

Social Security Act 1991

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Chapter 2—Pensions, benefits and allowances

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Part 2.19—Carer allowance

Division 1—Interpretation

952 Carer allowance definitions

In this Part, unless the contrary intention appears:

Adult Disability Assessment Tool has the meaning given by subsection 38C(3).

care receiver has the meaning given by subsections 953(1) and (2) and 954(1).

Child Disability Assessment Tool has the meaning given by subsection 38D(4).

disabled adult means a person aged 16 or more who:

- (a) has a physical, intellectual or psychiatric disability; and
- (b) is likely to suffer from that disability permanently or for an extended period.

disabled child means a person aged under 16 who:

- (a) has a physical, intellectual or psychiatric disability; and
- (b) is likely to suffer from that disability permanently or for an extended period.

Division 2—Qualification for and payability of carer allowance

Subdivision A—Qualification

953 Qualification for carer allowance—caring for either 1 or 2 disabled children

Single child

953(1) A person is qualified for carer allowance for a disabled child (the *care receiver*) if:

- (a) the care receiver is a dependent child (disregarding subsection 5(3)) of the person; and
- (b) the care receiver is an Australian resident; and
- (c) either of the following applies:
 - (i) the disability from which the care receiver is suffering is declared, under subsection 38D(3), to be a recognised disability for the purposes of this section;
 - (ii) the care receiver has been assessed and rated, and been given a positive score of not less than 1, under the Child Disability Assessment Tool; and
- (d) because of the disability from which the care receiver is suffering, the care receiver receives care and attention on a daily basis from:
 - (i) if the person is a member of a couple—the person, the person’s partner or the person together with another person (whether or not the person’s partner); or
 - (ii) if the person is not a member of a couple—the person or the person together with another person;
in a private home that is the residence of the person and the care receiver; and
- (f) the person is an Australian resident.

2 children

953(2) A person is qualified for carer allowance for 2 disabled children (the *care receivers*) if:

- (a) each care receiver is a dependent child (disregarding subsection 5(3)) of the person; and
- (b) each care receiver is an Australian resident; and
- (c) each care receiver has been assessed and rated, and been given a positive score of less than 1, under the Child Disability Assessment Tool and the sum of their scores is 1 or more; and
- (d) because of the disability from which each care receiver is suffering, each care receiver receives care and attention on a daily basis from:
 - (i) if the person is a member of a couple—the person, the person’s partner or the person together with another person (whether or not the person’s partner); or
 - (ii) if the person is not a member of a couple—the person or the person together with another person;in a private home that is the residence of the person and each care receiver; and
- (f) the person is an Australian resident.

Note 1: For *Australian resident* see section 7.

Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.

Note 4: For the effect of temporary cessation of care and attention on carer allowance, see section 957.

Note 5: For the effect of 2 people being qualified for carer allowance, see sections 964 and 965.

954 Qualification for carer allowance—caring for a disabled adult

954(1) A person is qualified for carer allowance for a disabled adult (the *care receiver*) if:

- (a) the care receiver is an Australian resident; and
- (b) the care receiver is a family member of the person or is a person approved in writing by the Secretary for the purposes of this paragraph; and
- (c) the care receiver has been assessed and rated, and been given a score of not less than 30, under the Adult Disability Assessment Tool; and
- (d) because of the disability from which the care receiver is suffering, the care receiver receives care and attention on a

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daily basis from the person, or the person together with another person, in a private home that is the residence of the person and the care receiver; and

(f) the person is an Australian resident.

Note 1: For *family member* see subsection 23(1). For *Australian resident* see section 7.

Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.

Note 4: For the effect of temporary cessation of care and attention on carer allowance, see section 957.

Note 5: For the effect of 2 people being qualified for carer allowance, see sections 964 and 965.

Disabled adult does not qualify for carer allowance for another disabled adult

954(2) If a person is qualified for carer allowance for a disabled adult, the disabled adult is not able to qualify for carer allowance for another disabled adult.

Person cannot qualify for more than 2 carer allowances

954(3) A person may qualify for carer allowance under this section for 2, but no more than 2, disabled adults.

955 Qualification for carer allowance—hospitalisation

955(1) If:

- (a) a person (the *carer*) is participating in the care of a disabled child, or a disabled adult, (the *hospitalised person*) in hospital; and
- (b) it is reasonable to assume that, if the hospitalised person were not in hospital, one or more persons would qualify for carer allowance for the hospitalised person or for the hospitalised person and another person; and
- (c) either:
 - (i) the hospitalised person is terminally ill; or
 - (ii) it is reasonable to expect that the hospitalised person will reside in the private home of the carer and the hospitalised person upon leaving hospital;

the one or more persons who would qualify for carer allowance as mentioned in paragraph (b) qualify for carer allowance.

Limit on qualification under subsection (1)

955(2) However, the period, or the sum of the periods, for which the one or more persons can be qualified under subsection (1) is 63 days in any calendar year.

956 Absence from Australia

During any period of absence from Australia:

- (a) throughout which Division 2 of Part 4.2 applies to the person; and
- (b) that is before the end of the person's portability period for carer allowance (within the meaning of that Division);

the person does not cease to be qualified for carer allowance merely because the care and attention of the care receiver or care receivers is not provided in a private home that is the residence of the person and the care receiver or care receivers.

957 Effect of cessation of care etc. on carer allowance

Continuation of allowance where temporary cessation of care

957(1) Subject to subsection (3), if:

- (a) a person is qualified for carer allowance because a care receiver or care receivers are receiving care and attention on a daily basis; and
- (b) the care receiver or care receivers temporarily cease to receive care and attention that would qualify the person for carer allowance;

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

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Continuation of allowance after hospitalisation—section 955 ceases to apply

957(2) Subject to subsection (3), if:

- (a) a person is qualified for carer allowance under section 955 because the person or another person is participating in the care of a disabled child or disabled adult in hospital; and
- (b) apart from this subsection, the person would later cease to be qualified for carer allowance under that section; and
- (c) the person would not cease to be qualified for carer allowance if the disabled child or disabled adult were receiving care and attention on a daily basis;

the person does not cease to be qualified for carer allowance merely because of the lack of receipt of that care and attention.

Limit on subsections (1) and (2)

957(3) However, the period, or the sum of the periods, for which subsection (1) or (2), or a combination of those subsections, can apply is:

- (a) 63 days in any calendar year; or
- (b) another period that the Secretary, for any special reason in the particular case, decides to be appropriate.

Cessation of care in order to undertake training etc.

957(4) If:

- (a) a person is qualified for carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and
- (b) the care receiver or either or both of the care receivers then are, or are likely to be, receiving education, training or treatment (other than treatment in hospital) for a period; and
- (c) during the period the care receiver or care receivers are not receiving the care and attention that would qualify the person for carer allowance; and
- (d) subsection (1) does not apply to the period;

the person does not cease to be qualified for carer allowance during the period merely because of the lack of receipt of that care and attention.

Note: A person who continues to be qualified for carer allowance because of subsection (4) will receive a reduced rate of carer allowance: see subsection 974(3).

Subdivision B—Limitations on payability

958 Carer allowance not payable if allowance rate nil

A carer allowance is not payable to a person if the person's child disability allowance rate would be nil.

964 Carer allowance not payable to 2 people for the same care receiver or care receivers unless declaration made

If:

- (a) 2 persons who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers; and
- (b) the Secretary has not made a declaration under subsection 981(1) in respect of carer allowance for the care receiver or care receivers; and
- (c) one of the persons is receiving carer allowance for the care receiver or care receivers;

carer allowance is not payable to the other person for the care receiver or care receivers.

965 Carer allowance not payable to more than one member of a couple

965(1) Subject to this section, if one member of a couple is receiving carer allowance for a care receiver or care receivers, carer allowance is not payable to the other member of the couple for the same care receiver or care receivers.

