in the pension loans scheme if:

(a) the person is receiving or is qualified for:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a carer pension; or

(v) a sole parent pension; or

(vi) a sheltered employment allowance; or

(vii) a rehabilitation allowance; and

1. the rate of that pension or allowance is, or is to be, an assets reduced rate; and
2. the person either:

(i) has turned:

(a) if a woman—60; or

(b) if a man—65; or

(ii) is the partner of a person referred to in (i); and

1. the couple’s assets consist of, or include, PLS assets; and
2. the value of the PLS assets is not less than 70% of the value of the couple’s assets.

Note 1: for “assets reduced rate” see Pension Rate Calculator A or C.

Note 2: for “assets” and “PLS assets” see subsection 11 (1).

Note 3: in calculating the value of the person’s assets, the value of the person’s exempt assets is disregarded—see subsections 11 (1) and 1118 (1).

**General Provisions Relating to the Assets Test s. 1134**

**Effect of participation in pension loans scheme—pension or allowance rate**

**1134. (1)** If:

1. a person is qualified to participate in the pension loans scheme; and
2. the person makes a request to participate under section 1136; and
3. the person complies with section 1137 (if it applies to the person); and
4. the Secretary is satisfied that the amount of any debt that becomes payable by the person to the Commonwealth under this Division is readily recoverable;

then:

1. if the person is not a member of a couple—the value of the person’s assets is to be disregarded when determining the rate of pension or allowance payable to the person; or
2. if the person is a member of a couple—the value of the couple’s assets is to be disregarded when determining the rate of pension or allowance payable to the person.

Note: section 1137 applies if the person’s or couple’s assets are valued at less than $100,000.

1. The value of the assets is to be disregarded on and after the first pension payday after the request is lodged.
2. For the purposes of sections 93, 146, 197, 248, 314, 361, 409, 460 and 512 (fringe benefits), the person’s rate is taken to be an assets reduced rate in spite of subsection (1).

Note: for “assets reduced rate” see Pension Rate Calculator A or C.

**Effect of participation in pension loans scheme—creation of debt**

**1135. (1)** If the value of assets has been disregarded under section 1134 for the purposes of determining a person’s pension or allowance rate, the person owes a debt to the Commonwealth.

**(2)** The maximum amount of the debt owed by the person under this section is the amount worked out by taking away $100,000 from the value of the person’s—or the couple’s—assets (including exempt assets).

Note 1: if the value of the person’s assets (including exempt assets) is less than $100,000, see section 1137; if their value subsequently falls below $100,000, see section 1141.

Note 2: “exempt assets” are defined in subsection 11 (1) to mean assets described in any of paragraphs 1118 (1) (a) to (r).

**(3)** This is how to work out the amount of the debt owed by the person from time to time:

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|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the sum of the amount of pension or allowance received by the person from time to time under the pension loans scheme: the result is the **income reduced amount**. |
| *Step 2.* | Take away from the income reduced amount the sum of the amount of pension or allowance (if any) that would have been received by the person if the value of assets had not been disregarded under section 1134: the result is the **basic amount of debt**. |
| *Step 3.* | Add to the basic amount of debt the amount of interest payable. The amount of interest payable is worked out under subsection (4): the result is the **amount of debt including interest**. |
| *Step 4.* | Add to the amount of debt including interest the amount of any registration costs payable by the person under subsection 1143 (4): subject to subsection (2), the result is the **total amount of debt**. |
| *Step 5.* | From the total amount of debt take away any amount of the debt already paid to the Commonwealth: the result is the current amount of debt owed by the person. |

**(4)** The amount of interest payable under subsection (3) is worked out on the basis of the rate fixed from time to time by the Minister by notice published in the *Gazette.*

**Need for a request to participate**

**1136. (1)** A person who wants to participate in the pension loans scheme must make a request to participate in accordance with this section.

**(2)** A request under subsection (1) must be signed:

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

(b) if the person is a member of a couple—by both members of the couple.

**(3)** The request must be:

1. in writing; and
2. in a form approved by the Secretary; and
3. lodged at an office of the Department.

**Additional requirement where person’s assets valued at less than $100,000**

*Person not member of a couple*

**1137. (1)** If:

(a) a person who is not a member of a couple wants to participate in the pension loans scheme; and

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(b) the value of the person’s assets (including exempt assets) is less than $100,000;

the person’s request to participate in the scheme must include an election in writing that subsection 1135 (2) not apply to the person.

Note 1: subsection 1135 (2) provides that no debt arises if the value of the assets is less than $100,000.

Note 2: “exempt assets” are defined in subsection 11 (1) to mean assets described in any of paragraphs 1118 (1) (a) to (r).

*Person member of a couple*

**(2)** If:

1. a person who is a member of a couple wants to participate in the pension loans scheme; and
2. the value of the couple’s assets (including exempt assets) is less than $100,000;

the person’s request to participate in the scheme must include an election in writing that subsection 1135 (2) not apply to the person.

Note 1: subsection 1135 (2) provides that no debt arises if the value of the assets (including exempt assets) is less than $100,000.

Note 2: “exempt assets” are defined in subsection 11 (1) to mean assets described in any of paragraphs 1118 (1) (a) to (r).

*Election to be signed*

**(3)** An election under this section must be signed:

1. if the request is made under subsection (1)—by the person; or
2. if the request is made under subsection (2)—by both members of the couple.

**Existence of debt results in charge over assets**

*Person not member o f a couple*

**1138. (1)** If a person who is not a member of a couple is participating in the pension loans scheme, the person’s assets are subject to a charge in favour of the Commonwealth to secure the payment of the debt to the Commonwealth.

*Person member of a couple*

**(2)** If:

1. a person who is a member of a couple is participating in the pension loans scheme; and
2. the person’s partner has signed the person’s request under subsection 1136 (2);

the couple’s assets are subject to a charge in favour of the Commonwealth to secure the payment of a debt to the Commonwealth.

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**Debt not to be recovered until after death**

**1139. (1)** The Commonwealth is not entitled to recover a debt under section 1135 from a person until after the person’s death.

(2) In the following circumstances, the Commonwealth is not entitled to recover the debt until after the person’s death and after:

(a) if:

(i) the person was a member of a couple at the time of death; and

(ii) the person’s partner survives the person; and

(iii) an amount of bereavement payment is payable to the partner because of the person’s death;

the last pension payday on which an amount of bereavement payment is payable; or

(b) if:

(i) the person was a member of a couple at the time of death; and

(ii) the person’s partner survives the person; and

(iii) the person’s partner has the use of the assets or part of the assets that are subject to a charge; and

(iv) the partner has turned:

(a) if a woman—60; or

(b) if a man—65;

the death of the partner.

1. This section is subject to sections 1140 (enforcement of charge if assets change hands) and 1142 (automatic termination of participation in pension loans scheme).
2. If the Secretary decides that the debt is to be recovered before the events referred to in subsection (1) or (2), the debt may be so recovered in spite of those subsections.

**Enforcement of charge**

**1140. (1)** If:

1. assets of a person are subject to a charge under section 1138; and
2. any of those assets cease to be assets of the person; and
3. the person receives proceeds from the sale or other disposal of the assets;

the Secretary may recover from the person, out of those proceeds, the whole or part of the debt secured by the charge.

**(2)** If:

(a) assets of a person are subject to a charge under section 1138; and

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(b) any of those assets are disposed of to another person (in this section called the **“new owner”**);

the Secretary may, subject to subsection (3), enforce the charge against those assets.

**(3)** The Secretary may not enforce the charge against the assets if the new owner is a *bona fide* purchaser for value without notice.

**Person ceases to participate in pension loans scheme if value of assets falls below $100,000**

**1141. (1)** If:

1. a person is participating in the pension loans scheme; and
2. the person has not made an election under section 1137; and
3. the value of the person’s—or the couple’s—assets (including exempt assets) falls below $100,000;

section 1134 (determination of pension or allowance rate under pension loans scheme) ceases to apply to the person unless the person lodges with the Department an election in writing that subsection 1135 (2) not apply to the person.

Note: the effect of subsection 1135 (2) is that no debt arises if the value of the assets is less than $100,000.

1. To be effective, the election must be lodged with the Department within 10 weeks after the value of the assets falls below $100,000.
2. If section 1134 ceases to apply to the person because of this section, it ceases to apply on or after the first pension payday after the value of the assets falls below $100,000.

**Automatic termination of participation in pension loans scheme**

**1142.** If:

1. a person, or a couple, is participating in the pension loans scheme; and
2. any of the following circumstances occurs:

(i) any of the PLS assets of the person, or the couple, cease to be assets of the person or the couple;

(ii) the person, or the couple, acquires assets that are neither PLS assets nor exempt assets;

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

(iv) if the person is a member of a couple—the person ceases to be a member of a couple; and

(c) as a result of any of those circumstances, the value of the person’s, or the couple’s, PLS assets is less than 70% of the value of the person’s, or the couple’s, assets;

the following sections cease to apply to the person unless the Secretary decides otherwise:

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1. section 1134 (determination of pension or allowance rate under pension loans scheme);
2. section 1139 (debt not to be recovered until after death).

Note: in calculating the value of assets under this section, the value of exempt assets is disregarded—see subsections 11 (1) and 1118 (1).

**Registration of charge**

**1143. (1)** If assets are subject to a charge under section 1138, the Secretary may lodge a notice in writing of the charge with the appropriate officer of the State or Territory in which the assets are situated.

1. The appropriate officer may register the charge as if the Secretary’s notice were a bill of sale or an instrument of charge or encumbrance duly executed under the laws in force in the State or Territory.
2. The Secretary may require the person whose assets are subject to the charge to execute an instrument relating to the registration of the charge.
3. If the Commonwealth incurs costs associated with:
4. the registration of the charge; or
5. the registration of the discharge of the charge;

those costs are payable by the person whose assets are subject to the charge.

**Manner of enforcement of charge**

**1144.** If a charge against assets is enforceable under this Division, the Secretary may enforce the charge against those assets or against part of those assets in any manner that the Secretary decides.

***Division 5*—*Special provisions relating to residents of retirement villages***

***Subdivision A*—*General***

**Retirement village resident**

**1145.** For the purposes of this Division, a person is a retirement village resident if the person’s principal home is in a retirement village.

**Basis for different treatment**

**1146.** This Division’s operation on a retirement village resident depends on:

(a) whether the resident is:

(i) not a member of a couple; or

(ii) a member of a couple; or

(iii) a member of an illness separated couple; or

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(iv) a member of an ordinary couple with different principal homes; and

1. the resident’s entry contribution; and
2. the resident’s extra allowable amount.

**Entry contribution**

**1147. (1)** A retirement village resident’s **entry contribution** is:

1. if the resident is not a member of a couple—the total amount paid, or agreed to be paid, for the resident’s current right to live in the retirement village; or
2. if the resident is a member of a couple, shares the resident’s principal home with the resident’s partner and is not a member of an illness separated couple—an amount equal to 50% of the total amount paid, or agreed to be paid, for the resident’s and the partner’s current right to live in the retirement village; or
3. if the resident is a member of an illness separated couple—the total amount paid, or agreed to be paid, for the resident’s current right to live in the retirement village; or
4. if:

(i) the resident is a member of an ordinary couple with different principal homes; and

(ii) the principal home of the resident’s partner is not in a retirement village;

the total amount paid, or agreed to be paid, for the resident’s current right to live in the retirement village; or

(e) if:

(i) the resident is a member of an ordinary couple with different principal homes; and

(ii) the principal home of the resident’s partner is also in a retirement village;

an amount equal to 50% of the total amount paid, or agreed to be paid, for the resident’s and the partner’s respective current rights to live in the retirement village concerned; or

(f) if:

(i) the resident was a member of a couple at the time when the resident took up residence in the retirement village; and

(ii) the resident has ceased to be a member of a couple;

the total amount paid, or agreed to be paid, for:

(iii) the resident’s current right to live in the retirement village; and

(iv) the resident’s current right (if any) to share the resident’s principal home with a partner.

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**(2)** An amount that is rent for the purposes of this Act is to be disregarded in applying subsection (1).

**Extra allowable amount**

*Residence taken up before 13 June 1989*

**1148. (1)** If a retirement village resident became entitled to take up residence in the retirement village before 13 June 1989, the resident’s **extra allowable amount** is:

1. if the resident is not a member of a couple—$64,000; or
2. if the resident is a member of an illness separated couple—$64,000; or
3. in any other case—$32,000.

*Residence taken up on or after 13 June 1989*

**(2)** If a retirement village resident became entitled to take up residence in the retirement village on or after 13 June 1989, the resident’s **extra allowable amount** is:

1. if the resident is not a member of a couple—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension “single” homeowner AVL and the pension “single” non-homeowner AVL; or
2. if the resident is a member of an illness separated couple—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension “single” homeowner AVL and the pension “single” non-homeowner AVL; or
3. in any other case—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension “partnered” homeowner AVL and the pension “partnered” non-homeowner AVL.
4. For the purposes of this section, a person **becomes entitled to take up residence** in a retirement village when the person becomes entitled to take up residence in a retirement village pursuant to the agreement under which the person’s current right to live in the retirement village arises.
5. In this section, “pension ‘single’ homeowner AVL”, “pension ‘single’ non-homeowner AVL”, “pension ‘partnered’ homeowner AVL” and “pension ‘partnered’ non-homeowner AVL” have the same meaning as in Part 3.16 (Indexation).

**Renegotiation of retirement village agreement**

**1149.** If a person who has a right to live in a retirement village under an agreement enters into a new agreement under which the person obtains a right to live in the retirement village, then, for the

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purposes of this Division, the total amount paid, or agreed to be paid, for the person’s current right to live in the retirement village is the sum of the following amounts:

1. the total amount paid under the new agreement for that right; and
2. so much (if any) of:

(i) any amount paid under an earlier agreement to obtain a right for the person to live in the retirement village; and

(ii) any amount that was, or would have been, payable to the person upon the termination of an earlier agreement;

as ought, in the Secretary’s opinion, to be attributed to the cost of the person’s current right to live in the retirement village.

***Subdivision B*—*Residents who are not members of a couple***

**Residents who are not members of a couple**

**1150. (1)** This section applies to a retirement village resident who is not a member of a couple.

*Entry contribution above extra allowable amount*

**(2)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was more than the extra allowable amount;

the resident is to be taken, for the purposes of this Act, to be a homeowner.

*Entry contribution equal to or below extra allowable amount*

**(3)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act:

1. the resident is to be taken not to have a right or interest in relation to the resident’s principal home; and
2. the resident’s assets are to be taken to include an asset the value of which is equal to the amount of the resident’s entry contributions; and
3. subsection 1118 (1) and section 1125 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, to be taken to have.

**(4)** Subsection (3) applies:

(a) whether or not the resident actually has any right or interest in the resident’s principal home; and

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(b) whatever the value of any right or interest that the resident does have in the resident’s principal home.

***Subdivision C***—***Residents who are members of couple and share principal home***

**Members of couples**

**1151. (1)** This section applies to a retirement village resident if:

1. the resident is a member of a couple; and
2. the resident shares the resident’s principal home with the resident’s partner.

*Entry contribution above extra allowable amount*

**(2)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was more than the extra allowable amount;

the resident is to be taken, for the purposes of this Act, to be a homeowner.

*Entry contribution equal to or below extra allowable amount*

**(3)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act:

1. the resident is to be taken not to have a right or interest in relation to the resident’s principal home; and
2. the resident’s assets are to be taken to include an asset the value of which is equal to the amount of the resident’s entry contribution; and
3. subsection 1118 (1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, to be taken to have.

**(4)** Subsection (3) applies:

1. whether or not the resident actually has any right or interest in the resident’s principal home; and
2. whatever the value of any right or interest that the resident does have in the resident’s principal home.

***Subdivision D*—*Residents who are members of illness separated couple***

**Members of illness separated couples (both in retirement village or villages)**

**1152. (1)** This section applies to a retirement village resident if:

(a) the resident is a member of an illness separated couple; and

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(b) the principal home of the resident’s partner is also a retirement village.

*Both entry contributions above extra allowable amount*

**(2)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution, and the entry contribution of the resident’s partner, were each more than the extra allowable amount concerned;

then, for the purposes of this Act:

1. the resident is to be taken to be a homeowner; and
2. any right or interest of the resident in the partner’s principal home is to be disregarded in calculating the actual value of the resident’s assets for the purposes of this Act; and
3. any right or interest of the partner in his or her principal home, or in the resident’s principal home, is to be disregarded in calculating the actual value of the partner’s assets for the purposes of this Act.

*Both entry contributions equal to or below extra allowable amount*

**(3)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution, and the entry contribution of the resident’s partner, were each equal to or less than the extra allowable amount concerned;

then, for the purposes of this Act:

1. the resident is to be taken not to have a right or interest in relation to the resident’s principal home; and
2. the resident’s assets are to be taken to include an asset the value of which is equal to the amount of the resident’s entry contribution; and
3. subsection 1118 (1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, taken to have.

**(4)** Subsection (3) applies:

1. whether or not the resident actually has any right or interest in the resident’s principal home; and
2. whatever the value of any right or interest that the resident does have in the resident’s principal home.

*Person’s entry contribution above extra allowable amount and partner’s entry contribution equal to or below extra allowable amount*

**(5)** If:

(a) this section applies to a retirement village resident; and

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1. the resident’s entry contribution was more than the extra allowable amount; and
2. the resident’s partner’s entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the resident and to the partner:

1. the resident is to be taken to be a homeowner;
2. for the purposes of this Act:

(i) both the resident, and the partner, are to be taken not to have a right or interest in relation to the partner’s principal home; and

(ii) the partner’s assets are to be taken to include an asset whose value is equal to the amount of the partner’s entry contribution; and

(iii) subsection 1118 (1) and section 1126 do not apply to the asset that the partner is, because of subparagraph (ii) of this paragraph, to be taken to have;

(f) any right or interest of the partner in the resident’s principal home is to be disregarded in calculating the actual value of the partner’s assets for the purposes of this Act;

(g) the resident’s assets value limit and the partner’s assets value limit are both to be taken to be $92,250.

Note: the amount in paragraph (g) is adjusted annually: see section 1205.

**(6)** Subsection (5) applies:

1. whether or not the resident’s partner actually has any right or interest in the partner’s principal home; and
2. whatever the value of any right or interest that the partner does have in the partner’s principal home.

**Members of illness separated couples (partner not in retirement village and partner homeowner)**

**1153. (1)** This section applies to a retirement village resident if:

1. the resident is a member of an illness separated couple; and
2. the principal home of the resident’s partner is not in a retirement village; and
3. the right or interest of the partner in the partner’s principal home is to be disregarded because of paragraph 1118 (1) (b).

*Entry contribution above extra allowable amount*

**(2)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was more than the extra allowable amount;

then:

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1. for the purposes of this Act, the resident is to be taken to be a homeowner; and
2. any right or interest of the resident in the partner’s principal home referred to in paragraph (1) (c) is to be disregarded in calculating the actual value of the resident’s assets for the purposes of this Act; and
3. any right or interest of the partner in the resident’s principal home is also to be disregarded in calculating the actual value of the partner’s assets for the purposes of this Act.

*Entry contribution equal to or below extra allowable amount*

**(3)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the resident and to the resident’s partner:

(c) for the purposes of this Act:

(i) both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident’s principal home; and

(ii) the resident’s assets are to be taken to include an asset the value of which is equal to the amount of the resident’s entry contribution; and

(iii) subsection 1118 (1) and section 1126 do not apply to the asset that the resident is, because of subparagraph (ii) of this paragraph, to be taken to have;

1. any right or interest of the resident in the partner’s principal home referred to in paragraph (1) (c) is to be disregarded in calculating the actual value of the resident’s assets for the purposes of this Act;
2. the resident’s assets value limit and the partner’s assets value limit are both to be taken to be $92,250.

Note: the amount in paragraph (e) is adjusted annually: see section 1205.

**(4)** Subsection (3) applies:

1. whether or not the resident actually has any right or interest in the resident’s principal home; and
2. whatever the value of any right to interest that the resident does have in the resident’s principal home.

**Member of illness separated couple (partner not in retirement village and partner not homeowner)**

**1154. (1)** This section applies to a retirement village resident if:

(a) the resident is a member of an illness separated couple; and

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1. the principal home of the resident’s partner is not in a retirement village; and
2. the resident’s partner does not have a right or interest in the partner’s principal home that is to be disregarded because of paragraph 1118 (1) (b).

*Entry contribution above extra allowable amount*

**(2)** If:

1. this section applies to a retirement village resident; and
2. the resident’s partner does not have a right or interest in his or her principal home that is to be disregarded because of paragraph 1118 (1) (b); and
3. the resident’s entry contribution was more than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the resident and to the partner:

1. for the purposes of this Act, the resident is to be taken to be a homeowner;
2. any right or interest of the partner in the resident’s principal home is to be disregarded in calculating the actual value of the partner’s assets for the purposes of this Act;
3. the resident’s assets value limit and the partner’s assets value limit are both to be taken to be $92,250.

Note: the amount in paragraph (f) is adjusted annually: see section 1205.

**(3)** Subsection (2) applies:

1. whether or not the resident actually has any right or interest in the resident’s principal home; and
2. whatever the value of any right or interest that the resident does have in the resident’s principal home.

*Entry contribution equal to or below extra allowable amount*

**(4)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was equal to or less than the extra allowable amount;

then, the following provisions apply for the purposes of the application of this Act to the resident and to the resident’s partner:

1. both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident’s principal home;
2. the resident’s assets are to be taken to include an asset the value of which is equal to the amount of the resident’s entry contribution;

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(e) subsection 1118 (1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, taken to have.

***Subdivision E*—*Residents who are members of ordinary couple with different principal homes***

**Members of ordinary couple with different principal homes (both in retirement villages)**

**1155. (1)** This section applies to a retirement village resident if:

1. the resident is a member of an ordinary couple with different principal homes; and
2. the principal home of the resident’s partner is also in a retirement village.

*Both entry contributions above extra allowable amount*

**(2)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution and the partner’s entry contribution, were each more than the extra allowable amount concerned;

then, for the purposes of this Act:

1. the resident and the partner are each to be taken to be home owners; and
2. the value of the resident’s principal home is to be taken to be the total amount paid, or agreed to be paid, for the resident’s current right to reside in the retirement village concerned; and
3. the value of the partner’s principal home is to be taken to be the total amount paid, or agreed to be paid, for the partner’s current right to reside in the retirement village concerned; and
4. any right or interest of the resident in:

(i) the more valuable of the 2 principal homes; or

(ii) where the value of the 2 principal homes is the same—the principal home of the younger person;

(in this subsection called the **“more valuable principal home”**)is to be disregarded in calculating the actual value of the resident’s assets; and

(g) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner’s assets; and

(h) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset the value ofwhich is equivalent to the amount of that person’s entry contribution.

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*Both entry contributions equal to or below extra allowable amount*

**(3)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution, and the partner’s entry contribution, were each less than or equal to the extra allowable amount concerned;

then, for the purposes of this Act:

1. the resident and the partner are each to be taken not to have a right or interest in relation to the resident’s principal home or the partner’s principal home; and
2. the resident’s assets are to be taken to include the total amount paid, or agreed to be paid, for the resident’s current right to reside in the retirement village; and
3. the partner’s assets are to be taken to include the total amount paid, or agreed to be paid, for the partner’s current right to reside in the retirement village concerned.

**(4)** Subsection (3) applies:

1. whether or not the resident actually has any right or interest in the resident’s principal home; and
2. whatever the value of any right or interest that the resident does have in the resident’s principal home; and
3. whether or not the partner actually has any right or interest in the partner’s principal home; and
4. whatever the value of any right or interest that the partner does ha.ve in the partner’s principal home.

**Members of ordinary couple with different principal homes (partner not in a retirement village and partner homeowner)**

**1156. (1)** This section applies to a retirement village resident if:

1. the resident is a member of an ordinary couple with different principal homes; and
2. the principal home of the resident’s partner is not in a retirement village; and
3. the right or interest of the partner in the partner’s principal home would, but for this section, be disregarded because of paragraph 1118 (1) (b).

**(2)** If this section applies to a retirement village resident, then, for the purposes of this Act:

1. the resident and the resident’s partner are each to be taken to have a right or interest in a principal home to which paragraph 1118 (1) (b) applies; and
2. the value of the resident’s principal home is to be taken to be the amount of the resident’s entry contribution; and
3. any right or interest of the resident in:

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(i) the more valuable of the 2 principal homes; or

(ii) where the value of the 2 principal homes is the same—the principal home that is not in a retirement village;

(in this subsection called the **“more valuable principal home”**)is to be disregarded in calculating the actual value of the resident’s assets; and

1. any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner’s assets; and
2. the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset whose value is equivalent to the value of the less valuable principal home.

**Members of ordinary couple with different principal homes (partner not in a retirement village and partner not homeowner)**

**1157. (1)** This section applies to a retirement village resident if:

1. the resident is a member of an ordinary couple with different principal homes; and
2. the principal home of the resident’s partner is not in a retirement village; and
3. the partner does not have a right or interest in the partner’s principal home that is to be disregarded because of paragraph 1118 (1) (b).

*Entry contribution above extra allowable amount*

**(2)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was more than the amount that would be the extra allowable amount if the resident were not a member of a couple;

then, for the purposes of this Act, the resident and the partner are each to be taken to have a right or interest in a principal home to which paragraph 1118 (1) (b) applies.

*Entry contribution equal to or below extra allowable amount*

**(3)** If:

1. this section applies to a retirement village resident; and
2. the resident’s entry contribution was equal to or less than the amount that would be the extra allowable amount if the resident were not a member of a couple;

then, the following provisions apply for the purposes of the application of this Act to the resident and to the resident’s partner:

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1. both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident’s principal home; and
2. the resident’s assets are to be taken to include an asset whose value is equal to the amount of the resident’s entry contribution.

**(4)** Subsection (3) applies:

1. whether or not the resident actually has any right or interest in the resident’s principal home; and
2. whatever the value of any right or interest that the resident does have in the resident’s principal home; and
3. whether or not the partner actually has any right or interest in the resident’s principal home; and
4. whatever the value of any right or interest that the partner does have in the resident’s principal home.

**Imprisonment s. 1158**

**PART 3.13—IMPRISONMENT**

***Division 1*—*Social security pensions (excluding sheltered employment allowance and rehabilitation allowance)***

**Some social security pensions not payable during period in gaol or in psychiatric confinement following criminal conviction**

**1158.** An age pension, invalid pension, wife pension, carer pension, sole parent pension, widowed person allowance, widow B pension or special needs pension is not payable to a person on a pension payday if:

1. on that payday the person is in gaol or undergoing psychiatric confinement because of a criminal conviction; and
2. that payday is not the first pension payday and not the last pension payday in the period of imprisonment or confinement.

Note: if someone else is receiving a payment that depends on the person in gaol receiving one of these payments, that other person’s payment is not payable during the period identified in this section: that other person may, however, become qualified for a sole parent pension—see subparagraph 249 (1) (a) (ii).

**Payment may be redirected to dependent partner or child**

**1159. (1)** If:

1. a pension or allowance is not payable to a person on a pension payday because of section 1158; and
2. 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:

1. the partner; or
2. someone else for the benefit of the partner.

**(2)** If:

1. a pension or allowance is not payable to a person on a pension payday because of section 1158; and
2. 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:

1. the young person; or
2. someone else for the benefit of the young person.

***Division 2*—*Social security benefits***

**Social security benefit not payable while person in gaol or in psychiatric confinement following criminal conviction**

**1160.** Unemployment benefit, job search allowance, sickness benefit or special benefit is not payable in respect of a period during which the person is in gaol or undergoing psychiatric confinement because of a criminal conviction.

**s. 1161 Imprisonment**

**Double benefit payment on release from gaol**

**1161. (1)** If:

1. a person is released from gaol after spending at least 7 days in gaol; and
2. the person claims unemployment benefit, job search allowance or sickness benefit within 7 days after being released; and
3. the benefit or allowance is payable to the person on the day on which the claim is made;

the rate of benefit or allowance payable to the person in respect of the period of 7 days starting on the day on which the claim is made is 2 times the amount that would otherwise be payable to the person in respect of that period.

**(2)** In applying subsection (1) in working out a person’s maximum special benefit rate, paragraph (1) (b) is to be taken to be satisfied if the person makes the claim for special benefit within 7 days after being released.

Note: if the person claims special benefit, the maximum special benefit rate will reflect the double rate provided for in subsection (1) (see subsection 746 (2)).

***Division 3***—***Sheltered employment allowance***

**Transfer from sheltered employment allowance to pension during or soon after release from prison**

**1162.** If:

(a) a person who is receiving sheltered employment allowance:

(i) goes to gaol; or

(ii) goes into psychiatric confinement because of a criminal conviction; and

1. the person lodges a claim for an age pension, invalid pension, wife pension, carer pension, sole parent pension, widowed person allowance, widow’s pension or special needs pension; and
2. the claim is made:

(i) within the period during which the person is in gaol or undergoing the psychiatric confinement; or

(ii) within a time after the end of that period that the Secretary approves in special circumstances; and

(d) the claim is granted;

the person is to be taken to have remained qualified for the sheltered employment allowance until the end of the first pension payday in the period during which the person was in gaol or undergoing the psychiatric confinement.

Note: this provision is intended to make sure that SEA recipients who “transfer” to a pension (usually invalid pension) are given the same treatment as continuing pension recipients: compare section 1158.

**Compensation Recovery s. 1163**

**PART 3.14—COMPENSATION RECOVERY**

***Division 1***—***General***

**General effect of Part**

**1163. (1)** If a person is entitled to or receives compensation, the following social security payments might be affected under this Part:

(a) so far as the person is concerned:

(i) invalid pension;

(ii) social security benefit;

(iii) sheltered employment allowance;

(iv) rehabilitation allowance payable in place of those; and

(b) so far as the partner (if any) is concerned:

(i) invalid pension;

(ii) social security benefit;

(iii) sheltered employment allowance;

(iv) rehabilitation allowance payable in place of those;

(v) wife pension;

(vi) carer pension.

1. If the person is entitled to compensation and does not take reasonable action to claim or obtain the compensation, the pension, benefit or allowance might not be payable to the person.
2. If the compensation is in the form of a lump sum, the pension, benefit or allowance might cease to be payable for a period (based on the amount of the lump sum) and some of the pension, benefit or allowance might be repayable.
3. If the compensation is in the form of a series of periodic payments, the rate of the pension, benefit or allowance might be reduced for the period for which the payments are received.
4. An invalid pension, social security benefit (other than sickness benefit) or sheltered employment allowance will only be affected under this Part if:
5. the compensation is received on or after 1 May 1987; and
6. the claim for the pension, benefit or allowance was made on or after 1 May 1987.

Note: compensation received before 1 May 1987 can affect a person’s sickness benefit—see section 23 of the Social Security Amendment Act 1988.

**(6)** A rehabilitation allowance will only be affected under this Part if:

1. the compensation is received on or after 1 May 1987; and
2. the rehabilitation allowance is payable in place of an invalid pension, social security benefit or sheltered employment allowance that was claimed on or after 1 May 1987.

**s. 1164 Compensation Recovery**

***Division 2***—***Enforcement of compensation rights***

**Secretary may require person to take action to obtain compensation**

**1164. (1)** If:

(a) a person is receiving:

(i) invalid pension; or

(ii) social security benefit; or

(iii) sheltered employment allowance; or

(iv) rehabilitation allowance in place of one of those; and

1. the person is entitled or may, in the Secretary’s opinion, be entitled to compensation; and
2. the person has taken:

(i) no action to claim or obtain compensation; or

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

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

**(2)** If:

(a) the person is qualified for:

(i) invalid pension; or

(ii) social security benefit; or

(iii) sheltered employment allowance; or

(iv) rehabilitation allowance in place of one of those; and

1. the person is entitled or may, in the Secretary’s opinion, be entitled to compensation; and
2. the person has taken:

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

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

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

1. 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.
2. If, under subsection (1), the Secretary requires a person who is receiving a pension, benefit or allowance, to take action to claim or obtain compensation, the pension, benefit or allowance ceases to be payable to the person unless the person complies with the requirement.
3. If, under subsection (2), the Secretary requires a person who is qualified for a pension, benefit or allowance to take action to claim or obtain compensation, the pension, benefit or allowance is not to be granted to the person unless the person complies with the requirement.

**Compensation Recovery s. 1164**

**(6)** If a person complies with a requirement under this section, the person is to be taken, for the purposes of this Act, to be qualified for the pension, benefit or allowance that the person was qualified for before the requirement was made.

***Division 3***—***Receipt of compensation***

**Pension, benefit or allowance not payable during lump sum preclusion period**

*Person not member of a couple*

**1165. (1)** Where:

(a) a person is qualified for:

(i) invalid pension; or

(ii) social security benefit; or

(iii) sheltered employment allowance; or

(iv) rehabilitation allowance payable in place of one of those; and

1. the person is not a member of a couple; and
2. the person receives compensation in the form of a lump sum (whether before or after the person became qualified for the pension, benefit or allowance);

a pension, benefit or allowance referred to in paragraph (a) is not payable to the person for the lump sum preclusion period.

Note: for “lump sum preclusion period” see subsections (3), (4), (5) and (6).

*Person member of a couple*

**(2)** If:

(a) a person is qualified for:

(i) invalid pension; or

(ii) social security benefit; or

(iii) sheltered employment allowance; or

(iv) rehabilitation allowance payable in place of one of those;

and

1. the person is a member of a couple; and
2. the person, or the person’s partner, receives compensation in the form of a lump sum (whether before or after the person became qualified for the pension, benefit or allowance);

the following provisions have effect:

(d) none of the following is payable to the person for the lump sum preclusion period:

(i) invalid pension;

(ii) social security benefit;

(iii) sheltered employment allowance;

(iv) rehabilitation allowance payable in place of one of those;

**s. 1165 Compensation Recovery**

(e) none of the following is payable to the person’s partner for the lump sum preclusion period:

(i) invalid pension;

(ii) social security benefit;

(iii) sheltered employment allowance;

(iv) rehabilitation allowance payable in place of one of those;

(v) wife pension;

(vi) carer pension because of caring for the person.

Note: for “lump sum preclusion period” see subsections (3), (4), (5) and (6).

*Lump sum preclusion period*

1. The **lump sum preclusion period** is the period for which payment of a pension, benefit or allowance is precluded under subsection (1) or (2).
2. The number of weeks in the lump sum preclusion period is the number worked out under the following formula:

|  |
| --- |
| **compensation part of lump sum** |
| **average weekly earnings** |

Note 1: for “compensation part” of lump sum see section 17.

Note 2: for “average weekly earnings” see section 17.

1. 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.
2. The lump sum preclusion period begins on:
3. if periodic compensation payments are made in respect of the lost earnings or lost earning capacity—the day after the last day of the periodic payments period; or
4. in any other case—the day on which the loss of earnings or loss of earning capacity began.

Note: for “periodic payments period” see section 17.

LUMP SUM PRECLUSION PERIOD EXAMPLES

Example 1: Jane is not a member of a couple. She is receiving invalid pension at the time when a lump sum compensation award is made to her. The compensation part of this lump sum is $3,500.

Jane’s lump sum preclusion period is:

|  |
| --- |
| **compensation part of lump sum** ($3,500) |
| **average weekly earnings** ($350) |

|  |  |  |
| --- | --- | --- |
| i.e. | 3,500 | =10. |
| 350 |

Her lump sum preclusion period is therefore 10 weeks. That period begins on the day Jane’s loss of earnings or loss of earning capacity began. It ends 10 weeks from that day. Invalid pension is not payable to Jane during that 10 week period.

If Jane has received invalid pension payments during that period, they will be recoverable under section 1166.

Example 2: Martha is a member of a couple. She is receiving invalid pension, and her partner Fred is receiving sickness benefit. Fred receives a lump sum compensation payment

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relating to an injury. The compensation part of this lump sum is $3,500. The lump sum preclusion period for Martha and Fred is:

|  |
| --- |
| **compensation part of lump sum** ($3,500) |
| **average weekly earnings** ($350) |

|  |  |  |
| --- | --- | --- |
| i.e. | 3,500 | = 10. |
| 350 |

The lump sum preclusion period is therefore 10 weeks. That period begins on the day Fred’s loss of earnings or loss of earning capacity began. It ends 10 weeks from that day. Invalid pension is not payable to Martha during that 10 week period. Sickness benefit is not payable to Fred in relation to that 10 week period.

If Martha has already received pension payments during that period, or if Fred has already received benefit payments relating to that period, those payments will be recoverable under section 1166.

**Person may have to repay amount where both lump sum and pension, benefit or allowance payments have been received**

**1166. (1)** If:

1. a person receives compensation in the form of a lump sum; and
2. the person receives payments of:

(i) invalid pension; or

(ii) social security benefit; or

(iii) sheltered employment allowance; or

(iv) rehabilitation allowance payable in place of one of those;

for the lump sum preclusion period;

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.

Note: for “lump sum preclusion period” see subsection 1165 (3).

**(2)** The amount specified in the notice is the **recoverable amount** and is worked out under the following Table and subsections (3) and (4).

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|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| RECOVERABLE AMOUNT TABLE | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 |
| item | category of person | person qualified for | partner’s status | recoverable amount |
|  |  |  |  | the smaller of: |
| 1. | Not member | IP |  | CLS |
|  | of a couple | SSB  SEA  RHA |  | PBAP  (see subsection (3)) |
|  |  |  | **not** qualified for: | the smaller of: |
| 2. | Partnered | IP | IP | CLS |
|  |  | SSB | SSB | PBAP |
|  |  | SEA  RHA | SEA  RHA  WP  CP | (see subsection (3)) |
|  |  |  |  |  |
|  |  |  | **qualified** for: | the smaller of: |
| 3. | Partnered | IP | IP | CLS |
|  |  | SSB | SSB | PBAP + PPBAP |
|  |  | SEA  RHA | SEA  RHA  WP  CP | (see subsection (4)) |

**KEY**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| IP | = | invalid pension | CLS | = | compensation part of lump sum |
| SSB | = | social security benefit | PBAP | = | person’s pension, benefit or allowance payments |
| SEA | = | sheltered employment allowance | PPBAP | = | partner’s pension, benefit or allowance payments |
| RHA | = | rehabilitation allowance payable in place of IP, SSB or SEA |  |  |  |
| WP | = | wife pension |  |  |  |
| CP | = | carer pension because of caring for the person |  |  |  |

**(3)** If the person’s situation is covered by item 1 or 2 in the Table, the **recoverable amount** is equal to the smaller of:

1. the compensation part of the lump sum; or
2. the sum of the pension, benefit or allowance payments made to the person for the lump sum preclusion period.

**(4)** If the person’s situation is covered by item 3 in the Table, the **recoverable amount** is equal to the smaller of:

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

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(b) the sum of the pension, benefit or allowance payments made to the person and to the person’s partner for the lump sum preclusion period.

LUMP SUM RECOVERABLE AMOUNT AND PRECLUSION PERIOD EXAMPLES

*Example 1:* Jane is not a member of a couple. She is receiving invalid pension. She receives a lump sum compensation payment relating to an injury. The compensation part of this lump sum is $3,500. Jane’s lump sum preclusion period is 10 weeks:

|  |  |
| --- | --- |
| 3,500 | =10 |
| 350 (average weekly earning |

That period began 6 weeks ago (on the day Jane’s loss of earning capacity because of the injury began). During that 6 weeks, Jane received a total of $688.10 in invalid pension payments.

The Secretary writes to Jane telling her of the recoverable amount she is liable to repay to the Commonwealth. Since Jane’s situation is covered by item 1 in the Table the recoverable amount is the smaller of $3,500 (the compensation part of the lump sum payment) and $688.10. Jane will be liable to repay to the Commonwealth $688.10. Because the lump sum preclusion period continues for another four weeks, Jane will receive no further invalid pension payments until after the four week period ends.

*Example 2:* Martha is a member of a couple. Martha is receiving invalid pension and her partner, Fred, is qualified for sickness benefit but is receiving rehabilitation allowance instead. Martha receives a lump sum compensation payment relating to an injury. The compensation part of this lump sum is $3,500.

The lump sum preclusion period is 10 weeks:

|  |  |
| --- | --- |
| 3,500 | =10 |
| 350 (average weekly earning |

That period began 6 weeks ago (on the day Martha s loss of earning capacity because of the injury began). During that 6 weeks, Martha received a total of $688.10 in invalid pension payments and Fred received a total of $630.90 in rehabilitation allowance payments.

The Secretary writes to Martha telling her of the recoverable amount she is liable to repay to the Commonwealth. Since Martha and Fred’s situation is covered by item 4 in the Table, the recoverable amount is the smaller of $3,500 (the compensation part of the lump sum payment) and $1,319.00 (the sum of $688.10 and $630.90). Martha will be liable to repay to the Commonwealth $1,319.00. Because the lump sum preclusion period continues for another four weeks, neither Martha nor Fred will receive any invalid pension or rehabilitation allowance payments until after the four week period ends.

**Lump sum compensation not counted as ordinary income**

**1167.** If an amount per fortnight of a pension, benefit or allowance is not payable to a person under section 1165 because of compensation in the form of a lump sum, that lump sum is not to be regarded as ordinary income of either the person or the person’s partner for the purposes of this Act (apart from Part 2.18 or section 698).

Note 1: for “ordinary income” see section 8.

Note 2: Part 2.18 deals with the family allowance supplement.

Note 3: section 698 deals with limitations on the amount of sickness benefit payable.

**Rate reduction of certain pensions, benefits and allowances where periodic compensation payments received**

**1168. (1)** If:

(a) a person, or the person’s partner, receives a series of periodic compensation payments; and

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(b) the person is qualified for:

(i) invalid pension; or

(ii) social security benefit; or

(iii) sheltered employment allowance; or

(iv) rehabilitation allowance payable in place of one of those;

for the periodic payments period;

the rate of the person’s pension, benefit or allowance is to be reduced, under subsection (3), for the periodic payments period.

Note: for “periodic payments period” see section 17.

**(2)** If:

1. subsection (1) applies to a person; and
2. the person is a member of a couple; and
3. the person’s partner is qualified for:

(i) invalid pension; or

(ii) social security benefit; or

(iii) sheltered employment allowance; or

(iv) rehabilitation allowance payable in place of one of those; or

(v) wife pension; or

(vi) carer pension because of caring for the person;

for the periodic payments period, the rate of the partner’s pension, benefit or allowance is also to be reduced, under subsection (3), for the periodic payments period.

**(3)** If the rate of a person’s pension, benefit or allowance is to be reduced under this section, the following Table is to be used to work out the person’s reduced rate:

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| REDUCTION TABLE | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | category of person | person qualified for | partner’s status | compensation recipient | reduced fortnightly rate of pension, benefit or allowance |
| 1. | Not member of a couple | IP  SSB  SEA  RHA |  | person | PBA-PC |
|  |  | **not** qualified for: | |  |  |
| 2. | Partnered | IP  SSB  SEA  RHA | IP  SSB  SEA  RHA  WP  CP | person | PBA-PC |
|  |  | **not** qualified for: | |  |  |
| 3. | Partnered | IP  SSB  SEA  RHA | IP  SSB  SEA  RHA  WP  CP | partner | PBA-PC |
|  |  |  | **qualified** for: |  |  |
| 4. | Partnered | IP | IP | person | PBA-PC |
|  |  | SSB | SSB |  | 2 |
|  |  | SEA | SEA |  | PPBA-PC |
|  |  | RHA | RHA  WP  CP |  | 2 |
|  |  |  | **qualified** for: |  |  |
| 5. | Partnered | IP | IP | partner | PBA-PC |
|  |  | SSB | SSB |  | 2 |
|  |  | SEA | SEA |  | PPBA-PC |
|  |  | RHA | RHA  WP |  | 2 |
|  |  |  | CP |  |  |

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**KEY**

|  |  |  |  |
| --- | --- | --- | --- |
| IP | = invalid pension | PBA | = person’s fortnightly rate of pension, benefit or allowance |
| SSB | = social security benefit | PC | = fortnightly rate of periodic compensation |
| SEA | = sheltered employment allowance | PPBA | = partner’s fortnightly rate of pension, benefit or allowance |
| RHA | = rehabilitation allowance payable in place of IP, SSB or SEA |  |  |
| WP | = wife pension |  |  |
| CP | = carer pension because of caring for the person |  |  |

Note 1: if the fortnightly rate of periodic compensation is higher than the fortnightly rate of pension, benefit or allowance, the pension, benefit or allowance will be reduced to nil for the periodic payments period.

Note 2: if a person’s rate is reduced under section 1168, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1207 (maximum basic rate and additional amount for partner first, then rent assistance and finally child amounts).

RATE REDUCTION EXAMPLES

*Example 1:* Jane is not a member of a couple. She has had to stop work because of sickness and has made a claim against her employer for compensation. In the meantime, she starts receiving sickness benefit of $260 per fortnight. Her employer now decides to settle her claim and tells her that she will start to receive fortnightly compensation payments of $160 from the employer. Jane will probably have to notify the Department of Social Security (under section 713) that she is going to receive these periodic payments. Her rate of sickness benefit will then be reduced while she is receiving periodic payments from her employer. Since her situation is covered by item 1 in the Table, her reduced sickness benefit rate will be $100 per fortnight ($260 (Jane’s fortnightly benefit rate)—$160 (Jane’s fortnightly period payment = $100)). This will be her rate of benefit as long as she continues to receive the periodic payments from her employer.

If Jane’s employer also agrees to pay her a lump sum in respect of the period after she became sick, but before the employer agreed to her claim, the sickness benefits she received for the lump sum preclusion period will be recoverable under section 1166.

*Example 2:* Martha is a member of a couple. She is receiving sickness benefit of $235 per fortnight, and her partner Fred is receiving unemployment benefit of $235 per fortnight. Martha has made a claim against her employer for compensation. The employer now decides to settle her claim and tells her that she will start to receive fortnightly compensation payments of $160 from the employer. Martha will probably have to notify the Department of Social Security (under section 713) that she is going to receive these periodic payments. While she is receiving periodic payments from her employer, both her sickness benefit rate and Fred’s unemployment benefit rate will be reduced. Since their situation is covered by item 4 in the Table, Martha’s rate will be reduced by $80 (160/2) and Fred’s rate will also be reduced by $80. As long as Martha continues to receive the periodic payments from her employer, her rate of sickness benefit will be $155 ($235 (Martha’s sickness benefit rate)-$80 = $155) and Fred’s rate of unemployment benefit will also be $155 ($235 (Fred’s unemployment benefit rate)—$80).

If Martha’s employer also agrees to pay her a lump sum in respect of the period after she became sick, but before the employer agreed to her claim, the sickness benefits she received and the unemployment benefit Fred received for the lump sum preclusion period will be recoverable under section 1166.

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

**1169.** If:

(a) the rate of a person’s pension, benefit or allowance is to be reduced under this Part; and

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(b) the person’s rate is reduced under the ordinary income test Module, the maintenance income test Module or the assets test Module of a Rate Calculator;

the reduction under this Part is to apply to the person’s rate as reduced under the ordinary income test Module, the maintenance income test Module or the assets test Module of the Rate Calculator.

**Person may have to repay amount where both periodic compensation payments and pension, benefit or allowance payments have been received**

**1170. (1)** If:

1. a person receives a series of periodic compensation payments; and
2. the person receives payments of:

(i) invalid pension; or

(ii) social security benefit; or

(iii) sheltered employment allowance; or

(iv) rehabilitation allowance payable in place of one of those;

for the periodic payments period; and

(c) those pension, benefit or allowance payments have not been reduced under section 1168;

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 specified in the notice is the **recoverable amount** and is worked out under the following Table and subsections (3) and (4).

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|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| RECOVERABLE AMOUNT TABLE | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 |
| item | category of person | person qualified for | partner’s status | recoverable amount |
|  |  |  |  | the smaller of: |
| 1. | Not member | IP |  | SPP |
|  | of a couple | SSB  SEA  RHA |  | PBAP  (see subsection (3)) |
|  |  |  | **not** qualified for: | the smaller of: |
| 2. | Partnered | IP | IP | SPP |
|  |  | SSB | SSB | PBAP |
|  |  | SEA  RHA | SEA  RHA  WP  CP | (see subsection (3)) |
|  |  |  | **qualified** for: | the smaller of: |
| 3. | Partnered | IP | IP | SPP |
|  |  | SSB | SSB | PBAP + PPBAP |
|  |  | SEA | SEA | (see |
|  |  | RHA | RHA  WP  CP | subsection (4)) |

**KEY**

|  |  |  |  |
| --- | --- | --- | --- |
| IP | = invalid pension | SPP | = sum of the periodic payments |
| SSB | = social security benefit | PBAP | = person’s pension, benefit or allowance payments |
| SEA | = sheltered employment allowance | PPBAP | = partner’s pension, benefit or allowance payments |
| RHA | = rehabilitation allowance payable in place of IP, SSB or SEA |  |  |
| WP | = wife pension |  |  |
| CP | = carer pension because of caring for the person |  |  |

**(3)** If the person’s situation is covered by item 1 or 2 in the Table, the **recoverable amount** is equal to the smaller of:

1. the sum of the periodic compensation payments; or
2. the sum of the pension, benefit or allowance payments to the person for the periodic payments period.

**(4)** If the person’s situation is covered by item 3 in the Table, the **recoverable amount** is equal to the smaller of:

(a) the sum of the periodic compensation payments; or

**Compensation Recovery s. 1170**

(b) the sum of the pension, benefit or allowance payments to the person and to the person’s partner for the periodic payments period.

PERIODIC PAYMENTS RECOVERABLE AMOUNT EXAMPLES

*Example 1:* Jane is not a member of a couple. She is receiving invalid pension at a fortnightly rate of $267.20. At the same time, she is receiving a series of periodic payments from an insurance company in settlement of her claim for compensation for an injury she received. The amount of the periodic payment is $300 per fortnight. She has been receiving both invalid pension and the periodic payments for four weeks. During that four weeks Jane received a total of $534.40 in invalid pension payments, and she received a total of $600 in periodic payments from the insurance company for that period.

The Secretary writes to Jane telling her of the recoverable amount she is liable to repay to the Commonwealth. Since Jane’s situation is covered by item 1 in the Table, the recoverable amount is the smaller of $534.40 and $600. Jane will be liable to repay to the Commonwealth $534.40.

*Example 2:* Martha is a member of a couple. Martha is receiving invalid pension and her partner Fred is receiving unemployment benefit. At the same time, Martha is receiving a series of periodic payments from an insurance company in settlement of her claim for compensation for an injury she received. The amount of the periodic payment is $300 per fortnight. She has been receiving both invalid pension and the periodic payments for four weeks. During that four weeks Martha received a total of $534.40 in invalid pension payments and Fred received a total of $534.40 in unemployment benefit. Martha also received $600 in periodic payments from the insurance company for that four week period.

The Secretary writes to Martha telling her of the recoverable amount she is liable to repay to the Commonwealth. Since Martha and Fred’s situation is covered by item 3 in the Table, the recoverable amount is the smaller of $1,068.80 ($534.40 plus $534.40) and $600. Martha will be liable to repay to the Commonwealth $600.

**Periodic compensation payments not counted as ordinary income**

**1171.** If the amount per fortnight of a pension, benefit or allowance payable to a person is reduced under section 1168 because of a series of periodic compensation payments, those payments are not to be regarded as ordinary income of either the person or the person’s partner for the purposes of this Act (apart from Part 2.18 or section 698).

Note 1: for “ordinary income” see section 8.

Note 2: Part 2.18 deals with the family allowance supplement.

Note 3: section 698 deals with limitations on the amount of sickness benefit payable.

***Division 4***—***Compensation payers***

**Secretary may send preliminary notice to potential compensation payer**

**1172. (1)** If:

1. a person seeks compensation in respect of the person’s lost earnings or lost capacity to earn; and
2. the person receives or claims:

(i) an invalid pension; or

(ii) a social security benefit; or

(iii) a sheltered employment allowance; or

(iv) a rehabilitation allowance that became payable in place of one of those;

for any period in respect of which the compensation is sought;

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

Note: for “potential compensation payer” see section 17.

**(2)** A notice under subsection (1) must contain:

1. a statement of the potential compensation payer’s obligation under section 1173; and
2. a statement of the effect of section 1176 so far as it relates to a preliminary notice.

**Potential compensation payer must notify Department of liability**

**1173.** If a potential compensation payer:

1. is given notice under section 1172 in relation to a person; and
2. either before or after receiving the notice, becomes liable to pay compensation to the person;

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

(c) becoming liable; or

(d) receiving the notice;

whichever happens later.

Penalty:

(e) in the case of a natural person—$2,000 or imprisonment for 12 months, or both; or

(f) in the case of a body corporate—$10,000.

**Secretary may send recovery notice to compensation payer**

**1174. (1)** If:

1. a compensation payer is liable to pay compensation to a person in respect of the person’s lost earnings or lost capacity to earn; and
2. the person receives or claims:

(i) an invalid pension; or

(ii) a social security benefit; or

(iii) a sheltered employment allowance; or

(iv) a rehabilitation allowance that became payable in place of one of those;

for the periodic payments period or the lump sum payment period;

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

Note: for “compensation payer” see section 17.

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1. If a compensation payer is given notice under subsection (1), the compensation payer is liable to pay to the Commonwealth the amount specified in the notice.
2. The amount specified in the notice is the **recoverable amount** and is worked out under subsections (4), (5) and (6).
3. If the person claiming compensation is not a member of a couple, the **recoverable amount** is equal to the smallest of the following amounts:
4. the sum of the pension, benefit or allowance payments payable to the person for the periodic payments period or the lump sum payment period;
5. the compensation part of the lump sum payment or the sum of the amounts of the periodic compensation payments;
6. 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 preliminary notice under section 1172 in relation to the matter; or

(ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

**(5)** If:

1. the person claiming compensation is a member of a couple; and
2. the person’s partner neither receives nor claims:

(i) an invalid pension; or

(ii) a social security benefit; or

(iii) a sheltered employment allowance; or

(iv) a rehabilitation allowance payable in place of one of those; or

(v) a wife pension; or

(vi) a carer pension because of caring for the person;

for the periodic payments period or the lump sum payment period;

the **recoverable amount** is equal to the smallest of the following amounts:

1. the sum of the pension, benefit or allowance payments payable to the person for the periodic payments period or the lump sum payment period;
2. the compensation part of the lump sum payment or the sum of the amounts of the periodic compensation payments;
3. the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

**s. 1174 Compensation Recovery**

(i) a preliminary notice under section 1172 in relation to the matter; or

(ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

**(6)** If:

1. the person claiming compensation is a member of a couple; and
2. the person’s partner receives or claims:

(i) an invalid pension; or

(ii) a social security benefit; or

(iii) a sheltered employment allowance; or

(iv) a rehabilitation allowance payable in place of one of those; or

(v) a wife pension; or

(vi) a carer pension because of caring for the person;

for the periodic payments period or the lump sum payment period;

the **recoverable amount** is equal to the smallest of the following amounts:

1. the sum of the pension, benefit or allowance payments payable to the person and to the person’s partner for the periodic payments period or the lump sum payment period;
2. the compensation part of the lump sum payment or the sum of the amount of the periodic compensation payments;
3. 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 preliminary notice under section 1172 in relation to the matter; or

(ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

**(7)** A notice under this section must contain a statement of the effect of section 1176 so far as it relates to a recovery notice.

**Compensation payer’s payment to Commonwealth discharges liability to compensation recipient**

**1175.** Payment to the Commonwealth of an amount that a compensation payer is liable to pay under section 1174 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.

**Compensation Recovery s. 1176**

**Offence to make compensation payment after receiving preliminary notice or recovery notice**

**1176. (1)** If a compensation payer has been given a preliminary notice under section 1172 or a recovery notice under section 1174 in relation to the payment of compensation to a person, the compensation payer must not make the compensation payment to the person unless:

1. in the case of a preliminary notice—the Secretary has given the compensation payer written notice that the preliminary notice is revoked; or
2. in the case of a recovery notice—the compensation payer has paid to the Commonwealth the amount specified in the notice; or
3. the Secretary has given the compensation payer written permission to pay the compensation.

Penalty:

1. in the case of a natural person—$2,000 or imprisonment for 12 months, or both; or
2. in the case of a body corporate—$10,000.

*Liability to pay Commonwealth*

**(2)** A compensation payer who contravenes subsection (1) is, in addition to being liable under subsection (1), liable to pay to the Commonwealth:

1. if the contravention relates to a preliminary notice—an amount determined by the Secretary; and
2. if the contravention relates to a recovery notice—the recoverable amount specified in the notice.

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

1. if the person is not a member of a couple—subsection 1174 (4); or
2. if the person is a member of a couple—subsection 1174 (5) or (6), as the case may be.

***Division 5***—***Insurers***

**Secretary may send preliminary notice to insurer**

**1177. (1)** If:

1. a person makes a claim against a potential compensation payer for compensation in respect of the person’s lost earnings or lost capacity to earn; and
2. the person receives or claims:

(i) an invalid pension; or

(ii) a social security benefit; or

**s. 1177 Compensation Recovery**

(iii) a sheltered employment allowance; or

(iv) a rehabilitation allowance that became payable in place of one of those;

for any period in respect of which the compensation is sought; and

(c) the potential compensation payer’s 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.

**(2)** A notice under subsection (1) must contain:

1. a statement of the insurer’s obligation under section 1178; and
2. a statement of the effect of section 1182 so far as it relates to a preliminary notice.

**Insurer must notify Department of liability**

**1178.** If an insurer:

1. is given notice under section 1177 in relation to a claim; and
2. either before or after receiving the notice, becomes liable to indemnify the compensation payer, either wholly or partly, in relation to the claim;

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

(c) becoming liable; or

(d) receiving the notice;

whichever happens later.

Penalty:

(e) in the case of a natural person—$2,000 or imprisonment for 12 months, or both; or

(f) in the case of a body corporate—$10,000.

**Secretary may send recovery notice to insurer**

**1179. (1)** If:

1. 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 in respect of the person’s lost earnings or lost capacity to earn; and
2. the person receives or claims:

(i) an invalid pension; or

(ii) a social security benefit; or

(iii) a sheltered employment allowance; or

(iv) a rehabilitation allowance that became payable in place of one of those;

**Compensation Recovery s. 1179**

for the periodic payments period or the lump sum payment period;

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

1. If an insurer is given notice under subsection (1), the insurer is liable to pay to the Commonwealth the amount specified in the notice.
2. The amount specified in the notice is the **recoverable amount** and is worked out under subsections (4), (5) and (6).
3. If the person claiming compensation is not a member of a couple, the **recoverable amount** is equal to the smallest of the following amounts:
4. the sum of the pension, benefit or allowance payments payable to the person for the periodic payments period or the lump sum payment period;
5. the compensation part of the lump sum payment or the sum of the amounts of the periodic compensation payments;
6. 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 preliminary notice under section 1177 in relation to the matter; or

(ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

**(5)** If:

1. the person claiming compensation is a member of a couple; and
2. the person’s partner neither receives nor claims:

(i) an invalid pension; or

(ii) a social security benefit; or

(iii) a sheltered employment allowance; or

(iv) a rehabilitation allowance payable in place of one of those; or

(v) a wife pension; or

(vi) a carer pension because of caring for the person;

for the periodic payments period or the lump sum payment period;

the **recoverable amount** is equal to the smallest of the following amounts:

1. the sum of the pension, benefit or allowance payments payable to the person for the periodic payments period or the lump sum payment period;
2. the compensation part of the lump sum payment or the sum of the amounts of the periodic compensation payments;

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(e) 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 preliminary notice under section 1177 in relation to the matter; or

(ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

**(6)** If:

1. the person claiming compensation is a member of a couple; and
2. the person’s partner receives or claims:

(i) an invalid pension; or

(ii) a social security benefit; or

(iii) a sheltered employment allowance; or

(iv) a rehabilitation allowance payable in place of one of those; or

(v) a wife pension; or

(vi) a carer pension because of caring for the person;

for the periodic payments period or the lump sum payment period;

the **recoverable amount** is equal to the smallest of the following amounts:

1. the sum of the pension, benefit or allowance payments payable to the person and to the person’s partner for the periodic payments period or the lump sum payment period;
2. the compensation part of the lump sum payment or the sum of the amount of the periodic compensation payments;
3. 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 preliminary notice under section 1177 in relation to the matter; or

(ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

**(7)** A notice under this section must contain a statement of the effect of section 1182 so far as it relates to a recovery notice.

**Preliminary notice or recovery notice to insurer suspends compensation payer’s liability**

**1180.** If an insurer has been given a preliminary notice under section 1177 or a recovery notice under section 1179 in relation to the insurer’s liability, or possible liability, to indemnify a compensation payer against a liability arising from a claim for compensation, the

**Compensation Recovery s. 1180**

compensation payer is not liable to pay compensation while the notice has effect.

**Insurer’s payment to Commonwealth discharges liability**

**1181.** Payment of an amount that an insurer is liable to pay to the Commonwealth under section 1179 in relation to a person claiming compensation operates, to the extent of the payment, as a discharge of:

1. the insurer’s liability to the compensation payer; and
2. the compensation payer’s liability to pay compensation to the person.

**Offence to make compensation payment after receiving preliminary notice or recovery notice**

**1182. (1)** If an insurer has been given a preliminary notice under section 1177 or a recovery notice under section 1179 in relation to the insurer’s liability to make a payment indemnifying a compensation payer, the insurer must not make the payment to the compensation payer unless:

1. in the case of a preliminary notice—the Secretary has given the insurer written notice that the preliminary notice is revoked; or
2. in the case of a recovery notice—the insurer has paid to the Commonwealth the amount specified in the notice; or
3. the Secretary has given the insurer written permission to make the payment to the compensation payer.

Penalty:

1. in the case of a natural person—$2,000 or imprisonment for 12 months, or both; or
2. in the case of a body corporate—$10,000.

*Liability to pay Commonwealth*

**(2)** An insurer who contravenes subsection (1) is, in addition to being liable under subsection (1), liable to pay to the Commonwealth:

1. if the contravention relates to a preliminary notice—an amount determined by the Secretary; and
2. if the contravention relates to a recovery notice—the recoverable amount specified in the notice.

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

(a) if the person claiming compensation is not a member of a couple—subsection 1179 (4); or

(b) if the person claiming compensation is a member of a couple—subsection 1179 (5) or (6), as the case may be.

**s. 1183 Compensation** **Recovery**

***Division 6***—***Miscellaneous***

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

**1183. (1)** The Secretary is not to give a recovery notice to an insurer (under section 1179) about a matter if there is a recovery notice to a compensation payer (under section 1174) in force in relation to the same matter.

**(2)** The Secretary is not to give a recovery notice to a compensation payer (under section 1174) about a matter if there is a recovery notice to an insurer (under section 1179) in force in relation to the same matter.

**Secretary may disregard some payments**

**1184.** For the purposes of this Part, the Secretary may treat the whole or part of a compensation payment as:

1. not having been made; or
2. not liable to be made;

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

**Part to bind Crown**

**1185.** This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

**New Enterprise Incentive Scheme s. 1186**

**PART 3.15—NEW ENTERPRISE INCENTIVE SCHEME**

**General effect of Part**

**1186.** This Part adjusts the social security pension or benefit rate of a person who is receiving or whose partner is receiving, payments under the scheme known as the New Enterprise Incentive Scheme (NEIS).

Note 1: payments under the New Enterprise Incentive Scheme (NEIS) do not count as ordinary income for the purposes of the ordinary income test: see paragraph 8 (8) (t).

Note 2: a person who has turned pension age is not eligible for payments under the New Enterprise Incentive Scheme (NEIS).

**Reduction in rate of payments under this Act if recipient or partner also receiving payments under New Enterprise Incentive Scheme (NEIS)**

**1187. (1)** If:

(a) an instalment of:

(i) invalid pension; or

(ii) wife pension; or

(iii) carer pension; or

(iv) sole parent pension; or

(v) widowed person allowance; or

(vi) special needs pension;

is payable to a person during a pension period; or

(b) a payment of:

(i) unemployment benefit; or

(ii) job search allowance; or

(iii) sickness benefit; or

(iv) special benefit; or

(v) sheltered employment allowance; or

(vi) rehabilitation allowance;

is payable to a person during a pension period; and

(c) NEIS is payable to the person during that pension period;

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

(2) If:

(a) an instalment of:

(i) invalid pension; or

(ii) rehabilitation allowance;

is payable to a person during a pension period; and

(b) NEIS is payable to the person during that pension period; and

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(c) an instalment of:

(i) wife pension in respect of the person; or

(ii) carer pension in respect of the person;

is payable to the person’s partner during a pension period; the rate of the partner’s payment is to be reduced under this Part.

**(3)** If:

1. NEIS is payable to a person during a pension period; and
2. the person is a member of a couple; and
3. a payment of:

(i) unemployment benefit; or

(ii) job search allowance; or

(iii) sickness benefit; or

(iv) special benefit; or

(v) sheltered employment allowance; or

(vi) rehabilitation allowance; and

is payable to the person’s partner during that pension period; and

(d) the amount of the partner’s payment includes a spouse amount for the person;

the rate of the partner’s payment referred to in paragraph (c) is to be reduced under this Part.

**Rate reduction under this Part**

**1188. (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 NEIS payment, the amount of rate reduction is to be equal to the amount of the NEIS payment.

**(2)** If:

1. a person’s rate of payment under this Act is to be reduced under this Part because of a NEIS payment; and
2. 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 NEIS 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 NEIS 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**

***Division 1***—***Preliminary***

**Analysis of Part**

**1189.** This Part provides for:

1. 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
2. the indexation, in line with AWE (Average Weekly Earnings) increases, of the amounts referred to in the AWE Indexation Table at the end of section 1195; and
3. the adjustment of other amounts in line with the increases in the amounts indexed.

**Indexed and adjusted amounts**

**1190.** The following table sets out:

1. each amount that is to be indexed or adjusted under this Part; and
2. the abbreviation used in this Part for referring to that amount; and
3. the provision or provisions in which that amount is to be found.

|  |  |  |  |
| --- | --- | --- | --- |
| INDEXED AND ADJUSTED AMOUNTS TABLE | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provisions in which amount specified |
|  | **Maximum basic rates** |  |  |
| 1. | Maximum basic rates for a social security pension | pension MBR | [Pension Rate Calculator A—point 1064-B1—Table B—column 3—all amounts]  [Pension Rate Calculator B—point 1065-B1—Table B—column 3—all amounts]  [Pension Rate Calculator C—point 1066-B1—the annual rate] |

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| --- | --- | --- | --- |
| INDEXED AND ADJUSTED AMOUNTS TABLE*—continued* | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provision in which amount specified |
| 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 A—point 1067-B1—Table B—column 3A—items 1 to 5]  [Benefit Rate Calculator A—point 1067-B1—Table B—column 3B—item 5] |
|  |  |  | [Benefit Rate Calculator A—point 1067-C3—paragraphs (a) and (b)]  [Benefit Rate Calculator B—point 1068-B1—Table B—column 3A—items 1 to 10]  [Benefit Rate Calculator B—point 1068-B1—Table B—column 3B—items 3, 4, 5, 7, 9 and 10] |
|  |  |  | [Benefit Rate Calculator B—point 1068-C4—paragraphs (a) and (b)] |
| 3. | Maximum basic rates for a social security benefit payable to a person who is under 21, is not a member of a couple and does not have a dependent child | benefit MBR (junior or intermediate) | [Benefit Rate Calculator A—point 1067-B1—Table B—column 3B—items 1, 2, 3 and 4]  [Benefit Rate Calculator B—point 1068-B1—Table B—column 3B—items 1, 2, 6 and 8] |
| 4. | Maximum basic rate of family allowance | family allowance MBR | [Family Allowance Rate Calculator—point 1069-B1—Table B—column 3—all amounts] |
| 5. | **Child amounts**  Maximum basic rate of family allowance supplement for child who has not turned 13 | FAS under 13 child MBR | [Family Allowance Supplement Rate Calculator—point 1070-B1—column 3—item 1] |
| 6. | Maximum basic rate of family allowance supplement for child who has turned 13 but has not turned 16 | FAS 13-16 child MBR | [Family Allowance Supplement Rate Calculator—point 1070-B1—Table B—column 3—item 2] |

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| INDEXED AND ADJUSTED AMOUNTS TABLE*—continued* | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provision in which amount specified |
| 7. | Social security pension dependent child add-on for child who has not turned 13 | pension under 13 child add-on | [Pension Rate Calculator A—point 1064-C3—Table C—column 3—item 1]  [Pension Rate Calculator B—point 1065-C3—Table C—column 3—item 1]  [Pension Rate Calculator C—point 1066-C2—Table C—column 3—item 1] |
| 8. | Social security pension dependent child add-on for child who has turned 13 but has not turned 16 | pension 13-16 child add-on | [Pension Rate Calculator A—point 1064-C3—Table C—column 3—item 2]  [Pension Rate Calculator B—point 1065-C3—Table C—column 3—item 2]  [Pension Rate Calculator C—point 1066-C2—Table C—column 3—item 2] |
| 9. | Social security benefit dependent child add-on for child who has not turned 13 | benefit under 13 child add-on | [Benefit Rate Calculator A—point 1067-E2—Table E—column 3—item 1]  [Benefit Rate Calculator B—point 1068-E2—Table E—column 3—item 1] |
| 10. | Social security benefit dependent child add-on for child who has turned 13 but has not turned 16 | benefit 13-16 child add-on | [Benefit Rate Calculator A—point 1067-E2—Table E—column 3—item 2]  [Benefit Rate Calculator B—point 1068-E2—Table E—column 3—item 2] |

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| INDEXED AND ADJUSTED AMOUNTS TABLE*—continued* | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provision in which amount specified |
| 11. | Guardian allowance for social security pension | pension  guardian  allowance | [Pension Rate Calculator A—point 1064-C10—the annual rate] |
|  |  |  | [Pension Rate Calculator B—point 1065-C3—Table C—column 3—item 4]  [Pension Rate Calculator C—point 1066-C5—the annual rate] |
| 12. | Guardian allowance for social security benefit | benefit guardian allowance | [Benefit Rate Calculator A—point 1067-E8]  [Benefit Rate Calculator B—point 1068-E9] |
| 13. | Multiple birth allowance for family allowance | FA multiple birth allowance | [Family Allowance Rate Calculator—point 1069-C2—paragraphs (a) and (b)] |
| 14. | Rate of family allowance payable to an approved care organisation | approved care organisation FA rate | [subsection 855 (2)] |
| 15. | Rate of child disability allowance | CDA rate | [subsection 967 (1)] |
| 16. | Rate of double orphan pension | DOP rate | [section 1010] |
|  | **Rent assistance** |  |  |
| 17. | Maximum rent assistance for social security pension | pension MRA | [Pension Rate Calculator A—point 1064-D5—Table D—column 4—all amounts]  [Pension Rate Calculator C—point 1066-D4—Table D—column 2—all amounts] |
| 18. | Maximum rent assistance for social security benefit | benefit MRA | [Benefit Rate Calculator A—point 1067-F13—Table F—column 4—all amounts]  [Benefit Rate Calculator B—point 1068-F15—Table F—column 4—all amounts] |

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| INDEXED AND ADJUSTED AMOUNTS TABLE*—continued* | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provision in which amount specified |
| 19. | Maximum rent assistance for family allowance supplement | FAS MRA | [Family Allowance Supplement Rate Calculator—point 1070-C2—Table C—column 4—all amounts] |
| 20. | **Income free area**  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 C—point 1066-E4—Table E—column 1] |
| 21. | Taxable income basic free area limit for family allowance | family allowance free area | [Family Allowance Rate Calculator—point 1069-D8—Table D—columns 1 and 2] |
| 22. | Taxable income basic free area limit for family allowance supplement | FAS free area | [Family Allowance Supplement Rate Calculator—point 1070-D14—Table D—column 1] |
| 23. | Fringe benefits ordinary income free area | fringe benefits free area | [Fringe Benefits Ordinary Income Test Calculator—point 1071-4—Table—column 3] |
|  | **Assets value limits** |  |  |
| 24. | Assets value limit for social security pension 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 C—point 1066-G3—Table G—column 3A—item 1] |
| 25. | assets value limit for social security pension 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 C—point 1066-G3—Table G—column 3B—item 1] |

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| INDEXED AND ADJUSTED AMOUNTS TABLE*—continued* | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provision 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 C—point 1066-G3—Table G—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 C—point 1066-G3—Table G—column 3B—items 2 and 3] |
| 28. | Assets value limit for social security benefit for homeowner who is not a member of a couple | benefit “single” homeowner AVL | [subsection 530 (2)—Table—column 3A—item 1]  [subsection 601 (3)—Table—column 3A—item 1]  [subsection 671 (3)—Table—column 3A—item 1]  [subsection 733 (3)—Table—column 3A—item 1] |
| 29. | Assets value limit for social security benefit for non-homeowner who is not a member of a couple | benefit “single” non-homeowner AVL | [subsection 530 (2)—Table—column 3B—item 1]  [subsection 601 (3)—Table—column 3B—item 1]  [subsection 671 (3)—Table—column 3B—item 1]  [subsection 733 (3)—Table—column 3B—item 1] |

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| INDEXED AND ADJUSTED AMOUNTS TABLE*—continued* | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provision in which amount specified |
| 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 | [subsection 530 (2)—Table—column 3A—item 2]  [subsection 601 (3)—Table—column 3A—item 2] |
|  |  |  | [subsection 671 (3)—Table—column 3A—item 2]  [subsection 733 (3)—Table—column 3A—item 2] |
| 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 | [subsection 530 (2)—Table—column 3B—item 2]  [subsection 601 (3)—Table—column 3B—item 2]  [subsection 671 (3)—Table—column 3B—item 2]  [subsection 733 (3)—Table—column 3B—item 2] |
|  |  |  |
| 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 530 (2)—Table—column 3A—item 3]  [subsection 601 (3)—Table—column 3A—item 3]  [subsection 671 (3)—Table—column 3A—item 3]  [subsection 733 (3)—Table—column 3A—item 3] |

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| INDEXED AND ADJUSTED AMOUNTS TABLE*—continued* | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provision 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 530 (2)—Table—column 3B—item 3]  [subsection 601 (3)—Table—column 3B—item 3]  [subsection 671 (3)—Table—column 3B—item 3]  [subsection 733 (3)—Table—column 3B—item 3] |
|  |  |  |
| 34. | Assets value limit for some illness separated retirement village residents | special illness separated retirement village resident AVL | [paragraph 1152 (5) (g)]  [paragraph 1153 (3) (e)]  [paragraph 1154 (2) (f)] |
| 35. | Assets value limit for family allowance supplement | FAS AVL | [paragraph 895 (1) (d)] |
| 36. | Assets value limit for fringe benefits for homeowner who is not a member of a couple | fringe benefits “single” homeowner AVL | [Fringe Benefits Means Test Calculator—point 1072-2—Table—column 3A—item 1] |
| 37. | Assets value limit for fringe benefits for non-homeowner who is not a member of a couple | fringe benefits “single” non-homeowner AVL | [Fringe Benefits Means Test Calculator—point 1072-2—Table—column 3B—item 1] |
| 38. | Assets value limit for fringe benefits for homeowner who is a member of a couple | fringe benefits “partnered” homeowner AVL | [Fringe Benefits Means Test Calculator—point 1072-2—Table—column 3A—item 2] |
| 39. | Assets value limit for fringe benefits for non-homeowner who is a member of a couple | fringe benefits “partnered” non-homeowner AVL | [Fringe Benefits Means Test Calculator—point 1072-2—Table—column 3B—item 2] |

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| INDEXED AND ADJUSTED AMOUNTS TABLE*—continued* | | | |
| column 1 | column 2 | column 3 | column 4 |
| item | description of amount | abbreviation | provision in which amount specified |
|  | **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 | [paragraph 5 (3) (c)]  [paragraph 250 (2) (c)]  [paragraph 839 (2) (c)]  [subparagraph 953 (b) (ii)] |
|  | **Parental means test** |  |  |
| 41. | Parental ordinary income free area | parental free area | [Benefit Rate Calculator A—point 1067-G17—Table G—column 1] |
| 42. | Parental assets value limit | parental AVL | [Benefit Rate Calculator A—point 1067-G10] |
| 43. | Parental means test minimum rate | parental means test minimum rate | [Benefit Rate Calculator A—point 1067-G8] |
|  | **Incentive allowance** |  |  |
| 44. | Incentive allowance rate | incentive allowance rate | [Pension Rate Calculator A—point 1064-J3—Table J—column 3—all amounts]  [Pension Rate Calculator B—point 1065-F3—Table F—column 3—all amounts] |

***Division 2***—***CPI indexation***

**CPI Indexation Table**

**1191. (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:

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **CPI INDEXATION TABLE** | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | amount | indexation day(s) | reference quarter (most recent before indexation day) | base quarter | rounding base |
|  | **Maximum basic rates** |  |  |  |  |
| 1. | pension MBR | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | $2.60 |
| (b) 20 September | (b) June |  |
| 2. | benefit MBR (ordinary) | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | $0.05 |
|  | (b) 20 September | (b) June |  |
| 3. | benefit MBR (junior or intermediate) | 1 January | June | highest June quarter before reference quarter (but not earlier than June quarter 1986) | $0.05 |
| 4. | family allowance MBR | 1 January | June | highest June quarter before reference quarter (but not earlier than June quarter 1989) | $0.10 |
| 5. | **Child amounts**  pension guardian allowance | 1 January | June | highest June quarter before reference quarter (but not earlier than June quarter 1986) | $2.60 |

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CPI INDEXATION TABLE*—continued* | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | amount | indexation day(s) | reference quarter (most recent before indexation day) | base quarter | rounding base |
| 6. | benefit guardian allowance | 1 January | June | highest June quarter before reference quarter (but not earlier than June quarter 1986) | $0.05 |
| 7. | FA multiple birth allowance | 1 January | June | highest June quarter before reference quarter (but not earlier than June quarter 1988) | $0.10 |
| 8. | approved care  organisation FA rate | 1 January | June | highest June quarter before reference quarter (but not before June quarter 1989) | $0.10 |
| 9. | CDA 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*—continued* | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | amount | indexation day(s) | reference quarter (most recent before indexation day) | base quarter | rounding base |
|  | **Rent assistance** |  |  |  |  |
| 11. | pension MRA | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | $2.60 |
|  |  | (b) 20 September | (b) June |  |
| 12. | benefit MRA | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | $0.10 |
|  | (b) 20 September | (b) June |  |
| 13. | FAS MRA | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | $0.10 |
|  | (b) 20 September | (b) June |  |
|  | **Income free areas** |  |  |  |  |
| 14. | pension free area | 1 July | March | most recent March quarter before reference quarter | $1.00 |
| 15. | family allowance free area | 1 January | June | most recent June quarter before reference quarter | not applicable—see subsection 1194 (4) |

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|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CPI INDEXATION TABLE*—continued* | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | amount | indexation day(s) | reference quarter (most recent before indexation day) | base quarter | rounding base |
| 16. | FAS free area | 1 January | June | most recent June quarter before reference quarter | $250.00 |
| 17. | fringe benefits ordinary income free area | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | $52.00 |
|  | (b) 20 September | (b) June |  |
|  | **Assets value limits** |  |  |  |  |
| 18. | pension “single” homeowner AVL | 13 June | December | most recent December quarter before reference quarter | $250.00 |
| 19. | pension “partnered” homeowner AVL | 13 June | December | most recent December quarter before reference quarter | $250.00 |
| 20. | pension “partnered” non-homeowner AVL | 13 June | December | most recent December quarter before reference quarter | $250.00 |
| 21. | benefit “single” homeowner AVL | 13 June | December | most recent December quarter before reference quarter | $250.00 |
| 22. | benefit “partnered” (item 3) homeowner AVL | 13 June | December | most recent December quarter before reference quarter | $250.00 |

**s. 1191 Indexation**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CPI INDEXATION TABLE*—continued* | | | | | |
| column 1 | column 2 | column 3 | column 4 | column S | column 6 |
| item | amount | indexation day(s) | reference quarter (most recent before indexation day) | base quarter | rounding base |
| 23. | benefit “partnered” (item 3) non-homeowner AVL | 13 June | December | most recent December quarter before reference quarter | $250.00 |
| 24. | parental AVL | 1 January | June | most recent June quarter before reference quarter | $250.00 |
| 25. | FAS AVL | 1 January | June | most recent June quarter before reference quarter | $250.00 |
| 26. | fringe benefits “single” homeowner AVL | 13 June | December | most recent December quarter before reference quarter | $250.00 |
| 27. | fringe benefits “partnered” homeowner AVL | 13 June | December | most recent December quarter before reference quarter | $250.00 |

**Indexation s. 1191**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CPI INDEXATION TABLE*—continued* | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| item | amount | indexation day(s) | reference quarter (most recent before indexation day) | base quarter | rounding base |
|  | **Permissible child earnings** |  |  |  |  |
| 28. | permissible child earnings limit | 1 January | June | highest June quarter before reference quarter (but not earlier than June quarter 1986) | $0.05 |
|  | **Parental means test** |  |  |  |  |
| 29. | parental means test minimum rate | 1 January | June | highest June quarter before reference quarter (but not earlier than June quarter 1986) | $0.05 |
|  | **Incentive allowance** |  |  |  |  |
| 30. | incentive allowance rate | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | $2.60 |
|  | (b) 20 September | (b) June |  |

*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.

**Indexation of amounts**

**1192. (1)** If an amount is to be indexed under this Division on an indexation day, this Act (and any other Act that refers to this Act) have 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:

**s. 1192 Indexation**

|  |  |
| --- | --- |
| *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: the result is the indexed amount. |

Note: for “current figure” see subsection 20 (1).

**Indexation factor**

**1193. (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:

|  |
| --- |
| **index number for most recent reference quarter** |
| **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.

1. 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.
2. 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.

**Rounding off indexed amounts**

**1194. (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.

1. 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.
2. 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.
3. If a provisional indexed amount for a family allowance free area is not a multiple of $1.00, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of $1.00.

**Indexation s. 1195**

***Division 3*—*AWE indexation***

**AWE Indexation Table**

**1195.** An amount referred to in the following AWE Indexation Table is to be indexed under this Division on each indexation day for the amount, using the reference calendar year and the base calendar year for the amount and indexation day:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| AWE INDEXATION TABLE | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 |
| item | amount | indexation day | reference calendar year | base calendar year |
| 1. | parental free area | 1 January | most recent calendar year before indexation day | calendar year immediately before reference calendar year |

**Indexation of amounts**

**1196. (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:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Use section 1197 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 1198 to round off the provisional indexed amount: the result is the indexed amount. |

Note: for “current figure” see subsection 20 (1).

**Indexation factor**

**1197. (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:

|  |
| --- |
| **November earnings average for the reference calendar vear** |
| **November earnings average for the base calendar year** |

worked out to 3 decimal places.

Note: for “reference calendar year” and “base calendar year” see AWE Indexation Table in section 1195.

**s. 1197 Indexation**

1. 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.
2. 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.

**Rounding off indexed amounts**

**1198. (1)** If a provisional indexed amount is a multiple of $50.00, the provisional indexed amount becomes the indexed amount.

Note: for “provisional indexed amount” see Step 3 in subsection 1196 (2).

1. If a provisional indexed amount is not a multiple of $50.00, the indexed amount is the provisional indexed amount rounded up or down to the nearest multiple of $50.00.
2. If a provisional indexed amount is not a multiple of $50.00 but is a multiple of $25.00, the indexed amount is the provisional amount rounded up to the nearest multiple of $50.00.

***Division 4*—*Adjustment of other rates***

**Adjustment of FAS child MBRs**

**1199. (1)** Subject to subsection (2), this Act (and any other Act that refers to this Act) have effect as if, on 1 January each year, the amount worked out in accordance with the following formula were substituted for the FAS under 13 MBR:

|  |  |
| --- | --- |
| **CPC Rate** × 3  520 | **− FA amount** |

Note 1: for “CPC Rate” (“combined pensioner couple rate”) see subsection 20 (2).

Note 2: for “FA amount” (“family allowance amount”) see subsection 20 (3).

Note 3: explanation of the formula—start with the current rate of pension paid to a member of a pensioner couple—multiply this rate by 2 to get the total yearly rate paid to the 2 members of such a couple (the “combined pensioner couple rate”)—divide by 26 to convert the pensioner couple rate from a yearly rate to a fortnightly rate—work out what 15% of the converted rate is—deduct the family allowance amount.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| combined pensioner couple rate | × | 1  26 | × | 15  100 | − family allowance amount |
| = combined pensioner couple rate | × | 1  26 | × | 3  20 | − family allowance amount |
| = combined pensioner couple rate | × | 3  520 |  | − | family allowance amount. |

**(2)** Subsection (1) does not apply if the amount worked out in accordance with the formula in that subsection is less than the current figure (immediately before the 1 January concerned) for the FAS under 13 MBR.

Note: for “current figure” see subsection 20 (1).

**Indexation s. 1199**

**(3)** Subject to subsection (4), this Act (and any other Act that refers to this Act) have effect as if, on 1 January each year, the amount worked out in accordance with the following formula were substituted for the FAS 13-16 MBR:

|  |  |  |
| --- | --- | --- |
| **CPC Rate** × 1  130 | **−** | **FA amount** |

Note 1: for “CPC Rate” (“combined pensioner couple rate”) see subsection 20 (2).

Note 2: for “FA amount” (“family allowance amount”) see subsection 20 (3).

Note 3: explanation of the formula—start with the current rate of pension for a member of a pensioner couple—multiply this rate by 2 to get the total rate paid to the 2 members of such a couple (the “combined pensioner couple rate”)—divide by 26 to convert the annual rate to a fortnightly rate—work out 20% of the converted combined rate—deduct the amount of family allowance paid in respect of the child.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| combined pensioner couple rate | × | 1  26 | × | 20  100 | − family allowance amount |
| = combined pensioner couple rate | × | 1  26 | × | 1  5 | − family allowance amount |
| = combined pensioner couple rate | × | 1  130 |  | − | family allowance amount. |

**(4)** Subsection (3) does not apply if the amount worked out in accordance with the formula in that subsection is less than the current figure (immediately before the 1 January concerned) for the FAS 13-16 MBR.

Note: for “current figure” see subsection 20 (1).

**(5)** If the amount worked out under subsection (1) or (3) is not a multiple of 5 cents, the amount to be substituted under that subsection is to be increased to the next highest amount that is a multiple of 5 cents.

**Adjustment of pension child add-ons**

**1200. (1)** Subject to subsection (2), this Act (and any other Act that refers to this Act) have effect as if, on 1 January each year, the amount worked out in accordance with the following formula were substituted for each pension under 13 dependent child add-on:

|  |  |  |
| --- | --- | --- |
| **CPC Rate** × 15  100 | **−** | **[FA amount** × 26] |

Note 1: for “CPC Rate” (“combined pensioner couple rate”) see subsection 20 (2).

Note 2: for “FA amount” (“family allowance amount”) see subsection 20 (3).

Note 3: explanation of the formula—start with the current rate of pension paid to a member of a pensioner couple—multiply this rate by 2 to get the total yearly rate paid to the 2 members of such a couple (the “combined pensioner couple rate”)—work out what 15% of that rate is—multiply the family allowance amount by 26 to convert it to a yearly amount—deduct the convened family allowance amount from 15% of the CPC rate.

**(2)** Subsection (1) does not apply if the amount worked out in accordance with the formula in that subsection is less than the current figure (immediately before the 1 January concerned) for the pension under 13 dependent child add-on.

Note: for “current figure” see subsection 20 (1).

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**(3)** Subject to subsection (4), this Act (and any other Act that refers to this Act) have effect as if, on 1 January each year, the amount worked out in accordance with the following formula were substituted for each pension 13-16 dependent child add-on:

|  |  |  |
| --- | --- | --- |
| **CPC Rate** × 20  100 | **−** | **[FA amount** × 26] |

Note 1: for “CPC Rate” (“combined pensioner couple rate”) see subsection 20(2).

Note 2: for “FA amount” (“family allowance amount”) see subsection 20 (3).

Note 3: explanation of the formula—start with the current rate of pension paid to a member of a pensioner couple—multiply this rate by 2 to get the total yearly rate paid to the 2 members of such a couple (the “combined pensioner couple rate”)—work out what 20% of that rate is—multiply the family allowance amount by 26 to convert it to a yearly amount—deduct the converted family allowance amount from 20% of the CPC rate.

**(4)** Subsection (2) does not apply if the amount worked out in accordance with the formula in that subsection is less than the current figure (immediately before the 1 January concerned) for the pension 13-16 dependent child add-on.

Note: for “current figure” see subsection 20 (1).

**(5)** If the amount worked out under subsection (1) or (3) is not a multiple of $2.60, the amount to be substituted under that subsection is to be increased to the next highest amount that is a multiple of $2.60.