965(2) If:

- (a) the Secretary is satisfied that each of the members of a couple is qualified for carer allowance for the same care receiver or care receivers; and

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- (b) each of them has made a claim for carer allowance (whether or not one of them is receiving carer allowance);

the Secretary is to make a declaration:

- (c) stating that the Secretary is satisfied that each of them is qualified for carer allowance for the care receiver or care receivers; and
- (d) naming one of them as the member of the couple to whom carer allowance is payable for the care receiver or care receivers.

965(3) If such a declaration is made, carer allowance for the care receiver or care receivers to which the declaration relates is not payable to the member of the couple who is not named in the declaration as mentioned in paragraph (2)(d).

965(4) The Secretary is to give notice of the declaration to each of the members of the couple involved.

965(5) In making the declaration, the Secretary must have regard to whether one member of the couple is the primary carer for the care receiver or care receivers.

Division 5—Rate of carer allowance

974 Rate of carer allowance

Daily rate

- 974(1) A person's rate of carer allowance is a daily rate worked out by dividing the person's fortnightly rate of carer allowance by 14.

Fortnightly rate

- 974(2) Subject to subsections (3) and (4), a person's fortnightly rate of carer allowance for a care receiver or care receivers is \$75.60.

Note: The rate of carer allowance is indexed annually (see sections 1190 and 1191).

Reduced fortnightly rate if care receiver undertakes training etc.

- 974(3) If on one or more days (each of which is a **training day**) in an instalment period in relation to carer allowance a person would have stopped being qualified for carer allowance apart from subsection 957(4) (care receiver undertakes training etc.), the person's fortnightly rate of carer allowance for that period is to be reduced by the following amount:

Number of training days \times Daily rate of carer allowance applicable to each training day

Rate where carer allowance shared

- 974(4) If:

- (a) 2 people who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers; and
- (b) the Secretary has made a declaration under subsection 981(1) in respect of carer allowance for the care receiver or care receivers;

the person's rate of carer allowance is the share specified in the declaration under paragraph 981(1)(b) of the carer allowance rate that would otherwise apply in respect of the care receiver or care receivers.

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Division 6—Multiple qualification for carer allowance for same care receiver or receivers

981 Secretary may make declaration where 2 people are qualified for carer allowance for the same care receiver or care receivers

981(1) If the Secretary is satisfied that 2 people who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers, the Secretary is to make a declaration:

- (a) stating that the Secretary is satisfied that the 2 people are each qualified for carer allowance for the care receiver or care receivers; and
- (b) specifying the share of the carer allowance for the care receiver or care receivers that each of the 2 people is to receive.

981(2) 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 carer allowance for the care receiver or care receivers—see section 964.

Note 2: For the effect of a declaration under this section on the calculation of carer allowance rates see subsection 974(4).

Division 10—Bereavement payments (death of disabled child)

Subdivision A—Death of disabled child

992J Continued carer allowance during bereavement rate continuation period where disabled child dies

992J(1) If:

- (a) a person is receiving carer allowance (other than because of this section) for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and
- (b) the disabled child or one of the disabled children dies; and
- (c) immediately before the child's death, the child was an FTB child of the person;

the person is to be qualified for carer allowance during the bereavement rate continuation period as if the child had not died and had received the care and attention referred to in paragraph 953(1)(d) or 953(2)(d) (as the case may be).

Note 1: For *bereavement rate continuation period* see subsection 21(2).

Note 2: If a person fails to satisfy paragraph (1)(c), the person may still be qualified for carer allowance for 4 weeks after the death of the child under section 992L.

992J(2) The rate at which the carer allowance is to be paid during the bereavement rate continuation period is the rate at which the allowance was payable to the person immediately before the day on which the child died.

992K Lump sum payable in some circumstances

992K(1) If:

- (a) a person is qualified for carer allowance under section 992J in relation to a disabled child, or one of 2 disabled children, who has died; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period; and

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(c) immediately before the child's death, the child was an FTB child of the person;

a lump sum (worked out using the lump sum calculator at the end of this subsection) 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 carer allowance was payable to the person immediately before the child died.

Step 2. Work out the number of paydays of the person in the bereavement lump sum period.

Step 3. Multiply the rate obtained in Step 1 by the number obtained in Step 2: the result is the amount of the lump sum payable to the person under this section.

Note: For *first available bereavement adjustment payday, bereavement period* and *bereavement lump sum period* see subsection 21(2).

992K(2) However, if a person is qualified for carer allowance under section 992J in relation to 2 disabled children both of whom have died at the same time, only one lump sum is payable to the person under this section.

Subdivision B—Death of disabled child (special short-term assistance)

992L Continuation of qualification for carer allowance for 4 weeks in some cases where recipient's disabled child dies

992L(1) If:

- (a) a person is receiving carer allowance (other than because of this section) for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and
- (b) the disabled child or one of the disabled children dies; and

(c) the person is not qualified under section 992J for carer allowance for the disabled child or disabled children; the person is to be qualified for carer allowance for the period of 4 weeks that starts on the day on which the child died as if the child had not died and had received the care and attention referred to in paragraph 953(1)(d) or 953(2)(d) (as the case may be).

992L(2) The rate at which the carer allowance is to be paid during the 4 week period is the rate at which the allowance was payable to the person immediately before the day on which the child died.

Subdivision C—Death of recipient

992M Death of recipient

992M(1) If:

- (a) a person is receiving carer allowance; and
- (b) the person is a member of a couple; and
- (c) the person dies; and
- (d) the person:
 - (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a disabled child; or
 - (ii) would have been so qualified if the person had not died;

there is payable to the partner an amount equal to the sum of the following amounts:

- (e) the amount of carer allowance that would have been payable to the person under subsection 992J(2) if the person had not died;
- (f) any lump sum that would have been payable to the person under section 992K if the person had not died.

992M(2) If:

- (a) a person is receiving carer allowance; and
- (b) the person is not a member of a couple; and

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- (c) the person dies; and
 - (d) the person:
 - (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a disabled child; or
 - (ii) would have been so qualified if the person had not died;
- there is payable, to such person as the Secretary thinks appropriate, an amount equal to the sum of the following amounts:
- (e) the amount of carer allowance that would have been payable to the person under subsection 992J(2) if the person had not died;
 - (f) any lump sum that would have been payable to the person under section 992K if the person had not died.

Part 2.20—Double orphan pension

Division 1—DOP child status

993 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.

Note 3: if the young person does not qualify as a double orphan under this subsection, and the young person is a refugee child, the young person may qualify as a double orphan under section 994.

- 993(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) in residential care 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 *mental hospital patient on a long-term basis*, see subsection 997(1).

Note 4A: For *in residential care on a long-term basis*, see subsection 997(2).

Note 5: for *uncontactable* see section 998.

Note 6: if the young person does not qualify as a double orphan under this subsection, and the young person is a refugee child, the young person may qualify as a double orphan under section 994.

994 Double orphan—refugee

A young person is a double orphan if:

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- (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) in residential care 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 *mental hospital patient on a long-term basis*, see subsection 997(1).

Note 5A: For *in residential care on a long-term basis*, see subsection 997(2).

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.

- 995(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.

996 Long-term prisoner

- 996(1) 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.

- 996(2) For the purposes of this Division, a person is a long-term prisoner if:

- (a) the person has been charged with an offence punishable by imprisonment for life or for a term of at least 10 years; and
- (b) the person has not been convicted of the offence; and
- (c) the person is in custody; and
- (d) the person is not serving a sentence of imprisonment for life or for a term of 10 years or more imposed as a result of conviction of another offence.

997 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.

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Nursing home patient

997(2) For the purposes of this Division, a person is *in residential care on a long-term basis* if:

- (a) the person is in residential care; and
- (b) the Secretary is satisfied that the person will be in residential care for an indefinite period.