**Adjustment of benefit child add-ons**

**1201. (1)** Subject to subsection (2), this Act (and any other Act that refers to this Act) have effect as if, on 1 January each year, the amount worked out in accordance with the formula were substituted for each benefit under 13 dependent child add-on:

|  |  |
| --- | --- |
| **CPC Rate** × 3 | **− FA amount** |
| 520 |

Note 1: for “CPC Rate” (“combined pensioner couple rate”) see subsection 20 (2).

Note 2: for “FA amount” (“family allowance amount”) see subsection 20 (3).

Note 3: explanation of the formula—start with the current rate of pension paid to a member of a pensioner couple—multiply this rate by 2 to get the total yearly rate paid to the 2 members of such a couple (the “combined pensioner couple rate”)—divide by 26 to convert the pensioner couple rate from a yearly rate to a fortnightly rate—work out what 15% of the converted rate is—deduct the family allowance amount.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| combined pensioner couple rate | × | 1  26 | × | 15  100 | − | family allowance amount |
| = combined pensioner couple rate | × | 1  26 | × | 3  20 | − | family allowance amount |
| = combined pensioner couple rate | × | 3  520 |  | − family allowance amount. | | |

**(2)** Subsection (1) does not apply if the amount worked out in accordance with the formula in that subsection is less than the current

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figure (immediately before the 1 January concerned) for the benefits under 13 dependent child add-on.

Note: for “current figure” see subsection 20 (1).

**(3)** Subject to subsection (4), this Act (and any other Act that refers to this Act) have effect as if, on 1 January each year, the amount worked out in accordance with the following formula were substituted for each benefit 13-16 dependent child add-on:

|  |  |  |
| --- | --- | --- |
| **CPC Rate** | **−** | **FA amount** |
| 130 |

Note 1: for “CPC Rate” (“combined pensioner couple rate”) see subsection 20 (2).

Note 2: for “FA amount” (“family allowance amount”) see subsection 20 (3).

Note 3: explanation of the formula—start with the current rate of pension for a member of a pensioner couple—multiply by 2 to get the total rate paid to the 2 members of such a couple (the “combined pensioner couple rate”)—divide by 26 to convert the annual rate to a fortnightly rate—work out 20% of the converted combined rate—deduct the amount of family allowance paid in respect of the child.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| combined pensioner couple rate | × | 1  26 | × | 20  100 | − family allowance amount |
| = combined pensioner couple rate | × | 1  26 | × | 1  5 | − family allowance amount |
| = combined pensioner couple rate | × | 1  130 |  | – | family allowance amount. |

**(4)** Subsection (3) does not apply if the amount worked out in accordance with the formula in that subsection is less than the current figure (immediately before 1 January concerned) for the benefits 13-16 dependent child add-on.

Note: for “current figure” see subsection 20 (1).

**(5)** If the amount worked out under subsection (1) or (3) is not a multiple of 5 cents, the amount to be substituted under that subsection is to be increased to the next highest amount that is a multiple of 5 cents.

**Adjustment of FAS MRA**

**1202. (1)** This Act has effect as if, on 20 March and 20 September each year, the amount worked out using the following formula were substituted for the FAS MRA (1 or 2 FAS children):

|  |
| --- |
| **Pension MRA (1 or 2 children)** |
| 26 |

where:

**Pension MRA (1 or 2 children)** is the current figure, as at that 20 March or 20 September, for the amount applicable in column 4B of Table D in point 1064-D5 of Pension Rate Calculator A, to a person to whom the Table applies.

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**(2)** This Act has effect as if, on 20 March and 20 September each year, the amount worked out using the following formula were substituted for the FAS MRA (3 or more FAS children):

|  |
| --- |
| **Pension MRA (3 or more children)** |
| 26 |

where:

**Pension MRA (3 or more children)** is the current figure, as at that 20 March or 20 September, for the amount applicable, under column 4C of Table D in point 1064-D5 of Pension Rate Calculator A, to a person to whom the Table applies.

**Adjustment of pension “single” non-homeowner AVL**

**1203.** This Act has effect as if, on 13 June each year, the amount worked out in accordance with the following formula were substituted for the pension “single” non-homeowner AVL:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **“single” homeowner AVL** | **+** | **2** | **×** | **“partnered” non-homeowner AVL** | **−** | **“partnered” homeowner AVL** |

where:

**“single” homeowner AVL** is the current figure, as at that 13 June, for the pension “single” homeowner AVL;

**“partnered” non-homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” non-homeowner AVL;

**“partnered” homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” homeowner AVL.

**Adjustment of benefit AVLs**

**1204. (1)** This Act has effect as if, on 13 June each year, the amount worked out in accordance with the following formula were substituted for the benefit “single” non-homeowner AVL:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **pension “single” homeowner AVL** | **+** | 2 | **×** | **pension “partnered” non-homeowner AVL** | **−** | **pension “partnered” homeowner AVL** |

where:

**pension “single” homeowner AVL** is the current figure, as at that 13 June, for the pension “single” homeowner AVL;

**pension “partnered” non-homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” non-homeowner AVL;

**pension “partnered” homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” homeowner AVL;

**(2)** This Act has effect as if, on 13 June each year, the amount worked out in accordance with the following formula were substituted for the benefit “partnered” (item 2) homeowner AVL:

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2 × [**pension “partnered” homeowner AVL**]

where:

**pension “partnered” homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” homeowner AVL.

**(3)** This Act has effect as if, on 13 June each year, the amount worked out in accordance with the following formula were substituted for the benefit “partnered” (item 2) non-homeowner AVL:

2 × [**pension “partnered” non-homeowner AVL**]

where:

**pension “partnered” non-homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” non-homeowner AVL.

**Adjustment of special illness separated retirement village resident AVL**

**1205.** This Act has effect as if, on 13 June each year, the amount worked out in accordance with the following formula were substituted for each special illness separated retirement village resident AVL:

|  |
| --- |
| **pension “partnered” homeowner AVL + pension “partnered” non-homeowner AVL** |
| 2 |

**Adjustment of fringe benefits AVLs**

**1206. (1)** This Act has effect as if, on 13 June each year, the amount worked out in accordance with the following formula were substituted for the fringe benefits “single” non-homeowner AVL:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **fringe benefits “single” homeowner AVL** | **+** | 2 | **×** | **pension “partnered” non-homeowner AVL** | **−** | **pension “partnered” homeowner AVL** |

where:

**fringe benefits “single” homeowner AVL** is the current figure, as at that 13 June, for the fringe benefits “single” homeowner AVL;

**pension “partnered” non-homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” non-homeowner AVL;

**pension “partnered” homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” homeowner AVL.

**(2)** This Act has effect as if, on 13 June each year, the amount worked out in accordance with the following formula were substituted for the fringe benefits “partnered” non-homeowner AVL:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **fringe benefits “partnered” homeowner AVL** | **+** | 2 | **×** | **pension “partnered” non-homeowner AVL** | **−** | **pension “partnered” homeowner AVL** |

where:

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**fringe benefits “partnered” homeowner AVL** is the current figure, as at that 13 June, for the fringe benefits “partnered” homeowner AVL;

**pension “partnered” non-homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” non-homeowner AVL;

**pension “partnered” homeowner AVL** is the current figure, as at that 13 June, for the pension “partnered” homeowner AVL.

**Miscellaneous s. 1207**

**PART 3.17—MISCELLANEOUS**

**Application of income and assets test reductions and of compensation reductions for income tax purposes**

**1207. (1)** If:

1. the rate of a social security pension or benefit applicable to a person is increased under the additional amounts for children Module of a Rate Calculator or the rent assistance Module of a Rate Calculator; and
2. the rate of that pension or benefit is to be reduced under:

(i) the ordinary income test Module, the maintenance income test Module or the assets test Module of the Rate Calculator; or

(ii) section 1168 (compensation reductions);

the reduction is to be applied:

1. first, to the rate of the pension or benefit apart from any increase under the additional amounts for children Module or the rent assistance Module; and
2. then, to the amount of any increase under the rent assistance Module; and
3. finally, to the amount of any increase under the additional amounts for children Module.

**(2)** The following Table sets out details of the Modules relevant to subsection (1):

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| TABLE | | | | | |
| RELEVANT MODULES TABLE | | | | | |
| column 1 | column 2 | column 3 | column 4 | column 5 | column 6 |
| Pension Rate Calculator | additional amounts for children Module | rent assistance Module | ordinary income test Module | maintenance income test Module | assets test Module |
| Pension  Rate  Calculator A  (section 1064) | Module C | Module D | Module E | Module F | Module G |
| Pension  Rate  Calculator C  (section 1066) | Module C | Module D | Module E | Module F | Module G |
| Benefit  Rate  Calculator A  (section 1067) | Module E | Module F | Module H | Module J | Not applicable |
| Benefit  Rate  Calculator B  (section 1068) | Module E | Module F | Module G | Module H | Not applicable |

**s. 1208 International Agreements**

**CHAPTER 4—INTERNATIONAL AGREEMENTS AND PORTABILITY**

**PART 4.1—INTERNATIONAL AGREEMENTS**

**Scheduled international social security agreements override this Act**

**1208. (1)** The provisions of a scheduled international social security agreement have effect despite anything in this Act.

1. Subsection (1) does not apply to a provision of an agreement before the day on which the agreement enters into force.
2. Subsection (1) applies to a provision of an agreement only in so far as the provision remains in force and affects the operation of this Act.
3. An agreement is a **scheduled international social security agreement** if:
4. the agreement is between Australia and a foreign country; and
5. the agreement relates to reciprocity in social security matters; and
6. the text of the agreement is set out in a Schedule to this Act.

**(5)** A reference in this Act to a **scheduled international social security agreement** includes a reference to a scheduled international social security agreement as amended by further agreements between Australia and the foreign country concerned.

**Portability of international agreement pension or allowance**

**1209.** A pension or allowance payable under a scheduled international social security agreement is not payable to a person for a period when the person is outside Australia unless the agreement provides that the pension or allowance is payable outside Australia.

**Rate of pension or allowance payable under scheduled international social security agreement where rate to be determined under the social security laws of Australia**

**1210. (1)** If:

1. a pension or allowance is payable to a person under a scheduled international social security agreement; and
2. the person is outside Australia; and
3. the agreement provides for the rate of the pension or allowance to be determined according to Australia’s social security laws;

the rate of the pension or allowance is to be worked out in accordance with the International Agreement Portability Rate Calculator at the end of this section.

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**(2)** In applying the International Agreement Portability Rate Calculator in accordance with subsection (1):

1. if the agreement provides that certain amounts are to be treated as income of the person—those amounts are to be treated as income of the person; and
2. if the agreement provides that certain amounts are to be treated as not being income of the person—those amounts are to be treated as not being income of the person.

**(3)** A reference to a **“period of residence in Australia”** is to be taken to be a reference to **“Australian working life residence”** for the purposes of this Part and a Schedule of this Act.

*Transitional provisions in relation to pensions payable under agreements with the United Kingdom*

**(4)** If:

1. a person is receiving an invalid pension solely because of the agreements set out in Schedule 2; and
2. the person was, immediately before 1 July 1987, receiving an invalid pension solely because of those agreements; and
3. the person was, immediately before 1 July 1987, receiving an allowance by way of rent assistance under section 30a of the *Social Security Act 1947*, as in force at that time; and
4. if that section were still in operation, a person would be receiving an allowance by way of rent assistance;

the person is entitled to an allowance under this section.

**(5)** The rate of allowance under this section is the rate equal to the difference between:

1. the rate of pension payable to the person from time to time or, if that rate is less than the rate of pension that was payable to the person immediately before 1 July 1987, the rate that was payable to the person immediately before 1 July 1987; and
2. the sum of:

(i) the rate of pension that was payable to the person immediately before 1 July 1987; and

(ii) the rate of the allowance by way of rent assistance that was payable to the person immediately before 1 July 1987 or, if the rate of the allowance by way of rent assistance that would be payable to the person if that section were still in operation is lower, that lower rate;

provided that the rate of allowance under this section is not to exceed the rate of rent assistance that was payable to the person immediately before 1 July 1987.

**(6)** An allowance under this section ceases to be payable to a person when the rate referred to in paragraph (5) (a) becomes equal to, or exceeds, the sum of the rates referred to in paragraph (5) (b).

**s. 1210 International Agreements**

***INTERNATIONAL AGREEMENT PORTABILITY RATE CALCULATOR***

*MODULE A—OVERALL RATE CALCULATION PROCESS*

*Overall rate calculation process*

1210-A1. This is how to calculate a person’s international agreement portability rate:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | Work out the period of the person’s Australian working life residence in Australia using Module B: the result is called the **residence period.** |
| *Step 2.* | Use the person’s residence period to work out the person’s **residence factor** using Module C below. |
| *Step 3.* | Work out the rate that would be the person’s pension or allowance rate if this Rate Calculator did not apply to the person and the person were in Australia: 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 international agreement portability rate. |

*MODULE B—AUSTRALIAN WORKING LIFE RESIDENCE*

*Working life*

1210-B1. For the purposes of this Module, a person’s **working life** is the period commencing when the person turns 16 and ending:

1. if the person is a woman—when she turns 60; or
2. if the person is a man—when he turns 65.

*Australian working life residence (general)*

1210-B2. Subject to points 1210-B3 to 1210-B9, a person’s **period of Australian working life residence** as at a particular time is the number of months in the period, or the aggregate of the periods, during the person’s working life during which the person has, up to that time, been an Australian resident.

*Calculation of number of months*

1210-B3. If a person’s period of Australian working life residence would, apart from this subsection, be a number of whole months, the period is to be increased by one month.

1210-B4 If a person’s period of Australian working life residence would, apart from this subsection, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

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*Australian working life residence (age or invalid pensioner couples)*

1210-B5. If:

1. a person is receiving an age or invalid pension; and
2. the person is a member of a couple; and
3. the person’s partner is receiving an age or invalid pension; and
4. the partner’s period of Australian working life residence is longer than the period that would be the person’s period of Australian working life residence under point 1210-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence.

*Australian working life residence (member of former age or invalid pensioner couple)*

1210-B6. If:

1. a person is receiving an age or invalid pension; and
2. the person is a member of a couple; and
3. the person ceases to be a member of a couple; and
4. immediately before the person ceases to be a member of a couple:

(i) the person was receiving an age or invalid pension; and

(ii) the partner was receiving an age or invalid pension; and

(e) the partner’s period of Australian working life residence (immediately before the person ceases to be a member of a couple) is longer than the period that would now be the person’s period of Australian working life residence under point 1210-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence (immediately before the person ceases to be a member of a couple).

*Australian working life residence (wife pensioner)*

1210-B7. If a person is receiving a wife pension, the person’s period of Australian working life residence is equal to the period of Australian working life residence of the person’s partner.

*Australian working life residence (recipient of sole parent pension, widowed person allowance or widow B pension)*

1210-B8. If:

1. a person is receiving a sole parent pension, widowed person allowance or widow B pension; and
2. the person became qualified for the pension or allowance because the person’s former partner died; and
3. the partner’s period of Australian working life residence (immediately before the partner’s death) is longer than the

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period that would now be the person’s period of Australian working life residence under point 1210-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence (immediately before the partner’s death).

*Australian working life residence (carer pension)*

1210-B9. If a person is receiving a carer pension, the person’s period of Australian working life residence is equal to the Australian working life residence of the person for whom the person is providing care.

*MODULE C—RESIDENCE FACTOR*

*Residence factor (period of Australian working life residence 25 years or more)*

1210-C1. If a person’s period of Australian working life residence is 300 months (25 years) or more, the person’s **residence factor** is 1.

Note: if a person’s residence factor is 1, the person’s pension will be payable overseas at the full domestic rate.

*Residence factor (period of Australian working life residence under 25 years)*

1210-C2. If a person’s period of Australian working life residence is less than 300 months (25 years), the person’s residence factor is:

|  |
| --- |
| **person’s Australian working life residence** |
| 300 |

**Overseas Portability s. 1211**

**PART 4.2—OVERSEAS PORTABILITY**

***Division 1***—***General portability of pensions***

**Benefits and family payments not portable**

**1211.** Social security benefits and family allowance supplement are not payable to a person who is outside Australia because presence in Australia is specified as an essential condition of qualification (see paragraphs 513 (b), 589 (1) (b), 666 (1) (g), 729 (2) (f) and 895 (1) (c)).

Note 1: section 667 provides that a person is taken to be in Australia for the purposes of subsection 666(1) (qualification for sickness benefit) if the person is temporarily absent from Australia for a period of 3 months or less.

Note 2: family allowance ceases to be payable:

1. to a person who continues to be absent from Australia for more than 3 years (see section 840); and
2. ceases to be payable in respect of a dependent child of a person if the child leaves Australia at any time on or after 1986 and the child continues to be absent from Australia for more than 3 years (see section 836).

**Grant of pension or allowance when person outside Australia**

*General*

**1212. (1)** A person may be granted a social security pension when the person is outside Australia if, immediately before the person left Australia:

1. the person was qualified for the pension; and
2. the person had lodged a claim for the pension.

**(2)** Subsection (1) does not apply to:

1. a carer pension; or
2. a sheltered employment allowance; or
3. a rehabilitation allowance.

*“Transfer” to portable pension or allowance*

**(3)** If:

(a) a person who is outside Australia is receiving:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a sole parent pension; or

(v) a widowed person allowance; or

(vi) a widow B pension; or

(vii) a service pension; and

1. the pension or allowance is cancelled or ceases to be payable automatically; and
2. immediately after the cancellation, the person is qualified for:

(i) an age pension; or

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(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a sole parent pension; or

(v) a widowed person allowance; or

(vi) a widow B pension;

the pension or allowance referred to in paragraph (c) may be granted to the person as if the person were an Australian resident and in Australia.

Note 1: all “transferees” must make proper claims for the second pension or allowance.

Note 2: this subsection has the effect of allowing the person to make a proper claim for the new pension or allowance even though the person is not, at the time of the claim, an Australian resident and in Australia.

Note 3: if a person lodges a claim for a pension or allowance before leaving Australia and a pension or allowance is granted to the person after the person has left Australia, the person is to be taken to have been receiving the pension or allowance as from the earliest day on which the pension or allowance is payable to the person (see subsection 23 (2)).

**Some pensions generally portable without time limit**

**1213. (1)** A person’s right to continue to be paid one of the following social security pensions is not affected by the person’s leaving Australia:

1. age pension;
2. invalid pension;
3. widowed person allowance.

**(2)** Subsection (1) has effect subject to:

1. sections 1218 and 1219 (departure certificates); and
2. section 1220 (claim based on short residence).

**Sole parent pension generally portable for 12 months only**

**1214. (1)** If a person:

1. is receiving a sole parent pension; and
2. leaves Australia; and
3. is not a special widow;

the following provisions have effect:

1. for the period of 12 months after the person leaves Australia the person’s right to continue to be paid the sole parent pension is not affected by the person’s leaving Australia;
2. the person ceases to be qualified for sole parent pension if the person remains absent from Australia for more than 12 months after the person leaves Australia;
3. if the person ceases to be qualified for sole parent pension under paragraph (e), the person remains disqualified until the person returns to Australia.

**(2)** Paragraph (1) (d) has effect subject to:

1. sections 1218 and 1219 (departure certificates); and
2. section 1220 (claim based on short residence).

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1. A temporary return to Australia is sufficient for the purposes of paragraph (1) (f).
2. If a person is a special widow, the person’s right to commence, or to continue, to be paid sole parent pension is not affected by the person’s leaving Australia.
3. Subsection (4) has effect subject to the departure certificate provisions (sections 1218 and 1219).
4. For the purposes of this section, a woman is a **special widow** if:
5. a man dies; and
6. immediately before his death:

(i) the man was legally married to the woman; and

(ii) the man and the woman were members of the same couple; and

(iii) the man and the woman were both Australian residents.

Note 1: this subsection only applies to a person if the person is receiving a sole parent pension when the person leaves Australia: it does not apply to a person who is granted a sole parent pension under subsection 249 (2).

Note 2: this subsection only applies to a sole parent pension and does not apply to a special needs sole parent pension.

Note 3: if a person lodges a claim for sole parent pension before leaving Australia and a sole parent pension is granted to the person after the person has left Australia, the person is to be taken to have been receiving the sole parent pension as from the earliest day on which the pension is payable to the person (see subsection 23 (2)).

Note 4: this subsection may not apply if a scheduled international social security agreement makes provision inconsistent with this subsection.

**Wife and widow B pension not portable after 12 months unless person is in a specified foreign country**

**1215.** If:

(a) a person is receiving:

(i) a wife pension; or

(ii) a widow B pension; and

1. the person leaves Australia on or after 1 July 1990; and
2. the person continues to be absent from Australia for a period of 12 months; and
3. on the day after the 12 month period ends the person is not in a specified foreign country;

the person ceases to be qualified for wife or widow B pension on the day after the 12 month period ends.

Note 1: for the period of 12 months after the person leaves Australia, the person’s right to continue receiving a wife or widow B pension will not be affected by the person leaving Australia as long as the person has complied with the departure certificate requirements (see sections 1218 and 1219) and has been an Australian resident for 12 months immediately before leaving Australia (see section 1220).

Note 2: this section only applies to a wife or widow B pension and does not apply to a special needs wife or widow B pension.

**s.** **1215 Overseas Portability**

Note 3: if a person lodges a claim for the pension before leaving Australia and the pension is granted to the person after the person has left Australia, the person is to be taken to have been receiving the pension as from the earliest day on which the pension is payable to the person (see subsection 23 (2)).

Note 4: this section may not apply if a scheduled international social security agreement makes provision inconsistent with this section.

Note 5: for “specified foreign country” see subsections 23 (1) and 38 (1).

Note 6: for effects of a person returning to Australia see section 1217.

**Wife and widow B pension may be portable after 12 months where person is in a specified foreign country**

**1216. (1)** If:

(a) a person is receiving:

(i) a wife pension; or

(ii) a widow B pension; and

1. the person leaves Australia on or after 1 July 1990; and
2. the person continues to be absent from Australia for a period of 12 months; and
3. on the day after the 12 month period ends the person is in a specified foreign country;

subject to subsection (2), the person is not disqualified for the pension after the 12 month period ends.

1. If, after the 12 month period ends, the person enters a country that is not a specified foreign country, the person is disqualified for wife or widow B pension as from the time when the person enters that country.
2. Subsection (2) does not apply if the person enters that country as a transit passenger on an unbroken journey between 2 specified foreign countries.

Note 1: for the period of 12 months after the person leaves Australia the person’s right to continue receiving a wife or widow B pension is not affected by the person leaving Australia.

Note 2: this section only applies to a wife or widow B pension and does not apply to a special needs wife or widow B pension.

Note 3: if a person lodges a claim for the pension before leaving Australia and the pension is granted to the person after the person has left Australia, the person is to be taken to have been receiving the pension as from the earliest day on which the pension is payable to the person (see subsection 23 (2)).

Note 4: this section may not apply if a scheduled international social security agreement makes provision inconsistent with this section.

Note 5: for “specified foreign country” see subsections 23 (1) and 37 (1).

Note 6: for effects of a person returning to Australia see section 1217.

**Effect of disqualified person returning to Australia**

**1217. (1)** If a person is disqualified for wife or widow B pension under section 1215 or 1216, the person remains disqualified until the person returns to Australia.

**(2)** A temporary return to Australia is sufficient for the purposes of subsection (1).

**Overseas Portability s. 1218**

***Division 2*—*Departure certificates and short residence***

**Qualification for pension ceases after 6 months unless person has a departure certificate**

**1218. (1)** If a person:

1. leaves Australia; and
2. has not received a departure certificate under section 1219 before leaving Australia; and
3. remains absent from Australia for more than 6 months;

the person ceases, at the end of the period of 6 months, to be qualified for:

(d) an age pension; or

1. an invalid pension; or
2. a wife pension; or

(g) a sole parent pension; or

(h) a widowed person allowance; or

(j) a widow B pension.

1. If a person ceases to be qualified for a pension or allowance under subsection (1), the person remains disqualified for the pension or allowance until the person returns to Australia.
2. A temporary return to Australia is sufficient for the purposes of subsection (2).

Note: a woman who is receiving widowed person allowance will not have to obtain a departure certificate unless she is pregnant (see section 315).

**Departure certificates**

*Recipients*

**1219. (1)** If:

(a) a person is receiving:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a sole parent pension; or

(v) a widowed person allowance; or

(vi) a widow B pension; and

1. the person proposes to leave Australia; and
2. the person notifies the Department of the proposed departure as required by a recipient notification notice; and
3. the Secretary is satisfied that the person is in Australia and is qualified for the pension or allowance;

the Secretary must give the person a certificate that:

(e) acknowledges that the person has notified the proposed departure under this section; and

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(f) states that the Secretary is satisfied that the person is qualified for the pension or allowance.

Note: for “recipient notification notice” see subsection 23 (1).

*Claimants*

**(2)** If:

(a) a person claims:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a sole parent pension; or

(v) a widowed person allowance; or

(vi) a widow B pension; and

1. the person proposes to leave Australia; and
2. the person notifies the Department of the proposed departure before the claim is determined;

the Secretary must give the person a certificate that acknowledges that the person has notified the proposed departure under this section.

**No portability where claim based on short residence**

**1220. (1)** If:

1. a person is an Australian resident; and
2. the person ceases to be an Australian resident; and
3. the person again becomes an Australian resident; and
4. the person lodges a claim for:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a sole parent pension; or

(v) a widowed person allowance; or

(vi) a widow B pension; and

(e) the claim is lodged within the period of 12 months after the person again became an Australian resident; and

(f) the person leaves Australia before the end of that period of 12 months; and

(g) there is no determination in respect of the person under subsection (3);

a pension or allowance 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

**Overseas Portability s. 1220**

1. the person has never before resided in Australia; and
2. the person then arrives in Australia; and
3. the person lodges a claim for:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a sole parent pension; or

(v) a widowed person allowance; or

(vi) a widow B pension; and

1. the claim is lodged within the period of 12 months after the person arrives in Australia; and
2. the person leaves Australia before the end of that period of 12 months; and
3. there is no determination in respect of the person under subsection (3);

a pension or allowance based on that claim is not payable to the person during any period during which the person is outside Australia.

**(3)** The Secretary may determine that subsection (1) or (2) is not to apply to a person if the Secretary is satisfied that the person’s reasons for leaving Australia before the end of the 12 month period arose from circumstances that could not be reasonably foreseen when the person returned to or arrived in Australia.

***Division 3*—*Rate of portable pensions***

**Rate of pensions paid outside Australia**

**1221. (1)** If this section applies to a person, the person’s pension or allowance rate is to be the portability rate calculated using the Pension Portability Rate Calculator at the end of this section.

(2) Subject to subsections (3), (4), (5) and (6), this section applies to a person if:

(a) the person commenced or commences to receive:

(i) an age pension; or

(ii) an invalid pension; or

(iii) a wife pension; or

(iv) a sole parent pension; or

(v) a widowed person allowance; or

(vi) a widow B pension;

after 1 July 1986; and

1. the person left or leaves Australia after commencing to receive the pension or allowance; and
2. the person continues to be absent from Australia for more than 12 months.

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**(3)** This section does not apply to a person if:

1. the person was an Australian resident on 8 May 1985; and
2. the person commences to receive the pension or allowance before 1 January 1996; and
3. the person’s absence from Australia commenced before 1 January 1996.

**(4)** This section does not apply to a person if:

1. the person was an Australian resident on 8 May 1985; and
2. the person is in a country with which Australia does not have an agreement that affects the operation of this Act.

**(5)** This section does not apply to a person if:

1. the person is receiving an invalid pension; and
2. the person became qualified to receive the invalid pension because of becoming permanently incapacitated for work or permanently blind while the person was an Australian resident.

**(6)** This section does not apply to a person if:

1. the person is receiving a sole parent pension, a widowed person allowance or widow B pension; and
2. the person became qualified to receive the pension or allowance because of the death of the person’s former partner; and
3. immediately before the death of the person’s former partner, the former partner was an Australian resident; and
4. the person would have become qualified to receive:

(i) the sole parent pension apart from subsection 262 (2); or

(ii) the widowed person allowance apart from subparagraph 315 (1) (d) (iv); or

(iii) the widow B pension apart from subsection 372 (2).

**Overseas Portability s. 1221**

***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. |
| *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. |

*MODULE B—AUSTRALIAN WORKING LIFE RESIDENCE*

*Working life*

1221-B1. For the purposes of this Module, a person’s **working life** is the period commencing when the person turns 16 and ending:

1. if the person is a woman—when she turns 60; or
2. if the person is a man—when he turns 65.

*Australian working life residence (general)*

1221-B2. Subject to points 1221-B3 to 1221-B9, a person’s **period of Australian working life residence** as at a particular time is the number of months in the period, or the aggregate of the periods, during the person’s working life during which the person has, up to that time, been an Australian resident.

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.

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*Australian working life residence (age or invalid pensioner couples)*

1221-B5. If:

1. a person is receiving an age or invalid pension; and
2. the person is a member of a couple; and
3. the person’s partner is receiving an age or invalid pension; and
4. the partner’s period of Australian working life residence is longer than the period that would be the person’s period of Australian working life residence under point 1221-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence.

*Australian working life residence (member of former age or invalid pensioner couple)*

1221-B6. If:

1. a person is receiving an age or invalid pension; and
2. the person is a member of a couple; and
3. the person ceases to be a member of a couple; and
4. immediately before the person ceases to be a member of a couple:

(i) the person was receiving an age or invalid pension; and

(ii) the partner was receiving an age pension or invalid pension; and

(e) the partner’s period of Australian working life residence (immediately before the person ceases to be a member of a couple) is longer than the period that would now be the person’s period of Australian working life residence under point 1221-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence (immediately before the person ceases to be a member of a couple).

*Australian working life residence (wife pensioner)*

1221-B7. If a person is receiving a wife pension, the person’s period of Australian working life residence is equal to the period of Australian working life residence of the person’s partner.

*Australian working life residence (recipient of sole parent pension, widowed person allowance or widow B pension)*

1221-B8. If:

1. a person is receiving a sole parent pension, widowed person allowance or widow B pension; and
2. the person became qualified for the pension or allowance because the person’s former partner died; and
3. the partner’s period of Australian working life residence (immediately before the partner’s death) is longer than the

**Overseas Portability s. 1221**

period that would now be the person’s period of Australian working life residence under point 1221-B2;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence (immediately before the partner’s death).

*Australian working life residence (carer pension)*

1221-B9. If a person is receiving a carer pension, the person’s period of Australian working life residence is equal to the Australian working life residence of the person for whom the person is providing care.

*MODULE C—RESIDENCE FACTOR*

*Residence factor (period of Australian working life residence 25 years or more)*

1221-C1. If a person’s period of Australian working life residence is 300 months (25 years) or more, the person’s residence factor is 1.

Note: if a person’s residence factor is 1, the person’s pension will be payable outside Australia at the full domestic rate.

*Residence factor (period of Australian working life residence under 25 years)*

1221-C2. If a person’s period of Australian working life residence is less than 300 months (25 years), the person’s residence factor is:

|  |
| --- |
| **person’s Australian working life residence** |
| 300 |

**s. 1222 Effect of Chapter**

**CHAPTER 5—OVERPAYMENTS AND DEBT RECOVERY**

**PART 5.1—EFFECT OF CHAPTER**

**General effect of Chapter**

**1222. (1)** This Chapter provides the methods for recovery by the Commonwealth of an overpayment or debt where a person:

1. has received an overpayment under this Act; or
2. has received an overpayment under certain other Acts or schemes; or
3. owes a debt referred to in Part 5.2, to the Commonwealth.

Note 1: overpayments under this Act—see section 1223.

Note 2: overpayments under other Acts or schemes—see section 1228.

Note 3: debts referred to in Part 5.2 are:

* section 1224—debts arising because of recipient’s contravention of Act;
* section 1225—compensation debts;
* section 1226—compensation payer and insurer debts;
* section 1227—assurance of support debts;
* section 1230—garnishee notice debts.

**(2)** If a person has received an overpayment:

1. under this Act; or
2. under certain other Acts or schemes;

the amount of the overpayment may be recoverable by means of deductions from the person’s pension, benefit or allowance.

Note: for “deductions” see section 1231.

**(3)** If a person owes a debt due to the Commonwealth it may be recoverable by one or more of the following methods:

(i) if the person is receiving a pension, benefit or allowance under this Act—deductions;

(ii) garnishee notice;

(iii) legal proceedings.

Note: the means of recovery available for each type of debt are set out in the following Table:

**Effect of Chapter s. 1222**

|  |  |  |
| --- | --- | --- |
| TABLE | | |
| debt | means | provision |
| 1224 (contravention of Act debt) | deductions legal proceedings garnishee notice | 1231  1232  1233 |
| 1225 (compensation debt) | deductions legal proceedings | 1231  1232 |
| 1226 (compensation payer and insurer debts) | legal proceedings | 1232 |
| 1227 (assurance of support debt) | deductions garnishee notice | 1231  1233 |
| 1230 (garnishee notice debt) | legal proceedings garnishee notice | 1232  1233 |

Note: the Secretary may decide to allow a person to pay a debt in one or more instalments—see section 1234.

**s. 1223 Amounts Recoverable under this Act**

**PART 5.2—AMOUNTS RECOVERABLE UNDER THIS ACT**

**Overpayments arising under this Act**

**1223. (1)** If:

1. an amount has been paid to a person by way of pension, benefit or allowance under this Act; and
2. the amount should not have been paid; and
3. the person to whom the amount was paid is receiving a pension, benefit or allowance under this Act; and
4. the person is qualified for the pension, benefit or allowance and the pension, benefit or allowance is payable to the person;

the amount is an overpayment and is recoverable by the Commonwealth by means of deductions.

**(2)** Subsection (1) does not apply to an amount if:

(a) the amount has been paid to a person in advance by way of:

(i) unemployment benefit; or

(ii) job search allowance; or

(iii) sickness benefit; or

(iv) special benefit; and

(b) the amount has not been paid as a result of a person:

(i) making a false statement or a false representation; or

(ii) failing or omitting to comply with a provision of this Act; and

1. the amount has been paid in respect of a period of not more than 14 days; and
2. during that period the benefit or allowance ceased to be payable to the person.

**(3)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

Note: for “deductions” see section 1231.

**Debts arising from recipients’ contravention of Act**

**1224. (1)** If:

1. an amount has been paid to a recipient by way of pension, benefit or allowance under this Act; and
2. the amount 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 this Act; and

**Amounts Recoverable under this Act s. 1224**

(c) the amount has not been deducted from the recipient’s pension, benefit or allowance under section 1223;

the amount so paid is a debt due by the recipient to the Commonwealth.

Note: if the recipient does not pay the debt within 3 months after receiving a notice of the amount of the debt, the amount of the debt will increase under section 1229.

**(2)** A debt due to the Commonwealth under subsection (1) is recoverable by the Commonwealth by means of:

1. if someone is receiving a pension, benefit or allowance under this Act—deductions; or
2. legal proceedings; or
3. garnishee notice.

Note 1: for “deductions” see section 1231.

Note 2: for “legal proceedings” see section 1232.

Note 3: for “garnishee notice” see section 1233.

**(3)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

Compensation debts

**1225. (1)** If a person is liable to pay a compensation debt, that debt is a debt due to the Commonwealth and is recoverable by the Commonwealth by means of:

1. if the person is receiving a pension, benefit or allowance under this Act—deductions; or
2. legal proceedings.

Note 1: for “compensation debt” see section 23.   
Note 2: for “deductions” see section 1231.

Note 3: for “legal proceedings” see section 1232.

Note 4: if the person does not pay the debt within 3 months after receiving a notice of the amount of the debt, the amount of the debt will increase under section 1229.

**(2)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Compensation payer and insurer debts**

**1226. (1)** If a person is liable to pay an amount to the Commonwealth because of a notice by the Secretary under section 1174 (compensation payers) or 1179 (insurers), the amount is a debt due to the Commonwealth and is recoverable by the Commonwealth by means of legal proceedings.

Note 1: for “compensation payer” see subsection 17 (1).

Note 2: for “legal proceedings” see section 1232.

**s. 1226 Amounts Recoverable under this Act**

**(2)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Assurance of support debts**

**1227. (1)** If a person is liable to pay an assurance of support debt, the debt is recoverable by the Commonwealth by means of:

1. if the person is receiving a pension, benefit or allowance under this Act—deductions; or
2. garnishee notice.

**(2)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

Note 1: for “assurance of support debt” see section 23.

Note 2: for “deductions” see section 1231.

Note 3: for “garnishee notice” see section 1233.

Note 4: if the person does not pay the debt within 3 months after receiving a notice of the amount of the debt, the amount of the debt will increase under section 1229.

**Overpayments arising under other Acts and Schemes**

**1228. (1)** If:

1. an amount has been paid to a person by way of a payment or payments to which subsection (2) applies; and
2. the amount should not have been paid; and
3. the person to whom the amount was paid is receiving a pension, benefit or allowance under this Act; and
4. the person is qualified for the pension, benefit or allowance under this Act and the pension, benefit or allowance 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:

1. a payment of pension or allowance under the Veterans’ Entitlements Act; or
2. a payment of pension or allowance under the *Seamen’s War Pensions and Allowances Act 1940*;or
3. a payment under:

(i) the AUSTUDY Scheme; or

(ii) the ABSTUDY Schooling Scheme; or

(iii) the ABSTUDY Tertiary Scheme (to the extent that it applies to full-time students); or

**Amounts Recoverable under this Act s. 1228**

(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

(d) if the amount was paid to the person on or after 12 August 1988—a program included in the programs known as Labour Force Programs.

Note: Labour Force Programs are administered by the Department of Education, Employment and Training and provide income support for people undertaking various kinds of vocational training.

**(3)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

**Penalty for late payment of certain debts**

**1229. (1)** If:

1. a person owes a debt to the Commonwealth under section 1224, 1225 or 1227; and
2. the debt arose on or after 1 September 1987; and
3. the amount of the debt is more than $50; and
4. the debt is not fully paid within 3 months after the person has been given a notice for the purposes of this subsection advising the person of the amount of the debt;

the debt is increased by adding to it a penalty amount, worked out under subsection (2).

**(2)** The **penalty amount**:

1. is worked out by adding together $15 and 10% of the amount of debt unpaid at the end of that period of 3 months; and
2. is not to exceed $515.

**Debt from failure to comply with garnishee notice**

**1230. (1)** If:

1. 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; and
2. the garnishee debtor fails to comply with the notice to the extent that he or she is capable of complying with it;

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then the amount of the debt outstanding (worked out under subsection (2)) is recoverable from the garnishee debtor by the Commonwealth by means of:

1. legal proceedings; or
2. 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:

1. 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
2. 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 other person; then:

1. both debts are reduced by the amount that the Commonwealth has so recovered; and
2. the amount specified in the notice under section 1233 is to be taken to be reduced by the amount so recovered.

**(4)** In this section, **“person”** includes:

1. the Commonwealth; and
2. a State; and
3. a Territory; and
4. any authority of the Commonwealth or of a State or Territory.

**Methods of Recovery s. 1231**

**PART 5.3—METHODS OF RECOVERY**

**Deductions**

**1231. (1)** Subject to subsection (2), an overpayment or a debt is to be deducted from a person’s pension, benefit or allowance in the following way:

|  |  |
| --- | --- |
| *Method statement* | |
| *Step 1.* | The Secretary is to decide, in each case, the amount by which each payment of the person’s pension, benefit or allowance is to be reduced. |
| *Step 2.* | Each payment of the person’s pension, benefit or allowance is to be reduced by that amount, until the sum of those amounts is equal to the overpayment or debt. |

**(2)** The overpayment or debt must be deducted unless:

1. the Secretary takes action under Part 5.4 (write off and waiver) in relation to the amount; or
2. the amount is recovered by the Commonwealth under another provision of this Chapter.

**(3)** This section extends to:

1. acts, omissions, matters and things outside Australia whether or not in a foreign country; and
2. all persons irrespective of their nationality or citizenship.

Note 1: this section applies to overpayments (sections 1223 and 1228) and debts arising under sections 1224, 1225 and 1227.

Note 2: Part 5.4 allows the Secretary to waive or write off debts.

**Legal proceedings**

**1232. (1)** If a debt is recoverable by the Commonwealth by means of legal proceedings under Part 5.2, the debt is recoverable by the Commonwealth in a court of competent jurisdiction.

1. Subject to subsection (3), legal proceedings for the recovery of the debt are not to be commenced after the end of the period of 6 years starting on the day on which the debt arose.
2. If the debt arises under section 1224 (overpayment due to contravention of Act), legal proceedings for the recovery of the debt may be commenced at any time within the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances giving rise to the debt.

Note: this section applies to debts recoverable under sections 1224, 1225, 1226 and 1230.

**s. 1233 Methods of Recovery**

**Garnishee notice**

**1233. (1)** If an amount (in this section called the **“debt”**)is recoverable from a person (in this section called the **“debtor”**)by the Commonwealth under section 1224, 1227 or 1230, the Secretary may by written notice given to another person:

1. by whom any money is due or accruing, or may become due, to the debtor; or
2. who holds or may subsequently hold money for or on account of the debtor; or
3. who holds or may subsequently hold money on account of some other person for payment to the debtor; or
4. 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

(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.

1. 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.
2. A person who fails to comply with a notice under subsection (1) to the extent that the person is capable of doing so is guilty of an offence.

Penalty:

1. in the case of a natural person—$2,000 or imprisonment for one year, or both; or
2. in the case of a body corporate—$10,000.

Note: see also section 1230 (consequence of failure to comply with notice under this section).

1. If the Secretary gives a notice to a person under subsection (1), the Secretary must give a copy of the notice to the debtor.
2. A person who makes a payment to the Commonwealth in compliance with a notice under subsection (1) is to be taken to have made the payment under the authority of the debtor and of any other person concerned.
3. If:

(a) a notice is given to a person under subsection (1) in respect of a debt due; and

**Methods of Recovery s. 1233**

(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.

1. 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.
2. In this section, **“person”** includes:
3. the Commonwealth; and
4. a State; and
5. a Territory; and
6. any authority of the Commonwealth or of a State or Territory.

**Secretary may allow payment of debt by instalments**

**1234. (1)** The Secretary may, on behalf of the Commonwealth, decide to allow a person to pay a debt in one or more instalments.

**(2)** A decision made under subsection (1) takes effect:

1. if no day is specified in the decision—on the day on which the decision is made; or
2. 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 was made).

**(3)** For the purposes of subsection (1), debt includes a debt or amount payable to the Commonwealth because of subsection 42 (1) of the VEA.

**s. 1235 Non-recovery of Overpayments and Debts**

**PART 5.4—NON-RECOVERY OF OVERPAYMENTS AND DEBTS**

**Meaning of “debt”**

**1235.** In this Part, **“debt”** includes a debt or an amount payable to the Commonwealth because of subsection 42 (1) of the Veterans’ Entitlements Act.

Note 1: for overpayments see sections 1223 (overpayments under this Act) and 1228 (overpayments under other Acts or schemes).

Note 2: debts referred to in Part 5.2 are:

* 1224—debts arising because of recipient’s contravention of Act;
* 1225—compensation debts;
* 1226—compensation payer and insurer debts;
* 1227—assurance of support debts;
* 1230—garnishee notice debts.

**Secretary may write off overpayment or debt**

**1236. (1)** The Secretary may, on behalf of the Commonwealth, decide to write off an overpayment or a debt.

**(2)** A decision made under subsection (1) takes effect:

1. if no day is specified in the decision—on the day on which the decision is made; or
2. 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).

Note: if the Secretary writes off an overpayment or a debt, this means an administrative decision has been made that, in the circumstances, there is no point in trying to recover the debt. In law, however, the overpayment or debt still exists and may later be pursued.

**Secretary may waive overpayment or debt**

**1237. (1)** The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth’s right to recover from a person the whole or a part of an overpayment or a debt.

1. In exercising the power under subsection (1), the Secretary must act in accordance with directions from time to time in force under subsection (3).
2. The Minister may, by determination in writing:
3. give directions relating to the exercise of the Secretary’s power under subsection (1); and
4. revoke or vary those directions.

**(4)** The Minister is to cause a copy of a determination under subsection (3) to be laid before each House of the Parliament within 15 sitting days of that House after the making of the determination.

**(5)** A decision of the Secretary under subsection (1) takes effect:

**Non-recovery of Overpayments and Debts s. 1237**

1. if no day is specified in the decision—on the day on which the decision is made; or
2. 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).

Note: if the Secretary waives the Commonwealth’s right to recover, this is a permanent bar to recovery of the overpayment or the debt—the overpayment or the debt effectively ceases to exist.

**s. 1238 Internal Review**

**CHAPTER 6—REVIEW OF DECISIONS**

**PART 6.1—INTERNAL REVIEW**

**Application of Part**

**1238.** This Part does not apply to a rate of return decision.

Note: for “rate of return decision” see subsection 9 (1).

**Secretary may review decisions**

**1239. (1)** The Secretary may review:

1. a decision of an officer under this Act other than a rate of return decision in relation to an investment product; or
2. a decision under section 5a, 5b, 5c, 5d or 5e of the *Health Insurance Act 1973*;

if satisfied that there is sufficient reason to review the decision.

1. Subsection (1) does not apply to a decision made by the National Director of the CES under section 27 (approval of vocational courses) or 28 (approval of voluntary organisations).
2. The Secretary may review a decision even if an application has been made to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for review of the decision.
3. The Secretary may:
4. affirm the decision; or
5. vary the decision; or
6. set the decision aside and substitute a new decision.

**(5)** If:

1. the Secretary makes a decision under subsection (4); and
2. at the time when the Secretary makes that decision, a person has applied to the Social Security Appeals Tribunal for review of the decision that was reviewed by the Secretary;

the Secretary must give the National Convener written notice of the Secretary’s decision under subsection (4).

**(6)** If:

1. the Secretary makes a decision under subsection (4); and
2. at the time when the Secretary makes that decision, a person has applied to the Administrative Appeals Tribunal for review of the decision that was reviewed by the Secretary;

the Secretary must give the Registrar of the Administrative Appeals Tribunal written notice of the Secretary’s decision under subsection (4).

**(7)** If:

(a) the Secretary sets a decision aside under subsection (4); and

**Internal Review s. 1239**

(b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

Note: for “rate of return decision” see subsection 9 (1).

**Application for review**

**1240. (1)** A person affected by:

(a) a decision of an officer under this Act other than a rate of return decision in relation to an investment product; or

(b) a decision under section 5a, 5b, 5c, 5d or 5e of the *Health Insurance Act 1973*;

may apply to the Secretary for review of the decision.

**(2)** Subsection (1) does not apply to a decision made by:

(a) the Secretary himself or herself; or

(b) the National Director of the CES under section 27 (approval of vocational courses) or 28 (approval of voluntary organisations).

**(3)** A person may apply under subsection (1) for review of a decision, and the Secretary or an authorised review officer may review the decision, even if an application has been made to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for review of the decision.

**(4)** If:

(a) a person applies under subsection (1) for a review of a decision; and

(b) an application for review of the decision is, or has been, made to the Social Security Appeals Tribunal before the Secretary or authorised review officer determines the review;

the Secretary must give the National Convener written notice of the making of the application under subsection (1).

**(5)** If:

(a) a person applies under subsection (1) for a review of a decision; and

(b) an application for review of the decision is, or has been, made to the Administrative Appeals Tribunal before the Secretary or authorised review officer determines the review;

the Secretary must give the Registrar of the Tribunal written notice of the making of the application under subsection (1).

**Secretary may continue payment pending outcome of application for review**

**1241. (1)** If:

(a) an adverse decision is made in relation to a pension benefit or allowance; and

**s. 1241 Internai Review**

(b) the adverse decision depends on:

(i) the exercise of a discretion by a person; or

(ii) the holding of an opinion by a person; and

(c) a person applies to the Secretary under subsection 1240 (1) for review of the adverse decision; and

(d) section 1242 does not apply to the adverse decision;

the Secretary may declare that payment of the pension, benefit or allowance is to continue, pending the determination of the review, as if the adverse decision had not been made.

**(2)** A declaration under subsection (1) is to be in writing.

**(3)** While a declaration under subsection (1) is in force in relation to the adverse decision, this Act (other than this Chapter) applies as if the adverse decision had not been made.

**(4)** A declaration under subsection (1) in relation to an adverse decision:

(a) starts to have effect on the day on which the declaration is made or on the earlier day (if any) specified in the declaration; and

(b) stops having effect if:

(i) the application to the Secretary for review of the adverse decision is withdrawn; or

(ii) the review of the adverse decision is determined by the Secretary; or

(iii) the declaration is revoked by the Secretary.

**(5)** A reference in subsection (1) to a person’s **holding of an opinion** is a reference to the person’s holding that opinion whether or not this Act expressly requires the opinion to be held before making the decision concerned.

**(6)** In this section:

**“adverse decision”**,in relation to a pension, benefit or allowance, means:

(a) a decision to cancel or suspend the pension, benefit or allowance; or

(b) a decision to reduce the rate of the pension, benefit or allowance.

**Automatic continuation of payment if review of section 282 cancellation decision sought**

**1242. (1)** This section applies to a decision if:

(a) the decision is to cancel a sole parent pension; and

(b) the decision resulted from the formation of an opinion under subsection 283 (1) or (3).

**Internal Review s. 1242**

**(2)** If:

(a) the Secretary makes a decision to which this section applies; and

(b) a person applies to the Secretary under subsection 1240 (1) for review of the decision; and

(c) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

(d) payment of the sole parent pension is to continue, pending the determination of the review, as if the decision had not been made;

(e) if payment of the pension had ceased for a period before the person applied for the review—in spite of section 300, arrears of pension are payable to the person for the period;

(f) this Act (other than this Chapter) applies as if the decision had not been made.

**(3)** Subsection (2) ceases to have effect if:

(a) the application for review is withdrawn; or

(b) the review of the decision is determined.

**Secretary’s powers where application for review**

**1243. (1)** If an application for review of a decision is made under subsection 1240 (1) the Secretary or an authorised review officer must:

(a) affirm the decision; or

(b) vary the decision; or

(c) set the decision aside and substitute a new decision.

**(2)** If a person makes a decision under subsection (1), the person must give the applicant written notice of the decision.

Note: meaning of “given”—sections 28a and 29 of the *Acts Interpretation Act 1901* provide that a notice is given:

(a) to a natural person if the notice is:

* delivered personally; or
* left at the last known address of the person; or
* sent by prepaid post to the last known address of the person; and

(b) to a body corporate if the notice is left at, or sent by prepaid post to, the head office or a registered office or a principal office of the body corporate.

**(3)** If:

(a) a person makes a decision under subsection (1); and

(b) at the time when the person makes the decision under subsection (1), an application has been made to the Social Security Appeals Tribunal for review of the decision that was reviewed by the person;

the person must give the National Convener written notice of the person’s decision under subsection (1).

**s. 1243 Internal Review**

**(4)** If:

(a) a person makes a decision under subsection (1); and

(b) at the time when the person makes the decision under subsection (1), an application has been made to the Administrative Appeals Tribunal for review of the decision that was reviewed by the person;

the person must give the Registrar of the Tribunal written notice of the person’s decision under subsection (1).

**(5)** If:

(a) a person sets a decision aside under subsection (1); and

(b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

**Notification of further rights of review**

**1244. (1)** If a person gives the applicant notice under subsection 1243 (2), the notice must include:

(a) a statement to the effect that the applicant may, subject to this Act, apply to the Social Security Appeals Tribunal for review of the person’s decision; and

(b) a statement about the person’s decision that:

(i) sets out the reasons for the decision; and

(ii) sets out the findings by the person on material questions of fact; and

(iii) refers to the evidence or other material on which those findings were based; and

(c) a statement to the effect that, if the person is dissatisfied with the Social Security Appeals Tribunal’s decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*,be made to the Administrative Appeals Tribunal for review of the Social Security Appeals Tribunal’s decision.

**(2)** A contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

**Review by the Social Security Appeals Tribunal s. 1245**

**PART 6.2—REVIEW BY THE SOCIAL SECURITY APPEALS TRIBUNAL**

**Application of Part**

**1245.** Unless otherwise stated, the provisions of this Part apply to all decisions of an officer under this Act including a rate of return decision.

**SSAT objectives**

**1246.** The Social Security Appeals Tribunal must, in carrying out its functions under this Act, pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

Note: for establishment and membership of the SSAT see Division 1 of Part 7.3.

**Application for review by SSAT**

**1247. (1)** Subject to section 1250, a person whose interests are affected by:

(a) a decision of an officer under this Act; or

(b) a decision under section 5a, 5b, 5C, 5d or 5e of the *Health Insurance Act 1973*;or

(c) a rate of return decision in relation to an investment product; may apply to the Social Security Appeals Tribunal for review of the decision.

**(2)** For the purposes of a rate of return decision in relation to an investment product, the fund manager is taken to be a person whose interests are affected by a decision.

**(3)** A decision constituted by a refusal to make a determination under subsection 1088 (1), comes into force on the day when the fund manager concerned is notified of the refusal.

**(4)** A reference in this Act to an application having been made to the Social Security Appeals Tribunal, in relation to a rate of return decision, does not include a reference to an application that has been withdrawn.

Note 1: “fund manager” see subsection 9 (1).

Note 2: “rate of return decision” in relation to an investment product see subsection 9 (1).

Note 3: others affected by the decision may apply to be made parties to the review (subsection 1260 (2)).

Note 4: for application requirements see section 1257.

**Application requirement—rate of return decision**

**1248.** The Social Security Appeals Tribunal may only review a rate of return decision where the application is expressed to be an application for review of a rate of return decision.

Note: subsection 1250 (2) requires that a rate of return decision cannot be reviewed more than 3 months after the decision came into force.

**s.** **1249 Review by the Social Security Appeals Tribunal**

**Person affected may apply for SSAT review and Secretary’s review**

**1249.** A person may apply under section 1247 for review of a decision, and the Social Security Appeals Tribunal may review the decision, even if an application has been made to the Secretary under subsection 1240 (1) for review of the decision.

Note: the Secretary cannot review a rate of return decision in relation to an investment product (see paragraph 1239 (1) (a)).

**Non-reviewable decisions**

**1250. (1)** The Social Security Appeals Tribunal cannot review a decision:

(a) under section 36 (major disaster declaration); or

(b) under section 27 (approval of vocational courses—UB work test); or

(c) under section 28 (approval of voluntary organisations—UB and JSA work test); or

(d) under a provision dealing with the form and place of lodgment of a claim; or

(e) under a provision dealing with the manner of payment of a pension, benefit or allowance; or

(f) under a provision dealing with debts owed to the Commonwealth by a recipient of a pension, benefit or allowance; or

(g) under a provision dealing with the giving of a notice requiring information from a recipient of a pension, benefit or allowance; or

(h) under section 1241 or 1251 (continuation of payment pending review of adverse decision); or

(j) under section 1231 (deduction of amounts from pension, benefit or allowance payments for tax purposes); or

(k) under section 1100 (application of Division 2 of Part 3.10 to a foreign currency); or

(l) under section 1104 (date of applicability of re-assessed exchange rate).

**(2)** The Social Security Appeals Tribunal cannot review a rate of return decision in relation to an investment product where a person applies for review of the decision more than 3 months after the decision came into force.

Note: for the time when a rate of return decision comes into force see subsection 1247 (3).

**Secretary may continue payment pending outcome of application for review**

**1251. (1)** If:

(a) an adverse decision is made in relation to a pension benefit or allowance; and

**Review by the Social Security Appeals Tribunal s. 1251**

(b) the adverse decision depends on:

(i) the exercise of a discretion by a person; or

(ii) the holding of an opinion by a person; and

(c) a person applies to the Social Security Appeals Tribunal under subsection 1247 (1) for review of the adverse decision; and

(d) section 1252 does not apply to the adverse decision;

the Secretary may declare that payment of the pension, benefit or allowance is to continue, pending the determination of the review, as if the adverse decision had not been made.

**(2)** A declaration under subsection (1) is to be in writing.

**(3)** While a declaration under subsection (1) is in force in relation to the adverse decision, this Act (other than this Chapter) applies as if the adverse decision had not been made.

**(4)** A declaration under subsection (1) in relation to an adverse decision:

(a) starts to have effect on the day on which the declaration is made or on the earlier day (if any) specified in the declaration; and

(b) stops having effect if:

(i) the application to the Social Security Appeals Tribunal for review of the adverse decision is withdrawn; or

(ii) the review of the adverse decision is determined by the Social Security Appeals Tribunal; or

(iii) the declaration is revoked by the Secretary.

**(5)** A reference in subsection (1) to a person’s **holding of an opinion** is a reference to the person’s holding that opinion whether or not this Act expressly requires the opinion to be held before making the decision concerned.

**(6)** In this section:

**“adverse decision”**,in relation to a pension, benefit or allowance, means:

(a) a decision to cancel or suspend the pension, benefit or allowance; or

(b) a decision to reduce the rate of the pension, benefit or allowance.

**Automatic continuation of payment if review of section 282 cancellation decision sought**

**1252. (1)** This section applies to a decision if:

(a) the decision is a decision to cancel a sole parent pension; and

(b) the decision resulted from the formation of an opinion under subsection 283 (1) or (3).

**s. 1252 Review by the Social Security Appeals Tribunal**

**(2)** If:

(a) the Secretary makes a decision to which this section applies; and

(b) a person applies to the Social Security Appeals Tribunal under subsection 1247 (1) for review of the decision; and

(c) the person makes the application within 14 days after being notified of the decision;

the following provisions have effect:

(d) payment of the sole parent pension is to continue, pending the determination of the review, as if the decision had not been made;

(e) if payment of the pension had ceased for a period before the person applied for the review—in spite of section 300, arrears of pension are payable to the person for the period;

(f) this Act (other than this Chapter) applies as if the decision had not been made.

**(3)** Subsection (2) ceases to have effect if:

(a) the application for review is withdrawn; or

(b) the review of the decision is determined.

**SSAT review powers (decisions other than rate of return decisions)**

**1253. (1)** If a person applies to the Social Security Appeals Tribunal (SSAT) for review of a decision other than a rate of return decision, the Tribunal must:

(a) affirm the decision; or

(b) vary the decision; or

(c) set the decision aside and:

(i) substitute a new decision; or

(ii) send the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the Tribunal.

Note: this subsection is subject to sections 1274 (which allows an applicant to withdraw the application) and 1275 (which allows the National Convener to dismiss an application for review in certain circumstances).

**(2)** If the Social Security Appeals Tribunal sets a decision aside and substitutes for it a decision that a person is entitled to a pension, benefit or allowance, the SSAT must:

(a) assess the rate at which the pension, benefit or allowance is to be paid to the person; or

(b) ask the Secretary to assess the rate at which the pension, benefit or allowance is to be paid to the person.

**Review by the Social Security Appeals Tribunal s. 1253**

**(3)** Subject to subsection (4), the Social Security Appeals Tribunal may, for the purposes of reviewing a decision under this Act, exercise all the powers and discretions that are conferred by this Act on the Secretary.

**(4)** The reference in subsection (4) to powers and discretions conferred by this Act does not include a reference to powers and discretions conferred by:

(a) section 36 (major disaster declaration); or

(b) section 27 (approval of vocational courses—UB work test); or

(c) section 28 (approval of voluntary organisations—UB and JSA work test); or

(d) a provision dealing with the form and place of lodgment of a claim; or

(e) a provision dealing with the manner of payment of a pension, allowance or benefit; or

(f) a provision dealing with the debts owed to the Commonwealth by a recipient of pension, benefit or allowance; or

(g) a provision dealing with the giving of a notice requiring information from a recipient of pension, benefit or allowance; or

(h) section 1100 (application of Division 2 of Part 3.10 to a foreign currency); or

(j) section 1104 (date of applicability of re-assessed exchange rate); or

(k) sections 1304 to 1307 (notice requiring information from any person); or

(m) section 1241 or 1251 (continuation of payment pending review of adverse decision); or

(n) a provision dealing with the imposition of requirements before grant of pension, benefit or allowance; or

(o) a provision dealing with the deduction of amounts from pension, benefit or allowance payments for tax purposes.

**(5)** The Social Security Appeals Tribunal may, for the purposes of reviewing a decision under the *Health Insurance Act 1973*,exercise all the powers and discretions that are conferred by that Act on the Secretary.

**(6)** If:

(a) the Social Security Appeals Tribunal sets a decision aside under subsection (1); and

(b) the Secretary, or the Social Security Appeals Tribunal, is satisfied that an event that did not occur would have occurred if the decision had not been made;

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the Secretary or the SSAT (as the case may be) may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

**SSAT review powers (rate of return decisions)**

**1254.** If a person applies to the Social Security Appeals Tribunal (SSAT) for review of a rate of return decision in relation to an investment product, the SSAT must:

(a) affirm the decision; or

(b) vary the decision; or

(c) set aside the decision and substitute a new decision.

**Date of effect of SSAT decisions (other than rate of return decisions)**

**1255. (1)** Subject to subsections (2) and (3), a decision by the Social Security Appeals Tribunal (SSAT) comes into operation immediately on the giving of the decision.

**(2)** The SSAT may specify in a decision that the decision is not to come into operation until a later day specified in the decision and if it does so the decision comes into operation on that later day.

**(3)** Subject to subsections (4) and (5), if the SSAT:

(a) varies the decision under review (including a decision under section 1240); or

(b) substitutes a new decision for the decision under review (including a decision under section 1240);

the decision as varied or the new decision (as the case may be) has effect, or is to be taken to have had effect, on and from the day on which the decision under review has or had effect.

**(4)** If:

(a) a person is given written notice of a decision (including a decision of the Secretary or an authorised review officer made under section 1243) under this Act; and

(b) the person applies to the SSAT more than 3 months after the notice was given, for review of the decision; and

(c) the SSAT varies the decision or sets the decision aside and substitutes a new decision; and

(d) the effect of the SSAT’s decision is:

(i) to grant the person’s claim for a pension, benefit or allowance; or

(ii) to direct the making of a payment of pension, benefit or allowance to the person; or

(iii) to increase the rate of the person’s pension, benefit or allowance;

**Review by the Social Security Appeals Tribunal s. 1255**

subsection (3) applies as if references in that subsection to the day on which the decision under review had effect were references to the day on which the application was made to the SSAT for review of the decision under review.

Note: meaning of “given”—sections 28a and 29 of the *Acts Interpretation Act 1901* provide that a notice is given:

(a) to a natural person if the notice is:

* delivered personally; or
* left at the last known address of the person; or
* sent by prepaid post to the last known address of the person; and

(b) to a body corporate if the notice is left at, or sent by prepaid post to, the head office or a registered office or a principal office of the body corporate.

**(5)** The SSAT may order:

(a) that subsection (3) not apply to a decision by the SSAT on a review; and

(b) that subsections (1) and (2) apply instead.

**(6)** This section does not apply to a rate of return decision.

**Date of effect of SSAT decision (rate of return decisions)**

**1256. (1)** A decision by the Social Security Appeals Tribunal (SSAT) affirming a rate of return decision in relation to an investment product comes into operation immediately on the giving of the decision.

**(2)** Subject to subsection (3) where the SSAT:

(a) varies the decision under review; or

(b) substitutes a new decision for the decision under review;

the decision comes into operation on the day specified by the SSAT and remains in force for the period specified by the SSAT.

**(3)** The SSAT cannot specify a day or a period which would have the effect of making the rate of return resulting from the decision operate at any time after it had been replaced by a new rate of return whether because of a later return decision or otherwise.

**Application requirements**

**1257. (1)** A person may apply to the Social Security Appeals Tribunal (SSAT) for review of a decision by:

(a) sending or delivering a written application to:

(i) an office of the SSAT; or

(ii) an office of the Department; or

(b) going to an office of the SSAT and making an oral application; or

(c) ringing an office of the SSAT by telephone and making an oral application.

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**(2)** If a person makes an oral application under paragraph (1) (b) or (c), the person receiving the oral application must make a written record of the details of the oral application and note on the record the date on which the application is made.

**(3)** If a written record of an oral application is made under subsection (2), the written record is to be taken to be a written application by the applicant and to be delivered to an office of the SSAT on the day on which the oral application is made.

**(4)** An application may include a statement of the reasons for seeking a review of the decision.

**Notification requirements—rate of return decision application**

**1258.** If a person, other than a fund manager in relation to an investment product, applies to the Social Security Appeals Tribunal under subsection 1247 (1) for review of a rate of return decision in relation to the investment product, the National Convener must give the fund manager written notice of the making of the application.

**Variation of decision before review completed**

**1259. (1)** If an officer varies a decision after an application has been made to the Social Security Appeals Tribunal for review of the decision but before determination of the review, the application for review is to be treated as if it were an application for review of the decision as varied.

**(2)** If an officer sets a decision aside and substitutes a new decision after an application has been made to the Social Security Appeals Tribunal for review of the decision set aside but before determination of the review, the application for review is to be treated as if it were an application for review of the new decision.

**(3)** If:

(a) a person applies to the Social Security Appeals Tribunal for review of a decision; and

(b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes a new decision;

the person may either:

(c) proceed with the application for review of the decision as varied or the new decision; or

(d) withdraw the application under section 1274.

**Parties to SSAT review**

**1260. (1)** The parties to a review by the Social Security Appeals Tribunal (SSAT) of a decision are:

(a) the applicant; and

(b) the Secretary; and

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(c) any other person who has been made a party to the review under subsection (4); and

(d) where it is a rate of return decision in relation to an investment product, a person who is taken to be a party to the review under subsection (5).

**(2)** If a person has applied under subsection 1247 (1) for review of a decision, any other person whose interests are affected by the decision may apply to the National Convener to be made a party to the review.

**(3)** An application under subsection (2) must be in writing.

**(4)** The National Convener may order that a person who has applied under subsection (2) be made a party to the review.

**(5)** A person will be taken to have applied to the National Convener to be made a party to a review of a rate of return decision in relation to an investment product where:

(a) an application has already been made to the SSAT for review of a rate of return decision in relation to an investment product by another person; and

(b) the review of the decision by the SSAT has not been determined; and

(c) a person applies to the SSAT for review of the same decision.

Note: for role of National Convener see section 1323.

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**PART 6.3—PROCEDURES FOR REVIEW BY THE SOCIAL SECURITY APPEALS TRIBUNAL**

***Division 1*—*Preliminary procedures***

**Procedure on receipt of application for review by SSAT**

**1261. (1)** If the application is sent or delivered to an office of the Department, the Secretary must send the application to the National Convener as soon as practicable and in any case not later than 7 days after the application is received at the office of the Department.

**(2)** If:

(a) the applicant sends or delivers the application to an office of the Social Security Appeals Tribunal (SSAT); or

(b) the Secretary sends the application to the National Convener under subsection (1);

the National Convener must give both the applicant and the Secretary written notice that the application has been received.

**(3)** Within 28 days after receiving notice of the making of the application from the National Convener, the Secretary must send the National Convener:

(a) a statement about the decision under review that:

(i) sets out the findings of fact made by the person who made the decision; and

(ii) refers to the evidence on which those findings were based; and

(iii) gives the reasons for the decision; and

(b) the original or a copy of every document or part of a document that is in the Secretary’s possession or control and is considered by the Secretary to be relevant to the review of the decision.

**(4)** If the National Convener asks the Secretary to send the statement and documents by a date earlier than the date provided for in subsection (3), the Secretary must take reasonable steps to comply with the National Convener’s request.

**(5)** If:

(a) after the end of the period referred to in subsection (3) and before the determination of the review, the Secretary obtains possession of a document; and

(b) the Secretary considers that the document or a part of the document is relevant to the review; and

(c) a copy of the document or the part of the document has not been sent to the National Convener under subsection (3);

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the Secretary must send a copy of the document or the part of the document to an office of the SSAT as soon as practicable after obtaining possession of the document.

**Parties to be given a statement about the decision under review**

**1262. (1)** The National Convener must give each party (other than the Secretary) a copy of the statement referred to in paragraph 1261 (3) (a).

**(2)** The National Convener may make an order directing a person who has received a copy of a statement under subsection (1):

(a) not to disclose information in the statement; or

(b) not to disclose information in the statement except in the circumstances or for the purposes specified in the order.

**(3)** The order must be by written notice given to the person.

**(4)** The person must not contravene the order.

**Arrangements for hearing of application**

**1263. (1)** If an application is made to the Social Security Appeals Tribunal for review of a decision under this Act, the National Convener must fix the date, time and place for the hearing of the application.

**(2)** If a declaration under section 1251 is in force in relation to the decision, the National Convener must take reasonable steps to ensure that the decision is reviewed as quickly as possible.

Note: if a declaration under section 1251 is in force, the person whose pension etc. is affected will be continuing to receive pension etc. as if the decision under review had not been made.

**(3)** The National Convener must give the applicant and any other parties to the review written notice of the date, time and place fixed for the hearing of the application.

**(4)** The notice under subsection (3) must be given a reasonable time before the date fixed for the hearing.

**Notice of application to person affected by decision (other than a rate of return decision)**

**1264. (1)** If:

(a) a person has made an application to the Social Security Appeals Tribunal (SSAT) for a review of a decision; and

(b) the National Convener is satisfied that another person’s interests are affected by the decision;

the National Convener must take reasonable steps to give the other person written notice that an application has been made to the SSAT for review of the decision.

**(2)** The notice under subsection (1):

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(a) must be in writing; and

(b) must include advice of the person’s right under section 1260 to apply to the National Convener to be added as a party to the review; and

(c) may be given at any time before the determination of the review.

**(3)** The National Convener must give each party to the review a copy of the notice.

**(4)** This section does not apply to a rate of return decision in relation to an investment product.

***Division 2***—***How the SSAT informs itself about the decision under review***

**Submissions to SSAT**

**1265. (1)** A party to a review of a decision may:

(a) make oral submissions to the Social Security Appeals Tribunal (SSAT); and

(b) make written submissions to the SSAT.

**(2)** The Secretary may make written submissions to the SSAT.

**(3)** A party to a review of a decision may have another person make submissions to the SSAT on behalf of the party.

**(4)** The National Convener may determine that the oral submissions to the SSAT by a party or a party’s representative are to be made by telephone.

**(5)** Without limiting subsection (4), the National Convener may determine that oral submissions to the SSAT by a party or a party’s representative are to be made by telephone if:

(a) the application is urgent and unnecessary delay would be caused by not conducting the hearing by telephone; or

(b) the party lives in a remote area and unnecessary expense would be incurred if the party or the party’s representative had to travel to the place at which the hearing is to be held; or

(c) the party has failed to attend the hearing and has not indicated that he or she intends not to attend the hearing; or

(d) the applicant is unable to attend the hearing because of illness or infirmity.

**(6)** If a party attending the hearing of the review is not proficient in English, the National Convener may direct that communication with the party at the hearing of the review proceed through an interpreter.

**(7)** A reference in this section to a party does not include a reference to the Secretary.

**Procedures for Review by the Social Security Appeals Tribunal s. 1266**

**SSAT hearings without oral submissions by applicant**

**1266. (1)** If a party has advised the National Convener that the party does not intend making oral submissions to the Social Security Appeals Tribunal (SSAT), the SSAT may proceed to hear the application for review without oral submissions from the party.

**(2)** If:

(a) the National Convener has determined under subsection 1265 (4) that oral submissions to the SSAT by a party or the party’s representative are to be made by telephone; and

(b) on the day fixed for the hearing the presiding member has been unable to contact the party or the party’s representative after reasonable efforts have been made to do so;

the National Convener may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party’s representative.

**(3)** If:

(a) the National Convener has not determined under subsection 1265 (4) that oral submissions to the SSAT by a party or the party’s representative are to be made by telephone; and

(b) the party or the party’s representative does not attend the hearing at the time fixed for the hearing;

the National Convener may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party’s representative.

**(4)** If the National Convener gives an authorisation under subsection (2) or (3), the SSAT may proceed to hear the application without oral submissions from the party or the party’s representative.

**(5)** The National Convener may revoke an authorisation under subsection (2) or (3).

**Evidence on oath**

**1267.** The Social Security Appeals Tribunal may take evidence on oath or affirmation for the purposes of a review of a decision.

**Request for further information from Secretary**

**1268. (1)** The National Convener may ask the Secretary to provide information or a document the Secretary has and that is relevant to the review of a decision.

**(2)** The Secretary must comply with a request made under subsection (1) and must, if at all practicable, do so within 7 days after receiving the request.

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**Request for Secretary to exercise powers under section 1304**

**1269. (1)** The National Convener may ask the Secretary to exercise the Secretary’s powers under section 1304 if the National Convener is satisfied that a person has information, or has custody or control of a document, that is relevant to the review of the decision.

Note: under section 1304, the Secretary can, for the purposes of this Act, require a person to provide information or produce documents.

**(2)** The Secretary must take all reasonable steps to comply with the request and must, if at all practicable, do so within 7 days after receiving the request.

***Division 3***—***The hearing***

**Hearing procedure**

**1270. (1)** The Social Security Appeals Tribunal, in reviewing a decision:

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) is to act as speedily as a proper consideration of the review allows; and

(c) is to, in determining what a proper consideration of the review requires, have regard to the objective laid down by section 1246.

**(2)** The Social Security Appeals Tribunal may inform itself on any matter relevant to a review of a decision in any manner that it considers appropriate.

**Hearing to be private**

**1271. (1)** The hearing of a review is to be in private.

**(2)** The National Convener may give directions as to the persons who may be present at any hearing of a review.

**(3)** In giving directions under subsection (2), the National Convener must have regard to wishes of the parties and the need to protect their privacy.

**(4)** Directions under subsection (2) may be made in writing or otherwise.

**Restrictions on disclosure of information obtained at hearing**

**1272. (1)** The National Convener may make an order directing a person who is present at the hearing of a review:

(a) not to disclose information disclosed to the person in the course of the hearing of the review; or

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(b) not to disclose information disclosed to the person in the course of the hearing of the review except in the circumstances or for the purposes specified in the order.

**(2)** A person must not contravene the order.

***Division 4***—***Other procedural matters***

**Adjournment of SSAT hearings**

**1273. (1)** The Social Security Appeals Tribunal may adjourn the hearing of a review of the decision from time to time.

**(2)** Without limiting subsection (1), the Social Security Appeals Tribunal (SSAT) may refuse to adjourn a hearing of a review of a decision if:

(a) there have already been a number of adjournments of the hearing; or

(b) the SSAT is satisfied that the adjournment would be contrary to the objective laid down by section 1246; or

(c) a declaration under sections 1241 or 1251 is in force in relation to the decision.

Note: if a declaration under sections 1241 or 1251 is in force, the person whose pension etc. is affected will be continuing to receive pension etc. as if the decision under review had not been made.

**Withdrawal of application for review**

**1274. (1)** An applicant for review of a decision may withdraw the application at any time.

**(2)** A withdrawal may be made by:

(a) sending or delivering written notice of withdrawal to:

(i) an office of the Social Security Appeals Tribunal; or

(ii) an office of the Department; or

(b) going to an office of the SSAT and orally withdrawing the application; or

(c) ringing an office of the SSAT by telephone and orally withdrawing the application.

**(3)** If a person withdraws an application under paragraph (2) (b) or (c), the person receiving the oral withdrawal must make a written record of the withdrawal and note on the record the date on which the withdrawal was made.

**(4)** If a person withdraws an application under subparagraph (2) (a) (ii), the Secretary must send notice of the withdrawal to the National Convener as soon as practicable and in any case not later than 7 days after the notice of withdrawal is received at the office of the Department.

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**Power to dismiss application**

**1275. (1)** If:

(a) a person makes an application to the Social Security Appeals Tribunal for review of a decision; and

(b) the National Convener is satisfied, either after having communicated with the person or having made reasonable attempts to contact the person and having failed to do so, that the person does not intend to proceed with the application;

the National Convener may dismiss the application.

**(2)** If the National Convener dismisses an application under subsection (1) the application is to be taken to have been withdrawn at the time when the application is dismissed.

**Chairperson for each SSAT hearing**

**1276. (1)** If the National Convener is one of the members who constitute the Social Security Appeals Tribunal (SSAT) for the purposes of the review of a decision, the National Convener is to preside at the hearing of the review.

**(2)** If:

(a) a senior member is one of the members who constitute the SSAT for the purposes of the review of a decision; and

(b) the National Convener is not one of those members; the senior member is to preside at the hearing of the review.

**(3)** In any other case, the National Convener must designate one of the members who constitute the SSAT for the purposes of the review of a decision as the member who is to preside at the hearing of the review.

**Majority decision**

**1277.** A question before the Social Security Appeals Tribunal (SSAT) on a review is to be decided according to the opinion of a majority of the members constituting the SSAT for the purposes of the review.

**Procedure where opinion of members equally divided**

**1278.** If:

(a) an application is made to the Social Security Appeals Tribunal (SSAT) for review of a decision; and

(b) section 1277 does not apply to a question before the SSAT on the review;

the question is to be decided according to the opinion of the member presiding.

**Procedures for Review by the Social Security Appeals Tribunal s. 1279**

**Directions as to procedure for hearings**

**1279. (1)** The National Convener:

(a) may give general directions as to the procedure to be followed by the Social Security Appeals Tribunal (SSAT) in connection with the review of decisions under this Act; and

(b) may give directions as to the procedure to be followed by the SSAT in connection with a particular review.

**(2)** A direction under subsection (1) must not be inconsistent with the provisions of this Act or the regulations.

Note: the National Convener also has a more general power to give directions under section 1323.

**(3)** A direction under paragraph (1) (b) may be given either before or after the hearing of the particular review has commenced.

**(4)** The presiding member of the SSAT as constituted to hear a particular review may give directions as to the procedure to be followed on the hearing of the review.

**(5)** A direction under subsection (4) must not be inconsistent with:

(a) the provisions of this Act or the regulations; or

(b) a direction given under subsection (1).

**(6)** A direction given under subsection (4) may be given either before or after the hearing of the particular review has commenced.

**(7)** Directions under this section must be given having due regard to the objective laid down by section 1246.

**Costs of review**

**1280. (1)** Subject to subsection (4), a party must bear any expenses incurred by the party in connection with the review.

**(2)** The Social Security Appeals Tribunal (SSAT) may determine that the SSAT is to pay the costs that are:

(a) incurred by the party for reasonable travel and accommodation in relation to the review; and

(b) specified in the determination.

**(3)** If the SSAT makes arrangements for a medical service in relation to a party, the SSAT may determine that it is to pay the costs of the medical service.

**(4)** If the SSAT makes a determination under subsection (2) or (3) in relation to a party’s costs, the costs may be paid by the Commonwealth.

**s. 1281 Procedures for Review by the Social Security Appeals Tribunal**

***Division 5*—*Notification of decisions***

**Procedure following SSAT decision**

**1281. (1)** If the Social Security Appeals Tribunal (SSAT) makes its decision on a review, the SSAT must:

(a) prepare a written statement that:

(i) sets out the decision of the SSAT on the review; and

(ii) sets out the reasons for the decision; and

(iii) sets out the findings on any material questions of fact; and

(iv) refers to the evidence or other material on which the findings of fact were based; and

(b) give each party to the review a copy of the statement referred to in paragraph (a) within 14 days after the determination of the review; and

(c) return to the Secretary any document that the Secretary has provided in relation to the review; and

(d) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact were based.

**(2)** If the Social Security Appeals Tribunal determines a review, the National Convener must give each party to the review (other than the Secretary) a written notice that includes a statement to the effect that, if the person is dissatisfied with the Social Security Appeals Tribunal’s decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*,be made to the Administrative Appeals Tribunal for review of the decision.

**(3)** A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

**Review by Administrative Appeals Tribunal s. 1282**

**PART 6.4—REVIEW BY ADMINISTRATIVE APPEALS TRIBUNAL**

***Division 1***—***Right to review by Administrative Appeals Tribunal***

**Application of Part**

**1282.** Unless otherwise stated, the provisions of this Part apply to all decisions of an officer under this Act including a rate of return decision.

**Review of SSAT decision by AAT**

**1283. (1)** If a decision has been reviewed by the Social Security Appeals Tribunal (SSAT) and has been affirmed, varied or set aside, application may be made to the Administrative Appeals Tribunal for a review of the decision of the SSAT.

**(2)** For the purposes of subsection (1), the decision made by the SSAT is to be taken to be:

(a) where the SSAT affirms a decision—the decision as affirmed; and

(b) where the SSAT varies a decision—the decision as varied; and

(c) where the SSAT sets a decision aside and substitutes a new decision—the new decision; and

(d) where the SSAT sets a decision aside and sends the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the SSAT—the directions or recommendations of the SSAT.

Note: paragraph (d) will not apply to a SSAT rate of return decision—see section 1254.

**(3)** Subsection (1) has effect subject to section 29 of the *Administrative Appeals Tribunal Act 1975.*

Note: section 29 of the Administrative Appeals Tribunal Act 1975 lays down the manner in which an application to the AAT for review of a decision must be made.

**(4)** If:

(a) the Administrative Appeals Tribunal sets a decision aside; and

(b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

Note: the provisions of this Part apply to review of all SSAT decisions (including SSAT rate of return decisions) except as specified.

**Variation of decision before AAT review completed**

**1284. (1)** If an officer varies a decision after an application has been made to the Administrative Appeals Tribunal for review of that decision but before the determination of the application for review, the

**s. 1284 Review by Administrative Appeals Tribunal**

application is to be treated as if it were an application for review of the decision as varied.

**(2)** If an officer sets a decision aside and substitutes a new decision after an application has been made to the Administrative Appeals Tribunal for review of the decision but before determination of the review, the application is to be treated as if it were an application for review of the new decision.

**(3)** If:

(a) a person applies to the Administrative Appeals Tribunal for review of a decision; and

(b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes the new decision;

the person may either:

(c) proceed with the application for review of the decision as varied or the new decision; or

(d) withdraw the application.

**Review of SSAT decision on application by the Secretary**

**1285.** If a decision has been reviewed by the Social Security Appeals Tribunal and has been varied or set aside, the *Administrative Appeals Tribunal Act 1975* applies to a review under section 1283 of the Social Security Appeals Tribunal’s decision as if the Secretary were, for the purposes of section 27 of that Act, a person whose interests are affected by the Social Security Appeals Tribunal’s decision.

Note: section 27 of the *Administrative Appeals Tribunal Act 1975* says that where an Act provides that an application may be made to the AAT for a review of a decision, the application may be made by or on behalf of any person whose interests are affected by the decision.

***Division 2*—*Modification of the Administrative Appeals Tribunal Act 1975***

***Subdivision A*—*Modification of AAT Act (SSAT rate of return decisions)***

**Operation of Administrative Appeals Tribunal Act—SSAT rate of return decisions**

**1286. (1)** For the purposes of the Administrative Appeals Tribunal Act, the fund manager in relation to an investment product shall be taken to be a person affected by an SSAT rate of return decision in relation to the investment product.

**(2)** If:

(a) an application is made to the Administrative Appeals Tribunal (AAT) under section 1283 for review of an SSAT rate of return decision in relation to an investment product; and

(b) the application is made by someone other than the fund manager in relation to the investment product;

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the Registrar of the AAT must give the fund manager written notice of the making of the application.

**(3)** If:

(a) a person applies to the AAT for review of an SS AT rate of return decision; and

(b) at the time when the person applies, an application has already been made to the AAT for review of that decision but proceedings for the review of the decision have not been determined;

the person is to be taken to have applied to the AAT under section 30 (1a) of the AAT Act to be made a party to the proceeding for the review of the decision.

**(4)** The AAT is not empowered to review a rate of return decision except on application that is expressed to be an application for review of an SSAT rate of return decision.

**(5)** A reference in this section to an application having been made to the AAT does not include a reference to an application that has been dismissed under section 42a of the AAT Act.

***Subdivision B***—***General***

**Modification of the Administrative Appeals Tribunal Act**

**1287.** This Subdivision sets out the modifications of the *Administrative Appeals Tribunal Act 1975* that need to be made for applications for review under section 1283.

**Statement of reasons for decision**

**1288.** The *Administrative Appeals Tribunal Act 1975* applies to an application under section 1283 for review of a decision as if references in section 28 of that Act to the person who made the decision were references to the National Convener.

Note: section 1281 of this Act requires the SSAT to give the parties to a review copies of a statement setting out reasons, findings on material questions of fact and a reference to the evidence or other material on which the findings were based. Section 28 of the *Administrative Appeals Tribunal Act 1975* entitles an applicant for review by the AAT to ask the person who made the decision for a statement setting out the same matters. Subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* says that an applicant for review is not entitled to a statement under that section if the matters referred to in section 1281 of this Act are set out in the decision itself or in a written statement given to the applicant.

**Notice of application for review**

**1289.** The *Administrative Appeals Tribunal Act 1975* applies to an application under section 1283 for review of a decision as if the reference in subsection 29 (11) of the AAT Act to the person who made the decision were a reference to each party to the review by the Social Security Appeals Tribunal (other than a party making the application under section 1283).

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Note: subsection 29 (11) of the *Administrative Appeals Tribunal Act 1975* requires notice of an application to the AAT for review of a decision to be given to the person who made the decision. The effect of this section is that any person who was a party to the review by the SSAT will be given notice of an application to the AAT for further review.

**Parties to a review by the AAT**

**1290.** The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 1283 as if the reference in paragraph 30 (1) (b) of the AAT Act to the person who made the decision were a reference to each person who was a party to the review by the Social Security Appeals Tribunal.

Note: paragraph 30 (1) (b) of the *Administrative Appeals Tribunal Act 1975* says that the person who made the decision under review is a party to the proceeding before the AAT for review of the decision. The effect of this section is that each person who was a party to the review by the SSAT is automatically made a party to an application to the AAT for further review.

**Lodging documents with the AAT**

**1291. (1)** The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 1283 as if references in section 37 of the AAT Act to the person who has made the decision that is the subject of an application for review by the Administrative Appeals Tribunal were references to the Secretary.

**(2)** If a person applies to the Administrative Appeals Tribunal under section 1283 for review of a decision, the Secretary is to be taken to have complied with the Secretary’s obligations under paragraph 37 (1) (a) of the *Administrative Appeals Tribunal Act 1975* in relation to the decision if the Secretary gives the Administrative Appeals Tribunal the prescribed number of copies of the statement prepared by the Social Security Appeals Tribunal under paragraph 1281 (1) (a).

**(3)** Subsection (2) does not limit the Administrative Appeals Tribunal’s powers under section 38 of the *Administrative Appeals Tribunal Act 1975.*

Note 1: subsection 37 (1) of the *Administrative Appeals Tribunal Act 1975* requires a person who has made a decision that is under review by the AAT to give the AAT copies of:

(a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and

(b) every other document or part of a document that is in the person’s possession or under the person’s control and is considered by the person to be relevant to the review.

Unless subsection 1291 (1) said otherwise, the obligations under section 37 of the Administrative Appeals *Tribunal Act 1975* would fall on the SSAT. Paragraph 1281 (1) (a) requires the SSAT to prepare a written statement of reasons, findings and evidence for its decision and paragraph 1281 (1) (b) requires the SSAT to give the Secretary a copy of the statement. As the Secretary has possession of the statement and the relevant documents, the Secretary is the appropriate person to give them to the AAT.

Note 2: section 38 of the *Administrative Appeals Tribunal Act 1975* allows the Administrative Appeals Tribunal to order the person who lodged a statement under paragraph 37 (1) (a) of the *Administrative Appeals Tribunal Act 1975*, to lodge an additional statement containing further and better particulars.

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**Power of the AAT to obtain additional statements**

**1292.** The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 1283 as if references in section 38 of the AAT Act to the person who lodges a statement referred to in paragraph 37 (1) (a) of that Act with the AAT were references to the National Convener.

Note: the effect of this section is that if the AAT considers that the section 1281 statement is not adequate, the AAT may ask the National Convener to provide an additional statement containing further and better details.

**Operation and implementation of the decision under review**

**1293.** The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 1283 as if the references in subsection 41 (4) of the AAT Act to the person who made the decision were references to each party to the review by the Social Security Appeals Tribunal.

Note: section 41 of the Administrative Appeals Tribunal Act 1975 deals with the operation and implementation of a decision under review by the AAT.

**Power of the AAT where a party fails to appear**

**1294.** The *Administrative Appeals Tribunal Act 1975* applies to a review under section 1283 as if the reference in subsection 42a (2) of the AAT Act to the person who made the decision were a reference to the Secretary.

Note: subsection 42a (2) of the *Administrative Appeals Tribunal Act 1975* empowers the AAT to direct that where a person fails to appear (other than the person who made the decision that is under review) that person is to cease to be a party to the proceedings before the AAT or the application for review is to be dismissed.