998 Person uncontactable

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

999 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) either:
 - (i) the young person is an FTB child of the person or would be an FTB child of the person except that the young person, or the person on behalf of the young person, is receiving payments under a prescribed education scheme; or
 - (ii) the young person is 21 years of age and is not receiving youth allowance, and no other person is receiving youth allowance in respect of the young person; 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; and
 - (d) the person:
 - (i) is an Australian resident or a special category visa holder residing in Australia; or
 - (ii) satisfies subsection (1A).

Note: for *double orphan* see sections 993 and 994.

When person satisfies this subsection

- 999(1A) A person satisfies this subsection if the person is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v), and either of the following applies:

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- (a) the person is in Australia; or
- (b) the person:
 - (i) is temporarily absent from Australia for a period not exceeding 26 weeks; and
 - (ii) the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2.

Approved care organisations

- 999(2) An approved care organisation is qualified for a double orphan pension for a young person if:
- (a) the organisation is eligible for family tax benefit for the young person, or would be eligible for family tax benefit for the young person except that the young person, or someone on behalf of the young person, is receiving payments under a prescribed education scheme; or
 - (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 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* see sections 6 and 35.

Subdivision B—Payability

1003 Double orphan pension not payable for child receiving a pension under the Veterans' Entitlements Act

A double orphan pension is not payable for a child in relation to a family allowance instalment period if the child is receiving a pension under Part II or IV of the Veterans' Entitlements Act.

Division 5—Rate of double orphan pension

1010 Rate of double orphan pension

- 1010(1) Subject to subsections (2) and (3), the rate of double orphan pension is a daily rate calculated by dividing \$37.90 by 14.
- 1010(2) If, in the case of a child who became a double orphan before 1 July 2000, the current family tax benefit rate in respect of the child is less than the prior family allowance rate in respect of the child, the rate calculated under subsection (1) in relation to the child is increased by an amount equal to the difference between the prior family allowance rate and the current family tax benefit rate.
- 1010(3) If, in the case of a child who becomes a double orphan on or after 1 July 2000, the current family tax benefit rate in respect of the child is less than the prior family tax benefit rate in respect of the child, the rate calculated under subsection (1) in relation to the child is increased by an amount equal to the difference between the prior family tax benefit rate and the current family tax benefit rate.
- 1010(4) Subsections (2) and (3) do not have effect in relation to a child at any time at which double orphan pension in respect of the child is payable to an approved care organisation.
- 1010(5) In this section:

current family tax benefit rate, in relation to a child, means the rate represented by so much of an individual's Part A rate of family tax benefit as relates to the child.

prior family allowance rate, in relation to a child, means the rate at which family allowance was payable in respect of the child immediately before the child became a double orphan.

prior family tax benefit rate, in relation to a child, means the rate represented by so much of an individual's Part A rate of family tax benefit as related to the child immediately before the child became a double orphan.

Division 10—Bereavement payments (death of DOP child)

Subdivision A—Death of DOP child (General)

1033 Continued double orphan pension during bereavement rate continuation period where DOP child dies

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:
 - (ii) the young person was an FTB child of the person; or
 - (iii) the person was receiving a service pension or income support supplement 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.

1034 Lump sum payable in some circumstances

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) immediately before the child died, the child was an FTB child;

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 double orphan pension was payable immediately before the first available bereavement adjustment payday: the result is called the *continued rate*.
- Step 2.* Work out the number of the person's paydays in the bereavement lump sum period.
- Step 3.* Multiply the continued rate by the number obtained in Step 2: the result is the amount of the lump sum payable to the person under this section.

Subdivision AA—Death of dependent child (special short-term assistance)

1034AA Continuation of qualification for double orphan pension for 4 weeks in some cases where recipient's DOP child dies

If:

- (a) a person is receiving double orphan pension for a young person; and
- (b) the young person dies; and
- (c) the person is not qualified for double orphan pension under section 1033 in respect of the young person;

the person is to be qualified for double orphan pension, for the period of 4 weeks that starts on the day after the day on which the young person died, as if the young person had not died.

Subdivision B—Death of recipient

1034A Death of recipient

1034A(1) If:

- (a) a person is receiving a double orphan pension; and
- (b) the person is a member of a couple; and
- (c) the person dies; and
- (d) the person:

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- (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a DOP child; or
- (ii) would have been so qualified if the person had not died; and
- (e) the person's partner claims the payments referred to in paragraph (d) within 3 months after the death of the child; there is payable to the partner an amount equal to the sum of the following amounts:
 - (f) the amount of double orphan pension that would have been payable to the person under section 1033 if the person had not died;
 - (g) any lump sum that would have been payable to the person under section 1034 if the person had not died.

1034A(2) If:

- (a) a person is receiving a double orphan pension; and
- (b) the person is not a member of a couple; and
- (c) the person dies; and
- (d) the person:
 - (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a DOP child; or
 - (ii) would have been so qualified if the person had not died;there is payable, to such person as the Secretary thinks appropriate, an amount equal to the sum of the following amounts:
 - (e) the amount of double orphan pension that would have been payable to the person under section 1033 if the person had not died; and
 - (f) any lump sum that would have been payable to the person under section 1034 if the person had not died.

Part 2.21—Mobility allowance

Division 1—Qualification for and payability of mobility allowance

Subdivision A—Qualification

1035 Qualification for mobility allowance

1035(1) A person is qualified for a mobility allowance if the person satisfies the travel test set out in subsection (2) and 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 8 hours a week on a continuing basis;

(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*);
- (ia) the person is not receiving an amount called the training component from the Employment Department;

Note: The training component is paid to a person to assist with his or her expenses in undertaking vocational training.

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- (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 8 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;
- (v) the person is an Australian resident; or
- (ba) all the following apply:
 - (i) the person is a handicapped person;
 - (ii) the person is receiving newstart allowance, youth allowance or austudy payment;
 - (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
 - (iv) the person is not receiving an amount called the training component from the Employment Department;
 - Note: The training component is paid to a person to assist with his or her expenses in undertaking the job search activities.
 - (vi) the person is an Australian resident; or
- (c) all of the following apply:
 - (i) the person is a handicapped person;
 - (ii) 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 job search activities under an agreement between the Secretary and a service provider nominated by the Secretary to the Employment Department;
- (iia) the person is not receiving an amount called the training component from the Employment Department;
- Note: The training component is paid to a person to assist with his or her expenses in undertaking the job search activities.
- (iv) the person is an Australian resident; or
- (ca) all of the following apply:
- (i) the person is a handicapped person;
 - (ii) 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 job search activities under the Competitive Employment Placement and Training Program administered by the Department;
 - (iv) the person is an Australian resident; or
- (d) all of the following apply:
- (i) the person is a handicapped person;
 - (ii) 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 voluntary work approved by the Secretary for charitable,

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welfare or community organisations for at least 8 hours a week on a continuing basis;

(iv) the person is an Australian resident.

Note 1: for *handicapped person, gainful employment, and vocational training* see section 19.

Note 2: for *Australian resident* see section 7.

1035(2) A person *satisfies the travel test* mentioned in subsection (1) if the person is required to travel to and from the person's home for the purpose of undertaking:

- (a) gainful employment; or
- (b) vocational training; or
- (c) job search activities; or
- (d) voluntary work approved by the Secretary for charitable, welfare or community organisations.

Subdivision B—Payability

1037 Mobility allowance not payable where person receiving motor vehicle assistance

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:
 - (i) item 135 or 135A of the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*; or
 - (ii) item 96 or 97 in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*;(other than a benefit 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.

1039AA Newly arrived resident's waiting period

1039AA(1) Subject to subsections (2), (3) and (4), a person who, on or after the commencement of this subsection:

- (a) enters Australia; and
- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

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

1039AA(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a mobility allowance.

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

1039AA(3) Subsection (1) does not apply to a person if the person has already served a newly arrived resident's waiting period.