**s. 1295 General Administration**

**CHAPTER 7—ADMINISTRATION**

**PART 7.1—GENERAL ADMINISTRATION**

***Division 1***—***Principles of administration***

**Secretary to have general administration of Act**

**1295.** The Secretary is, subject to any direction of the Minister, to have the general administration of this Act.

**Principles of administration**

**1296.** In administering this Act, the Secretary is to have regard to:

(a) the desirability of achieving the following results:

(i) the ready availability to members of the public of advice and information services relating to income support;

(ii) the ready availability of publications containing clear statements about income support entitlements and procedural requirements;

(iii) the delivery of services under the Act in a fair, courteous, prompt and cost-efficient manner;

(iv) a process of monitoring and evaluating delivery of programs with an emphasis on the impact of programs on social security recipients;

(v) the establishment of procedures to ensure that abuses of the social security system are minimised; and

(b) the special needs of disadvantaged groups in the community; and

(c) the need to be responsive to Aboriginality and to cultural and linguistic diversity; and

(d) the importance of the systems of review of decisions under the Act; and

(e) the need to apply government policy, in accordance with the law and with due regard to relevant decisions of the Administrative Appeals Tribunal and the Social Security Appeals Tribunal.

Note: in administering this Act, the Secretary is also bound by the Privacy Act 1988 and by provisions of this Act concerning confidentiality—see Division 2 of Part 7.2.

**Government policy statements**

**1297. (1)** The Minister may prepare a written statement of the policy of the Commonwealth Government in relation to the administration of this Act and give a copy of the statement to:

(a) the Secretary; and

(b) the National Convener of the Social Security Appeals Tribunal.

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**(2)** If the Minister gives a copy of a statement to the Secretary or the National Convener under subsection (1), the Minister must lay a copy of the statement before each House of the Parliament within 15 sitting days of that House after the Minister gives the copy under that subsection.

**(3)** In exercising powers under this Act, an officer must have regard to any statement, a copy of which has been given to the Secretary under subsection (1).

**(4)** In exercising powers under this Act, the National Convener and the Social Security Appeals Tribunal must have regard to any statement a copy of which has been given to the National Convener under subsection (1).

**The Secretary and National Convener may agree on administrative arrangements**

**1298.** The Secretary and the National Convener of the Social Security Appeals Tribunal may agree on administrative arrangements to further the objectives of Chapter 6.

**Delegation**

**1299.** The Secretary may by signed instrument delegate to an officer all or any of the powers of the Secretary under this Act.

Note: see sections 34a and 34aa of the Acts Interpretation Act 1901 on delegation.

***Division 2*—*Miscellaneous***

**Telephone service for clients**

**1300.** The Minister is to direct the Secretary to develop a service which will enable a person to make a telephone call to an office that is under the general control of the Secretary, at no greater cost than the cost of a local telephone call.

**Authorised review officers**

**1301. (1)** The Secretary may authorise an officer to perform duties as an authorised review officer for the purposes of this Act.

**(2)** The Secretary’s authorisation must be in writing.

**Decisions to be in writing**

**1302. (1)** A decision of an officer under this Act must be in writing.

**(2)** A decision under this Act is taken to be in writing if it is entered into, or recorded with the use of, a computer.

**Annual report**

**1303. (1)** As soon as practicable after 30 June in each year, the Secretary must prepare and give to the Minister a report on the administrative operation of this Act during the year that ended on that 30 June.

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**(2)** The Minister is to cause a copy of the annual report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

**Information Management s. 1304**

**PART 7.2—INFORMATION MANAGEMENT**

***Division 1*—*Information gathering***

**General power to obtain information**

**1304. (1)** The Secretary may request a person to give information, or produce a document that is in the person’s custody or under the person’s control, to the Department if the Secretary considers that the information or document may be relevant to the question of:

(a) whether a person who has made a claim for a pension, benefit or allowance under this Act is qualified for the pension, benefit or allowance; or

(b) whether a pension, benefit or allowance under this Act is payable to a person who is receiving, or has received, it; or

(c) the rate of pension, benefit or allowance under this Act that is or was applicable to a person.

Note: a request under this subsection may be sent to a company as well as to a natural person—paragraph 22 (1) (a) of the Acts Interpretation Act 1901 provides that “person” includes a body corporate.

**(2)** A request under subsection (1) must be by notice in writing given to the person.

Note: meaning of “given”—sections 28a and 29 of the Acts Interpretation Act 1901 provide that a notice is “given” to a natural person if the notice is:

* delivered personally; or
* left at the last known address of the person; or
* sent by prepaid post to the last known address of the person.

**(3)** The notice must specify:

(a) how the person is to give the information or how the document is to be produced; and

(b) the period within which the person is to give the information, or produce the document, to the Department; and

(c) the officer (if any) to whom the information is to be given or the document is to be produced; and

(d) that the notice is given under this section.

**(4)** The period specified under paragraph (3) (b) must end at least 14 days after the notice is given.

**(5)** The notice may require the person to give the information by appearing before a specified officer to answer questions.

**(6)** If the notice requires the person to appear before an officer, the notice must specify a time and a place for the person to appear, and the time must be at least 14 days after the notice is given.

**(7)** A person must not:

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(a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or

(b) in purporting to comply with the notice, knowingly or recklessly provide information or produce a document that is false or misleading in a material particular.

Penalty:

(c) in the case of a natural person—$2,000 or imprisonment for 12 months, or both; or

(d) in the case of a body corporate—$10,000.

**(8)** This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

**(9)** This section does not require a person to give information or produce a document to the extent that in doing so the person would contravene a law of the Commonwealth (other than a law of a Territory).

**(10)** This section extends to:

(a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and

(b) all persons, irrespective of their nationality, who are making or who have made a claim for a pension, benefit or allowance under this Act; and

(c) all persons, irrespective of their nationality, who are receiving, or have received, a payment of a pension, benefit or allowance under this Act.

Note: State or Territory law does **not** affect a person’s obligations under this section—see section 1310.

**Power to obtain information *from* a person who owes a debt to the Commonwealth**

**1305. (1)** The Secretary may request a person who owes a debt to the Commonwealth under or as a result of this Act:

(a) either to:

(i) give to the Department information that is relevant to the person’s financial situation; or

(ii) produce to the Department a document that is in the person’s custody or under the person’s control and is relevant to the person’s financial situation; and

(b) if the person’s address changes—to notify the Department of the new address within 14 days of the change.

Note: a request under this subsection may be sent to a company as well as to a natural person—paragraph 22 (1) (a) of the *Acts Interpretation Act 1901* provides that “person” includes a body corporate.

**(2)** A request under subsection (1) must be by notice in writing given to the person.

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Note: meaning of “given”—sections 28a and 29 of the *Acts Interpretation Act 1901* provide that a notice is “given” to a natural person if the notice is:

* delivered personally; or
* left at the last known address of the person; or
* sent by prepaid post to the last known address of the person.

**(3)** The notice must specify:

(a) how the person is to give the information or how the document is to be produced; and

(b) the period within which the person is to give the information, or produce the document, to the Department; and

(c) the officer (if any) to whom the information is to be given or the document is to be produced; and

(d) that the notice is given under this section.

**(4)** The period specified under paragraph (3) (b) must end at least 14 days after the notice is given.

**(5)** A person must not:

(a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or

(b) in purported compliance with such a notice, knowingly or recklessly provide information or produce a document that is false or misleading in a material particular.

Penalty:

(c) in the case of a natural person—$2,000 or imprisonment for 12 months, or both; or

(d) in the case of a body corporate—$10,000.

**(6)** This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

**(7)** This section does not require a person to provide information or produce a document to the extent that in doing so the person would contravene a law of the Commonwealth (other than a law of a Territory).

Note: State or Territory law does not affect a person’s obligations under this section—see section 1310.

**(8)** This section does not limit section 1304.

**(9)** This section extends to:

(a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and

(b) all persons, irrespective of their nationality, who are making or who have made a claim for a pension, benefit or allowance under this Act; and

(c) all persons, irrespective of their nationality, who are receiving, or have received, a payment of a pension, benefit or allowance under this Act.

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**Power to obtain information *about* a person who owes a debt to the Commonwealth**

**1306. (1)** If the Secretary believes that a person may have information or a document:

(a) that would help the Department locate another person (in this section called the **“debtor”**) who owes a debt to the Commonwealth under or as a result of this Act; or

(b) that is relevant to the debtor’s financial situation;

the Secretary may request the person to give the information, or produce the documents, to the Department.

Note: a request under this subsection may be sent to a company as well as to a natural person—paragraph 22 (1) (a) of the *Acts Interpretation Act 1901* provides that “person” includes a body corporate.

**(2)** A request under subsection (1) must be by notice in writing given to the person.

Note: meaning of “given”—sections 28a and 29 of the *Acts Interpretation Act 1901* provide that a notice is “given” to a natural person if the notice is:

* delivered personally; or
* left at the last known address of the person; or
* sent by prepaid post to the last known address of the person.

**(3)** The notice must specify:

(a) how the person is to give the information or how the document is to be produced; and

(b) the period within which the person is to give the information, or produce the document, to the Department; and

(c) the officer (if any) to whom the information is to be given or the document is to be produced; and

(d) that the notice is given under this section.

**(4)** The period specified under paragraph (3) (b) must end at least 14 days after the notice is given.

**(5)** A person must not:

(a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or

(b) in purported compliance with such a notice, knowingly or recklessly provide information or produce a document that is false or misleading in a material particular.

Penalty:

(c) in the case of a natural person—$2,000 or imprisonment for 12 months, or both; or

(d) in the case of a body corporate—$10,000.

**(6)** This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

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**(7)** This section does not require a person to provide information or produce a document to the extent that in doing so the person would contravene a law of the Commonwealth (other than a law of a Territory).

**(8)** This section extends to:

(a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and

(b) all persons, irrespective of their nationality, who are making or who have made a claim for a pension, benefit or allowance under this Act; and

(c) all persons, irrespective of their nationality, who are receiving, or have received, a payment of a pension, benefit or allowance under this Act.

Note: State or Territory law does not affect a person’s obligations under this section—see section 1310.

**Power to obtain information to verify claims etc.**

**1307. (1)** The Secretary may request a person to give information about a class of persons to the Department for either or both of the following purposes:

(a) detecting cases in which amounts of pension, benefit or allowance under this Act have been paid when they should not have been paid;

(b) verifying the qualification of persons who have made claims for pensions, benefits or allowances under this Act for those pensions, benefits or allowances.

Note: a request under this subsection may be sent to a company as well as to a natural person—paragraph 22 (1) (a) of the *Acts Interpretation Act 1901* provides that “person” includes a body corporate.

**(2)** The information that the Secretary may request about each person in the class of persons is all or any of the following information (but no other information):

(a) full name and any previous name;

(b) address;

(c) sex;

(d) marital status;

(e) date of birth;

(f) date of death;

(g) dates of entries into and departures from Australia;

(h) any payments received by the person from the person given the notice, within the period of 12 months before the giving of the notice, and the account number of any account into which any of those payments were paid;

(j) in relation to a course of study being undertaken by the person:

(i) whether the course is full-time or part-time; and

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(ii) the date on which the person started the course; and

(iii) the subjects being studied by the person.

**(3)** A request under subsection (1) must be by notice in writing given to the person.

Note: meaning of “given”—sections 28a and 29 of the *Acts Interpretation Act 1901* provide that a notice is “given” to a natural person if the notice is:

* delivered personally; or
* left at the last known address of the person; or
* sent by prepaid post to the last known address of the person.

**(4)** The notice must specify:

(a) the class of persons about which the information is to be given; and

(b) how the person is to give the information; and

(c) the period within which the person is to give the information to the Department; and

(d) the officer (if any) to whom the information is to be given; and

(e) that the notice is given under this section.

**(5)** The Secretary may specify a particular class of persons in the notice whether or not the Secretary is able to identify any of the persons in that class as being persons:

(a) who have received; or

(b) who are receiving; or

(c) who have made claims for;

pensions, benefits or allowances under this Act.

**(6)** The period specified under paragraph (4) (c) must be at least 14 days after the notice is given.

**(7)** Within 3 months after the information is given, the Secretary must decide which (if any) of the information given in response to the notice is, or is likely to be, relevant to the matters referred to in subsection (1).

**(8)** If the Secretary decides, within the 3 month period, that some or all of the information given in response to the notice is not, or is not likely to be, relevant to the matters referred to in subsection (1), the Secretary must ensure that any record of the irrelevant information is destroyed.

**(9)** If the Secretary has not made a decision under subsection (7) at the end of the 3 month period, the Secretary must ensure that any record of all or any part of the information is destroyed.

**(10)** A person must not:

(a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or

(b) in purported compliance with such a notice, knowingly or

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recklessly provide information or produce a document that is false or misleading in a material particular.

Penalty:

(c) in the case of a natural person—$2,000 or imprisonment for 12 months, or both; or

(d) in the case of a body corporate—$10,000.

**(11)** This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

**(12)** This section does not require a person to give information to the extent that in doing so the person would contravene a law of the Commonwealth (other than a law of a Territory).

**(13)** This section extends to:

(a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and

(b) all persons, irrespective of their nationality, who are making or who have made a claim for a pension, benefit or allowance under this Act; and

(c) all persons, irrespective of their nationality, who are receiving, or have received, a payment of a pension, benefit or allowance under this Act.

Note: State or Territory law does not affect a person’s obligations under this section—see section 1310.

**Power to obtain information about tax file number**

**1308. (1)** The Secretary may ask a person to quote their tax file number for the purposes of determining the payability to the person of:

(a) unemployment benefit; or

(b) job search allowance; or

(c) sickness benefit.

Note: sections 529 (unemployment benefit), 600 (job search allowance) and 670 (sickness benefit) provide that unemployment benefit, job search allowance and sickness benefit are not payable unless the person has given the Secretary their tax file number or an employment declaration which states certain matters about the tax file number.

**(2)** If a person has given the Secretary a document referred to in:

(a) paragraph 529 (2) (b) or (3) (b) (unemployment benefit); or

(b) paragraph 600 (2) (b) or (3) (b) (job search allowance); or

(c) paragraph 670 (2) (b) or (3) (b) (sickness benefit);

the Commissioner of Taxation may:

(d) tell the Secretary whether the person has a tax file number; or

(e) tell the Secretary the person’s tax file number; or

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(f) tell the Secretary if the person’s application for a tax file number is refused; or

(g) tell the Secretary if the person withdraws his or her application for a tax file number.

**(3)** The Secretary may record a tax file number:

(a) quoted in a statement given to the Secretary for the purposes of:

(i) paragraph 529 (1) (a) (unemployment benefit); or

(ii) paragraph 600 (1) (a) (job search allowance); or

(iii) paragraph 670 (1) (a) (sickness benefit); or

(b) communicated to the Secretary by the Commissioner of Taxation.

**(4)** Section (1) operates despite section 8wa of the *Taxation Administration Act 1953.*

**(5)** Paragraph (2) (b) and subsection (3) operate despite section 8wb of the *Taxation Administration Act 1953.*

**Self incrimination**

**1309. (1)** A person is not excused from giving information or producing a document pursuant to a notice under this Division on the ground that the information may tend to incriminate the person.

**(2)** Information given, or a document produced, by a person pursuant to a notice under this Division is not admissible in evidence against the person in a criminal proceeding other than a proceeding under, or arising out of, subsection 1304 (7), 1305 (5), 1306 (5) or 1307 (10).

**State/Territory law does not affect obligations to provide information under this Act**

**1310. (1)** Nothing contained in any law of a State or a Territory operates to prevent a person from:

(a) giving information; or

(b) producing documents; or

(c) giving evidence;

that the person is required to give or produce to the Department or to an officer for the purposes of this Act.

**(2)** This section extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

(b) all persons irrespective of their nationality or citizenship.

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**End-of-employment statement by employer**

**1311. (1)** If a person’s employment (including employment under a contract for services) ceases, the person may request his or her former employer to give the person, in a form approved by the Secretary, a statement about that employment.

**(2)** If a person makes a request under subsection (1), the former employer must comply with the request as soon as practicable. Penalty:

(a) in the case of a natural person—$2,000 or imprisonment for 1 year, or both; or

(b) in the case of a body corporate—$10,000.

Note: the statement could be relevant in determining a person’s claim for unemployment benefit, job search allowance or special benefit. The statement may establish whether the person is affected by, for example, section 544 (unemployment due to voluntary act) or section 545 (unemployment due to misconduct) or their equivalents for job search allowance and special benefit.

***Division 2***—***Confidentiality***

**Protection of personal information**

**1312. (1)** An officer must not, except in the performance or exercise of his or her duties, functions or powers under this Act, make a record of, or disclose to any person, any information about another person that the officer has access to in the performance or exercise of his or her duties, functions or powers under this Act or the 1947 Act.

Penalty:

(a) in the case of a natural person—$12,000 or imprisonment for 2 years, or both; or

(b) in the case of a body corporate—$60,000.

**(2)** Despite subsection (1), nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of the *Child Support (Registration and Collection) Act 1988* or the *Child Support (Assessment) Act 1989.*

**Protection extends to court, tribunal etc. proceedings**

**1313.** An officer must not, except for the purposes of this Act, be required:

(a) to produce any document in his or her possession; or

(b) to disclose any matter or thing of which he or she had notice;

by reason of the performance or exercise of his or her duties, functions or powers under this Act or the 1947 Act, to:

(c) a court; or

(d) a tribunal; or

(e) an authority; or

(f) a person;

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that has power to require the production of documents or the answering of questions.

**Secretary’s certificate**

**1314. (1)** Despite sections 1312 and 1313, the Secretary may:

(a) if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases—disclose information acquired by an officer in the performance of his or her functions or duties or in the exercise of his or her powers under this Act to such persons as the Secretary determines; or

(b) disclose any such information to the Secretary of a Department of State of the Commonwealth or to the head of an authority of the Commonwealth for the purposes of that Department or authority; or

(c) disclose any such information to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it.

**(2)** In giving certificates for the purposes of paragraph (1) (a), the Secretary must act in accordance with guidelines from time to time in force under subsection 1315 (1).

**(3)** The Secretary must not, under paragraph (1) (a) or (b), disclose information relating to any person other than a person who:

(a) is receiving a pension, benefit or allowance under this Act; or

(b) has received, or made a claim for, a pension, benefit or allowance under this Act or the 1947 Act within the period of 12 months preceding the disclosure of the information.

**(4)** A person to whom information is disclosed under subsection (1), and any person employed by, or otherwise under the control of, that authority or person is, in respect of that information, subject to the same rights, privileges, obligations and liabilities under sections 1312 and 1313 as if he or she were an officer who had acquired the information in the performance or exercise of duties, functions or powers under this Act.

**Guidelines for exercise of Secretary’s certificate power**

**1315. (1)** The Minister, by determination in writing:

(a) is to set guidelines for the exercise of the Secretary’s power to give certificates for the purposes of paragraph 1314 (1) (a); and

(b) may revoke or vary those guidelines.

**(2)** A determination made under subsection (1) is a disallowable instrument for the purposes of section 46a of the *Acts Interpretation Act 1901*,subject to the provisions of subsection (3).

**Information Management s. 1315**

**(3)** Section 48 of the *Acts Interpretation Act 1901* applies to a determination made under subsection (1) as if paragraph (1) (b) of section 48 were omitted and the following paragraph substituted:

“(b) subject to this section, shall take effect on the first day on which the determination is no longer liable to be disallowed, or to be deemed to be disallowed, under this section; and”.

**Offence—soliciting disclosure of protected information**

**1316. (1)** If:

(a) a person solicits the disclosure of protected information from an officer or another person; and

(b) the disclosure would be in contravention of this Division; and

(c) the first-mentioned person knows or ought reasonably to know that the information is protected information;

the first-mentioned person is guilty of an offence, whether or not any protected information is actually disclosed.

Note: for “protected information” see subsection 23 (1).

**(2)** If:

(a) a person is convicted of an offence under subsection (1); and

(b) the person acted as an employee or agent of another person in soliciting the disclosure of the information concerned;

the other person is guilty of an offence.

**(3)** It is a defence to a prosecution for an offence against subsection (2) if it is established that the employee or agent concerned was acting outside the scope of his or her authority as an employee or agent in soliciting the disclosure of the information concerned.

**Offences where protected information disclosed**

**1317. (1)** If protected information is disclosed to a person in contravention of this Division, the person is guilty of an offence if he or she knows or ought reasonably to know that the disclosure is in contravention of this Division and:

(a) he or she in any way solicited the disclosure of the information; or

(b) he or she discloses the information to another person; or

(c) he or she uses the information otherwise than by disclosing it to another person.

Note: for “protected information” see subsection 23 (1).

**(2)** It is a defence to a prosecution for an offence against subsection (1) if it is established that the defendant had lawful authority for acting as described in the applicable paragraph of that subsection.

**(3)** If:

(a) a person is convicted of an offence under subsection (1); and

**s. 1317 Information Management**

(b) the person acted as an employee or agent of another person in obtaining the information concerned;

the other person is also guilty of an offence.

**(4)** It is a defence to a prosecution for an offence against subsection (3) if it is established that the employee or agent concerned was acting outside the scope of his or her authority as an employee or agent in acting as described in the applicable paragraph of subsection (1).

**Offences—offering to supply protected information**

**1318. (1)** A person who:

(a) offers to supply (whether to a particular person or otherwise) information about another person; and

(b) knows that the information is protected information; is guilty of an offence.

**(2)** A person who:

(a) holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person; and

(b) knows that the information is protected information; is guilty of an offence.

Note: for “protected information” see subsection 23 (1).

**Penalty for offences under this Division**

**1319.** The penalty for an offence against section 1316, 1317 or 1318 is:

(a) in the case of a natural person—$12,000 or imprisonment for a period of 2 years, or both; or

(b) in the case of a body corporate—$60,000.

**Protection for officers**

**1320.** Nothing in this Division renders an officer acting in the exercise or performance of his or her duties, functions or powers under this Act guilty of an offence.

**Officer’s oath or declaration**

**1321.** An officer must make an oath or declaration in a form approved by the Minister or the Secretary if required to do so by the Minister or the Secretary.

**Social Security Appeals Tribunal s. 1322**

**PART 7.3—SOCIAL SECURITY APPEALS TRIBUNAL**

***Division 1***—***Establishment and membership of the Social Security Appeals Tribunal***

**Establishment of the SSAT**

**1322.** There is hereby established a Social Security Appeals Tribunal, which is to consist of:

(a) a National Convener; and

(b) such number of senior members as are appointed in accordance with this Act; and

(c) such number of other members as are appointed in accordance with this Act.

**The National Convener**

**1323. (1)** The National Convener is responsible for the overall operation and administration of the Social Security Appeals Tribunal.

**(2)** The National Convener is to:

(a) monitor the operations of the Social Security Appeals Tribunal; and

(b) take reasonable steps to ensure that decisions of the Social Security Appeals Tribunal are consistent; and

(c) take reasonable steps to ensure that the Social Security Appeals Tribunal efficiently and effectively performs its functions.

**(3)** The National Convener may give directions:

(a) for the purpose of increasing the efficiency of the operations of the Social Security Appeals Tribunal; and

(b) as to the arrangements of the business of the Tribunal.

**Appointment of members**

**1324. (1)** The National Convener and the senior members of the Social Security Appeals Tribunal are to be appointed by the Governor-General.

**(2)** The other members are to be appointed by the Minister.

**(3)** The National Convener is to be appointed as a full-time member.

**(4)** Any other member may be appointed either as a full-time member or as a part-time member.

**Period of appointment of members**

**1325. (1)** Subject to this Part, a member holds office for such period as is specified in the instrument of appointment, but is eligible for re-appointment.

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**(2)** The period specified under subsection (1) must not exceed:

(a) in the case of the National Convener—5 years; and

(b) in any other case—3 years.

**Acting appointments**

**1326. (1)** The Minister may appoint a person to act as National Convener:

(a) during a vacancy in the office of National Convener, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the National Convener is absent from duty or from Australia or is, for any reason, unable to perform the duties of the National Convener’s office.

**(2)** A person appointed to act during a vacancy in the office of National Convener must not continue to act for more than 12 months.

**(3)** The Minister may appoint a person to act as a full-time senior member during any period, or during all periods, when the member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the member’s office.

**(4)** The Minister may appoint a person to act as a part-time senior member during any period, or during all periods, when the member is, for any reason, unavailable to perform the duties of the member’s office.

**(5)** Where a person has been appointed under subsection (1), (3) or (4), the Minister may direct that the person is to continue to act in the appointment after the normal terminating event occurs.

**(6)** A direction under subsection (5) must specify the period during which the person may continue to act in the appointment.

**(7)** The period specified under subsection (6) may be specified by reference to the happening of a particular event or the existence of particular circumstances.

**(8)** A direction under subsection (5):

(a) is to be given only if there is a pending review or other special circumstances justifying the giving of the direction; and

(b) may only be given before the normal terminating event occurs.

**(9)** A person continuing to act under a direction under subsection (5) must not continue to act for more than 12 months after the normal terminating event occurs.

**(10)** If the Social Security Appeals Tribunal as constituted for the purposes of a review includes a person acting or purporting to act under this section, any decision of, or any direction given or any other

**Social Security Appeals Tribunal s. 1326**

act done by, the Tribunal as so constituted is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

**(11)** Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

**(12)** For the purposes of this section the normal terminating event for an appointment under subsection (1), (3) or (4) is:

(a) if the appointment is made under paragraph (1) (a)—the filling of the vacancy in the office of National Convener; or

(b) if the appointment is made under paragraph (1) (b)—the National Convener ceasing to be absent or ceasing to be unable to perform the duties of the National Convener’s office; or

(c) if the appointment is made under subsection (3)—the senior member ceasing to be absent or ceasing to be unable to perform the duties of the member’s office; or

(d) if the appointment is made under subsection (4)—the senior member ceasing to be unavailable to perform the duties of the member’s office.

***Division 2*—*Organisation of the business of the Social Security Appeals Tribunal***

**Constitution of SSAT for each hearing**

**1327. (1)** Subject to section 1328, the National Convener may give written directions as to the members who are to constitute the Social Security Appeals Tribunal for the purposes of:

(a) a particular review; or

(b) reviews of a particular kind.

**(2)** Without limiting subsection (1), the National Convener may give a direction under that subsection as to the members who are to constitute the Social Security Appeals Tribunal for the purposes of all reviews, or reviews of a particular kind, that are listed for hearing at a particular place during a particular period or during particular periods.

**s. 1327 Social Security Appeals Tribunal**

**(3)** For the purposes of a review, the Social Security Appeals Tribunal is to be constituted by the members ascertained in accordance with the directions given under subsection (1).

**Number of members to constitute SSAT for each hearing**

**1328. (1)** The maximum number of members to constitute the Social Security Appeals Tribunal for the purposes of a review is 4.

**(2)** Subject to subsection (3) and section 1329, the minimum number of members to constitute the Social Security Appeals Tribunal for the purposes of a review is 3.

**(3)** A member or 2 members may constitute the Social Security Appeals Tribunal for the purposes of a review if the National Convener is satisfied that there are special circumstances justifying the consideration of the review by fewer than 3 members.

**Member unavailable to complete review**

**1329. (1)** If the hearing of a review of a decision has been commenced or completed by the Social Security Appeals Tribunal constituted by 2 or more members but, before the matter to which the proceeding relates has been determined, one of the members constituting the Tribunal for the purposes of the review has:

(a) ceased to be a member; or

(b) has ceased to be available for the purposes of the review;

the following provisions have effect:

(c) if the National Convener does not give a direction under section 1327 reconstituting the Tribunal for the purposes of the review—the hearing and determination, or the determination, of the review may be completed by the Tribunal constituted by the remaining member or members;

(d) in any other case—the proceeding must be reheard by the Tribunal as reconstituted in accordance with the directions of the National Convener under section 1327.

**(2)** If a review is reheard by the Social Security Appeals Tribunal, the Tribunal may, for the purposes of that review, have regard to any record of the proceedings before the Tribunal as previously constituted.

**(3)** The reference in subsection (2) to a record of proceedings includes a reference to a record of any evidence taken in the proceeding.

***Division 3*—*Administrative matters***

**Remuneration and allowances of members**

**1330. (1)** A member is to be paid such remuneration as is determined by the Remuneration Tribunal.

**Social Security Appeals Tribunal s. 1330**

**(2)** If no determination of a member’s remuneration by the Remuneration Tribunal is in operation, the member is to be paid such remuneration as is prescribed.

**(3)** A member is to be paid such allowances as are prescribed.

**(4)** This section has effect subject to the *Remuneration Tribunal Act 1973.*

**Leave of absence**

**1331. (1)** The Minister may grant leave of absence to the National Convener on such terms and conditions as to remuneration or otherwise as the Minister determines.

**(2)** The National Convener may grant leave of absence to another full-time member.

**(3)** The Minister may determine the terms and conditions as to remuneration or otherwise on which leave may be granted under subsection (2).

**(4)** A determination under subsection (3) must be in writing.

**Approval to engage in outside employment**

**1332. (1)** The National Convener may approve another full-time member’s engaging in paid employment outside the duties of the member’s office.

**(2)** The Minister may give the National Convener directions as to the National Convener’s exercise of powers under subsection (1) and the National Convener must comply with the directions.

**(3)** A direction under subsection (2) must be in writing.

**Resignation**

**1333.** A member may resign office by writing signed by the member and delivered to the Minister.

**Removal from office**

**1334. (1)** The Governor-General may remove the National Convener or a senior member from office on the ground of proved misbehaviour or physical or mental incapacity.

**(2)** The Minister may remove an ordinary member from office on the ground of proved misbehaviour or physical or mental incapacity.

**(3)** The Minister may suspend a member from office on the ground of misbehaviour or physical or mental incapacity.

**(4)** If the Minister suspends the National Convener or a senior member from office, the Governor-General may, on the recommendation of the Minister:

**s. 1334 Social Security Appeals Tribunal**

(a) remove the National Convener or the senior member from office; or

(b) direct that the suspension continue for such further period as the Governor-General specifies; or

(c) direct that the suspension terminate.

**(5)** The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

**(6)** The Governor-General may remove the National Convener or a senior member from office if disqualifying circumstances exist in relation to the National Convener or the senior member.

**(7)** The Minister may remove an ordinary member from office if disqualifying circumstances exist in relation to the member.

**(8)** For the purposes of this section disqualifying circumstances exist in relation to a member if:

(a) the member becomes bankrupt; or

(b) the member applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) the member compounds with the member’s creditors; or

(d) the member makes an assignment of the member’s remuneration for the benefit of the member’s creditors; or

(e) the member is a full-time member and:

(i) engages, except in accordance with an approval under section 1332, in paid employment outside the duties of the member’s office; or

(ii) is absent from duty, except on leave of absence granted under section 1331, for 14 consecutive days or 28 days in any 12 months; or

(f) the member fails, without reasonable excuse, to comply with the member’s obligations under section 1335.

**(9)** If the National Convener or a senior member is an eligible employee for the purposes of the *Superannuation Act 1976*,the Governor-General may, with the consent of the National Convener or the senior member, by signed instrument, retire the National Convener or the senior member from office on the ground of physical or mental incapacity on a date specified in the instrument.

**(10)** If an ordinary member is an eligible employee for the purposes of the *Superannuation Act 1976*,the Minister may, with the consent of the ordinary member, by signed instrument, retire the ordinary member from office on the ground of physical or mental incapacity on a date specified in the instrument.

**(11)** The date specified under subsection (9) or (10) must not be earlier than the date on which the instrument is signed.

**Social Security Appeals Tribunal s. 1334**

**(12)** A member must not be suspended, removed or retired from office except as provided by this section.

**Disclosure of interests**

**1335. (1)** If:

(a) a member is, or is to be, a member of the Social Security Appeals Tribunal as constituted for the purposes of a review; and

(b) the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of member’s functions in relation to that review;

the following provisions have effect:

(c) the member must disclose the interest to the applicant and to the Secretary;

(d) except with the consent of the applicant and the Secretary, the member must not take part in the review or exercise any powers in relation to the review by the Social Security Appeals Tribunal of the relevant decision.

**(2)** If the National Convener becomes aware that:

(a) a member is, or is to be, a member of the Social Security Appeals Tribunal as constituted for the purposes of a review; and

(b) the member has, in relation to that review, an interest of the kind referred to in paragraph (1) (b) of this section;

the following provisions have effect:

(c) if the National Convener considers that the member should not take part, or should not continue to take part in the review—the National Convener must give a direction to the member accordingly;

(d) in any other case—the National Convener must cause the interest of the member to be disclosed to the applicant and to the Secretary.

**Disclosure of confidential information**

**1336. (1)** This section applies to a person who is or has been:

(a) a member of the Social Security Appeals Tribunal; or

(b) a person acting as a member of the Tribunal; or

(c) a member of the staff of the Tribunal; or

(d) a person (other than a member of the staff of the Tribunal) providing interpreting services at the hearing of a review by the Tribunal under Chapter 6.

**(2)** This section applies to information or a document if the information or document concerns a person and is obtained by a person

**s. 1336 Social Security Appeals Tribunal**

to whom this section applies in the course of performing functions or duties or exercising powers under this Act.

**(3)** A person to whom this section applies must not:

(a) make a record of any information to which this section applies; or

(b) divulge or communicate to any person any information to which this section applies;

unless the record is made or the information is divulged or communicated:

(c) for the purposes of this Act; or

(d) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act.

**(4)** Subsection (3) applies to the divulging or communicating of information whether directly or indirectly.

**(5)** A person to whom this section applies is not to be required:

(a) to produce in a court any document to which this section applies; or

(b) to divulge or communicate to any court any information to which this section applies;

except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

**(6)** A person to whom this section applies must make an oath or declaration in a form approved by the Minister if required to do so by the Minister.

**(7)** For the purposes of this section, a person who is providing interpreting services at the hearing of a review by the Tribunal under Chapter 6 is to be taken to be performing a function under this Act.

**(8)** In this section:

**“court”** includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

**“produce”** includes permit access to.

**Delegation by the National Convener**

**1337.** The National Convener may by signed instrument delegate to a member of the Social Security Appeals Tribunal all or any of the powers and functions of the National Convener under this Act.

**Protection of members and witnesses**

**1338. (1)** A member has, in the performance of the member’s duties as a member, the same protection and immunity as a member of the Administrative Appeals Tribunal.

**Social Security Appeals Tribunal s. 1338**

**(2)** A person representing a party at a hearing of a review before the Social Security Appeals Tribunal has the same protection and immunity as a barrister has in appearing before the Administrative Appeals Tribunal on behalf of a party.

**(3)** A person appearing before the Social Security Appeals Tribunal as a witness has the same protection as a person appearing before the Administrative Appeals Tribunal as a witness.

**Fees for witnesses**

**1339. (1)** If a person appears before the Social Security Appeals Tribunal as a witness at the request of the National Convener, the person is entitled to be paid, in respect of the person’s attendance, fees and allowances ascertained in accordance with a determination under subsection (2).

**(2)** The Minister may determine the amounts of fees and allowances to be paid under subsection (1).

**(3)** A determination under subsection (2) must be in writing and is a disallowable instrument for the purposes of section 46a of the *Acts Interpretation Act 1901.*

**(4)** The fees and allowances referred to in subsection (1) are to be paid by the Commonwealth.

**Oath or affirmation of office**

**1340. (1)** A person who is appointed as a member, or to act as a member, must not discharge the duties of the office unless the person has taken an oath, or made an affirmation, in accordance with the form of oath or affirmation in Schedule 1.

**(2)** The oath or affirmation must be made before a justice of the peace or a commissioner for taking affidavits.

**Staff of the SSAT**

**1341.** Any staff required to assist the Social Security Appeals Tribunal are to be persons appointed or employed under the *Public Service Act 1922* and made available for the purpose by the Secretary.

**Annual report**

**1342. (1)** The National Convener must, as soon as practicable after 30 June in each year prepare and give to the Minister a report of the operations of the Social Security Appeals Tribunal during that year.

**(2)** The Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report after the Minister receives the report.

**s. 1343 Offences**

**CHAPTER 8—MISCELLANEOUS**

**PART 8.1—OFFENCES**

***Division 1***—***Offences***

**Operation of Part**

**1343.** This Part extends to:

(a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and

(b) all persons, irrespective of their nationality, who are making or who have made, a claim for a pension, benefit or allowance under this Act; and

(c) all persons, irrespective of their nationality, who are receiving or have received, a payment of a pension, benefit or allowance under this Act.

Note: this Division does not contain an exhaustive list of all offences against this Act.

**False statement in connection with claims and hardship requests**

**1344. (1)** A person must not knowingly or recklessly make a false or misleading statement in connection with, or in support of, the person’s or any other person’s:

(a) claim for a pension, benefit or allowance under this Act; or

(b) request under paragraph 1129 (1) (d) that section 1129 (financial hardship—pensions or allowances) apply to the person; or

(c) request under paragraph 1131 (1) (f) that section 1131 (financial hardship—benefits) apply to the person.

**(2)** The statement referred to in subsection (1) may be a spoken statement or a written statement.

**False statement—to deceive or affect rates**

**1345. (1)** A person must not knowingly or recklessly make a false or misleading statement to:

(a) deceive an officer doing duty in relation to this Act; or

(b) affect the rate of a pension, allowance, or benefit payable under this Act.

**(2)** The statement referred to in subsection (1) may be a spoken statement or a written statement.

**False statement or document**

**1346. (1)** A person must not knowingly or recklessly:

(a) make a statement to an officer which is false in any particular; or

(b) present a document to an officer which is false in any particular.

**Offences s. 1346**

**(2)** The statement referred to in subsection (1) may be a spoken statement or a written statement.

**Payment knowingly obtained where not payable**

**1347.** A person must not knowingly obtain:

(a) a payment of a pension, benefit or allowance under this Act; or

(b) an instalment of a pension, benefit or allowance under this Act;

which is:

(c) not payable at all; or

(d) only payable in part.

**Payment knowingly obtained through fraud etc.**

**1348.** A person must not knowingly obtain:

(a) a payment of a pension, benefit or allowance under this Act; or

(b) an instalment of a pension, benefit or allowance under this Act;

by means of:

(c) a false or misleading statement made knowingly or recklessly; or

(d) impersonation; or

(e) a fraudulent device.

**Proceedings against corporations**

**1349. (1)** If, in proceedings for an offence against this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:

(a) a director, employee or agent of the corporation engaged in that conduct; and

(b) the director, employee or agent was, in engaging in that conduct, acting within the scope of the director’s, employee’s or agent’s actual or apparent authority; and

(c) the director, employee or agent had that state of mind.

**(2)** Any conduct engaged in on behalf of a corporation:

(a) by a director, employee or agent of the corporation within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the corporation, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

is taken, for the purposes of this Act, to have been engaged in by the corporation.

**(3)** A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person.

**s. 1350 Offences**

***Division 2***—***Penalties and orders for interest***

**Penalties**

**1350.** If a person contravenes any of the sections in Division 1, the person is guilty of an offence.

Penalty: $2,000 or imprisonment for a period of 12 months, or both.

**Conviction of an offence—repayment of pension, benefit or allowance**

**1351. (1)** If a person is convicted of an offence under section 1350 the court may:

(a) impose a penalty in respect of the offence; and

(b) order the person to pay the Commonwealth an amount equal to any amount paid by way of pension, allowance or benefit because of the act, failure or omission for which the person is convicted.

Note: the amount referred to in paragraph 1351 (1) (b) will be evidenced by a certificate prepared by the Secretary under section 1357.

**(2)** In spite of anything in this Act, or any other law, a person is not to be imprisoned for failing to pay an amount payable to the Commonwealth under paragraph (1) (b).

**Order for interest by the court**

**1352. (1)** The court may make an order for interest if:

(a) a person is convicted of an offence under section 1350; and

(b) the offence involved a scheme to defraud the Commonwealth; and

(c) the court orders the person to pay the Commonwealth an amount of more than $30,000 under paragraph 1351 (1) (b); and

(d) the Commonwealth applies to the court for an order for interest.

Note: for “scheme to defraud the Commonwealth” see subsection (4).

**(2)** If the court makes an order for interest, interest is payable at the rate of 20% per year of the amount referred to in paragraph (1) (c).

**(3)** Interest is to be calculated in respect of the period during which the person received a pension, benefit, or allowance because of the act, failure or omission for which the person is convicted.

**(4)** In this section:

**“scheme to defraud the Commonwealth”** means:

(a) a scheme that involves the making of a series of false or misleading statements; or

(b) a scheme that involves obtaining, by means of impersonation or a fraudulent device, a series of:

**Offences s. 1352**

(i) payments of pension, benefit or allowance under this Act; or

(ii) instalments of pension, benefit or allowance under this Act;

that were not payable.

**Penalty where person convicted of more than one offence**

**1353. (1)** Subject to subsection (2), if a person is convicted of more than one offence against section 1350, the court may, if it thinks fit, impose one penalty for all the offences.

**(2)** A penalty for all the offences of which a person is convicted must not exceed the sum of the maximum penalties that could be imposed if penalties were imposed for each offence separately.

***Division 3***—***Procedural matters***

**Joining of charges**

**1354.** Charges against the same person for a number of offences against section 1350 may be joined in one complaint, information or declaration if those charges:

(a) are founded on the same facts; or

(b) form a series of offences of the same or a similar character; or

(c) are part of a series of offences of the same or a similar character.

**Particulars of each offence**

**1355.** Particulars of each offence charged are to be set out in a separate paragraph if 2 or more of the charges are included in the same complaint, information or declaration.

**Joined charges may be tried together**

**1356.** If the charges are joined, the charges must be tried together unless:

(a) the court considers it just that any charge should be tried separately; and

(b) makes an order to that effect.

**Secretary’s certificate**

**1357. (1)** For the purposes of paragraph 1351 (1) (b), a certificate signed by the Secretary is evidence of the matters specified in the certificate.

**(2)** The certificate may specify:

(a) a person; and

(b) an amount that has been paid to the person by way of pension, benefit or allowance because of:

(i) an act; or

**s. 1357 Offences**

(ii) a failure; or

(iii) an omission; and

(c) the act, failure or omission which caused the amount to be paid to the person.

**Court certificate**

**1358.** If:

(a) the court makes an order under paragraph 1351 (1) (b) for the payment to the Commonwealth of an amount of money; and

(b) the clerk or other appropriate officer of the court signs a certificate specifying:

(i) the amount ordered to be paid to the Commonwealth; and

(ii) the person by whom the amount is to be paid; and

(c) the certificate is filed in a court (which may be the court that made the order) that has civil jurisdiction to the extent of the amount to be paid;

the certificate is enforceable in all respects as a final judgment of the court in which the certificate is filed.

**Miscellaneous s. 1359**

**PART 8.2—MISCELLANEOUS**

**Payment to Commissioner of Taxation—section 218 Income Tax Assessment Act**

**1359.** The Secretary must, in accordance with section 218 of the *Income Tax Assessment Act 1936*,for the purposes of enabling the collection of tax that is, or may become, payable by a recipient of a pension, benefit or allowance:

(a) make deductions from the instalments of the pension, benefit or allowance payable to a person; and

(b) pay the amount deducted to the Commissioner of Taxation.

**Judicial notice to be taken of certain matters**

**1360. (1)** All courts must take judicial notice of a signature that purports to be attached or appended to any official document if the signature is of a person who:

(a) holds or has held the office of:

(i) Secretary; or

(ii) Director-General of Social Security; or

(iii) Director-General of Social Services; or

(b) is or was an officer.

**(2)** If the signature of a person referred to in subsection (1) purports to be attached or appended to any official document, all courts must take judicial notice of the fact that the person holds, or has held, an office referred to in subsection (1) or is or was an officer.

**Evidence**

**1361. (1)** If the signature of any person who:

(a) holds or has held the office of:

(i) Secretary; or

(ii) Director-General of Social Security; or

(iii) Director-General of Social Services; or

(b) is or was an officer;

purports to be attached or appended to any official document, the document must be received in all courts as *prima facie* evidence of the facts and statements contained in it.

**(2)** A statement in writing signed by a person referred to in subsection (1) that a person is or was receiving a pension, benefit or allowance under this Act, on a certain date at a certain rate must be received in all courts as *prima facie* evidence that the person is or was receiving the pension, allowance or benefit on the date and at the rate stated.

**s. 1362 Miscellaneous**

**External Territories**

**1362.** This Act extends to the Territory of Cocos (Keeling) Islands and to the Territory of Christmas Island.

**Appropriation**

**1363.** Payments of pensions, benefits and allowances under this Act must be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

**Regulations**

**1364.** The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient for carrying out or giving effect to this Act and, in particular, may make regulations prescribing penalties up to a fine of $500 for any breach of the regulations.