1039AA(4) Subsection (1) does not apply to a person who becomes a handicapped person while in Australia.

Note: For *handicapped person* see section 19.

1039AA(5) Subsection (1) does not apply to a person if:

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

1039AB Duration of newly arrived resident's waiting period

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day the person first became an Australian resident; and
- (b) ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

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Division 2—Rate of mobility allowance

1044 Rate of mobility allowance

[see Appendix for CPI adjusted figures]

1044(1AA) The rate of mobility allowance is a daily rate worked out by dividing the fortnightly rate by 14.

1044(1) The fortnightly rate of mobility allowance is \$50.50.

1044(2) A person's mobility allowance rate is nil if:

(a) the person has received mobility allowance advance under section 1047A; and

(b) the person's advance payment period has not ended.

Note 1: for *advance payment period* see paragraph 1047A(2)(b).

Note 2: the rate of mobility allowance is indexed annually in line with CPI increases (see section 1191—item 34 of the CPI Indexation Table—and sections 1192 to 1194).

1044(3) In this section:

advance payment period, in relation to a person, means the period of 26 weeks that starts at the beginning of the advance entitlement period.

Division 3—Mobility allowance advance

1045 Qualification for mobility advance

- 1045(1) A person is qualified for a mobility allowance advance if:
- (a) the person is receiving mobility allowance; and
 - (b) the person requests the advance; and
 - (c) the Secretary is satisfied that the person will continue to be qualified for mobility allowance for at least 26 weeks from the day on which the person receives the advance; and
 - (d) a mobility allowance advance has not been paid to the person in the 52 weeks before the day on which the request is made.
- 1045(2) For the purposes of subsection (1):
- (a) a person's ***advance payday*** is the first payday of the person for mobility allowance for which it is practicable to pay the advance and adjust the person's mobility allowance payments; and
 - (b) a person's ***advance payment period*** is the period of 26 weeks starting on the advance payday.
- 1045(3) The amount of the advance is calculated by multiplying the mobility allowance rate by 13.
- 1045(4) For the purpose of subsection (3):
- mobility allowance rate*** is the rate of mobility allowance on the advance payday.

Division 4—Continuation

1046 Continuation of mobility allowance when person ceases to be qualified

1046(1) This section applies to a person if:

- (a) a mobility allowance is payable to a person; and
- (b) the person would, apart from this section, cease 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; or
 - (iii) to engage in voluntary work approved by the Secretary for charitable, welfare or community organisations; for at least 8 hours a week on a continuing basis.

1046(2) This section applies to a person if:

- (a) a mobility allowance is payable to a person; and
- (b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion:
 - (i) to receive newstart allowance for a reason other than the application of section 597, 601, 605 or 660IA; or
 - (ii) to receive youth allowance for a reason other than the application of section 541A, 544A, 544C, 550, 553B or 565C; or
 - (iii) to receive an austudy payment for a reason other than the application of section 569, 576 or 590C; or
 - (iv) to undertake job search activities as part of an activity plan developed by a Disability Panel established by the Secretary; or
 - (v) to undertake job search activities under the Competitive Employment Placement and Training Program administered by the Health Department.

1046(3) A person to whom this section applies continues to be qualified for the mobility allowance for 12 weeks after the person would, apart

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from this section, have ceased to be qualified for the mobility allowance.

1046(4) If:

- (a) a mobility allowance is payable to a person; and
- (b) the person would, apart from this section, cease to be qualified for the allowance because of circumstances other than those described in subsections (1) and (2);

the person continues to be qualified for the mobility allowance for 2 weeks after the person would, apart from this section, have ceased to be qualified for the mobility allowance.

1046(5) If:

- (a) a mobility allowance is payable to a person because of subsection (3); 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 on the day on which those circumstances occur.

Part 2.22—Advance payments of social security entitlements

Division 1—Qualification for advance payment

1061A Qualification for advance payment

Qualifications

- 1061A(1) Subject to this section, a person is qualified for an advance payment of a social security entitlement only if:
- (a) the social security entitlement is payable to the person; and
 - (b) the person has been receiving an income support payment for a continuous period of 3 months immediately before the day on which the person's application for the advance payment is made; and
 - (d) the Secretary is satisfied that the person will not suffer financial hardship from reductions in instalments of the social security entitlement as a result of receiving the advance payment.

Note 1: Other provisions of this Act deal with advances of social security payments that are not social security entitlements. For example, section 1047A deals with mobility allowance advance and Part 2.23 deals with advance pharmaceutical allowance.

Note 2: For *income support payment* and *social security entitlement* see subsection 23(1).

Note 3: For the determination of the continuous period in respect of which a person received an income support payment see section 38B.

- (2) The Secretary may determine in writing that paragraph (1)(b) does not apply to a person who has applied for an advance of youth allowance or austudy payment and the determination has effect accordingly. The determination is a disallowable instrument.

Disqualification

- 1061A(4) A person is not qualified for an advance payment if:

- (a) the maximum amount of advance payment to which the person would be entitled under Division 4 is less than \$250; or
 - (b) the person has received an advance payment, or an instalment of an advance payment, of a social security entitlement and has not fully repaid the advance payment; or
 - (c) the person has received the amount of an advance payment in a single lump sum, or has received the first instalment of such an amount, on or after 1 January 1997, and the period of 12 months from the day the lump sum or instalment was paid has not elapsed; or
 - (d) the person owes a debt to the Commonwealth (whether arising under this Act or not) that is recoverable under Part 5.2 by means of deductions from the person's social security payment.
- (5) Paragraph (4)(c) does not apply to a person:
- (a) who is receiving a pension PP (single); and
 - (b) who applies for an advance payment within the period of 28 days after ceasing to be a member of a couple.
- (6) Paragraph (4)(d) does not apply to a person if:
- (a) the debt the person owes to the Commonwealth arose as a result of the person's parenting payment rate changing from benefit PP (partnered) to pension PP (single); and
 - (b) the amount of the debt is smaller than the amount of advance payment to which the person would be entitled under Division 4.

Section 1061B

Division 2—Applying for advance payment

1061B Application

A person who wants an advance payment of a social security entitlement under this Part must apply for the advance payment in accordance with this Division.

1061C Form of application

1061C(1) The application must be in writing and must be in accordance with a form approved by the Secretary.

1061C(2) The application must specify the amount of advance payment sought.

1061D Lodgment of application

1061D(1) The application must be lodged:

- (a) at an office 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.

1061D(2) A place or person approved under subsection (1) must be a place or person in Australia.

1061D(3) The applicant must be in Australia when the application is lodged.

1061E Application may be withdrawn

1061E(1) An applicant for an advance payment or a person acting on behalf of an applicant may withdraw an application that has not been determined.

1061E(2) An application that is withdrawn is taken not to have been made.

1061E(3) A withdrawal may be made orally or in writing.

Division 3—Determination of application and payment of advance payment

1061EA Secretary to determine application

1061EA(1) The Secretary must determine the application in accordance with this Act.

1061EA(2) The Secretary must grant the application if the Secretary is satisfied that the person is qualified for the advance payment.

1061EB Payment of advance payment

1061EB(1) Subject to subsection (3), if the application is granted, the advance payment of the social security entitlement is to be paid on the next day on which the person is paid an instalment of the social security entitlement.

1061EB(2) Subject to subsection (3), the advance payment is to be paid as a single lump sum.

1061EB(3) The Secretary may determine that:

- (a) an advance payment is to be paid on the day specified in the determination; or
- (b) an advance payment is to be paid in the two instalments specified in the determination on the days specified in the determination.

Section 1061ED

Division 4—Amount of advance payment

1061ED Amount of advance payment—social security pensions

Application

1061ED(1) The amount of an advance payment of a social security pension is calculated according to this section.