**SCHEDULE 1** Section 1340

OATH

I, , swear that I will faithfully and impartially perform the duties of the office of National Convener (or senior member or member) of the Social Security Appeals Tribunal without fear or favour, affection or ill-will. So help me God.

AFFIRMATION

I, , solemnly and sincerely promise and declare that I will faithfully and impartially perform the duties of the office of National Convener (or senior member or member) of the Social Security Appeals Tribunal without fear or favour, affection or ill-will.

\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 2** Section 1208

PART A

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia,

Being resolved to co-operate in the social field,

Desiring to make arrangements enabling persons who go from one country to the other to receive social security benefits for age, widowhood, invalidity, sickness, unemployment and family responsibilities, as far as possible at the same rates and under the same conditions as persons who have been resident in the latter country,

Have agreed as follows:

PART I—Definitions and General Provisions

ARTICLE 1

**Definitions**

For the purposes of this Agreement, unless the context otherwise requires—

(a) “age pension”, “invalid pension”, “wife’s allowance” and “child’s allowance” have the same meaning as in the legislation of Australia;

(b) “benefit” means pension, allowance or benefit payable under the legislation of one (or the other) country and includes any increase payable for a dependant;

(c) “child” means, in relation to any person, a child, as defined in the legislation which is being applied, who would be treated under that legislation as being a child of that person or included in his family;

(d) “competent authority” means, in relation to the United Kingdom, the Minister of Pensions and National Insurance, the Ministry of Labour and National Insurance for Northern Ireland or the Isle of Man Board of Social Services, as the case may require, and, in relation to Australia, the Director-General of Social Services;

(e) “country” means, according to the context, the United Kingdom or Australia;

(f) “family benefit” means, in relation to the United Kingdom, a family allowance payable under the legislation of the United

**SCHEDULE 2***—continued*

Kingdom, and, in relation to Australia, child endowment payable under the legislation of Australia;

(g) “former Agreement” means the Agreement on Social Security signed in London on the 8th June, 1953, on behalf of the Contracting Parties;

(h) “full standard rate” means, in relation to any benefit payable under the legislation of the United Kingdom, the rate at which the beneficiary would be qualified to receive that benefit if the relevant contribution conditions were fully satisfied;

(i) “guardian’s allowance”, “widow’s allowance”, “widowed mother’s allowance” and “widow’s basic pension” have the same meaning as in the legislation of the United Kingdom;

(j) “legislation” means, according to the context, the laws, orders and regulations specified in Article 2 which are or have been or may hereafter be in force in any part of one (or the other) country;

(k) “means test” means any provision of the legislation of Australia which affects the payment or rate of a benefit on account of income or property;

(l) “pension age” means, in relation to any person, the age at which that person is treated as reaching pensionable age under the legislation of the United Kingdom;

(m) “qualified to receive” means, in relation to the United Kingdom, entitled to receive subject to any disqualification or any provision about giving notice, claiming, earnings, hospital treatment or overlapping benefits which may be appropriate and, in relation to Australia, qualified to receive after taking into account any means test which may be appropriate;

(n) “retirement pension” has the same meaning as in the legislation of the United Kingdom and includes a contributory old age pension payable under that legislation;

(o) “United Kingdom” means England, Scotland, Wales, Northern Ireland and the Isle of Man;

(p) “widow’s benefit” means, in relation to the United Kingdom, a widow’s allowance, widowed mother’s allowance or widow’s pension payable under the legislation of that country or a widow’s basic pension so payable to a woman who became a widow before the 5th July, 1948;

(q) “widow’s pension”, in relation to the United Kingdom, means a widow’s pension payable under the legislation of the United Kingdom other than a widow’s basic pension, and, in relation to Australia, has the same meaning as in the legislation of Australia.

**SCHEDULE 2***—continued*

ARTICLE 2

**Legislation**

(1) The provisions of this Agreement shall apply—

(a) in relation to the United Kingdom—

(i) to the National Insurance Act, 1946, the National Insurance Act (Northern Ireland), 1946, the National Insurance (Isle of Man) Act, 1948, and the legislation in force before the 5th July, 1948, which was replaced by those Acts; and

(ii) to the Family Allowances Act, 1945, and the Family Allowances (Isle of Man) Act, 1946; and

(b) in relation to Australia, to the Social Services Act 1947-1957.

(2) Subject to the provisions of paragraph (4) of this Article, this Agreement shall apply also to laws, orders and regulations which carry into effect, amend, supplement or consolidate the legislation specified in paragraph (1) of this Article.

(3) This Agreement shall apply to laws, orders and regulations which amend or supplement the legislation specified in paragraph (1) or (2) of this Article for the purpose of giving effect to it or to any agreement on social security which any two of the competent authorities of the United Kingdom have made with one another.

(4) Subject to the provisions of paragraph (2) of Article 32, this Agreement shall apply, only if the Contracting Parties so agree, to laws, orders and regulations which amend or supplement the legislation specified in paragraph (1) or (2) of this Article for the purpose of giving effect to any other reciprocal agreement on social security which one (or the other) Party has made with the Government of a third country or which any of the competent authorities of the United Kingdom has made with the authority administering any scheme of social security in a third country.

PART II—Retirement Pensions and Age Pensions

ARTICLE 3

**United Kingdom retirement pensions by virtue of residence in Australia**

(1) For the purposes of any claim to receive a retirement pension, a person who is permanently resident in the United Kingdom shall be treated as if he, or, in the case of a claim made by a married woman or a widow by virtue of her husband’s insurance, her husband, had paid contributions under the legislation of the United Kingdom for any period during which he was resident in Australia, and for any period during which he was proceeding from either country to the other if he arrived in the latter country within thirteen weeks after leaving the former country.

**SCHEDULE 2***—continued*

(2) Where the person claiming a retirement pension is a married woman claiming by virtue of her own insurance, the provisions of paragraph (1) of this Article shall not apply to her unless—

(a) she has paid one hundred and fifty-six contributions under the legislation of the United Kingdom (other than contributions which would not be taken into account for the purposes of any claim to receive a benefit under that legislation) for any period after the date of her marriage and before the date when she reaches pension age; or

(b) at the time when she was last in Australia, she was being treated as a widow for the purposes of her right to receive a widow’s pension under the legislation of Australia, or would have been so treated but for her earnings.

(3) Where the person claiming a retirement pension is a widow claiming by virtue of her own insurance and she has chosen to have her husband’s contributions taken into account, the provisions of paragraph (1) shall apply both to her husband and to herself.

(4) Where a person who is permanently resident in the United Kingdom was receiving an age pension, otherwise than by virtue of this Agreement or the former Agreement, at the time when he was last in Australia, and was over pension age at that time, he shall, if he is not qualified by virtue of paragraphs (1), (2) and (3) of this Article to receive a retirement pension at the full standard rate, be treated as if he satisfied the contribution conditions for such a pension:

Provided that a married woman who does not satisfy either of the conditions specified in paragraph (2) of this Article shall be treated for the purposes of this paragraph as if her husband and not she satisfied the said contribution conditions.

(5) Subject to the provisions of Article 21, any pension which is awarded by virtue of this Article shall cease to be payable if the pensioner ceases to be permanently resident in the United Kingdom.

ARTICLE 4

**Australian age pensioner deemed to have retired**

For the purposes of any claim to receive a retirement pension, a person shall be deemed to have retired from regular employment if, at any time within the four months before his arrival in the United Kingdom, he was receiving an age pension.

ARTICLE 5

**United Kingdom contributions payable after pension age**

For the purposes of those provisions of the legislation of the United Kingdom which concern the payment of contributions for any period after the insured person has reached pension age and the increase of

**SCHEDULE 2***—continued*

the weekly rate of retirement pension by virtue of those contributions, a person who was resident in Australia for any period shall be treated as if he had become an insured person at the beginning of that period.

ARTICLE 6

**Restoration of retirement pension rights**

A person who at any time before the 7th January, 1954, chose not to qualify for a retirement pension but to have a refund of part of the contributions which he had paid under the legislation of the United Kingdom may, if he was resident in Australia for any period before or after that time, cancel that choice by giving notice to the competent authority of the United Kingdom and repaying the sum which he received by way of refund of contributions.

ARTICLE 7

**United Kingdom retirement pensions in Australia**

(1) Where a person would be qualified to receive a retirement pension, otherwise than by virtue of this Agreement or the former Agreement, if he were in the United Kingdom, he shall be qualified to receive that pension while he is in Australia.

(2) This Article shall have effect subject to the provisions of Article 24.

ARTICLE 8

**Australian age pensions by virtue of residence in the United Kingdom**

(1)For the purposes of any claim to receive an age pension, a person who is permanently resident in Australia shall be treated at if he had been resident there during any period—

(a) during which he was resident in the United Kingdom; or

(b) during which he was proceeding from the United Kingdom to Australia, if he arrived in Australia within thirteen weeks after leaving the United Kingdom.

(2) This Article shall have effect subject to the provisions of Article 25.

PART III—Widows’ Benefits and Widows’ Pensions

ARTICLE 9

**United Kingdom widows’ benefits by virtue of residence in Australia**

(1) For the purposes of any claim to receive a widow’s benefit under the legislation of the United Kingdom, a widow who is permanently resident in the United Kingdom shall be treated as if her husband had paid contributions under that legislation for any period during which he was resident in Australia, and for any period during

**SCHEDULE 2***—continued*

which he was proceeding from either country to the other if he arrived in the latter country within thirteen weeks after leaving the former country.

(2) Where a widow who is permanently resident in the United Kingdom was receiving a widow’s pension under the legislation of Australia, otherwise than by virtue of this Agreement or the former Agreement, at the time when she was last in that country, and is not qualified by virtue of paragraph (1) of this Article to receive a widowed mother’s allowance or widow’s pension at the full standard rate under the legislation of the United Kingdom, she shall be qualified to receive at the full standard rate—

(a) a widowed mother’s allowance if she has a child in her family or if she has residing with her a person under the age of eighteen years and the widow’s pension which she was receiving at the time when she was last in Australia was being paid to her on the basis that she had the custody, care and control of that child or of that person; or

(b) a widow’s pension or retirement pension, as the case may require, if she is not qualified to receive a widowed mother’s allowance but had reached the age of fifty years either before she last left Australia or when she ceased to be qualified to receive a widowed mother’s allowance.

(3) Subject to the provisions of Article 21, any widow’s benefit which is awarded by virtue of this Article shall cease to be payable if the widow ceases to be permanently resident in the United Kingdom.

ARTICLE 10

**United Kingdom widow or widow’s child in Australia**

(1) Where a woman would be qualified to receive a widow’s benefit under the legislation of the United Kingdom, otherwise than by virtue of this Agreement or the former Agreement, if she were in the United Kingdom, she shall be qualified to receive that benefit while she is in Australia.

(2) Where a woman would be qualified under the legislation of the United Kingdom, otherwise than by virtue of this Agreement or the former Agreement, to receive a widowed mother’s allowance, including an allowance for a child, if her child were in the United Kingdom, she shall be qualified to receive that allowance for any period—

(a) during which the child is in Australia; or

(b) during which the child is proceeding from one country to the other, if he arrives in the latter country within thirteen weeks after leaving the former country.

**SCHEDULE 2***—continued*

(3) This Article shall have effect subject to the provisions of Article 24.

ARTICLE 11

**Australian widows’ pensions by virtue of residence in the United Kingdom**

(1) For the purposes of any claim to receive a widow’s pension under the legislation of Australia, a woman who is permanently resident in that country shall be treated as if she had been resident in Australia during any period—

(a) during which she was resident in the United Kingdom;

(b) during which she was absent from the United Kingdom, if her husband paid contributions or had contributions credited to him for that period under the legislation of the United Kingdom; or

(c) during which she was proceeding from the United Kingdom to Australia, if she arrived in Australia within thirteen weeks after leaving the United Kingdom.

(2) This Article shall have effect subject to the provisions of Article 25.

PART IV—Family Allowances, Guardians’ Allowances and Child Endowment

ARTICLE 12

**Family benefit paid in one country by virtue of residence in the other**

(1) If a person is in the United Kingdom but is treated, otherwise than by virtue of this Agreement, for the purposes of the legislation of Australia as being in Australia, he shall be qualified to receive family benefit for a child in accordance with the provisions of that legislation; and no family benefit for that child shall be paid under the legislation of the United Kingdom.

(2) Subject to the provisions of paragraph (1) of this Article—

(a) if a person who has claimed family benefit under the legislation of one country or the child for whom family benefit has been so claimed is permanently resident in that country, then, for the purposes of any right to receive that benefit, any period during which he was resident or present in the other country shall be treated as a period during which he was, respectively, resident or present in the former country and, if he was born in the latter country, he shall be treated as if he had been born in the former country; and

(b) if a person who has claimed family benefit under the legislation of one country is temporarily absent from that country, he

**SCHEDULE 2***—continued*

shall, for the purposes of any right to receive that benefit, be treated during any period during which he is in the other country as if he were in the former country, provided that the said period begins within thirteen weeks after the time when he was last in the former country; but he shall be qualified to receive only the amount of family benefit which he would have received under the legislation of the latter country if that amount is less than the amount which he would have received under the legislation of the former country.

(3) Where the circumstances in which a person is receiving education or undergoing training in Australia are such that, if they had occurred in the United Kingdom, they would have enabled that person to be treated, for the purposes of the legislation of the United Kingdom, as undergoing full-time instruction in a school or as undergoing full-time training, as the case may be, that person shall, for the purposes of any right to receive family benefit under the legislation of the United Kingdom, be treated as undergoing full-time instruction in a school or as undergoing full-time training, as the case may be.

(4) Any child born to a woman while she is temporarily absent from one country in circumstances in which she is treated, in accordance with sub-paragraph (b) of paragraph (2) of this Article, as if she were in that country shall, for the purposes of any right to receive family benefit under the legislation of that country, be treated as if the child had been born in that country and, so long as the woman or her husband is so temporarily absent, as if the child were in that country during any period during which the child is in the other country.

(5) Where any person is qualified to receive family benefit for a child under the legislation of one country by virtue of the provisions of paragraph (2) of this Article, no family benefit for that child shall be paid under the legislation of the other country.

ARTICLE 13

**Guardians’ allowances**

Where a person who is permanently resident in the United Kingdom claims a guardian’s allowance for a child who is permanently resident there, any parent of that child who, after reaching the age of fifteen years, was resident in Australia on or after the 5th July, 1948, shall be treated as if he had been insured under the legislation of the United Kingdom.

**SCHEDULE 2***—continued*

ARTICLE 14

**Family allowances in Northern Ireland**

The Contracting Parties agree that the Reciprocal Arrangements relating to Family Allowances in Northern Ireland and Child Endowment in Australia, a Memorandum of which is set out in the Schedule to the former Agreement, shall continue to have effect.

PART V—Sickness Benefits and Invalid Pensions

ARTICLE 15

**Australian sickness benefits by virtue of United Kingdom residence**

If a person in Australia claims a sickness benefit under the legislation of that country, he shall be treated, for the purposes of that claim, as if he had been resident in Australia—

(a) during any period during which he was resident in the United Kingdom; and

(b) during the period after his departure from the United Kingdom until his arrival in Australia, if that period does not exceed thirteen weeks.

ARTICLE 16

**Australian invalid pensions by virtue of United Kingdom residence**

(1) If a person who is permanently resident in Australia claims an invalid pension under the legislation of that country, he shall be treated for the purposes of that claim—

(a) as if he had been resident in Australia during any period—

(i) during which he was resident in the United Kingdom; or

(ii) during which he was proceeding from the United Kingdom to Australia, if he arrived in Australia within thirteen weeks after leaving the United Kingdom; and

(b) as if he had become permanently incapacitated for work or permanently blind while in Australia, if he became permanently incapacitated for work or permanently blind, as the case may be, while in the United Kingdom or while proceeding from the United Kingdom to Australia.

(2) If a person is qualified to receive an invalid pension by virtue of the provisions of paragraph (1) of this Article, then, subject to the provisions of paragraph (3) of this Article and to the provisions of the legislation of Australia, his wife shall be qualified to receive a wife’s allowance and he or his wife shall be qualified to receive a child’s allowance.

**SCHEDULE 2***—continued*

(3) Where a person, at the time when he arrives in Australia, is qualified to receive an invalid pension by virtue of the provisions of paragraph (1) of this Article—

(a) he shall not receive more by way of such pension than the amount of the sickness benefit which he would have received under the legislation of the United Kingdom if he had remained in that country and any provision of that legislation about overlapping benefits which would have been appropriate in his case had not been applied;

(b) his wife shall not receive more by way of a wife’s allowance than the amount by which the amount of the sickness benefit which he would have received under the legislation of the United Kingdom exceeds the amount of the invalid pension which he is qualified to receive; and

(c) any child’s allowance which he or his wife is qualified to receive shall not exceed the amount by which the amount of the sickness benefit which he would have received under the legislation of the United Kingdom exceeds the total amount of the invalid pension and the wife’s allowance which he and his wife are respectively qualified to receive.

ARTICLE 17

**United Kingdom sickness benefit by virtue of gainful occupation in Australia**

(1) Where a person, who is, or would but for his incapacity for work be, ordinarily gainfully occupied, claims a sickness benefit under the legislation of the United Kingdom or applies for contributions to be credited to him under that legislation for any period during which he is incapable of work, he shall be treated—

(a) as if he had paid a contribution—

(i) under the legislation of the United Kingdom concerning National Health Insurance in force before the 5th July, 1948, for any week before that date during which he was gainfully occupied under a contract of service in Australia;

(ii) as an employed person for any week after that date during which he was gainfully occupied under a contract of service in Australia;

(iii) as a self-employed person for any other week after that date during which he was gainfully occupied in Australia; and

(iv) as a non-employed person for any week after that date during which he was proceeding from either country to the other, if he arrived in the latter country within thirteen weeks after leaving the former country;

**SCHEDULE 2***—continued*

(b) as if he had had a contribution credited to him—

(i) as an employed person for any week during which he was resident in Australia and was unemployed and available for work or was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied under a contract of service; and

(ii) as a self-employed person for any other week during which he was resident in Australia and was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied.

(2) Nothing in paragraph (1) of this Article shall diminish any right which a person has, apart from this Agreement, to receive a sickness benefit under the legislation of the United Kingdom.

(3) Where a person who is permanently resident in the United Kingdom was receiving—

(a) a sickness benefit, an invalid pension or a rehabilitation allowance under the legislation of Australia; or

(b) a payment under the Tuberculosis Act 1948 of the Commonwealth of Australia,

when he was last in Australia and is incapable of work at the time when he arrives in the United Kingdom, he shall be treated under the legislation of the United Kingdom as if, at that time and for so long as he continues from that time to be incapable of work, he satisfied the contribution conditions under which sickness benefit is payable for an indefinite period.

PART VI—Unemployment Benefits

ARTICLE 18

(1) If a person in one country claims an unemployment benefit under the legislation of that country, he shall be treated for the purposes of his claim as if he had been resident in that country during any period—

(a) during which he was resident in the other country; or

(b) during which he was proceeding from the latter country to the former country, if that period does not exceed thirteen weeks.

(2) Where a person claims an unemployment benefit under the legislation of the United Kingdom or applies for contributions to be credited to him under that legislation for any period during which he is unemployed, he shall be treated—

(a) as if he had paid a contribution—

(i) as an employed person for any week during which he was gainfully occupied under a contract of service in Australia;

**SCHEDULE 2***—continued*

(ii) as a self-employed person for any other week during which he was gainfully occupied in Australia; and

(iii) as a non-employed person for any week” during which he was proceeding from either country to the other, if he arrived in the latter country within thirteen weeks after leaving the former country;

(b) as if he had had a contribution credited to him—

(i) as an employed person for any week during which he was resident in Australia and was unemployed and available for work or was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied under a contract of service; and

(ii) as a self-employed person for any other week during which he was resident in Australia and was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied.

(3) Nothing in paragraph (2) of this Article shall diminish any right which a person has, apart from this Agreement, to receive an unemployment benefit under the legislation of the United Kingdom.

PART VII—Beneficiaries moving from one Country to the other

ARTICLE 19

**Australian pensioner migrating to the United Kingdom**

Where a person—

(a) leaves Australia to become permanently resident in the United Kingdom and arrives in the United Kingdom within thirteen weeks after leaving Australia; and

(b) was qualified to receive and was receiving an age pension, an invalid pension, a wife’s allowance, a child’s allowance or a widow’s pension under the legislation of Australia, whether by virtue of this Agreement or otherwise, immediately before leaving Australia,

that pension shall not cease to be payable, and may be paid, for the period during which he is proceeding to the United Kingdom.

ARTICLE 20

**Australian pensioner visiting the United Kingdom**

(1) The provisions of this Article shall apply only to age pensions, invalid pensions, wives’ and children’s allowances and widows’ pensions payable under the legislation of Australia, whether by virtue of this Agreement or otherwise.

(2) Where a person—

**SCHEDULE 2***—continued*

(a) is temporarily absent from Australia and arrives in the United Kingdom within thirteen weeks after leaving Australia; and

(b) was qualified to receive, and was receiving, a benefit immediately before leaving Australia,

that benefit shall not cease to be payable, and may be paid, during that temporary absence, but payment for the period after his departure from the United Kingdom until his arrival in Australia shall not be made unless that period does not exceed thirteen weeks.

(3) A person—

(a) who is temporarily absent from Australia and arrives in the United Kingdom within thirteen weeks after leaving Australia;

(b) who, if he had not left Australia, would have become qualified to receive a benefit at a time during that temporary absence; and

(c) who, if that time is between the date of his departure from the United Kingdom and the date of his arrival in Australia, arrives in Australia within thirteen weeks after leaving the United Kingdom,

shall be treated as if had become qualified to receive that benefit at that time, and the benefit shall be payable, and may be paid, during his temporary absence, but payment for the period after his departure from the United Kingdom until his arrival in Australia shall not be made unless that period does not exceed thirteen weeks.

(4) Where—

(a) a person is, by virture of the last preceding paragraph, treated as if he had become qualified to receive a benefit at a time after his departure from Australia but before his arrival in the United Kingdom or after his departure from the United Kingdom but before his arrival in Australia; and

(b) he lodges a claim for that benefit within fourteen days after his arrival in the United Kingdom or Australia, as the case may be,

the claim shall be treated, for the purposes of determining the date from which the benefit may be paid, as if it had been lodged at the time when he is treated as having become so qualified.

ARTICLE 21

**United Kingdom beneficiary proceeding to or from Australia**

(1) Where a person—

(a) leaves the United Kingdom to become permanently resident in Australia and arrives in Australia within thirteen weeks after leaving the United Kingdom; and

**SCHEDULE 2***—continued*

(b) was qualified to receive a retirement pension or a widow’s benefit under the legislation of the United Kingdom, whether by virtue of this Agreement or otherwise, immediately before his departure from the United Kingdom,

that person shall continue to be so qualified for the period of the journey.

(2) Where a person to whom the provisions of paragraph (1) of this Article do not apply would be qualified, if he were in the United Kingdom, to receive a retirement pension or a widow’s benefit under the legislation of that country, otherwise than by virtue of this Agreement or the former Agreement, he shall be qualified to receive that pension or benefit for any period during which he is proceeding from one country to the other.

(3) This Article shall have effect subject to the provisions of Article 24.

PART VIII—Miscellaneous Provisions

ARTICLE 22

**United Kingdom beneficiary with dependant in Australia**

(1) Where a person, who is qualified to receive any benefit under the legislation of the United Kingdom, other than a retirement pension payable by virtue of Article 3 of this Agreement, would be qualified to receive also an increase of that benefit for a dependant if the dependant were in the United Kingdom, he shall be qualified to receive that increase while the dependant is in Australia unless the dependant is a child for whom child endowment is payable under the legislation of Australia.

(2) Where the dependant of any person is proceeding from one country to the other, and arrives in the latter country within thirteen weeks after leaving the former country, the provisions of paragraph (1) of this Article shall apply to that person as if the dependant were in Australia.

ARTICLE 23

**Family benefit for period of journey**

Where a person was qualified under the legislation of either country, whether by virtue of this Agreement or otherwise, to receive family benefit for a child immediately before he or the child or both left one of the two countries and would have remained so qualified if he or the child or both, as the case may be, had not left that country, the benefit shall not cease to be payable, and may be paid, for any period (not exceeding thirteen weeks in the case of any one journey) during which

**SCHEDULE 2***—continued*

he or the child or both, as the case may be, are proceeding to the other country.

ARTICLE 24

**Rate of United Kingdom benefit in Australia**

Where a person who is not resident in the United Kingdom is in Australia and is qualified to receive any benefit under the legislation of the United Kingdom, the rate of that benefit shall be determined in accordance with those provisions of that legislation which concern the payment of benefit to persons who are not resident in the United Kingdom.

ARTICLE 25

**United Kingdom beneficiary qualified to receive Australian benefit**

(1) The provisions of this Article shall apply, in relation to the United Kingdom, only to retirement pensions and widows’ benefits, and, in relation to Australia, only to age pensions, invalid pensions, wives’ allowances and widows’ pensions, whether they are payable by virtue of this Agreement or otherwise; and, for the purposes of applying those provisions, the effect of any provision of the legislation of the United Kingdom which concerns overlapping benefits shall be disregarded.

(2) Subject to the provisions of paragraph (4) of this Article, where a person is qualified to receive a benefit under the legislation of Australia, the amount of any benefit which he is entitled to receive under the legislation of the United Kingdom shall be disregarded in the computation of his income and shall be deducted from the amount of benefit which would otherwise be payable to him under the legislation of Australia.

(3) Where a married woman is qualified to receive a benefit under the legislation of Australia, the amount of any increase of benefit which her husband is entitled to receive for her under the legislation of the United Kingdom shall be disregarded in the computation of his income and her income, and shall be deducted from the amount of benefit which would otherwise be payable to her under the legislation of Australia.

(4) Where a man and his wife are both entitled to receive benefits under the legislation of Australia, the provisions of paragraph (2) of this Article shall not apply to any increase of benefit which he is entitled to receive for her under the legislation of the United Kingdom, but the provisions of paragraph (3) shall apply to that increase of benefit.

**SCHEDULE 2***—continued*

ARTICLE 26

**Widow receiving invalid or widow’s pension before migration to the United Kingdom**

Where a widow who is permanently resident in the United Kingdom was receiving an invalid pension of a widow’s pension under the legislation of Australia, otherwise than by virtue of this Agreement or the former Agreement, from the time when her husband died until the time when she was last in Australia, she shall, for the purposes of any claim to receive a sickness benefit, an unemployment benefit or a retirement pension under the legislation of the United Kingdom, be treated as if, at the time when she arrived in the United Kingdom, she ceased to be entitled to a widow’s allowance under that legislation.

ARTICLE 27

**Meaning of “permanently resident”**

For the purposes of applying the provisions of Articles 3, 8, 9, 11, 12, 13, 16, 17, 19, 20, 21 and 26, a person shall be treated as permanently resident in one country and shall not be treated as temporarily absent from the other country—

(a) if the competent authority of the former country is satisfied that he is likely to remain there for at least three years; or

(b) if he has been temporarily resident in the former country for at least one year and the competent authorities of the two countries have not agreed that he should not be treated as permanently resident in that country.

ARTICLE 28

**Meaning of “resident in the United Kingdom”**

For the purposes of applying the provisions of Articles 8, 11, 12, 15, 16, and 18, a person shall be treated as having been resident in the United Kingdom during any period of absence from that country during which he was not resident in Australia and for which he paid contributions voluntarily or compulsorily under the legislation of the United Kingdom or for which he had contributions credited to him under that legislation.

ARTICLE 29

**Meaning of “resident in Australia”**

(1) For the purposes of applying the provisions of Articles 3, 5, 6, 9, 12, 13, 17 and 18, a person shall be treated as having been resident in Australia during any period of absence from that country if he was treated, otherwise than by virtue of this Agreement or the former Agreement, as being resident there during that period for the purposes of the legislation of that country.

**SCHEDULE 2*—****continued*

(2) For the purposes of applying the provisions of Articles 3, 5, 6, 9, 17 and 18, no account shall be taken of any period during which a person was resident in Australia before he reached the age of fifteen years or after he reached pension age.

PART IX—Administration

ARTICLE 30

**Administrative arrangements**

The competent authorities—

(a) shall make such administrative arrangements as may be required for the purposes of giving effect to this Agreement and shall determine all matters of an incidental and supplementary nature which in their opinion are relevant for that purpose;

(b) shall communicate to each other information regarding any measure taken by them to give effect to this Agreement;

(c) shall supply to each other, on request, information regarding the circumstances of any person who claims a benefit in accordance with the provisions of this Agreement; and

(d) shall communicate to each other, as soon as possible, information regarding any changes made in the legislation of their countries which affect the application of this Agreement.

ARTICLE 31

**Agency payments**

Where, under the provisions of Articles 7, 10, 12, 19, 20, 21 or 23 of this Agreement, any benefit is payable under the legislation of one country to a person who is in the other country, the payment may, at the request of the competent authority of the former country, be made by the competent authority of the latter country as agent for the competent authority of the former country.

PART X—Extension of Agreement to other Territories

ARTICLE 32

(1) Where any territory for whose international relations the Government of the United Kingdom is responsible has a scheme of social insurance which provides benefits comparable with the benefits provided by the schemes of National Insurance of the United Kingdom and is linked with those schemes by means of a reciprocal agreement, the Contracting Parties, at the request of the Government of that territory, may agree to extend this Agreement by means of an Exchange of Notes so that it applies to that territory.

(2) If this Agreement is extended to any territory in accordance with the provisions of paragraph (1) of this Article, it shall apply,

**SCHEDULE 2***—continued*

subject to such modifications as may be agreed by the Contracting Parties and specified in the Exchange of Notes—

(a) to periods of residence in that territory or insurance under that territory’s scheme of social insurance, in the same way as it applies to periods of residence in the United Kingdom or insurance under the legislation of the United Kingdom; and

(b) in relation to persons in that territory or resident in that territory, to that territory’s scheme of social insurance, in the same way as it applies, in relation to persons in the United Kingdom or resident in the United Kingdom, to the legislation of the United Kingdom,

and, subject as aforesaid, the legislation of the United Kingdom shall be deemed to include any Order in Council giving effect to the reciprocal agreement which links that territory’s scheme of social insurance with the schemes of National Insurance of the United Kingdom.

PART XI—Transitional and Final Provisions

ARTICLE 33

**Transitional provisions**

(1) No provision of this Agreement shall confer any right to receive any payment of a benefit for a period before the date of the entry into force of this Agreement.

(2) Any contribution which a person has paid under the legislation of the United Kingdom before the date of the entry into force of this Agreement, and any period during which a person has been resident in either country before that date, shall be taken into account for the purposes of determining the right to receive a benefit in accordance with the provisions of this Agreement.

(3) No provision of this Agreement shall diminish any rights which a person has acquired under the legislation of either country before the date of the entry into force of this Agreement, whether by virtue of the former Agreement or otherwise, and a person who, before the 7th January, 1959, makes a claim to receive an age pension, an invalid pension or a wife’s allowance shall have the right to have his claim determined without regard to the provisions of this Agreement or the former Agreement.

ARTICLE 34

**Termination of Agreement**

In the event of the termination of this Agreement, any rights acquired by a person in accordance with its provisions shall be maintained, and the Contracting Parties shall negotiate for the settlement of any rights then in course of acquisition by virtue of those provisions.

**SCHEDULE 2***—continued*

ARTICLE 35

**Entry into force of Agreement**

(1) This Agreement shall enter into force on the 1st April, 1958, and shall remain in force for a period of one year from that date. Thereafter it shall continue in force from year to year unless—

(a) the Parties agree to terminate it; or

(b) either Party gives notice of termination in writing at least six months before the expiry of any such yearly period.

(2) Subject to the provisions of Articles 14 and 33, the former Agreement shall be terminated on the date of entry into force of this Agreement.

IN WITNESS whereof the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Canberra, this twenty-ninth day of January, Nineteen hundred and fifty-eight.

|  |  |
| --- | --- |
| For the Government of the  United Kingdom of Great Britain and  Northern Ireland: | For the Government of the  Commonwealth of Australia: |
| HAROLD MACMILLAN | ROBERT MENZIES |

**SCHEDULE 2***—continued*

PART B

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

Canberra, 16th August, 1962

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia,

Desiring to modify and extend the Agreement on Social Security which was signed on their behalf at Canberra on the 29th January, 1958,

Have agreed as follows:

ARTICLE 1

For the purposes of this Agreement, the expression “the Principal Agreement” means the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia which was signed at Canberra on behalf of those Governments on the 29th January, 1958.

ARTICLE 2

Article 1 of the Principal Agreement shall be amended—

(a) by inserting after paragraph (d) the following paragraph:

“(da) ‘contribution’, in relation to the legislation of the United Kingdom, does not include a graduated contribution within the meaning of that legislation;”;

(b) by omitting paragraph (n) and substituting the following paragraph:—

“(n) ‘retirement pension’ means a retirement pension under the legislation of the United Kingdom and includes a contributory old age pension under that legislation and any graduated retirement benefit constituted by an increase in the weekly rate of a retirement pension under that legislation;”; and

(c) by omitting paragraph (p) and substituting the following paragraph:

“(p) ‘widow’s benefit’, in relation to the United Kingdom, means a widow’s allowance, a widowed mother’s allowance (including any graduated retirement benefit constituted by an increase in the weekly rate of a widowed mother’s allowance) or a widow’s pension under the legislation of that country or a widow’s basic

**SCHEDULE 2***—continued*

pension payable under the legislation of that country to a woman who became a widow before the 5th July, 1948;”.

ARTICLE 3

Article 2 of the Principal Agreement shall be amended by inserting in clause (ii) of sub-paragraph (a) of paragraph (1), after the words “the Family Allowances Act, 1945,”, the words “the Family Allowances Act (Northern Ireland), 1945”.

ARTICLE 4

Article 3 of the Principal Agreement shall be amended—

(a) by inserting in paragraph (2), before the word “unless”, the words “in respect of any period during which she was a married woman”; and

(b) by omitting paragraph (3) and substituting the following paragraphs:—

“(3) Where—

(a) a woman claiming a retirement pension by virtue of her own insurance has been, but is not at the time of the claim, married and chooses to have her former husband’s contributions taken into account for the purposes of her claim; and

(b) her former husband had been resident in Australia for any period,

her former husband shall be treated, for the purposes of her claim, as if he had paid contributions under the legislation of the United Kingdom for any period referred to in sub-paragraph (b) of this paragraph and for any other period commencing immediately after, or ending immediately before, that period during which he was proceeding on a journey between Australia and the United Kingdom that was completed within thirteen weeks.

“(3a) Where a person claiming a retirement pension is a woman who—

(a) would have been qualified to receive a widow’s benefit, other than a widow’s basic pension, for any period by virtue of Article 9 of this Agreement, if this Agreement had been in force during that period; or

(b) would be qualified, under the arrangements made for crediting contributions to widows claiming retirement pensions under the legislation of the United Kingdom, to have contributions credited to her for any period if this Agreement had been in force during that period,

**SCHEDULE 2***—continued*

she shall be treated, for the purposes of her claim, as if contributions had been credited to her for that period.”;

(c) by omitting from paragraph (4) the words and figures “paragraphs (1), (2) and (3)” and substituting the words “the preceding paragraphs”; and

(d) by omitting the proviso to paragraph (4) and substituting the following proviso:—

“Provided that, if that person is a married woman who does not satisfy either of the conditions specified in paragraph (2) of this Article, she shall be treated as if her husband and not she satisfied the said contribution conditions.”.

ARTICLE 5

Article 5 of the Principal Agreement shall be amended by inserting after the word “contributions” (first occurring) the words “, including graduated contributions,”.

ARTICLE 6

Article 8 of the Principal Agreement shall be amended by inserting after paragraph (1) the following paragraph:—

“(1a) For the purposes of any claim to receive an age pension, a woman who is permanently resident in Australia and who is, or has been, married shall be treated as if she had been resident in Australia during any period of absence from the United Kingdom during her marriage, if her husband paid contributions or had contributions credited to him for that period under the legislation of the United Kingdom.”.

ARTICLE 7

Article 12 of the Principal Agreement shall be amended—

(a) by omitting paragraph (2) and substituting the following paragraph:—

“(2) Subject to the provisions of paragraph (1) of this Article—

(a) if a person who has claimed family benefit under the legislation of one country is permanently resident in that country, then, for the purposes of any right to receive that benefit, any period during which he was in the other country shall be treated as a period during which he was in the first-mentioned country, and, if he was born in the other country, he shall be treated as if he had been born in the first-mentioned country;

(b) if a child for whom family benefit has been claimed under the legislation of one country is permanently

**SCHEDULE 2***—continued*

resident in that country, then, for the purposes of any right to receive that benefit, any period during which he was resident in the other country shall be treated as a period during which he was resident in the first-mentioned country, and, if he was born in the other country, he shall be treated as if he had been born in the first-mentioned country;

(c) if a person who has claimed family benefit for a child under the legislation of one country is in the other country and is not qualified to receive family benefit for that child under the legislation of the other country, he shall be treated for the purposes of his claim as if he were in the first-mentioned country; and

(d) if a person who has claimed family benefit under the legislation of one country is temporarily absent from that country and, during that absence, is in the other country for a period commencing within thirteen weeks after his departure from the first-mentioned country, he shall, for the purposes of any right to receive that benefit, be treated as if during that period he were in the first-mentioned country, but he shall not be qualified to receive during that period an amount of family benefit greater than the amount that he would have been qualified to receive during that period under the legislation of the other country if that legislation had applied in relation to him and his family during that period.”; and

(b) by omitting from paragraph (4) the word and letter “subparagraph (b)” and substituting the word and letter “subparagraph (d).”.

ARTICLE 8

Article 14 of the Principal Agreement shall be omitted.

ARTICLE 9

Article 16 of the Principal Agreement shall be amended—

(a) by omitting from paragraph (2) the word and figure “paragraph (3)” and substituting the words and figures “paragraphs (3) and (4)”; and

(b) by omitting paragraph (3) and substituting the following paragraphs:

“(3) Where a person is permanently incapacitated for work or permanently blind at the time when he arrives in Australia, the fortnightly amount of any invalid pension, or the sum of the fortnightly amounts of any invalid pension, wife’s allowance

**SCHEDULE 2***—continued*

and child’s allowance, payable in his case by virtue of the provisions of paragraphs (1) and (2) of this Article, shall not exceed twice the full standard weekly rate of sickness benefit which would be payable to him under the legislation of the United Kingdom if he and his family (if any) had remained in that country and none of the provisions of that legislation about overlapping benefits were applied to him.

“(4) Where the sum of the fortnightly amounts of two or more benefits is reduced by virtue of the provisions of paragraph (3) of this Article, the fortnightly amount payable by way of each of those benefits shall bear the same relation to the maximum fortnightly amount of that benefit as the first-mentioned sum, thus reduced, bears to the sum of the maximum fortnightly amounts of those benefits.

“(5) For the purposes of this Article, a person shall be deemed to be permanently incapacitated for work if the degree of his permanent incapacity for work is not less than 85 per centum as determined under the legislation of Australia.”.

ARTICLE 10

Sub-paragraph (b) (ii) of paragraph (1) of Article 17 and subparagraph (b)(ii) of paragraph (2) of Article 18 of the Principal Agreement shall be omitted and in their places there shall be substituted the following sub-paragraph:—

“(ii) as a self-employed person for any other week during which he was resident in Australia and was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied or if he was having contributions credited to him on grounds of incapacity for work under the legislation of the United Kingdom immediately before the time when he last left that country before that week.”.

ARTICLE 11

Article 19 of the Principal Agreement shall be omitted and in its place there shall be substituted:—

“ARTICLE 19

**Australian pensioner migrating to the United Kingdom**

“Where a person—

(a) leaves Australia to become permanently resident in the United Kingdom and arrives in the United Kingdom within thirteen weeks after leaving Australia; and

(b) was qualified to receive and was receiving an age pension, an invalid pension, a wife’s allowance, a child’s allowance or a

**SCHEDULE 2***—continued*

widow’s pension under the legislation of Australia, whether by virtue of this Agreement or otherwise, immediately before leaving Australia,

that pension or allowance shall not cease to be payable, and may be paid, for the period during which he is proceeding to the United Kingdom and, if he makes a claim within fourteen days after the day of his arrival in the United Kingdom for a benefit under the legislation of the United Kingdom corresponding to that pension or allowance and that benefit is payable to him under the legislation of the United Kingdom, for the period from the day of his arrival in the United Kingdom till the day immediately before the day from which the benefit that he claims becomes payable to him.”.

ARTICLE 12

Article 20 of the Principal Agreement shall be amended—

(a) by inserting in sub-paragraph (a) of paragraph (2), after the word “Australia” (first occurring), the words “for the primary purpose of visiting the United Kingdom”; and

(b) by inserting in sub-paragraph (a) of paragraph (3), after the word “Australia” (first occurring), the words “for the primary purpose of visiting the United Kingdom”.

ARTICLE 13

Article 21 of the Principal Agreement shall be amended by omitting paragraph (1) and substituting the following paragraph:—

“(1) Where a person—

(a) leaves the United Kingdom to become permanently resident in Australia and arrives in Australia within thirteen weeks after leaving the United Kingdom; and

(b) was qualified, whether by virtue of this Agreement or otherwise, to receive a retirement pension or a widow’s benefit under the legislation of the United Kingdom immediately before his departure from the United Kingdom,

that person shall continue to be so qualified for the period of the journey and, if he makes a claim within fourteen days after the day of his arrival in Australia for a benefit under the legislation of Australia corresponding to that retirement pension or widow’s benefit and that benefit is payable to him under the legislation of Australia, for the period from the day of his arrival in Australia till the day immediately before the day from which the benefit that he claims becomes payable to him.”.

ARTICLE 14

Article 23 of the Principal Agreement shall be omitted and in its place there shall be substituted:—

**SCHEDULE 2***—continued*

“ARTICLE 23

**Family benefit for the period of the journey and after**

“Where—

(a) a person was qualified under the legislation of one country, whether by virtue of this Agreement or otherwise, to receive family benefit for a child immediately before he or the child or both left that country to travel to the other country; and

(b) the person or the child or both, as the case may be, completes the journey within thirteen weeks,

any family benefit that would have been payable under the legislation of the first-mentioned country if the person or the child or both, as the case may be, had not left the first-mentioned country shall not cease to be payable, and may be paid, for the period of the journey and, if a claim is made within six months after the day of arrival in the other country for a family benefit for the child under the legislation of the other country and that benefit is payable, for the period from the day of arrival in the other country till the day immediately before the day from which the benefit claimed becomes payable.”.

ARTICLE 15

Article 25 of the Principal Agreement shall be amended—

(a) by inserting in paragraph (1), after the words “widows’ benefits”, the words “, other than graduated retirement benefit”; and

(b) by omitting from paragraph (1) the words “whether they are payable by virtue of this Agreement or otherwise” and substituting the words “being benefits payable under the legislation of Australia by virtue of this Agreement”.

ARTICLE 16

After Article 29 of the Principal Agreement there shall be added the following Article:—

“ARTICLE 29a

**Meaning of ‘gainfully occupied under a contract of service in Australia’**

“For the purposes of Articles 17 and 18, a person shall be treated as having been gainfully occupied under a contract of service in Australia during—

(a) any period of service, whether in Australia or elsewhere, in the Defence Force of Australia; and

(b) any period of absence from Australia during which he was an employee and was treated as being a resident of Australia within the meaning of any Act relating to the imposition, assessment and collection of a tax upon incomes in force in Australia.”.

**SCHEDULE 2***—continued*

ARTICLE 17

Artide 33 of the Principal Agreement shall be amended by omitting paragraph (3) and substituting the following paragraph:—

“(3) No provision of this Agreement shall diminish any rights which a person has acquired under the legislation of either country before the date of the entry into force of this Agreement, whether by virtue of the former Agreement or otherwise, and a person who makes a claim to receive any benefit under the legislation of either country may choose to have his claim determined without regard to the provisions of this Agreement.”.

ARTICLE 18

This Agreement shall enter into force on the 1st October, 1962, and shall be read and construed as one with the Principal Agreement.