Amount of advance

1061ED(2) Subject to section 1061EH, the amount of the advance payment is the smallest of the following amounts:

- (a) the amount of advance payment sought;
- (b) the maximum amount of advance payment payable to the person as worked out under subsection (3);
- (c) \$500.

Formula for maximum amount of advance under paragraph (2)(b)

1061ED(3) For the purposes of paragraph (2)(b), the maximum amount of advance payment payable to the person is the amount worked out using the following formula:

$6\% \times \text{Annual payment rate}$

where:

annual payment rate is:

- (a) if the person was receiving a social security pension on the last payday before the application for the advance payment was made—the rate at which the pension was payable under the relevant Pension Rate Calculator or Pension PP (Single) Rate Calculator (as the case requires) to the person on that payday, excluding any amount payable by way of remote area allowance; or
- (b) if the person was receiving a benefit PP (partnered) on the last payday before the application for the advance payment was made—the rate at which pension PP (single) is payable to the person under the Pension PP (Single) Rate Calculator on the person's first pension PP (single) payday after the

application for the advance payment was made, excluding any amount payable by way of remote area allowance.

Rounding

1061ED(4) Amounts worked out under subsection (3) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Example:

Facts: Geoff has, at all times during the past 5 months, been receiving age pension. His annual payment rate is \$4,680. He applies for an advance payment of \$290.

Application: The maximum amount of advance payment payable to Geoff is worked out under subsection (3) as follows: $6\% \times \$4680 = \280.80 . This is the smallest of the 3 amounts referred to in subsection (2). Geoff can therefore be paid an advance payment of \$280.80.

1061EE Amount of advance payment—widow allowance, youth allowance, austudy payment, mature age allowance under Part 2.12B or newstart allowance

Application

1061EE(1) The amount of an advance payment of widow allowance, youth allowance, austudy payment, mature age allowance under Part 2.12B or newstart allowance is worked out according to this section.

Amount of advance

1061EE(2) Subject to section 1061EH, the amount of the advance payment is the smallest of the following amounts:

- (a) the amount of advance payment sought;
- (b) the maximum amount of advance payment payable to the person as worked out under subsection (3) or (4), as the case requires;
- (c) \$500.

Formula for maximum amount of advance: widow allowance and mature age allowance

1061EE(3) For the purpose of paragraph (2)(b), the maximum amount of advance payment of widow allowance or mature age allowance

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under Part 2.12B payable to the person is the amount worked out under the following formula:

$$6\% \times \text{Fortnightly payment rate} \times 26$$

Formula for maximum amount of advance: newstart allowance

1061EE(4) For the purpose of paragraph (2)(b), the maximum amount of advance payment of youth allowance, austudy payment or newstart allowance payable to the person is the amount worked out under the following formula:

$$7\% \times \text{Fortnightly payment rate} \times 26$$

Rounding

1061EE(5) Amounts worked out under subsection (3) or (4) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Meaning of fortnightly payment rate

1061EE(6) For the purposes of the formulae in subsections (3) and (4):

fortnightly payment rate means the fortnightly rate of widow allowance, youth allowance, austudy payment, mature age allowance under Part 2.12B or newstart allowance (as the case requires) payable under Benefit Rate Calculator B to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance.

Example:

Facts: Veronique has, at all times in the past 4 months, been receiving widow allowance. Her fortnightly payment rate is \$200. She applies for an advance payment of \$300.

Result: The maximum amount of advance payment payable to Veronique is worked out under subsection (3) as follows:

$$6\% \times \$200 \times 26 = \$312.00$$

The smallest of the 3 amounts referred to in subsection (2) is \$300. Veronique can therefore be paid an advance payment of \$300.

1061EH Minimum amount of advance payment

1061EH(1) An advance payment is not payable if it would be less than \$250.

1061EH(2) Subsection (1) does not prevent payment of an advance payment in instalments of less than \$250.

Example:

Facts: Sarah has, at all times during the past 14 weeks, been receiving pension PP (single). Her annual payment rate is \$7,800. She applies for an advance payment of \$470.

Application: The maximum amount of advance payment payable to Sarah is worked out under subsection 1061ED(3) as follows: $6\% \times \$7,800 = \468 . The Secretary directs that the advance payment be paid in 2 equal instalments. Sarah therefore receives 2 instalments of \$234 each.

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Division 5—Payment of advance payment

1061EI Advance payment to be paid to person or nominee

- 1061EI(1) Subject to subsection (3), an advance payment of a person's social security entitlement is to be paid to that person.
- 1061EI(2) The Secretary may direct that the whole or part of the advance payment of a person's social security entitlement is to be paid to someone else on behalf of the person.
- 1061EI(3) If the Secretary makes a direction under subsection (2), the advance payment is to be paid in accordance with the direction.

1061EJ Payment into bank account etc.

- 1061EJ(1) An amount that is to be paid to a person under section 1061EI may only be paid in accordance with this section.
- 1061EJ(2) Subject to this section, the amount is to be paid, at the time or times worked out under section 1061EB, to the credit of a bank account nominated and maintained by the person.
- 1061EJ(3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.
- 1061EJ(4) Where the person has not nominated an account for the purposes of subsection (2), then, subject to subsections (5) and (7), the amount is not to be paid.
- 1061EJ(5) Where:
- (a) an amount has not been paid because of subsection (4); and
 - (b) the person nominates an account for the purposes of subsection (2);
- the amount is to be paid under subsection (2).

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- 1061EJ(6) The Secretary may direct that the whole or a part of the amount be paid to the person in a different way from that provided for by subsection (2).
- 1061EJ(7) If the Secretary gives a direction under subsection (6), the amount is to be paid in accordance with the direction.

Division 6—Protection of advance payment

1061EK Advance payment to be absolutely inalienable

Inalienability

1061EK(1) Subject to subsections (2) and (3) and section 1359, an advance payment under this Part is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Note: The effect of a garnishee order on an advance payment of a social security entitlement is dealt with in the Part of this Chapter that deals with that social security entitlement. For example, the effect of a garnishee order on an advance payment of age pension is dealt with in Part 2.2 (which deals with age pension).

Payments to Commissioner of Taxation at recipient's request

1061EK(2) The Secretary may make deductions from an advance payment payable to a person under this Part if 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 social security payment if requested by the Commissioner of Taxation (see section 1359).

Deductions from advance payment with recipient's consent

1061EK(3) The Secretary may make deductions from an advance payment payable to a person under this Part if the recipient consents under section 1234A to the Secretary making the deductions.

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

Division 7—Repayment of advance payment

1061EL Repayment of advance payment

- 1061EL(1) If a person receives an advance payment or an instalment of an advance payment under this Part, the person must repay the advance payment or instalment to the Commonwealth by one or more of the following methods:
- (a) deductions from the person's social security entitlement under Chapter 3 (General provisions relating to payability and rates);
 - (b) a method provided for by Chapter 5 (Overpayments and debt recovery);
 - (c) a method (other than a method described in paragraph (a) or (b)) that is acceptable to both the person and the Secretary.
- 1061EL(2) Subsection (1) does not affect:
- (a) the operation of subsection 1224E(1) (Debts arising from advance payments of social security entitlements); or
 - (b) the Secretary's powers and duties under Part 5.4 (Non-recovery of debts) if the amount of the advance payment or instalment that has not been repaid becomes a debt due to the Commonwealth.

Part 2.22A—Special employment advances

Division 1—Qualification for special employment advance

1061EM Qualification for special employment advance

1061EM(1) Subject to section 1061EO, a person is qualified for a special employment advance at a particular time (the *relevant time*) only if:

- (a) the person is qualified for a special employment advance qualifying entitlement at the relevant time; and
- (b) the person has been receiving an income support payment for a continuous period of 3 months immediately before the day on which the person's application for the special employment advance is made; and
- (c) either of the following applies:
 - (i) the person or, if the person is a member of a couple, the person's partner has earned from casual work in Australia, but has not received, income (the *unreceived income*);
 - (ii) the Secretary is satisfied that the person has received a definite offer of employment in Australia (the *offered employment*) for a period of not less than 6 weeks and needs financial assistance from the Commonwealth to enable him or her to take up the employment; and
- (d) subsection (2) or (3), as the case requires, applies for the purpose of determining whether the person is qualified for a special employment advance at the relevant time; and
- (e) where subparagraph (c)(i) applies—the person is in severe financial hardship; and
- (f) the Secretary is satisfied that the person will not suffer financial hardship as a result of the recovery by the Commonwealth of the special employment advance.