In witness whereof the undersigned, duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Canberra, this sixteenth day of August, nineteen hundred and sixty-two.

|  |  |
| --- | --- |
| For the Government of the United Kingdom of Great Britain and Northern Ireland: | For the Government of the Commonwealth of Australia: |
| W. P. OLIVER | HUGH S. ROBERTON |

**SCHEDULE 2***—continued*

PART C

NOTES DATED 6 MARCH 1975 BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF AUSTRALIA FURTHER AMENDING THE AGREEMENT ON SOCIAL SECURITY SIGNED AT CANBERRA ON 29 JANUARY 1958

British High Commission,

Canberra

6 March 1975

Sir,

I have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, which was signed at Canberra on 29 January 1958, as amended by the Agreement signed at Canberra on 16 August 1962, (which for the purposes of this Note are together referred to as “the Agreement”), and to recent discussions between the Department of Health and Social Security of the United Kingdom and the Department of Social Security of Australia concerning the need further to amend the Agreement in the light of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974, which allow Australian pensions to be paid abroad, the National Insurance Act 1971, which introduced invalidity benefit into the United Kingdom, the Social Services (Parity) Order (Northern Ireland) 1971, which made similar provision for invalidity benefit in Northern Ireland and the National Insurance (Isle of Man) Order 1972, which made similar provision for invalidity benefit in the Isle of Man.

Pending the outcome of these discussions the Government of the United Kingdom takes the view that some immediate steps are necessary to prevent the possibility of duplicate payments of United Kingdom and Australian pensions by virtue of the Agreement. Accordingly, they propose that the following amendments to the Agreement should be made forthwith as an interim measure and without prejudice to any other amendments which may be agreed subsequently between the United Kingdom and Australian Governments:

(a) Article 17 of the Agreement shall be amended in the heading and in paragraphs (1) and (2) by inserting the words “or invalidity” after the word “sickness”, and in paragraph (3) by substituting the words “sickness or invalidity benefit is payable” for the words “sickness benefit is payable for an indefinite period”.

(b) Where a person is entitled to receive a benefit by virtue of the provisions of Article 3 or 9, or of paragraphs (1) and (3) of Article 17 of the Agreement as amended by sub-paragraph (a) of this paragraph:

**SCHEDULE 2***—continued*

(i) the rate of benefit which he would otherwise be entitled to receive, but for this sub-paragraph, by virtue of the provisions of Article 3 or 9 shall be reduced by the amount of benefit which is payable by virtue of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974; and

(ii) the rate of benefit which he would be entitled to receive, but for this sub-paragraph, by virtue of the provisions of paragraphs (1) and (3) of Article 17 of the Agreement as amended by sub-paragraph (a) of this paragraph shall be reduced by the total amount of invalid pension and wife’s pension which may be payable by virtue of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974.

(c) Article 1, paragraph (a) of the Agreement shall be amended as follows:

(i) omit the words “, “wife’s allowance” ” and substitute the words “and “wife’s pension” ”;

(ii) omit the words “and “Child’s allowance” ”.

(d) Article 1 of the Agreement shall be amended as follows:

(i) omit the full-stop after paragraph (q) and substitute a semi-colon;

(ii) after paragraph (q) insert the following paragraph:

“(r) “invalidity benefit” means, in relation to the United Kingdom, invalidity benefit as defined under the legislation of the United Kingdom.”.

(e) Article 16, paragraph (2) of the Agreement shall be amended by omitting the words from “wife’s allowance” to the end of the paragraph and substituting the words “wife’s pension.”.

(f) Article 16, paragraph (3) of the Agreement shall be amended as follows:

(i) omit the words “, wife’s allowance and child’s allowance” and substitute the words “and wife’s pension”;

(ii) omit the word “sickness” and substitute the word “invalidity”.

(g) Article 16, paragraph (4) of the Agreement shall be amended by omitting the words “or more”.

(h) Article 19, sub-paragraph (b) of the Agreement shall be amended by omitting the words “allowance, a child’s allowance” and substituting the word “pension”.

(i) Article 20, paragraph (1) of the Agreement shall be amended by omitting the words “and children’s allowances” and substituting the word “pensions”.

**SCHEDULE 2***—continued*

(j) Article 25, paragraph (1) of the Agreement shall be amended by omitting the word “allowances” and substituting the word “pensions”.

(k) Article 26 of the Agreement shall be amended by inserting the words “or invalidity” after the word “sickness”.

I have the honour to suggest that, if these proposals are acceptable to the Government of Australia, this Note and your reply to that effect shall constitute an Agreement between our two Governments to enter into force on the date of your reply.

Either Government may terminate this Agreement within six months of the date of entry into force by giving written notice to the other of its intention to do so, in which case termination shall take effect immediately upon receipt of such notice.

I avail myself of this opportunity, Sir, to renew to you the assurance of my highest consideration.

MORRICE JAMES

The Honourable W. G. Hayden MP

Minister for Social Security

Department of Social Security

CANBERRA

Minister for Social Security

6 March 1975

Sir,

I have the honour to acknowledge the receipt of your Note of today’s date which reads as follows:

“I have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, which was signed at Canberra on 29 January 1958, as amended by the Agreement signed at Canberra on 16 August 1962, (which for the purposes of this Note are together referred to as “the Agreement”), and to recent discussions between the Department of Health and Social Security of the United Kingdom and the Department of Social Security of Australia concerning the need further to amend the Agreement in the light of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974, which allow Australian pensions to be paid abroad, the National Insurance Act 1971, which introduced invalidity benefit into the United Kingdom, the Social Services (Parity) Order (Northern Ireland) 1971, which made similar provision for invalidity benefit in Northern Ireland and the National Insurance (Isle of Man) Order 1972, which made similar provision for invalidity benefit in the Isle of Man.

Pending the outcome of these discussions the Government of the United Kingdom takes the view that some immediate steps are necessary to prevent the possibility of duplicate payments of United Kingdom

**SCHEDULE 2***—continued*

and Australian pensions by virtue of the Agreement. Accordingly, they propose that the following amendments to the Agreement should be made forthwith as an interim measure and without prejudice to any other amendments which may be agreed subsequently between the United Kingdom and Australian Governments:

(a) Article 17 of the Agreement shall be amended in the heading and the paragraphs (1) and (2) by inserting the words “or invalidity” after the word “sickness”, and in paragraph (3) by substituting the words “sickness or invalidity benefit is payable” for the words “sickness benefit is payable for an indefinite period”.

(b) Where a person is entitled to receive a benefit by virtue of the provisions of Article 3 or 9, or of paragraphs (1) and (3) of Article 17 of the Agreement as amended by sub-paragraph (a) of this paragraph:

(i) the rate of benefit which he would otherwise be entitled to receive, but for this sub-paragraph, by virtue of the provisions of Article 3 or 9 shall be reduced by the amount of benefit which is payable by virtue of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974; and

(ii) the rate of benefit which he would be entitled to receive, but for this sub-paragraph, by virtue of the provisions of paragraphs (1) and (3) of Article 17 of the Agreement as amended by sub-paragraph (a) of this paragraph shall be reduced by the total amount of invalid pension and wife’s pension which may be payable by virtue of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974.

(c) Article 1, paragraph (a) of the Agreement shall be amended as follows:

(i) omit the words “, “wife’s allowance” ” and substitute the words “and “wife’s pension” ”;

(ii) omit the words “and “child’s allowance” ”.

(d) Article 1 of the Agreement shall be amended as follows:

(i) omit the full-stop after paragraph (q) and substitute a semi-colon;

(ii) after paragraph (q) insert the following paragraph:

“(r) “Invalidity benefit” means, in relation to the United Kingdom, invalidity benefit as defined under the legislation of the United Kingdom.”.

(e) Article 16, paragraph (2) of the Agreement shall be amended by omitting the words from “wife’s allowance” to the end of the paragraph and substituting the words “wife’s pension.”.

**SCHEDULE 2***—continued*

(f) Artide 16, paragraph (3) of the Agreement shall be amended as follows:

(i) omit the words “, wifes’ allowance and child’s allowance” and substitute the words “and wife’s pension”;

(ii) omit the word “sickness” and substitute the word “invalidity”.

(g) Article 16, paragraph (4) of the Agreement shall be amended by omitting the words “or more”.

(h) Article 19, sub-paragraph (b) of the Agreement shall be amended by omitting the words “allowance, a child’s allowance” and substituting the word “pension”.

(i) Article 20, paragraph (1) of the Agreement shall be amended by omitting the words “and children’s allowances” and substituting the word “pensions”.

(j) Article 25, paragraph (1) of the Agreement shall be amended by omitting the word “allowances” and substituting the word “pensions”.

(k) Article 26 of the Agreement shall be amended by inserting the words “or invalidity” after the word “sickness”.

I have the honour to suggest that, if these proposals are acceptable to the Government of Australia, this Note and your reply to that effect shall constitute an Agreement between our two Governments to enter into force on the date of your reply.

Either Government may terminate this Agreement within six months of the date of entry into force by giving written notice to the other of its intention to do so, in which case termination shall take effect immediately upon receipt of such notice.”

I have the honour to inform you that these proposals are acceptable to the Government of Australia, and that they agree that your Note and this reply shall constitute an Agreement between our two Governments which shall enter into force on the date of this reply. Please accept, Sir, the assurance of my highest consideration.

W. G. HAYDEN

His Excellency the Right Hon. Sir Morrice James, G.C.M.G., C.V.O., M.B.E.,

High Commissioner,

British High Commission,

Canberra, A.C.T.

**SCHEDULE 2***—continued*

PART

NOTES DATED 29 DECEMBER 1986 AND 31 DECEMBER 1986 BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF AUSTRALIA FURTHER AMENDING THE AGREEMENT ON SOCIAL SECURITY SIGNED AT CANBERRA ON 29 JANUARY 1958

Foreign and Commonwealth Office

London SW1 2AH

29 December 1986

His Excellency

Mr A. R. Parsons

Australian High Commission

Strand

London

Your Excellency

I have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, which was signed at Canberra on 29 January 1958, as amended by the Agreement signed at Canberra on 16 August 1962, and by an Exchange of Notes at Canberra on 6 March 1975 (which, for the purposes of this Note, are together referred to as “the Agreement”), and to recent discussions between the Department of Health and Social Security of the United Kingdom and the Department of Social Security of Australia, concerning the need further to amend the Agreement so as to preclude working holidaymakers form receiving unemployment benefit under the Agreement and to make other minor modifications.

I now have the honour to propose the following amendments to the Agreement:

(a) Article 3 shall be amended by deleting paragraph (2) and the proviso to paragraph (4).

(b) Article 17 shall be amended by inserting after paragraph (3) the following new paragraph:

“(4) For the purposes of any claim to invalidity pension under the legislation of the United Kingdom, any period in respect of which a person was qualified to receive a sickness benefit or an invalid pension under the legislation of Australia shall be treated as if it were a period of entitlement to sickness benefit or invalidity pension completed under the legislation of the United Kingdom.”.

(c) Article 18 shall be amended—

(i) by inserting after paragraph (2) the following new paragraph:

**SCHEDULE 2***—continued* .

“(3) The provisions of this Article shall not apply to a person—

(a) who is in Australia having been granted an entry permit pursuant to a visa issued on an application for a visa to enter that country for a working holiday; or

(b) who is in the United Kingdom by virtue only of his having obtained leave to enter that country given in accordance with any provision of the immigration rules (as defined in section 33 (1) of the Immigration Act 1971 of the United Kingdom) which required him to satisfy an immigration officer at the date upon which that obligation last arose that—

(i) he was seeking permission to enter the United Kingdom for an extended holiday, and

(ii) he intended to take only employment within the United Kingdom which was incidental to that holiday.”;

(ii) by renumbering the existing paragraph (3) as paragraph (4), deleting the word and figure “paragraph (2)” and substituting the words and figures “paragraphs (2) and (3)”.

(d) Article 22 shall be amended by deleting from paragraph (1) the words:

“unless the dependant is a child for whom child endowment is payable under the legislation of Australia”.

If the foregoing proposals are acceptable to the Government of Australia I have the honour to propose that this Note and Your Excellency’s reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on 9 February 1987.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

A. E. FURNESS

(for the Secretary of

State for Foreign and

Commonwealth Affairs)

**SCHEDULE 2***—continued*

AUSTRALIAN HIGH COMMISSION

AUSTRALIA HOUSE

STRAND

LONDON WC2B 4LA

01-438 8000

31 December 1986

Dear Sir Geoffrey,

I have the honour to acknowledge receipt of your Note of 29 December 1986 which reads as follows:

‘I have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, which was signed at Canberra on 29 January 1958, as amended by the Agreement signed at Canberra on 16 August 1962, and by an Exchange of Notes at Canberra on 6 March 1975 (which, for the purposes of this Note, are together referred to as “the Agreement”), and to recent discussions between the Department of Health and Social Security of the United Kingdom and the Department of Social Security of Australia, concerning the need further to amend the Agreement so as to preclude working holidaymakers from receiving unemployment benefit under the Agreement and to make other minor modifications.

‘I now have the honour to propose the following amendments to the Agreement:

(a) Article 3 shall be amended by deleting paragraph (2) and the proviso to paragraph (4)

(b) Article 17 shall be amended by inserting after paragraph (3) the following new paragraph:

“(4) For the purposes of any claim to invalidity pension under the legislation of the United Kingdom, any period in respect of which a person was qualified to receive a sickness benefit or an invalid pension under the legislation of Australia shall be treated as if it were a period of entitlement to sickness benefit of invalidity pension completed under the legislation of the United Kingdom.”.

(c) Article 18 shall be amended—

(i) by inserting after paragraph (2) the following new paragraph:

“(3) The provisions of this Article shall not apply to a person—

(a) who is in Australia having been granted an entry permit pursuant to a visa issued on an application for a visa to enter that country for a working holiday; or

**SCHEDULE 2***—continued*

(b) who is in the United Kingdom by virtue only of his having obtained leave to enter that country given in accordance with any provision of the immigration rules (as defined in section 33 (1) of the Immigration Act 1971 of the United Kingdom) which required him to satisfy an immigration officer at the date upon which that obligation last arose that—

(i) he was seeking permission to enter the United Kingdom for an extended holiday, and

(ii) he intended to take only employment within the United Kingdom which was incidental to that holiday.”;

(ii) by renumbering the existing paragraph (3) as paragraph (4), deleting the word and figure “paragraph (2)” and substituting the words and figures “paragraphs (2) and (3)”.

(d) Article 22 shall be amended by deleting from paragraph (1) the words:

“unless the dependant is a child for whom child endowment is payable under the legislation of Australia”.

‘If the foregoing proposals are acceptable to the Government of Australia I have the honour to propose that this Note and Your Excellency’s reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on 9 February 1987.

‘I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.’

I have the honour to confirm that the foregoing proposals are acceptable to the Government of Australia, who therefore agree that your Note together with this reply, shall constitute an Agreement between our two Governments which shall enter into force on 9 February 1987.

Yours sincerely

A. R. PARSONS

The Rt Hon. Sir Geoffrey Howe, QC, MP,

Secretary of State for Foreign and Commonwealth Affairs,

Foreign and Commonwealth Office,

Downing Street,

LONDON SW1A 2AL

**SCHEDULE 3** Section 1208

AGREEMENT

BETWEEN

AUSTRALIA

AND

THE REPUBLIC OF ITALY

PROVIDING FOR RECIPROCITY IN MATTERS

RELATING TO SOCIAL SECURITY

Australia and the Republic of Italy,

Wishing to strengthen the existing friendly relations between the two countries, and

Desiring to co-ordinate the operation of their respective social security systems and to enhance the equitable access by people who move between Australia and Italy to social security benefits provided for under the laws of both countries,

Have agreed as follows:

PART I—INTERPRETATION AND SCOPE

ARTICLE 1

Interpretation

1. In this Agreement, unless the context otherwise requires:

(a) “Australian benefit” means a benefit referred to in Article 2 in relation to Australia;

(b) “benefit” means Australian benefit or Italian benefit;

(c) “competent authority” means, in the case of Australia, the Secretary to the Department of Social Security or an authorised representative of the Secretary and, in the case of Italy, the Ministry of Labour and Social Welfare;

(d) “dependants” means, in relation to Italy, persons who are within the categories of family members of a person insured, or of a pensioner, under the social security laws of Italy and who are recognized, by those laws, as the dependants of such a person or pensioner;

(e) “institution”, in relation to a Contracting Party, means an institution apart from a competent authority which is responsible for the application of this Agreement in respect of that Contracting Party as specified in administrative arrangements made from time to time pursuant to Article 19;

(f) “Italian benefit” means a benefit payable under the social security laws of Italy;

**SCHEDULE 3***—continued*

(g) “Italian supplement” means a supplement paid in order to increase the amount of a benefit, derived from credited contributions and payable to a person, to the minimum amount specified for that benefit in the social security laws of Italy;

(h) “month” means calendar month;

(i) “period of Australian residence during working life”, in relation to a person, means the period, or the aggregate of the periods, during which that person has been a resident of Australia, other than any period—

(a) during which the person had not attained the age of 16 years; or

(b) after the person, being a woman, had attained the age of 60 years or, being a man, had attained the age of 65 years;

but does not include any period deemed pursuant to subparagraph 1 (c) of Article 7 to be a period in which that person was residing in Australia;

(j) “period of credited contributions”, in relation to a person, means a period, or the total of two or more periods, of contributions used to acquire a benefit, and any period deemed to be a period of contributions, under the social security laws of Italy by that person but does not include any period deemed pursuant to sub-paragraph 1 (d) of Article 7 to be a period of credited contributions in Italy;

(k) “period of residence in Australia”, in relation to a person, means a period or the total of 2 or more periods, at any time, when that person was residing in Australia for the purposes of the social security laws of Australia, but does not include any period deemed pursuant to sub-paragraph 1 (c) of Article 7 to be a period in which that person was residing in Australia;

(l) “social security laws of Australia” means the Social Security Act 1947 of Australia as amended, not including amendments effected by laws made by Australia for the purpose of giving effect to an agreement on social security;

(m) “social security laws of Italy” means legislation within the scope of this Agreement, in relation to Italy, by virtue of Article 2;

(n) “spouse carer’s pension” means a carer’s pension payable to a husband under the legislation within the scope of this Agreement relating to Australia;

(o) “survivors” means, in relation to Italy, persons who are within the categories of family members of a person who was insured or was a pensioner under the social security laws of Italy, and is now deceased, and who are recognized by those laws as survivors of that person or pensioner;

**SCHEDULE 3***—continued*

(p) “widow” means, in relation to Australia, a de jure widow; and

(q) “year” means a period of 365 days or, if that period includes 29 February, 366 days.

2. A reference in this Agreement to additional pensions and mothers’ and guardians’ allowances for children is a reference to increases in the rate of any of the benefits referred to in items (i) to (vi) inclusive of sub-paragraph 1 (a) of Article 2 and paid under provisions of the legislation within the scope of this Agreement in relation to Australia relating to the custody, care and control of a child or children.

3. In the application of this Agreement by a Contracting Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the legislation within the scope of this Agreement, in relation to that Contracting Party, by virtue of Article 2.

ARTICLE 2

Legislative Scope

1. The legislation within the scope of this Agreement is:

(a) in relation to Australia: the Social Security Act 1947 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for and for all matters in relation to the following benefits:

(i) age pensions;

(ii) invalid pensions;

(iii) pensions payable to widows;

(iv) wives’ pensions;

(v) double orphans’ pensions;

(vi) spouse carers’ pensions; and

(vii) additional pensions and mothers’ and guardians’ allowances for children; and

(b) in relation to Italy: the legislation in force at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that legislation, concerning the compulsory general insurance scheme for employees in regard to invalidity, old age and survivors; special insurance schemes for self-employed persons and other categories of workers; family allowances and unemployment insurance, and in particular the following benefits:

(i) old age pensions;

(ii) seniority pensions;

(iii) anticipated pensions;

**SCHEDULE 3***—continued*

(iv) invalidity allowances;

(v) inability pensions;

(vi) privileged invalidity allowances;

(vii) privileged inability pensions;

(viii) invalidity attendance allowance;

(ix) survivors’ pensions;

(x) family allowances for dependants of pensioners; and

(xi) unemployment allowances.

2. Notwithstanding the provisions of paragraph 1, the legislation within the scope of this Agreement shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any bilateral agreement on social security entered into by either Contracting Party.

3. The competent authorities of the Contracting Parties shall notify each other of legislation that amends, supplements or replaces the legislation within the scope of this Agreement in relation to their respective Contracting Parties, promptly after the first-mentioned legislation is enacted.

ARTICLE 3

Personal Scope

Except as otherwise provided in Articles 4 and 20, this Agreement shall apply to persons who move between Australia and Italy and who are or have been resident in Australia or have been credited with contributions under the social security laws of Italy and, where applicable, to any dependants or survivors of those persons.

ARTICLE 4

Equality of Treatment

1. The citizens of each of the Contracting Parties shall be treated equally in the application of the social security laws of Australia and of Italy, respectively, and in any case in which entitlement to a benefit payable under those laws by a Contracting Party depends, in whole or in part, on citizenship of that Contracting Party, a person who is a citizen of the other Contracting Party shall, for the purposes of a claim for that benefit, be deemed to be a citizen of the first-mentioned Contracting Party.

2. The persons to whom this Agreement applies shall be treated equally by each of the Contracting Parties in regard to rights and obligations which arise by virtue of this Agreement in relation to each Contracting Party.

**SCHEDULE 3***—continued*

PART II—RESIDENCE OR PRESENCE OUTSIDE AUSTRALIA FOR PURPOSES OF QUALIFYING FOR AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Italy

Where, apart from residing and being physically present in Australia, a person is qualified for an Australian benefit under the social security laws of Australia or by virtue of this Agreement but, on the date on which he or she lodges a claim for that benefit, he or she is:

(a) residing in Australia and physically present in Italy;

(b) residing in Italy and physically present in Australia; or

(c) residing and physically present in Italy,

that person shall be deemed, for the purposes of that claim, to be residing in and physically present in Australia on that date.

ARTICLE 6

Residence or Presence in a Third Country

A person who is a resident of Australia or Italy, or of a third country with which Australia enters into an agreement on social security, and is physically present in that third country may, if that agreement includes provisions for co-operation in the assessment and determination of claims for benefits, lodge in that third country a claim for an Australian benefit, and that person shall, for the purposes of that claim, be deemed to be residing in and physically present in Australia on the date of lodgement of that claim.

PART III—TOTALISATION AND PRO-RATA BENEFITS

ARTICLE 7

Totalisation of Periods of Residence and Periods of Contributions

1. Where a person to whom this Agreement applies has accumulated:

(a) a period of residence in Australia that is:

(i) less than the period required to qualify him or her, in respect of residence, under the social security laws of Australia for an Australian benefit; and

(ii) equal to or greater than the minimum period identified in accordance with paragraph 4 for that person; or

(b) a period of credited contributions that is:

(i) less than the period required to qualify him or her, in respect of contributions, under the social security laws of Italy for an Italian benefit; and

(ii) equal to or greater than the minimum period identified in accordance with paragraph 5 for that benefit,

**SCHEDULE 3***—continued*

and, on the other hand, has accumulated both a period of Australian residence during working life and a period of credited contributions in Italy which, when added together, are equal to or in excess of the required minimum period specified for that benefit by the legislation that is within the scope of this Agreement in relation to the Contracting Party by whom the benefit may be payable, then:

(c) for the purposes of a claim for that Australian benefit, the last-mentioned period of credited contributions shall be deemed to be a period in which that person was residing in Australia; and

(d) for the purposes of a claim for that Italian benefit, that period of Australian residence during working life shall be deemed to be a period of credited contributions in Italy.

2. Where a person to whom paragraph 1 applies:

(a) has resided continuously in Australia for a period which is less than the minimum period of continuous residence required by the social security laws of Australia for entitlement of that person to an Australian benefit; and

(b) has accumulated a period of credited contributions in 2 or more separate periods that exceed in total the minimum period referred to in sub-paragraph (a),

the total of the periods of credited contributions shall be deemed to be one continuous period and, by virtue of sub-paragraph 1 (c), a period in which the person was residing continuously in Australia, equivalent to that total.

3. Where a period of residence in Australia and a period of credited contributions in Italy coincide, the period of coincidence shall be taken into account once by each of the Contracting Parties for the purposes of this Article, as follows:

(a) for an Australian benefit: as a period of residence in Australia; and

(b) for an Italian benefit: as a period of credited contributions.

4. The minimum period of Australian residence during working life to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person outside Australia: the minimum period required shall be 1 year’s residence, of which at least 6 months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to a person in Australia: no minimum period shall be required.

5. The minimum period of credited contributions in Italy to be taken into account for the purposes of paragraph 1 shall be as follows:

**SCHEDULE 3***—continued*

1. for old age pension: 1 year;
2. for anticipated pension: 1 year;
3. for seniority pension: 15 years;
4. for invalidity allowance: 1 year;
5. for inability pension: 1 year;
6. for privileged invalidity allowance: 1 year;
7. for privileged inability pension: 1 year; and (h) for survivor’s pension: 1 year.

6. For the purposes of eligibility for voluntary insurance under the social security laws of Italy, a period of credited contributions in Italy in relation to a person shall be combined, where necessary, with any period of Australian residence during working life accumulated by that person, provided that the first-mentioned period totals at least one year.

ARTICLE 8

Australian Pro-Rata Benefits

1. Where an Australian benefit, other than a double orphan’s pension, is payable by virtue of this Agreement:

(a) to a person who is outside Australia: subject to paragraphs 2 and 9, the rate of that benefit shall be determined in accordance with the formula

|  |  |
| --- | --- |
| **A =** | **PQ** |
| 300 |

where

**A** represents the rate of benefit payable;

**Q** represents, subject to paragraph 5, the number of whole months, plus one, accumulated in a period of Australian residence during working life by that person, but not exceeding 300;

**P** represents the rate of Australian benefit that would be payable to that person if:

(i) he or she were in Australia and were qualified under the social security laws of Australia to receive that benefit;

(ii) any amount paid to that person as an Italian supplement were not included as income for that person in determining the rate; and

(iii) the amount of Italian benefit taken into account as income for those same purposes were calculated as follows:

**SCHEDULE 3***—continued*

|  |  |
| --- | --- |
| **Y =** | **Q × I** |
|  | 300 |

where

**Y** represents the amount of Italian benefit to be taken into account;

**Q** represents the same value as set out above in this subparagraph; and

**I** represents the amount of an Italian benefit payable to that person not including the amount of any Italian supplement;

(b) to a person who is in Australia: the rate of that benefit shall, subject to paragraph 6, be calculated by disregarding, in the computation of his or her income, any Italian benefit, including any Italian supplement, which that person is entitled to receive, and by deducting the amount of that Italian benefit, including that supplement, from the rate of Australian benefit which would otherwise be payable to that person.

2. The rate mentioned in sub-paragraph 1 (a) in relation to the symbol **A** shall not exceed the rate that would have been payable to that person if he or she had been in Australia and had met the requirements, in respect of residence, under the social security laws of Australia.

3. Where the rate of a benefit calculated in accordance with subparagraph 1 (b) is less than the rate of that benefit which would be payable under sub-paragraph 1 (a) if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.

4. For the purposes of paragraph 3, a comparison of the rates of a benefit determined in accordance with sub-paragraphs 1 (a) and 1 (b) shall be made as at:

(a) the date of the first pension pay day occurring after the date on which the claim for the benefit was lodged; and

(b) each anniversary of that pension pay day for so long as the person concerned is entitled to the benefit,

using, as the value of the symbol Q in sub-paragraph 1 (a), the number of whole months, plus one, in the period of Australian residence during working life accumulated by the person at the date as at which the comparison is made.

5. In the case of a person and his or her spouse or of a widow, the value to be applied to the symbol Q for the purposes of sub paragraph 1 (a), in relation to a claim by either that person or each of that person and that spouse, or by that widow, shall be determined in accordance with those provisions of the social security laws of

**SCHEDULE 3***—continued*

Australia which specify periods of residence for calculating benefits payable to persons outside Australia.

6. For the purposes of sub-paragraph 1 (b), where:

(a) one or other, or both, of a person and his or her spouse are entitled to receive an Italian benefit; or

(b) a person is entitled to receive an increase in respect of his or her spouse in an Italian benefit payable to that person,

the total of the Italian benefits payable to that person and his or her spouse shall be apportioned equally between them and disregarded in the computation of their respective incomes, and the amount so apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.

7. In paragraph 6, a reference to a spouse of a person is a reference not only to the de jure spouse of that person but also to a de facto spouse within the meaning of that term under the social security laws of Australia.

8. Sub-paragraph 1 (a) shall not apply to:

(a) a person who becomes qualified to receive an invalid pension by virtue of this Agreement where the person became permanently incapacitated for work or permanently blind while in Australia or during a temporary absence from Australia;

(b) a widow who becomes qualified to receive a widow’s pension by virtue of this Agreement by reason of the death in Australia or during a temporary absence from Australia of the widow’s former spouse while the widow and that spouse were residing permanently in Australia; or

(c) a person, during any absence of the person from Australia that commences before 1 January 1996, who:

(i) becomes eligible to receive an Australian benefit by virtue of this Agreement;

(ii) was a resident of Australia or an absent resident on 8 May 1985; and

(iii) commences to receive that benefit before 1 January 1996.

9. An Australian benefit that is payable by virtue of this Agreement to a person who:

(a) was a resident of Australia or an absent resident on 8 May 1985; and

(b) commences to receive that benefit before 1 January 1996,

shall be paid, during any absence of that person from Australia that commences before 1 January 1996, at a rate calculated in accordance with sub-paragraph 1 (b) and paragraph 3.

**SCHEDULE 3***—continued*

ARTICLE 9

Italian Pro-Rata Benefits

1. The amount of an Italian benefit payable to a person by virtue of this Agreement through the application of Article 7 shall be determined as follows:

(a) the amount of the theoretical benefit to which the person concerned would be entitled shall be established as if the period of credited contributions in Italy, and the period of Australian residence during working life referred to in sub-paragraph 1 (d) of Article 7, and accumulated to the date from which the benefit would be payable, for that person had accumulated under the social security laws of Italy; and

(b) the amount of benefit payable shall be that amount which bears to the amount referred to in sub-paragraph (a) the same ratio as that period of credited contributions bears to the sum of that period of credited contributions and that period of Australian residence during working life for that person.

2. If the sum of the periods referred to in sub-paragraph 1 (b) exceeds the maximum period provided for by the social security laws of Italy for entitlement to the maximum rate of the benefit concerned, that maximum period shall be substituted for that sum in calculations made in accordance with that sub-paragraph.

3. The calculation of a rate in relation to a person in accordance with paragraph 1 shall take into account only the salary of that person which was subject to contributions under the social security laws of Italy.

PART IV—PROVISIONS CONCERNING BENEFITS

ARTICLE 10

Payment of Supplementary and Additional Amounts

Where a benefit is payable by a Contracting Party by virtue of this Agreement to or in respect of a person, there shall also be payable any supplement or additional amount that is payable, in addition to that benefit, to or in respect of a person who qualifies for that supplement or additional amount under the social security laws of that Contracting Party.

ARTICLE 11

Unemployment Allowance

For the purposes of eligibility by a citizen of Australia or of Italy for unemployment allowance under the social security laws of Italy, any periods of employment accumulated by that person in Australia, other than periods of self-employment, shall be totalized with periods of

**SCHEDULE 3***—continued*

credited contributions in Italy for that person, if those last-mentioned periods total one year or more.

ARTICLE 12

Double Orphan’s Pension

Where a double orphan’s pension is payable under the social security laws of Australia in respect of a child who was orphaned during a period of residence in Australia by that child, that pension shall, subject to the provisions of those laws, be payable while that child is in Italy to the person who has the custody, care and control of the child.

ARTICLE 13

Family Allowances

Family allowances payable under the social security laws of Italy:

(a) shall be payable by virtue of this Agreement to persons who are receiving an Italian benefit payable under the social security laws of Italy, whether those persons are citizens of Australia or Italy, and who are residing in Australia; and

(b) shall not preclude the payment of family allowance under the social security laws of Australia, including those laws as modified or adapted by laws giving effect to an agreement on social security with a third country,

and shall for the purposes of reciprocity in relation to this Agreement be regarded as the Italian benefit equivalent to those Australian benefits described as:

(c) wives’ pensions;

(d) spouse carers’ pensions; and

(e) additional pensions and mothers’ and guardians’ allowances for children.

ARTICLE 14

Wife’s Pension and Spouse Carer’s Pension

A person who receives from Australia a wife’s pension or a spouse carer’s pension by virtue of the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall, for the purposes of this Agreement and in particular for the purposes of paragraph 6 of Article 8, be deemed to receive that pension by virtue of this Agreement.

PART V—MISCELLANEOUS PROVISIONS

ARTICLE 15

Lodgement of Claims

1. A claim for a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged:

**SCHEDULE 3***—continued*

(a) in the territory of either of the Contracting Parties in accordance with administrative arrangements made pursuant to Article 19; or

(b) in a third country if that country is of the kind referred to in Article 6,

at any time after the Agreement enters into force.

2. Where a claim for a benefit of a Contracting Party is lodged in the territory of the other Contracting Party or in a third country in accordance with paragraph 1, the date on which the claim is so lodged shall be the date of lodgement of the claim for all purposes relating to the claim.

ARTICLE 16

Determination of Claims

1. In determining the entitlement of a person to a benefit by virtue of this Agreement:

(a) a period of Australian residence during working life and a period of credited contributions; and

(b) any event which is relevant to that entitlement,

shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the social security laws of the Contracting Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3. (1) Where:

(a) a claim is made for a benefit payable by one of the Contracting Parties, whether by virtue of this Agreement or otherwise; and

(b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit (in this Article called “assumed benefit”), that is payable by the other Contracting Party and that, if paid, would affect the amount of the first-mentioned benefit,

that claim may be determined by the first-mentioned Party as if the assumed benefit were in fact being paid to that claimant.

(2) Where a claim for a benefit is determined in accordance with sub-paragraph (1) and it is subsequently established that the amount of the assumed benefit in relation to that person was not in fact

**SCHEDULE 3***—continued*

paid, any deficiency in the payment of the first-mentioned benefit shall be adjusted retrospectively.

(3) In this paragraph and in paragraph 4, “benefit” is not limited to those benefits specified in Article 2.

4. Where:

(a) it appears that a person who is entitled to the payment of a benefit by one of the Contracting Parties might also be entitled to the payment of a benefit by the other Contracting Party, in either case whether by virtue of this Agreement or otherwise;

(b) the amount of the benefit that might be paid by that other Contracting Party would affect the amount of the benefit payable by the first-mentioned Contracting Party; and

(c) the amount that could be due in respect of the benefit by that other Contracting Party, whether by virtue of this Agreement or otherwise, is likely to include an adjustment for arrears of that benefit,

then

(d) that other Contracting Party shall, if the first-mentioned Contracting Party so requests, pay the amount of those arrears to the first-mentioned Contracting Party; and

(e) the first-mentioned Contracting Party may deduct from the amount of those arrears any excess amount of the benefit paid by it and shall pay any balance remaining to that person.

ARTICLE 17

Exclusion of Italian Supplement from Australian Income Test

Where a person receives both a benefit under the social security laws of Australia, including any laws made for the purpose of giving effect to an agreement on social security other than this Agreement, and an Italian benefit which includes an Italian supplement, that supplement shall not be included as income for the purposes of the social security laws of Australia.

ARTICLE 18

Portability of Benefits

1. Where a benefit is payable by a Contracting Party by virtue of this Agreement that benefit shall be payable within and outside the respective territory of both Contracting Parties.

2. Subject to paragraph 3, the payment of a benefit by a Contracting Party shall be subject to the provisions of this Agreement and of the legislation within the scope of this Agreement in relation to that Contracting Party.

**SCHEDULE 3***—continued*

3. The legislation referred to in paragraph 2 in relation to Australia shall not include those provisions which preclude the payment of benefits outside Australia.

4. A benefit payable by a Contracting Party by virtue of this Agreement shall be paid by that Contracting Party, whether the beneficiary is in the territory of the other Contracting Party or outside the respective territory of both Contracting Parties, without deduction for administrative fees and charges.

ARTICLE 19

Administrative Arrangements and Mutual Assistance

1. The competent authorities of the Contracting Parties shall make whatever administrative arrangements are necessary from time to time in order to implement this Agreement, or in relation to any matter arising under their respective social security laws, and, where those arrangements are required to be made on a mutual basis, shall co-operate, both in regard to matters affecting the operation of both social security systems and of each of them.

2. The competent authorities of the Contracting Parties will, at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Contracting Parties with other countries.

ARTICLE 20

Exchange of Information

1. The competent authorities and the institutions of the Contracting Parties shall exchange such information as is necessary for the operation of this Agreement or of the social security laws of the Contracting Parties concerning all matters arising under this Agreement or under those laws.

2. The competent authorities and institutions of the Contracting Parties may exchange information of the kind referred to in paragraph 1 in relation to any person who has lodged a claim for or is in receipt of a benefit and who is outside the categories of persons referred to in Article 3.

3. Any information received by the competent authority or an institution of a Contracting Party pursuant to paragraphs 1 or 2 shall be protected in the same manner as information obtained under the social security laws of that Contracting Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this

**SCHEDULE 3***—continued*

Agreement or the social security laws of the Contracting Parties and shall be used only for those purposes.

4. In no case shall the provisions of paragraphs 1, 2 and 3 be construed so as to impose on the competent authority or an institution of a Contracting Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Contracting Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party.

5. Unless there are reasonable grounds for believing the contrary, any information received by a competent authority or relevant institution from the competent authority or an institution of the other Contracting Party shall be accepted as valid or true, as the case requires.

6. A Contracting Party shall not raise any charges against the other Contracting Party for services of an administrative nature, including services rendered in accordance with Article 19, by that first-mentioned Contracting Party to the other in accordance with this Agreement, but that other Contracting Party shall meet any costs or expenses which are reasonably incurred for those services and are payable to another person or organisation.

ARTICLE 21

Appeals

1. Any person who is affected by a determination, direction, decision or approval made or given by the competent authority or institution of a Contracting Party, in relation to a matter arising by virtue of this Agreement shall have the same rights to the review, by administrative and judicial bodies of that Contracting Party, of that determination, direction, decision or approval as are provided under the domestic laws of that Contracting Party.

2. Documents relating to appeals that may be made to administrative bodies established by, or administratively for the purposes of, the social security laws of one of the Contracting Parties may be lodged in the territory of the other Contracting Party, in accordance with administrative arrangements made pursuant to Article 19 and any documents duly lodged in that manner shall be regarded as duly lodged for the purposes of those laws.

3. The date on which a document is duly lodged in the territory of one of the Contracting Parties in accordance with paragraph 2 shall determine whether that document is lodged within any time limit

**SCHEDULE 3***—continued*

specified by the laws or administrative practices of the other Contracting Party which govern the appeal concerned.

ARTICLE 22

Review of Agreement

1. The Contracting Parties may agree at any time to review any of the provisions of this Agreement.

2. The Contracting Parties shall appoint representatives to meet as a committee of experts once during each year for the first four years after this Agreement comes into force and to review and report to the competent authorities on the operation and effectiveness of the Agreement, taking into account operational experience and practices in and between the two countries and between either of them and any other country with which either has entered into an agreement on social security.

3. The Contracting Parties shall consult on the further arrangements to review this Agreement and its operations to apply after it has been in force for four years.

4. The administrative arrangements made pursuant to Article 19 shall contain guidance on the role and method of operation of the committee of experts referred to in paragraph 2.

5. (1) In particular, where a Contracting Party enacts legislation that amends, supplements or replaces the legislation within the scope of this Agreement in relation to that Contracting Party, the Contracting Parties shall, if one of them so requests, consult on any matters that arise, as a consequence of that first-mentioned legislation, in relation to the continued operation or possible amendment of this Agreement.

(2) For the purposes of the consultations referred to in sub-paragraph (1), the Contracting Parties may direct the committee of experts referred to in paragraph 2 to meet and report on matters which the Contracting Parties require to be considered by the committee.

PART VI—FINAL PROVISIONS

ARTICLE 23

Entry Into Force

1. This Agreement shall be ratified by both Contracting Parties according to their respective procedures and shall enter into force on the first day of the month next following the month in which the instruments of ratification are exchanged.

2. Immediately upon this Agreement entering into force, the Agreement made on 2 November 1972 between the Government of the Commonwealth of Australia and the Government of the Republic

**SCHEDULE 3***—continued*

of Italy in relation to portability of pensions between Australia and Italy shall terminate.

ARTICLE 24

Termination

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Contracting Party receives from the other written notice through the diplomatic channel of the intention of the other Contracting Party to terminate this Agreement.

2. In the event that this Agreement is terminated in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Rome the 23rd day of April 1986 in the English and Italian languages, both texts being equally authoritative.

|  |  |
| --- | --- |
| FOR AUSTRALIA | FOR THE REPUBLIC  OF ITALY |
| Bob Hawke | B. Craxi |

**SCHEDULE** 4 Section 1208

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND PROVIDING FOR RECIPROCITY IN MATTERS RELATING TO SOCIAL SECURITY

The Government of Australia, and

The Government of New Zealand,

WISHING to strengthen the existing friendly relations between the two countries, and

DESIRING to co-ordinate the operation of their respective social security systems and to enhance the equitable access by people who move between Australia and New Zealand to social security benefits provided for under the laws of both countries,

HAVE agreed as follows:

PART I—INTERPRETATION AND SCOPE

ARTICLE 1

*Interpretation*

1. In this Agreement, unless the context otherwise requires:

(a) “Australian benefit” means a benefit referred to in Article 2 in relation to Australia;

(b) “benefit” means Australian benefit or New Zealand benefit;

(c) “competent authority” means, in the case of Australia, the Secretary to the Department of Social Security or an authorised representative of the Secretary and, in the case of New Zealand, the Social Security Commission of New Zealand or, if either no longer exists, such other officer or body as the responsible Minister for the Contracting Party concerned notifies to the responsible Minister for the other Contracting Party;

(d) “New Zealand benefit” means a benefit referred to in Article 2 in relation to New Zealand; and

(e) “social security laws” means:

(i) in relation to Australia, the Social Security Act 1947, and any Act passed in substitution for that Act, as amended, but not including amendments effected by laws made by Australia for the purposes of giving effect to an agreement on social security; and

(ii) in relation to New Zealand, the Social Security Act 1964, and any Act passed in substitution for that Act, as amended.

2. This Agreement applies:

**SCHEDULE 4***—continued*

(a) in relation to Australia, to its external territories in the same manner as the social security laws of Australia apply to those territories; and

(b) in relation to New Zealand, to New Zealand only and not to the Cook Islands, Niue or Tokelau,

and references to “Australia”, “New Zealand” or “territory” in relation to either of them shall be read accordingly.

3. In the application of this Agreement by a Contracting Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the legislation within the scope of this Agreement, in relation to that Contracting Party, by virtue of Article 2.

ARTICLE 2

*Legislative Scope*

1. The legislation within the scope of this Agreement is:

(a) in relation to Australia: the Social Security Act 1947 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for and in relation to the following benefits:

(i) age pensions;

(ii) invalid pensions;

(iii) wives’ pensions;

(iv) carers’ pensions;

(v) widows’ pensions;

(vi) supporting parents’ benefits;

(vii) unemployment benefits;

(viii) sickness benefits;

(ix) double orphans’ pensions; and

(x) family allowances; and

(b) in relation to New Zealand: the Social Security Act 1964 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for and in relation to the following benefits:

(i) national superannuation;

(ii) invalids’ benefits;

(iii) widows’ benefits;

(iv) domestic purposes benefits;

(v) unemployment benefits;

(vi) sickness benefits;

**SCHEDULE 4***—continued*

(vii) orphans’ benefits; and

(viii) family benefits.

2. Notwithstanding the provisions of paragraph 1, the legislation within the scope of this Agreement shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any bilateral agreement on social security entered into by either Contracting Party.

3. The competent authorities of the Contracting Parties shall notify each other of legislation that amends, supplements or replaces the legislation within the scope of this Agreement in relation to their respective Contracting Parties, promptly after the first-mentioned legislation is enacted.

ARTICLE 3

*Personal Scope*

This Agreement shall apply to persons who move between Australia and New Zealand and who are residing in either or both of Australia and New Zealand.

ARTICLE 4

*Equality of Treatment*

1. The persons to whom this Agreement applies shall be treated equally by each of the Contracting Parties in regard to rights and obligations which arise by virtue of this Agreement in relation to each Contracting Party.