1061EM(2) This subsection applies for the purpose of determining whether a person is qualified for a special employment advance at the relevant time only where:

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- (a) the person's application for the advance was based on the effect of the unreceived income on the person's special employment advance qualifying entitlement; and
- (b) the person is not a CDEP Scheme participant; and
- (c) either of the following subparagraphs applies:
 - (i) if the person were qualified for the special employment qualifying entitlement on the next payday for the entitlement at a rate equal to the maximum basic rate of the entitlement, the rate of the entitlement on that payday would be reduced by at least 50% as a result of the person or the person's partner having earned the unreceived income;
 - (ii) subparagraph (i) does not apply in respect of the person but, if the person were qualified for the special employment qualifying entitlement on 2 or more paydays for the entitlement at a rate equal to the maximum basic rate of the entitlement, the average of the rates of the entitlement on those paydays would be reduced by at least 50% as a result of the person or the person's partner having earned the unreceived income.

1061EM(3) This subsection applies for the purpose of determining whether a person is qualified for a special employment advance at the relevant time only where the person's application for the advance was based on the person's need for financial assistance from the Commonwealth to enable him or her to take up the offered employment and:

- (a) if the person were qualified for the special employment qualifying entitlement on each of the paydays for the entitlement that occur in the period of 6 weeks referred to in subparagraph (1)(c)(ii) at a rate equal to the maximum basic rate of the entitlement, the average of the rates of the entitlement on those paydays:
 - (i) would be reduced by at least 50% as a result of the person having taken up the offered employment; or
 - (ii) would be so reduced if Module J of the Youth Allowance Rate Calculator in section 1067G or Module E of the Austudy Payment Rate Calculator were disregarded; or

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- (b) the person would cease to be qualified for the special employment advance qualification upon his or her taking up the offered employment.

1061EN Meaning of *in severe financial hardship*

1061EN(1) For the purposes of paragraph 1061EM(1)(e) as it applies to a person who makes a claim for special employment advance, the person is *in severe financial hardship* if:

- (a) where the person is not a member of a couple—the value of the person’s liquid assets (within the meaning of subsection 14A(1)) is less than the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the person; or
- (b) where the person is a member of a couple—the value of the person’s liquid assets (within the meaning of subsection 14A(2)) is less than twice the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the person.

1061EN(2) If the person referred to in subsection (1) is a CDEP Scheme participant, then, in determining for the purposes of that subsection the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement payable to the person, the person’s maximum basic rate is taken to be the rate that would be that maximum basic rate if sections 408CG, 500W, 552C, 614A, 660YCH and 771HK had not been enacted.

1061EO Person not qualified in certain circumstances

1061EO(1) A person is not qualified for a special employment advance if:

- (a) the person is qualified for an employment entry payment under Part 2.13 and has made a claim under section 665 in respect of the offered employment; or
- (b) the lump sum amount, or the total of the amounts of the instalments, as the case may be, of the special employment advance to which the person would be entitled under Division 4 is less than \$50; or
- (c) the person owes a debt to the Commonwealth (whether arising under this Act or not) and the debt is recoverable

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under Part 5.2 by means of deductions from the person's social security payment; or

- (d) where subparagraph 1061EM(1)(c)(ii) applies in respect of the person—the person is participating in a program for the placing of people in employment and the program has been declared by the Secretary, in writing, to be a program to which this paragraph applies.

1061EO(2) A declaration under paragraph (1)(d) is a disallowable instrument.

Division 4—Amount of special employment advance

1061EW Where claim based on effect of unreceived income on special employment advance qualifying entitlement

1061EW(1) This section applies where the claim was based on the effect of the unreceived income on the claimant's special employment advance qualifying entitlement.

1061EW(2) Subject to section 1061EY, the total amount of the special employment advance payable to the claimant is to be the smallest of the following amounts:

- (a) the amount sought in the claim for the advance;
- (b) the amount by which the instalment, or the sum of the amounts by which the instalments, of the claimant's special employment advance qualifying entitlement is or will be reduced because of the unreceived income;
- (c) \$500;
- (d) if an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth—the difference between that amount and \$500.

1061EX Where claim based on claimant's need for financial assistance to take up offered employment

1061EX(1) This section applies where the claim was based on the claimant's need for financial assistance to take up offered employment.

1061EX(2) Subject to the following provisions of this section and section 1061EY, the total amount of the special employment advance payable to the claimant is to be the smallest of the following amounts:

- (a) the amount sought in the claim for the advance;
- (b) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;
- (c) \$500.

1061EX(3) If:

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- (a) an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth; and
- (b) the sum of:
 - (i) the amount referred to in paragraph (a); and
 - (ii) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;is not more than \$500;

the total amount of the special employment advance payable to the claimant is the amount referred to in subparagraph (b)(ii).

1061EX(4) If:

- (a) an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth; and
- (b) the sum of:
 - (i) the amount referred to in paragraph (a); and
 - (ii) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;is more than \$500;

the following paragraphs have effect:

- (c) where the amount referred to in paragraph (a) is less than \$500 and the claimant satisfies the Secretary that the claimant would have sufficient financial resources to enable him or her to take up the offered employment if the total amount of the special employment advance payable were an amount equal to the difference between \$500 and the amount referred to in paragraph (a)—the total amount of the special employment advance payable to the claimant is an amount equal to that difference;
- (d) where paragraph (c) does not apply—no amount of special employment advance is payable to the claimant.

1061EX(5) If:

- (a) the claimant is not a member of a couple; and
- (b) the value of the claimant's liquid assets (within the meaning of subsection 14A(1)) exceeds the fortnightly amount of the

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maximum payment rate of the special employment advance qualifying entitlement that is payable to the claimant;
the total amount of the special employment advance that, apart from this subsection, would be payable to the claimant under subsections (2) to (4) is reduced by the amount of the excess.

1061EX(6) If:

- (a) the claimant is a member of a couple; and
- (b) the value of the claimant's liquid assets (within the meaning of subsection 14A(2)) exceeds twice the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the claimant;

the total amount of the special employment advance that, apart from this subsection, would be payable to the claimant under subsections (2) to (4) is reduced by the amount of the excess.

1061EX(7) In determining for the purposes of subsection (5) or (6) the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to a claimant who is a CDEP Scheme participant, the claimant's maximum basic rate is taken to be the rate that would be that maximum basic rate if sections 408CG, 500W, 552C, 614A, 660YCH and 771HK had not been enacted.

1061EY Reduction of special employment advance by amount of any employment entry payment

If:

- (a) a person claims a special employment advance; and
- (b) an employment entry payment has been paid, or is payable, to the person in respect of the employment referred to in subparagraph 1061EM(1)(c)(i) or (ii);

the total amount of the special employment advance that, apart from this section, would be payable to the person is reduced by the amount of the employment entry payment.

Division 7—Repayment of special employment advance

1061EZC Repayment of special employment advance

- 1061EZC(1) If a person receives a special employment advance or an instalment of a special employment advance under this Part, the person must repay the special employment advance or instalment to the Commonwealth by one or more of the following methods:
- (a) deductions from the person's special employment advance qualifying entitlement under Chapter 3 (General provisions relating to payability and rates);
 - (b) a method provided for by Chapter 5 (Overpayments and debt recovery);
 - (c) a method (other than a method described in paragraph (a) or (b)) that is acceptable to both the person and the Secretary.

1061EZC(2) Subsection (1) does not affect the Secretary's powers and duties under Part 5.4 (Non-recovery of debts) if the amount of the special employment advance or instalment that has not been repaid becomes a debt due to the Commonwealth.

Part 2.23—Advance pharmaceutical allowance

Division 1—Qualification for and payability of advance pharmaceutical allowance

1061F Qualification for advance pharmaceutical allowance

- 1061F(1) A person is qualified for an advance pharmaceutical allowance if:
- (a) the person is receiving a social security pension; and
 - (b) the Secretary is satisfied that the person's ordinary income is not more than \$20.50 per fortnight.
- 1061F(2) For the purposes of this section, a person's *ordinary income* does not include:
- (a) a payment:
 - (i) that the person is entitled to under the law of a foreign country; and
 - (ii) that results in the person's social security pension rate being reduced by an amount equal to the amount of the payment; or
 - (b) a periodic compensation payment to which Part 3.14 applies.
- 1061F(3) For the purposes of this section, if a person is a member of a couple the amount of the person's *ordinary income* is worked out by adding the couple's ordinary incomes (on a fortnightly basis) and dividing by 2.

1061G Advance pharmaceutical allowance not payable in some circumstances

- 1061G(1) Even though a person is qualified for an advance pharmaceutical allowance, the allowance is not payable to the person if the person is not an Australian resident.
- 1061G(2) Even though a person is qualified for an advance pharmaceutical allowance, the allowance is not payable to the person if:
- (a) the person is a member of a couple; and
 - (b) the person's partner:

- (i) is receiving an advance pharmaceutical allowance under the Veterans' Entitlements Act; and
- (ii) is not receiving a service pension.

Note: for *Veterans' Entitlements Act* and *service pension* see subsection 23(1).

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Division 3—Amount of advance pharmaceutical allowance

1061JC Amount of advance pharmaceutical allowance

Subject to section 1061JD, the amount of a person's advance pharmaceutical allowance is:

$$\frac{\text{Pharmaceutical allowance rate} \times 7}{26}$$

where:

pharmaceutical allowance rate is the yearly amount of pharmaceutical allowance that would be added to the person's maximum basic rate if a pharmaceutical allowance advance were not being paid to the person.

Note: Pharmaceutical rates are to be found at:

- (a) point 1064-C8 of Pension Rate Calculator A;
- (b) point 1065-C8 of Pension Rate Calculator B;
- (c) point 1066-C7 of Pension Rate Calculator C;
- (d) point 1066A-D8 of Pension Rate Calculator D;
- (e) point 1066B-D8 of Pension Rate Calculator E;
- (f) point 1068A-C7 of Pension PP (Single) Rate Calculator.

1061JD Annual limit

1061JD(1) The amount paid to a person in a calendar year by way of:

- (a) pharmaceutical allowance; and
- (b) advance pharmaceutical allowance;

is not to exceed the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note: for the amount *paid* to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

1061JD(2) In this section:

advance pharmaceutical allowance includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

pharmaceutical allowance includes pharmaceutical allowance under the Veterans' Entitlements Act.

Part 2.23A—Crisis payment

Division 1—Qualification for crisis payment

1061JG Qualification—release from gaol or psychiatric confinement

A person is qualified for a crisis payment if, after the commencement of this section:

- (a) the person is released from gaol, or from psychiatric confinement that the person was undergoing because he or she had been charged with committing an offence, after spending at least 14 days in gaol or such confinement; and
- (b) the person claims the crisis payment either while the person was in gaol or psychiatric confinement, or within 7 days after being released; and
- (c) on the day on which the claim for the crisis payment is made (including the day on which it is taken to have been made under Schedule 2 to the Administration Act:
 - (i) the person is qualified for a social security pension or social security benefit; and
 - (ii) the person is in severe financial hardship (see section 19D).

1061JH Qualification—extreme circumstances forcing departure from home

1061JH(1) A person is qualified for a crisis payment if, after the commencement of this section:

- (a) the person has left, or cannot return to, his or her home because of an extreme circumstance; and
- (b) the extreme circumstance makes it unreasonable to expect the person to remain in, or return to, the home; and
- (c) the person has established, or intends to establish, a new home; and
- (d) at the time the extreme circumstance occurred, the person was in Australia; and

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- (e) the person makes a claim for a crisis payment within 7 days after the extreme circumstance occurred; and
- (f) on the day on which the claim is made:
 - (i) the person is in severe financial hardship (see section 19D); and
 - (ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit and the person is qualified for the pension or benefit; and
- (g) during the 12 months immediately preceding the day on which the claim is made, no more than 3 crisis payments have been payable to the person.

Note: Examples of extreme circumstances that would qualify a person for crisis payment are the person's house being burnt down, or the person being subjected to domestic or family violence.

1061JH(2) A person is not qualified for a crisis payment in respect of an extreme circumstance if the Secretary is satisfied that the extreme circumstance is brought about with a view to obtaining a crisis payment.

1061JJ Crisis payment not payable in addition to disaster relief payment

A crisis payment is not payable to a person in respect of an extreme circumstance if the person is qualified for a disaster relief payment (whether under this Act or otherwise) in respect of the same extreme circumstance.

1061JK Crisis payment not payable if assurance of support in force

A person is not qualified for a crisis payment if the Secretary is satisfied that at the time the person would otherwise have been qualified for crisis payment:

- (a) an assurance of support was in force in respect of the person (the *assuree*); and
- (b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and

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Part 2.23A Crisis payment

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(c) it was reasonable for the assuree to accept that support.

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

Division 4—Amount of crisis payment

1061JU Amount of payment

1061JU(1) Subject to subsection (2), the amount of a crisis payment payable to a person is half the fortnightly amount at the maximum basic rate of the social security pension or social security benefit that is payable to the person.

1061JU(2) If a person is a CDEP Scheme participant, the amount of a crisis payment payable to the person is half the fortnightly amount at the maximum basic rate of the social security pension or social security benefit that the person is taken to be receiving under section 1188H.

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

1061JU(3) If, under section 1188H, the person is taken to be receiving more than one social security pension or social security benefit, the person is taken, for the purposes of subsection (2), to be receiving the pension or benefit with the higher maximum basic rate.

1061JU(4) In this section:

maximum basic rate, in relation to each of the following social security payments, means (unless otherwise stated below) the rate worked out at Module B of the relevant Rate Calculator:

- (a) for the following pensions if the recipient is not blind:
 - (i) age pension;
 - (ii) disability support pension (recipient has turned 21);
 - (iii) carer pension;
 - (iv) wife pension;the Rate Calculator at the end of section 1064; or
- (b) for age pension and disability support pension (recipient has turned 21) if the recipient is blind—the Rate Calculator at the end of section 1065; or
- (c) for widow B pension—the Rate Calculator at the end of section 1066; or

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- (d) for disability support pension if the recipient is under 21 and not blind—the Rate Calculator at the end of section 1066A; or
- (e) for disability support pension if the recipient is under 21 and is blind—the Rate Calculator at the end of section 1066B; or
- (f) for the following allowances:
 - (i) newstart allowance;
 - (ii) widow allowance;
 - (iii) sickness allowance;
 - (iv) partner allowance;
 - (v) mature age allowance granted under Part 2.12B;the Rate Calculator at the end of section 1068; or
- (g) for mature age allowance granted under Part 2.12A—the Rate Calculator at the end of section 1064; or
- (h) for a pension PP (single)—the Rate Calculator at the end of section 1068A; or
- (i) for benefit PP (partnered)—Module C of the Rate Calculator at the end of section 1068B; or
- (j) for mature age partner allowance—the Rate Calculator at the end of section 1064; or
- (k) for special benefit—section 746; or
- (l) for youth allowance—the Rate Calculator at the end of section 1067G; or
- (m) for austudy payment—Step 3 of the Method statement in Module A of the Rate Calculator at the end of section 1067L.