2. Subject to this Agreement, the citizens of each of the Contracting Parties shall be treated equally in the application of the social security laws of Australia and of New Zealand and, in any case in which entitlement to a benefit payable under those laws by a Contracting Party depends, in whole or in part, on citizenship of that Contracting Party, a person who is a citizen of the other Contracting Party shall, for the purposes of a claim for that benefit, deemed to be a citizen of the first-mentioned Contracting Party.

PART II—RESIDENCE

ARTICLE 5

*Entitlement to Benefits During Residence or Presence in a Country*

A person shall not be entitled, by virtue of this Agreement, to the benefits payable by a Contracting Party unless that person:

(a) is residing permanently in the territory of that Contracting Party; or

(b) has been in that territory for a period of 6 months (without regard to any earlier periods spent in that territory),

**SCHEDULE 4***—continued*

and otherwise meets the requirements of the social security laws of that Contracting Party in relation to those benefits.

ARTICLE 6

*Recognition by One Country of Residence in the Other Country*

1. Where a person is residing in the territory of one of the Contracting Parties and is a claimant for a benefit payable by that Contracting Party, each period of residence accumulated by that claimant or, as appropriate, by a related person in the territory of the other Contracting Party shall be deemed, for the purposes of the claim for that benefit, to be a period of residence by that claimant or related person in the territory of the first-mentioned Contracting Party.

2. In paragraph 1:

(a) “related person” means:

(i) the spouse of the claimant;

(ii) the last deceased spouse of the claimant;

(iii) a child in respect of whom the benefit referred to in paragraph 1 is claimed; or

(iv) the last surviving parent, or the deceased parent formerly responsible for the care and control, of the claimant,

as the circumstances require; and

(b) “benefit” does not include unemployment benefit.

3. For the purposes of the social security laws of Australia relating to family allowance, a period of residence accumulated in New Zealand by a person, and by a child in respect of whom that benefit is claimed by that person, shall be deemed to be a period in which the person and the child had been in Australia.

ARTICLE 7

*Country of Residence*

1. Subject to paragraph 2, the question whether a person is or, at any past time, was residing in the territory of one of the Contracting Parties for the purposes of this Agreement shall be determined by reference to the domestic laws of that Contracting Party.

2. Where, for a period, a person is a resident of both Australia and New Zealand, that period shall be counted:

(a) in relation to a claim for an Australian benefit, only as a period of residence in Australia; and

(b) in relation to a claim for a New Zealand benefit, only as a period of residence in New Zealand.

**SCHEDULE 4***—continued*

PART III—PROVISIONS RELATING TO BENEFITS

ARTICLE 8

*Commencement of Benefits*

Where a person:

(a) moves permanently from the territory of one Contracting Party to the territory of the other Contracting Party and arrives in the last-mentioned territory not more than 12 weeks after his or her departure from the first-mentioned territory; and

(b) immediately prior to his or her departure, was paid a benefit by the first-mentioned Contracting Party,

any benefit that is payable, whether by virtue of this Agreement or otherwise, to that person by that other Contracting Party shall be paid with effect from a date conforming with the pattern of payments for the benefit payable to the person, being a date not later than the date succeeding that on which the first-mentioned benefit ceased to be paid.

ARTICLE 9

*Payment of Supplementary and Additional Amounts*

Where a benefit is payable by a Contracting Party by virtue of this Agreement to or in respect of a person, there shall also be payable any supplement or additional amount that is payable, in addition to that benefit, to or in respect of a person who qualifies for that supplement or additional amount under the social security laws of that Contracting Party.

ARTICLE 10

*Entitlement to Payment by New Zealand of National Superannuation*

1. A person shall be entitled by virtue of this Agreement to the payment by New Zealand of national superannuation only if:

(a) that person is of an age at which an age pension may be payable to the person; and

(b) the income and assets of the person are such as would entitle the person to the payment of an age pension,

under the social security laws of Australia.

2. The rate of national superannuation payable by New Zealand by virtue of this Agreement to a person shall be subject to deduction of the amount of any Australian benefit payable to that person, in the same manner as the rate of national superannuation may be reduced under the social security laws of New Zealand by the amount of any overseas benefit, pension or periodical allowance, or part thereof, that is payable to a person entitled to receive a benefit under those laws.

**SCHEDULE 4***—continued*

ARTICLE 11

*New Zealand Widows’, Domestic Purposes and Orphans’ Benefits*

Where a widow’s benefit, a domestic purposes benefit or an orphan’s benefit would be payable by New Zealand but for the fact that a child to whom that benefit would relate was born in Australia, that child shall, for the purposes of a claim for that benefit, be deemed to have been born in New Zealand.

ARTICLE 12

*Restriction on Dual Entitlement to Certain Benefits*

Where a benefit specified in one of the columns set out in the following table has been paid by the Contracting Party named at the head of that column to or in respect of a person who is residing in the territory of that Contracting Party, that benefit shall cease to be payable if the other Contracting Party pays, to or in respect of that person while he or she is in the territory of the other Contracting Party, a benefit specified in the other column of that table.

*Table*

*Australian Benefit New Zealand Benefit*

Family Allowance Family Benefit

Double Orphan’s Pension Orphan’s Benefit

ARTICLE 13

*Unemployment Benefit*

1. This Article applies to any person who is a citizen of one of the Contracting Parties and who is in the territory of the other Contracting Party.

2. Subject to paragraph 4, a person to whom this Article applies shall be entitled to the payment of unemployment benefit by a Contracting Party only if the person:

(a) has been continuously present in the territory of that Contracting Party for not less than 6 months since the date of his or her most recent arrival in that territory;

(b) is residing in that territory on the date on which the person lodges a claim for that benefit and resides or has resided there throughout the period in respect of which the claim is lodged;

(c) satisfies the competent authority of that Contracting Party, by reference to the person’s circumstances, or his or her work history in that territory, that the person has permanently settled in that territory; and

(d) meets those criteria which are specified for that benefit by the social security laws of that Contracting Party in regard to age, unemployment, capability and willingness to undertake suitable

**SCHEDULE 4***—continued*

work, efforts to obtain such work and non-receipt of other benefits.

3. For the purposes of sub-paragraph 2 (c):

(a) a person shall be deemed to satisfy the requirements in relation to work history in the territory of a Contracting Party if, since the date referred to in sub-paragraph 2 (a), the person has undertaken:

(i) in relation to Australia, paid work for 8 weeks of at least 30 hours per week; or

(ii) in relation to New Zealand, 8 weeks full employment;

(b) consideration of a person’s circumstances shall include consideration of:

(i) the person’s family arrangements;

(ii) the housing or accommodation arrangements of the person and, if applicable, of the spouse and children of the person, whether in the territory of the Contracting Party concerned, of the other Contracting Party or elsewhere, including actions such as the purchase or lease of a home in the first-mentioned territory and the disposal of a former home in the other territory or elsewhere; and

(iii) the arrangements made by the person in regard to any bank or comparable accounts, the transfer, disposal or location of any property, and taxation clearances.

4. Where a person to whom this Article applies has been resident in the territory of a Contracting Party for the period of 12 months immediately preceding the date on which the person lodges a claim for unemployment benefit in that territory, the person shall be required to meet, in relation to that claim, only the criteria specified for that benefit by the social security laws of that Contracting Party.

5. For the purposes of paragraph 4, a period of residence in the territory of a Contracting Party in relation to a person shall include any period or periods of temporary absence by that person from that territory that do not exceed in the aggregate 2 calendar months, and that do not break the continuity of that period of residence.

ARTICLE 14

*Supporting Parents’ Benefit and Domestic Purposes Benefit*

1. This Article applies to any person who is a citizen of one of the Contracting Parties and who is in the territory of the other Contracting Party.

2. Subject to paragraph 3, a person to whom this Article applies shall not be granted a supporting parents’ benefit or a domestic purposes benefit by a Contracting Party unless, in addition to meeting the

**SCHEDULE 4***—continued*

requirements for that benefit of the social security laws of that Contracting Party, the person has been continuously present in the territory of that Contracting Party for not less than 6 months since the date of his or her most recent arrival in that territory.

3. Where a person to whom this Article applies has been resident in the territory of a Contracting Party for the period of 12 months immediately preceding the date on which the person lodges a claim, in Australia, for supporting parents’ benefit or, in New Zealand, for domestic purposes benefit, the person shall be required to meet, in relation to that claim, only the criteria specified for that benefit by the social security laws of that Contracting Party.

4. For the purposes of paragraph 3, a period of residence in the territory of a Contracting Party in relation to a person:

(a) shall include any period or periods of temporary absence by that person from that territory that do not exceed in the aggregate 2 calendar months, and that do not break the continuity of that period of residence; and

(b) shall not include any period deemed by Article 6 to be a period of residence by the person in that territory.

ARTICLE 15

*Wife’s Pension and Carer’s Pension*

A person who receives from Australia a wife’s pension or a carer’s pension by virtue of the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall, for the purposes of this Agreement, be deemed to receive that pension by virtue of this Agreement.

PART IV—MISCELLANEOUS PROVISIONS

ARTICLE 16

*Lodgement of Claims*

1. Subject to paragraph 3, a claim for a benefit, whether payable by virtue of this agreement or otherwise, may be lodged in the territory of either of the Contracting Parties, in accordance with administrative arrangements made pursuant to Article 20, at any time after the Agreement enters into force.

2. Where a claim for a benefit payable by one of the Contracting Parties is lodged in the territory of the other Contracting Party in accordance with paragraph 1, the date on which the claim is lodged shall be the date of lodgement of the claim for all purposes relating to the claim.

3. Paragraph 1 applies, in relation to Australia, only to those Australian benefits described as sickness benefit, double orphan’s pension and family allowance.

**SCHEDULE 4***—continued*

ARTICLE 17

*Portability of Benefits for Temporary Absences*

Where a benefit is payable by one of the Contracting Parties by virtue of this Agreement, that benefit shall be payable, up to a period of 26 weeks, while the beneficiary is in the territory of the other Contracting Party or outside the territory of both, subject to the provisions of this Agreement and of the social security laws of the first-mentioned Contracting Party other than, in relation to Australia, those provisions precluding the payment of benefits outside Australia.

ARTICLE 18

*Exclusion of New Zealand Benefits from Australian Income Test*

Where a benefit is paid by Australia to a person who is in New Zealand and a benefit is also paid by New Zealand to that person, the amount of the benefit paid by New Zealand shall not be included in the income of that person for the purposes of the social security laws of Australia.

ARTICLE 19

*Recovery of Overpayments*

1. Where:

(a) an amount paid by one of the Contracting Parties to a person in respect of a benefit exceeds the amount, if any, that is properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit; and

(b) a benefit is payable by the other Contracting Party to that person, whether by virtue of this Agreement or otherwise,

the competent authority of that other Contracting Party shall, if requested by the other competent authority to do so, and in accordance with this Article, deduct the amount equivalent to the excess payment referred to in sub-paragraph (a) from amounts due in respect of the last-mentioned benefit.

2. The amount of an excess payment referred to in paragraph 1 shall be the amount determined by the competent authority of the Contracting Party by whom the excess payment was made.

3. The rate of deductions made in accordance with paragraph 1 from amounts due in respect of a benefit, and any incidental or related matters, shall be determined by the competent authority of the Contracting Party by whom that benefit is payable, in accordance with the social security laws of that Contracting Party, including in particular those provisions which relate to deduction from, in the case of Australia, family allowance and, in the case of New Zealand, family benefit.

4. Where, in a case such as that described in sub-paragraph 1 (a), the person to whom the excess amount was paid by one of the Contracting

**SCHEDULE 4***—continued*

Parties is in the territory of the other Contracting Party and is not in receipt of a benefit from that other Contracting Party, the competent authority of that other Contracting Party shall, if requested by the other competent authority to do so, endeavour to arrange with the person for the repayment of the first-mentioned Contracting Party of that excess amount.

5. Amounts deducted by one of the Contracting Parties in accordance with paragraph 1, and any amounts received by that Contracting Party pursuant to arrangements referred to in paragraph 4, shall be remitted to the other Contracting Party as agreed between the competent authorities or in administrative arrangements made pursuant to Article 20.

6. In this Article, “benefit” is not limited to those benefits specified in Article 2.

ARTICLE 20

*Administrative Arrangements*

1. The competent authorities of the Contracting Parties shall make whatever administrative arrangements are necessary from time to time in order to implement this Agreement, and to enable benefits payable by one of the Contracting Parties, whether by virtue of this Agreement or otherwise, to persons who are residing in or in the territory of the other Contracting Party to be paid to those persons on behalf of the first-mentioned Contracting Party by that other Contracting Party.

2. Where arrangements of the kind referred to in paragraph 1 are required to be made on a mutual basis, the competent authorities shall co-operate, both in regard to matters affecting the operation of both social security systems and of each of them.

3. A benefit payable by one of the Contracting Parties by virtue of this Agreement shall be paid by that Contracting Party without deduction for administrative fees and charges.

ARTICLE 21

*Exchange of Information*

1. The competent authorities of the Contracting Parties shall, without limitation by Article 3, exchange such information as is necessary for the operation of this Agreement or of the social security laws of the Contracting Parties concerning all matters arising under this Agreement or under those laws other than those matters referred to in the social security laws of New Zealand as “Contributions Towards Cost of Domestic Purposes Benefits for Solo Parents” and “Medical and Hospital Benefits and other Related Benefits”.

**SCHEDULE 4***—continued*

2. Any information received by the competent authority of a Contracting Party pursuant to sub-paragraph 1 shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this Agreement or the social security laws of the Contracting Parties and shall be used for other purposes or disclosed to other persons only with the prior consent of the competent authority who provided the information.

3. In no case shall the provisions of paragraph 1 and 2 be construed so as to impose on the competent authority of a Contracting Party the obligation:

(a) to carry out administrative measures at variance with the laws of the administrative practice of that or the other Contracting Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party.

4. Unless there are reasonable grounds for believing the contrary, any information received by a competent authority from the other competent authority shall be accepted as valid or true, as the case requires.

5. A Contracting Party shall not raise any charges against the other Contracting Party for services of an administrative nature rendered by that first-mentioned Contracting Party to the other in accordance with this Agreement or the administrative arrangements made pursuant to Article 20, but that other Contracting Party shall meet any costs or expenses which are reasonably incurred for those services and are payable to another person or organisation.

ARTICLE 22

*Appeals*

1. Any person who is affected by a determination, direction, decision or approval made or given by the competent authority or an institution of a Contracting Party, in relation to a matter arising by virtue of this Agreement, shall have the same rights to the review, by administrative and judicial bodies of that Contracting Party, of that determination, direction, decision or approval as are provided under the domestic laws of that Contracting Party.

2. Documents relating to appeals that may be made to administrative bodies established by, or administratively for the purposes of, the social security laws of Australia or New Zealand may be lodged in the territory of the other Contracting Party, respectively, in accordance with administrative arrangements made pursuant to Article 20 and any documents duly lodged in that manner shall be regarded as duly lodged for the purposes of those laws.

**SCHEDULE 4***—continued*

3. The date on which the document is duly lodged in the territory of one of the Contracting Parties in accordance with paragraph 2 shall determine whether that document is lodged within any time limit specified by the laws or administrative practices of the other Contracting Party which govern the appeal concerned.

ARTICLE 23

*Review of Agreement*

The Contracting Parties may agree at any time to review any of the provisions of this Agreement and, in any case, shall, within the period of 3 years commencing on the date of signature of this Agreement, review the present limitation on continuation of payment by a Contracting Party of benefits to beneficiaries who move outside the territory of that Contracting Party.

PART V—FINAL PROVISIONS

ARTICLE 24

*Entry into Force*

1. This Agreement shall enter into force on the date on which the Contracting Parties exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in New Zealand, as the case may be, and thereupon this Agreement shall have effect on and from the date specified for that purpose in that exchange of notes.

2. When this Agreement commences to have effect, the Agreement on Social Security between the Government of Australia and the Government of New Zealand, signed at Sydney on 15 April 1949, shall terminate but shall continue to have effect in relation to all persons who, immediately prior to its termination, were in receipt of a benefit paid by either or both of Australia and New Zealand by virtue of that Agreement but such a person may elect to have his or her future entitlement in respect of that benefit determined in accordance with this Agreement.

ARTICLE 25

*Termination*

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Contracting Party receives from the other written notice through the diplomatic channel of the intention of the other Contracting Party to terminate this Agreement.

2. In the event that this Agreement is terminated in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who:

**SCHEDULE 4*—****continued*

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto,

have signed this Agreement.

Done in duplicate at Melbourne this fifth day of October 1986.

|  |  |
| --- | --- |
| FOR THE GOVERNMENT  OF AUSTRALIA: | FOR THE GOVERNMENT  OF NEW ZEALAND: |
| B. HOWE | G. ANSELL |

**SCHEDULE 5** Section 1208

RECIPROCAL AGREEMENT ON SOCIAL SECURITY

between

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA

The Government of Australia and the Government of Canada,

Wishing to strengthen the existing friendly relations between the two countries, and

Resolved to co-operate in the field of social security,

Have agreed as follows:

PART I

INTERPRETATION AND SCOPE

ARTICLE 1

Interpretation

1. In this Agreement:

“benefit” means, in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

“Canadian creditable period” means a period, or the total of two or more periods, of residence or contributions which has been or can be used to acquire the right to a Canadian benefit, but does not include any period considered under paragraph 2 of Article 10 as a Canadian creditable period;

“carer’s pension” means a carer’s pension payable to a spouse under the legislation of Australia;

“competent authority” means, in relation to Australia, the Secretary to the Department of Social Security and, in relation to Canada, the Minister of National Health and Welfare;

“Government of Canada” means the Government in its capacity as representative of Her Majesty the Queen in right of Canada and represented by the Minister of National Health and Welfare;

“legislation” means, in relation to a Party, the laws specified in Article 2 in relation to that Party;

“period of residence in Australia”, in relation to a person, means a period defined as such in the social security laws of Australia, but does not include any period deemed pursuant to Article 6 to be a period in which that person was an Australian resident;

“social security laws” means:

**SCHEDULE 5***—continued*

(i) in relation to Australia, the Social Security Act 1947 as amended, not including amendments effected by laws made for the purpose of giving effect to an agreement on social security; and

(ii) in relation to Canada, the laws specified in subparagraph 1 (b) of Article 2;

“widow” means, in relation to Australia:

(i) a de jure widow; or

(ii) a woman who, for not less than 3 years immediately prior to the death of a man, lived with him on a permanent basis as his de facto spouse and was wholly or mainly maintained by him,

but does not include a woman who is the de facto spouse of a man.

2. In the application by a Party of this Agreement to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security laws of either Party or, in the event of a conflict of meaning, by whichever of those, laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraphs 2 and 3, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

(a) in relation to Australia, the Social Security Act 1947 to the extent that the Act provides for and applies to:

(i) age pensions;

(ii) invalid pensions;

(iii) wives’ pensions;

(iv) carers’ pensions; and

(v) pensions payable to widows; and

(b) in relation to Canada:

(i) the Old Age Security Act and the regulations made thereunder; and

(ii) the Canada Pension Plan and the regulations made thereunder.

2. In relation to Australia, the legislation to which this Agreement applies shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.

**SCHEDULE 5***—continued*

3. This Agreement shall apply to laws of a Party which extend the existing legislation of that Party to new categories of beneficiaries unless the competent authority of that Party communicates in writing an objection in regard to those laws to the competent authority of the other Party prior to the commencement of those laws.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is residing or has resided in Canada within the meaning of the Old Age Security Act or is making or has made contributions under the Canada Pension Plan

and, where applicable, to any spouse, dependant or survivor of such a person.

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

PART II

PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Canada or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

(a) is an Australian resident or residing in Canada or a third State with which Australia has concluded an agreement on social security that includes provision for co-operation in the assessment and determination of claims for benefits; and

(b) is in Australia, Canada or that third State,

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife’s pension or carer’s pension who has never been an Australian resident.

**SCHEDULE 5***—continued*

ARTICLE 6

Totalisation in relation to Australian Benefits

1. Where a person has been an Australian resident for a period that is:

(a) less than the period as an Australian resident required to qualify him or her under the legislation of Australia for a benefit; and

(b) equal to or greater than the minimum period identified in accordance with paragraph 6 for that person,

but has accumulated both a period of residence in Australia and a Canadian creditable period which, when added together, are equal to or greater than the minimum period required for qualification for that benefit by the legislation of Australia, that Canadian creditable period shall be deemed, for the purposes of a claim for that benefit, to be a period in which that person was an Australian resident.

2. In the case of a claim by a person for an invalid pension or pension payable to a widow, paragraph 1 shall apply only to a Canadian creditable period accumulated by that person under the Canada Pension Plan.

3. For the purposes of a claim by a person for a pension payable to a widow, that person shall, subject to Article 9, be deemed to have accumulated a Candian creditable period for any period for which her spouse accumulated a creditable period under the Canada Pension Plan but any period during which the person and her spouse both accumulated Canadian creditable periods under the Canada Pension Plan shall be taken into account once only.

4. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated a Canadian creditable period in two or more separate periods that exceed in total the minimum period referred to in subparagraph (a),

the total of the Canadian creditable periods shall be deemed to be one continuous period.

5. For the purposes of this Article:

(a) where a period of residence in Australia and a Canadian creditable period coincide, the period of coincidence shall be taken into account once only as a period in which that person was an Australian resident; and

(b) a Canadian creditable period accumulated under the Old Age Security Act which coincides with a Canadian creditable period

**SCHEDULE 5***—continued*

accumulated under the Canada Pension Plan shall be taken into account once only.

6. The minimum period of residence in Australia which a person must have accumulated before paragraph 1 applies shall be as follows:

(a) for an Australian benefit other than an invalid pension, the minimum period required shall be one year of which at least 6 months must be continuous; and

(b) for an invalid pension, the minimum period required shall be 2 years of which at least 6 months must be continuous.

ARTICLE 7

Australian Pro-Rata Benefits

1. Where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the social security laws of Australia but:

(a) disregarding in the computation of his or her income the guaranteed income supplement under the Old Age Security Act and the portion of the spouse’s allowance under that Act equivalent to the guaranteed income supplement and other Canadian federal, provincial or territorial payments of a similar character as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Canada; and

(b) by assessing as income to that person only a proportion of any other benefit received by that person under the legislation of Canada calculated by multiplying the number of whole months, plus one, accumulated by that person in a period of residence in Australia, but not exceeding 300, by the amount of that benefit and dividing that product by 300.

2. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined according to the legislation of Australia but, subject to paragraph 5, disregarding in the computation of his or her income any Canadian benefit which that person is entitled to receive, and deducting the amount of that Canadian benefit from the rate of Australian benefit which would otherwise be payable to that person.

3. Where the rate of a benefit calculated in accordance with paragraph 2 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.

**SCHEDULE 5***—continued*

4. For the purposes of paragraph 3, a comparison of the rates of a benefit determined in accordance with paragraphs 1 and 2 shall be made as at:

(a) the date of the first pension pay-day occurring after the date on which the claim for the benefit was lodged; and

(b) each anniversary of that pension pay-day for so long as the person concerned is entitled to the benefit, using, in that comparison, the number of months in the period of residence in Australia accumulated by the person at the date as at which the comparison is made.

5. For the purposes of paragraph 2, where one or other, or both, of a person and his or her spouse are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her spouse shall be apportioned equally between them and disregarded in the computation of their respective incomes, and the amount so apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.

6. An Australian benefit that is payable only by virtue of this Agreement to a person who:

(a) was an Australian resident on 8 May 1985; and

(b) commences to receive that benefit before 1 January 1996

shall be paid, during any absence of that person from Australia that commences before 1 January 1996, at a rate calculated in accordance with paragraphs 2 and 3.

7. As soon as practicable after an exchange of letters in which Canadian federal, provincial or territorial payments are mutually determined for the purposes of subparagraph 1 (a), the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying those Canadian payments.

ARTICLE 8

Wives’ Pensions and Carers’ Pensions

For the purposes of this Agreement, a person who receives an Australian wife’s pension or carer’s pension due to the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall be deemed to receive that pension by virtue of this Agreement.

ARTICLE 9

Pensions Payable to Widows

Where, under the legislation of Australia, a widow lodges a claim for a pension payable to a widow, matters which concern her former spouse and affect that claim shall be considered for the purposes of

**SCHEDULE 5***—continued*

that claim by reference only to her last-deceased spouse who was her husband or was a man in respect of whom she satisfies the conditions specified in subparagraph (ii) of the definition of “widow” in Article 1.

PART III

PROVISIONS RELATING TO CANADIAN BENEFITS

ARTICLE 10

Totalising of Periods for Purposes of the Legislation of Canada

1. Subject to paragraph 3, if a person is not entitled to a benefit on the basis of his or her Canadian creditable periods, eligibility for that benefit shall be determined by totalising these periods and those specified in paragraph 2.

2. (a) For the purposes of determining eligibility for a benefit under the Old Age Security Act, a period of residence in Australia shall be considered as a period of residence in Canada.

(b) For the purposes of determining eligibility for a benefit under the Canada Pension Plan, a calendar year which includes a period of residence in Australia of at least 6 calendar months shall be considered as a year for which contributions have been made under the Canada Pension Plan.

3. For the purposes of this Article, where a Canadian creditable period and a period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

ARTICLE 11

Benefits under the Old Age Security Act

1. (a) If a person is entitled to payment of a pension in Canada under the Old Age Security Act without recourse to the provisions of this Agreement, but has not accumulated sufficient periods of residence in Canada to qualify for payment of the pension abroad under that Act, a partial pension shall be paid to that person outside Canada if the Canadian creditable period accumulated under the Old Age Security Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension abroad.

(b) The amount of the pension payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension, exclusively on the basis of the periods creditable under that Act.

2. (a) If a person is not entitled to a pension or spouse’s allowance under the Old Age Security Act solely on the basis of periods

**SCHEDULE 5***—continued*

of residence in Canada, a partial pension or a spouse’s allowance shall be paid to that person if the Canadian creditable period accumulated under that Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension or a spouse’s allowance.

(b) The amount of the pension or the spouse’s allowance payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse’s allowance, exclusively on the basis of the periods creditable under that Act.

3. Notwithstanding any other provision of this Agreement:

(a) the competent authority of Canada shall not pay a pension under the Old Age Security Act to a person outside Canada unless his or her Canadian creditable period accumulated under that Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for a payment of a pension abroad;

(b) a spouse’s allowance shall not be payable by virtue of this Agreement to a person who has not accumulated a Canadian creditable period of at least one year under the Old Age Security Act; and

(c) a spouse’s allowance and a guaranteed income supplement shall be paid outside Canada only to the extent permitted by the Old Age Security Act.

ARTICLE 12

Benefits under the Canada Pension Plan

1. If a person is not entitled to a disability pension, disabled contributor’s child’s benefit, survivor’s pension, orphan’s pension or death benefit solely on the basis of the periods creditable under the Canada Pension Plan, but is entitled to that benefit through the totalising of periods as provided in Article 10, the competent authority of Canada shall calculate the amount of the earnings-related portion of such benefit under the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under the Canada Pension Plan.

2. The amount of the flat-rate portion of the benefit payable by virtue of this Agreement shall, in a case referred to in paragraph 1, be determined by multiplying:

(a) the amount of the flat-rate portion of the benefit determined under the Canada Pension Plan

**SCHEDULE 5***—continued*

by

(b) the fraction which represents the ratio of the periods of contributions to the Canada Pension Plan in relation to the minimum qualifying period required under the Canada Pension Plan for entitlement to that benefit,

but in no case shall that fraction exceed the value of one.

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 13

Lodgement of Documents

1. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party is lodged with the competent authority of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the competent authority of the first Party.

2. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

ARTICLE 14

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and a Canadian creditable period; and

(b) any event which is relevant to that eligibility or entitlement

shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.

3. A death benefit under the Canada Pension Plan shall not be paid by virtue of this Agreement in respect of a death which occurred before the date of entry into force of this Agreement.

4. Where:

(a) the competent authority of Canada pays a benefit to a person in respect of a past period;

**SCHEDULE 5***—continued*

(b) for all or part of that period, the competent authority of Australia has paid to that person a benefit under the legislation of Australia; and

(c) the amount of the Australian benefit would have been varied had the Canadian benefit been paid during that period,

then

(d) the amount that would not have been paid by the competent authority of Australia had the Canadian benefit been paid on a periodical basis from the date to which the arrears of benefit referred to in subparagraph (a) were paid shall be a debt due by that person to Australia; and

(e) the competent authority of Australia may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit to that person.

5. In paragraph 4, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia.

ARTICLE 15

Payment of Benefits

1. The payment outside Australia of an Australian benefit payable by virtue of this Agreement shall not be restricted by those provisions of the social security laws of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

2. A carer’s pension as defined in this Agreement, whether payable by virtue of this Agreement or otherwise, shall be paid within Australia and Canada.

3. A benefit payable by virtue of this Agreement shall be paid without deduction for administrative fees and charges.

ARTICLE 16

Exchange of Information and Mutual Assistance

1. The competent authorities shall:

(a) notify each other of laws that amend, supplement or replace the social security laws of their respective Parties promptly after the first-mentioned laws are made;

(b) communicate to each other any information necessary for the application of this Agreement or of the respective social security laws of the Parties concerning all matters arising under this Agreement or under those laws;

(c) lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit

**SCHEDULE 5***—continued*

under this Agreement or any other entitlement under the respective social security laws as if the matter involved the application of their own laws; and

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 17.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities for the reimbursement of certain types of expenses.

3. Any information about a person which is transmitted in accordance with this Agreement to a competent authority shall be protected in the same manner as information obtained under the social security laws of that Party and shall be disclosed only in the manner permitted by the laws of that Party.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the competent authority of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administrative practice of that or the other Party.

ARTICLE 17

Administrative Arrangements

The competent authorities of the Parties shall make whatever administrative arrangements are necessary from time to time to implement this Agreement.

ARTICLE 18

Language of Communication

In the application of this Agreement, the competent authority of a Party may communicate directly with the other competent authority in any official language of that Party.

ARTICLE 19

Understandings with a Province of Canada

The relevant authority of Australia and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada provided that those understandings are not inconsistent with the provisions of this Agreement.

**SCHEDULE 5***—continued*

ARTICLE 20

Resolution of Difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.

3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.

4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.

5. The arbitrators shall determine their own procedures.

6. The decision of the arbitrators shall be final and binding.

ARTICLE 21

Review of Agreement

Where a Party requests the other to meet to review this Agreement, representatives of the Parties shall meet no later than 6 months after that request was made and, unless the Parties otherwise mutually determine, their meeting shall be held in the territory of the Party to which that request was made.

PART V

FINAL PROVISIONS

ARTICLE 22

Entry into Force and Termination

1. This Agreement shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.

**SCHEDULE 5***—continued*

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in two copies at Canberra this 4th day of July 1988 in the English and French languages, each text being equally authoritative.

|  |  |
| --- | --- |
| BEN HUMPHREYS  FOR THE GOVERNMENT  OF AUSTRALIA | DON MAZANKOWSKI  FOR THE GOVERNMENT  OF CANADA |

**SCHEDULE 6** Section 1208

AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND SPAIN

Australia and Spain,

Wishing to strengthen the existing friendly relations between the two countries, and

Resolved to co-operate in the field of social security;

Have agreed as follows:

PART I

GENERAL PROVISIONS

ARTICLE- 1

Definitions

1. In this Agreement, unless the context otherwise requires:

* “benefit” means in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;
* “carer’s pension” means a carer’s pension payable to a spouse under the legislation of Australia;
* “Competent Authority” means; in relation to Australia: the Secretary to the Department of Social Security; and, in relation to Spain: the Department of Labour and Social Security;
* “Competent Institution” means; in relation to Australia: the Competent Authority for Australia; and in relation to Spain: the Institution responsible under the legislation of Spain for dealing with a claim for a Spanish benefit;
* “Institution” means; in relation to Australia: the Competent Authority for Australia; and in relation to Spain: the agency or authority responsible for the implementation of the legislation of Spain;
* “legislation” means, in relation to a Party, the laws specified in Article 2 in relation to that Party;
* “period of residence in Australia”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 8 to be a period in which that person was an Australian resident;

**SCHEDULE 6***—continued*

* “Spanish creditable period” means a period, or the total of two or more periods, of contributions which has been or can be used to acquire the right to a Spanish benefit, but does not include any period considered under paragraph 1 of Article 10 as a Spanish creditable period;
* “widow” means, in relation to Australia: a de jure widow but does not include a woman who is the de facto spouse of a man.

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

(a) in relation to Australia: the *Social Security Act 1947* in so far as the Act provides for and in relation to the following benefits:

(i) age pensions;

(ii) invalid pensions;

(iii) wives’ pensions;

(iv) carer’s pensions; and

(v) pensions payable to widows,

(b) in relation to Spain: the legislation relating to the General Scheme and the Special Schemes of the Social Security system as they relate to the following benefits:

(i) benefits for temporary incapacity for work in cases of common illness, maternity or non-industrial accident;

(ii) invalidity;

(iii) old age;

(iv) death and survivors; and

(v) unemployment benefits.

2. Notwithstanding the provisions of paragraph 1 the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any reciprocal agreement on social security entered into by either Party.

**SCHEDULE 6***—continued*

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is or has been subject to the legislation of Spain,

and where applicable, to any spouse, dependant or survivor of such a person.

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5

Application of Spanish Legislation

1. Where an employee or a self-employed worker who is covered by the Social Security Schemes of Spain is sent by his firm, or goes, to undertake temporary work in Australia he or she shall continue to be covered by those Social Security Schemes so long as the period of the proposed work does not exceed 5 years.

2. If, owing to unforeseen circumstances, the period of the work extends beyond 5 years, this extension may be recognized by the Competent Authority of Spain.

PART II

PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 6

Residence or Presence in Spain or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

(a) is an Australian resident or residing in Spain or a third State with which Australia has concluded an agreement on social

**SCHEDULE 6***—continued*

security that includes provision for co-operation in the assessment and determination of claims for benefits; and

(b) is in Australia, Spain or that third State,

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife’s pension or carer’s pension who has never been an Australian resident.

ARTICLE 7

Spouse-related Australian Benefits

For the purposes of this Agreement, a person who receives an Australian benefit due to the fact that the spouse of that person receives by virtue of this Agreement another Australian benefit, shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.

ARTICLE 8

Totalisation for Australia

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:

(a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for that Australian benefit; and

(b) a period of residence in Australia equal to or greater than the minimum period identified in accordance with paragraph 4 for that person;

and has accumulated a Spanish creditable period then for the purposes of a claim for that Australian benefit, that Spanish creditable period shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated a Spanish creditable period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

the total of the Spanish creditable periods shall be deemed to be one continuous period.

**SCHEDULE 6***—continued*

3. For all purposes of this Article, where a period by a person as an Australian resident and a Spanish creditable period accumulated by that person coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident there shall be no minimum period of residence in Australia.

ARTICLE 9

Calculation of Australian Benefits

1. Where an Australian benefit is payable by virtue of this Agreement, to a person outside of Australia, the rate of that benefit shall be determined according to the legislation of Australia.

2. Notwithstanding the provisions of the previous paragraph, when assessing the income of a person for the purposes of calculating the rate of benefit only a proportion of any Spanish benefit (or benefits) shall be regarded as income.

That proportion shall be calculated by multiplying the total number of months of that person’s period of residence in Australia, which shall not exceed 300, by the amount of that Spanish benefit and dividing that product by 300.

3. A person who is in receipt of an Australian benefit under the legislation of Australia, shall be entitled to the concessional assessment of income set out in paragraph 2 of this Article for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.

4. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia and until the person becomes eligible under Australian domestic legislation the amount of that benefit shall be determined as follows:

(a) according to the legislation of Australia, but without taking into account in the computation of his or her income any Spanish benefit which that person is entitled to receive, and

(b) by deducting the amount of that Spanish benefit from the amount of the Australian benefit to which that person would otherwise be entitled.

**SCHEDULE 6***—continued*

5. Where a married person, or that person and his or her spouse are in receipt of a Spanish benefit or benefits, it shall be deemed, for the purposes of implementing paragraph 4 and the legislation of Australia, that each one of them receives one half of the amount of the benefit or the total of the two benefits as the case may be.

6. If a person is unable to receive an Australian benefit as a result of the provisions of paragraph 4, or because the person did not claim the said benefit, it shall be deemed that if that person’s spouse claims a benefit under the legislation of Australia, that the person receives that benefit.

7. The reference in paragraph 6 to payment of a benefit under the legislation of Australia to the spouse, means the payment of any benefit, pension or allowance payable under the *Social Security Act 1947* as amended from time to time and whether payable by virtue of this Agreement or otherwise.

PART III

PROVISIONS RELATING TO SPANISH BENEFITS

ARTICLE 10

Totalization for Spain

1. Where this Agreement applies and there is a Spanish creditable period that is:

(a) less than the period necessary to give a claimant entitlement to the benefit claimed under Spanish legislation; and

(b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,

then any period of residence in Australia by the contributor to whom that Spanish creditable period was credited shall be deemed to be a Spanish creditable period.

2. For the purposes of this Article, where a Spanish creditable period and period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Spanish creditable period.

3. The minimum Spanish creditable period to be taken into consideration for the purposes of paragraph 1 shall be one year. However, where the Spanish creditable period is shorter than one year and the period of residence in Australia is also shorter than one year, but with the addition of both periods an entitlement to a Spanish benefit is obtained, they shall both be taken into account.

4. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of residence in Australia in the

**SCHEDULE 6***—continued*

legislation of Australia shall be raised from 60 years to 65 years for the purposes of claiming an old age pension under the legislation of Spain.

ARTICLE 11

Sickness Benefits

For the granting of benefits in case of sickness of a worker the totalization of periods referred to in Article 10 shall be taken into account, if necessary, without the condition imposed by subparagraph 1 (b) of Article 10.

ARTICLE 12

Old age, invalidity and survivors pensions

1. Entitlement by virtue of this Agreement to old age, invalidity or death and survivors benefit under the legislation of Spain shall be determined as follows:

(a) The Competent Institution shall determine, according to its own provisions, the amount of the benefit corresponding to the duration of the periods of insurance completed only under its legislation.

(b) The Competent Institution shall also examine the entitlement considering the provisions of Article 10. If, in application of it, entitlement to pension is obtained, the following rules shall apply for the calculation of the amount:

(i) the Competent Institution shall determine the theoretical pension to which the claimant would be entitled as if all the periods of insurance and/or residence totalized had been accomplished under its legislation;

(ii) the amount of the pension effectively due to the claimant, shall be that obtained after reducing the amount of the theoretical pension to a pro-rata pension, according to the period of insurance completed exclusively under the legislation of Spain and all the periods of insurance and residence completed in the two Parties; and

(iii) in no case shall the sum of the Spanish creditable periods and the periods of residence in Australia be taken to exceed the maximum period established by the legislation of Spain in regard to the benefit in question.

2. Once the entitlement of the claimant has been established according to subparagraphs 1 (a) and (b) the Competent Institution shall assign the most favourable benefit.

**SCHEDULE 6***—continued*

ARTICLE 13

Special Scheme Benefits

If the legislation of Spain provides that in the determination of entitlement to or the granting of certain benefits there is a requirement that the Spanish creditable periods have been completed in an activity subject to a Special Scheme or, as the case may be, in a specific activity or specific employment, periods of residence in Australia completed under the legislation of Australia shall be taken into account when they have been accomplished in an equivalent scheme or in the same activity or in the same employment.

ARTICLE 14

Determination of Regulating Base

When, for determining the Regulating Base for benefits, periods of residence in Australia must be taken into account, the Spanish Competent Institution shall determine that Regulating Base on the minimum contribution bases in force in Spain, during that period or fraction of period, for the workers of the same category of professional qualification as the person concerned last had according to Spanish legislation.

ARTICLE 15

Situacion de alta

An Australian resident or a person in receipt of an Australian benefit shall be deemed to be validly insured (situacion de alta o asimilada) for the purposes of entitlement to benefit under the legislation of Spain.

ARTICLE 16

Unemployment Benefits

1. For the granting of unemployment benefits the totalization of periods referred to in Article 10 shall, if necessary, be taken into account without the condition imposed by subparagraph 1 (b) of that Article.

2. Notwithstanding the provisions of Article 20, unemployment benefits paid pursuant to paragraph 1 shall be paid during the periods established under the legislation of Spain and while the unemployed person resides in the territory of Spain.

ARTICLE 17

Equivalence of Events

The continuing entitlement to a Spanish benefit shall be subject to the legislation of Spain and events which occur in Australia relevant to that continuing entitlement will be considered as if they had occurred in Spain.

**SCHEDULE 6***—continued*

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 18

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with administrative arrangements made pursuant to Article 22 at any time after the Agreement enters into force.

2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the Competent Institution of the first Party.

3. In relation to Australia, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

ARTICLE 19

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and a Spanish creditable period; and

(b) any event or fact which is relevant to that entitlement,

shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3. (a) Where a person receives or will receive a benefit from one Party and has received an overpayment of a benefit from the other Party, the Institution of the latter Party may request the Institution of the former Party to withhold the amount of the overpayment from the arrears of benefits payable by the former

**SCHEDULE 6***—continued*

Party and transfer them to the Institution of the latter Party to recoup the amount of the overpayment.

(b) The Institution receiving a request under subparagraph (a) shall take the action set out in the Administrative Arrangement, as provided for in Article 22, to recoup the amount of the overpayment and to transfer it to the other Institution.

(c) The amount of the overpayment shall be a debt due by the person receiving it to the Party that paid it.

4. A reference in paragraph 3 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the *Social Security Act 1947* of Australia as amended from time to time, and in relation to Spain, means any pension, benefit, allowance or advance made by an Institution including overpayments.

ARTICLE 20

Payment of Benefits

1. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside the territories of both Parties:

|  |  |
| --- | --- |
| (a) for Australia: | - age pensions, |
| - invalid pensions, |
| - wife’s pensions, and |
| - pensions payable to widows for persons who are Class B widows or Class A widows who were widowed in Australia. |
| (b) for Spain: | - invalidity, |
| - old age, and |
| - death and survivors. |
| 2. The benefits payable by virtue of this Agreement or otherwise and listed in this paragraph shall be paid in Australia and Spain with no limitation by time: | |
|
|
| (a) for Australia: | - carer’s pensions, and |
| - pensions payable to widows who are not included in subparagraph 1 (a). |
| (b) for Spain: | - invalidity, |
| - old age, and |
| - death and survivors. |

3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived

**SCHEDULE 6***—continued*

under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.

4. A benefit payable by a party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties, without deduction for government administrative fees and charges for processing and paying that benefit.

5. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

ARTICLE 21

Exchange of Information and Mutual Assistance

1. The Competent Authorities shall:

(a) advise each other of laws that amend, supplement or replace the legislation of their respective Parties, promptly after the first-mentioned laws are made;

(b) advise each other directly of internal action to implement this Agreement and any Arrangement adopted for its implementation; and

(c) advise each other of any technical problems encountered when applying the provisions of this Agreement or of any Arrangement made for its implementation.

2. The Institutions of both Parties shall:

(a) advise each other of any information necessary for the application of this Agreement or of the respective legislation of the Parties concerning all matters within their area of competence arising under this Agreement or under those laws;

(b) assist one another in relation to the determination of any benefit under this Agreement or the respective legislation within the limits of and according to their own laws; and

(c) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 22.

3. The assistance referred to in paragraphs 1 and 2 shall be provided free of charge, subject to any arrangement reached between the

**SCHEDULE 6***—continued*

Competent Authorities and Institutions for the reimbursement of certain types of expenses.

4. Any information about a person which is transmitted in accordance with this Agreement to an Institution shall be protected in the same manner as information obtained under the legislation of that Party.

5. In no case shall the provisions of paragraphs 1, 2 and 4 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other Party.

6. In this Article the meaning of “legislation” is not confined by any restrictions imposed by Article 2.

7. In the application of this Agreement, the Competent Authority and the Institutions of a party may communicate with the other in the official language of that Party.

ARTICLE 22

Administrative Arrangements

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

ARTICLE 23

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

PART V

FINAL PROVISIONS

ARTICLE 24

Entry Into Force and Termination

1. This Agreement shall enter into force one month after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalized.

**SCHEDULE 6***—continued*

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in 2 copies at CANBERRA this 10th day of FEBRUARY 1990 in the Spanish and English languages, each text being equally authoritative.

|  |  |
| --- | --- |
| FOR AUSTRALIA:  BRIAN HOWE | FOR SPAIN:  JOSE LUIS PARDOS |

[*Minister’s second reading speech made in*—

*House of Representatives on 6 December 1990*

*Senate on 21 February 1991*]