Part 2.24—Disaster relief payment

1061K Qualification for disaster relief payment

A person is qualified for a disaster relief payment if:

- (a) because of a major disaster:
 - (i) a person's principal residence is severely damaged; or
 - (ii) there is a significant interruption to a person's source of livelihood; and
- (b) when the person was affected by the disaster, he or she:
 - (i) was residing in Australia; and
 - (ii) was not an unlawful non-citizen within the meaning of the *Migration Act 1958*.

Note: for *major disaster* see subsection 23(1).

1061P Amount of payment

1061P(1) The amount of a disaster relief payment payable to a person who is a member of a couple is the sum of:

- (a) the rate per fortnight for Item 3 in Table B of point 1064-B1 (maximum basic rate); and
- (b) the person's daily rate of family tax benefit worked out in subsection (3), multiplied by 14; and
- (c) one twenty-sixth of the applicable rate for item 2 in Table D of point 1064-D5 (rent assistance).

1061P(2) The amount of a disaster relief payment payable to a person who is not a member of a couple is the sum of:

- (a) the rate per fortnight for item 1 in Table B of point 1064-B1 (maximum basic rate); and
- (b) the person's daily rate of family tax benefit worked out in subsection (3), multiplied by 14; and

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(c) one twenty-sixth of the applicable rate for item 1 in Table D of point 1064-D5 (rent assistance).

Note 1: if a person is receiving a social security pension or a social security benefit, the disaster relief payment is in addition to the person's normal payments.

Note 2: if a person claims a social security pension or a social security benefit as a result of a major disaster within 2 weeks of claiming a disaster relief payment, he or she will be paid as from the date he or she was affected by the disaster, in addition to the disaster relief payment.

1061P(3) A person's daily rate of family tax benefit is calculated in accordance with the following formula and then rounded in accordance with subsection 58(3) of the Family Assistance Act:

$$\frac{\text{Maximum rate of FTB} - \text{Base rate of FTB}}{365}$$

where:

base rate of FTB means the base rate of family tax benefit for the person under clause 4 of Schedule 1 to the Family Assistance Act.

maximum rate of FTB means the maximum rate of family tax benefit for the person under step 1 of clause 3 of Schedule 1 to the Family Assistance Act.

Part 2.24A—Pensioner education supplement

Division 1—Qualification for pensioner education supplement

Subdivision A—The basic rules

1061PA Qualification for pensioner education supplement

A person is qualified for a pensioner education supplement if the person:

- (a) is undertaking qualifying study (see Subdivision B); and
- (b) is receiving a payment attracting pensioner education supplement (see Subdivision C); and
- (c) is of pensioner education supplement age (see Subdivision D); and
- (d) meets the residency requirements under Subdivision E.

Note: Division 2 sets out situations in which pensioner education supplement is not payable even if the person qualifies for it.

Subdivision B—Undertaking qualifying study

1061PB Undertaking qualifying study

General

1061PB(1) For the purposes of this Part, a person is ***undertaking qualifying study*** if the Secretary is satisfied that:

- (a) the person:
 - (i) is enrolled in a course of education at an educational institution; or
 - (ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or
 - (iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being

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- enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and
- (b) the course in which the person is enrolled, or intends to enrol, is an approved course of education or study (see section 1061PC); and
 - (c) the person is a full-time student or a concessional study-load student in respect of that course (see sections 1061PD and 1061PE); and
 - (d) the person satisfies the progress rules (see sections 1061PH and 1061PI).

Persons not undertaking qualifying study

1061PB(2) A person is not undertaking qualifying study if the person:

- (a) is employed on a full-time basis as an apprentice or trainee under an industrial instrument and has a training agreement (however described) with a training authority (by whatever name called) of a State or Territory; or
- (b) has completed a course for:
 - (i) a degree of Master or Doctor at an educational institution; or
 - (ii) a qualification at a foreign institution that is, in the Secretary's opinion, of the same standing as a degree of Master or Doctor at an educational institution.

Note: For *educational institution* see subsection 23(1).

Taken to be undertaking qualifying study from 1 January

1061PB(3) For the purpose of subsection (1), a person is taken to have been undertaking qualifying study from 1 January in a particular year if:

- (a) the person is enrolled in a course of education that is a full year course starting before 1 April in that year; and
- (b) the person starts his or her full year course before that day; and
- (c) either:

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- (i) the person did not undertake full-time or part-time study for the whole, or a part, of the immediately preceding semester (excluding vacations); or
- (ii) the person did not undertake full-time or part-time study for more than one semester (excluding vacations) during the immediately preceding 12 months and the Secretary is satisfied that this was due to the person's illness or to other circumstances beyond the person's control.

Taken to be undertaking qualifying study from 1 July

- 1061PB(4) For the purpose of subsection (1), a person is taken to have been undertaking qualifying study from 1 July in a particular year if:
- (a) the person is enrolled in a course of education that is a full year course starting on or after 1 July in that year; and
 - (b) the person starts his or her full year course on or after that day; and
 - (c) either:
 - (i) the person did not undertake full-time or part-time study for the whole, or a part, of the immediately preceding semester (excluding vacations); or
 - (ii) the person did not undertake full-time or part-time study for more than one semester (excluding vacations) during the immediately preceding 12 months and the Secretary is satisfied that this was due to the person's illness or to other circumstances beyond the person's control.

Taken to be undertaking qualifying study until 31 December

- 1061PB(5) For the purpose of subsection (1), a person is taken to be undertaking qualifying study until the end of 31 December in a particular year if:
- (a) the person completes his or her course of education after 15 September but before 31 December in that year; and
 - (b) the person's course of education is a full year course or a late starting course.

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Industrial instruments

1061PB(6) In paragraph (2)(a):

industrial instrument means an award or agreement (however described) that:

- (a) is made under or recognised by a law of the Commonwealth or of a State or Territory that:
 - (i) regulates the relationships between employers and employees; or
 - (ii) provides for the prevention or settlement of disputes between employers and employees; and
- (b) concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.

1061PC Approved course of education or study

For the purposes of paragraph 1061PB(1)(b), a course is an approved course of education or study if it is a course that the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

1061PD Full-time students

For the purposes of this Subdivision, a person is a ***full-time student*** in respect of a course if:

- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period; or
- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Note: For ***normal amount of full-time study*** see section 1061PF.

1061PE Concessional study-load students

- 1061PE(1) For the purposes of this Subdivision, there are 2 classes of concessional study-load students, namely:
- (a) 25% concessional study-load students; and
 - (b) 66% concessional study-load students.
- 1061PE(2) For the purposes of this Subdivision, a person is a **25% concessional study-load student** in respect of a course if this subsection applies to the person and:
- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
 - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.
- 1061PE(3) For the purposes of this Subdivision, a person is a **66% concessional study-load student** in respect of a course if this subsection applies to the person and:
- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
 - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.
- Note: For *normal amount of full-time study* see section 1061PF.
- 1061PE(4) Subsection (2) applies to a person if:
- (a) an officer in the Commonwealth Rehabilitation Service or an appropriate medical practitioner who has a detailed

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knowledge of the person's physical condition has stated in writing that:

- (i) the person has a substantial physical disability; and
 - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
- (b) a medical practitioner specialising in psychiatry has stated in writing that:
- (i) the person has a substantial psychiatric disability; and
 - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
- (c) a psychologist who is registered with the Australian Psychologist Society has stated in writing that the person:
- (i) has an intellectual disability; and
 - (ii) cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
- (d) the person is receiving:
- (i) a disability support pension, a carer payment or a pension PP (single) under this Act; or
 - (ii) an invalidity service pension or a carer service pension under the Veterans' Entitlements Act; or
- (e) the person has a dependent child aged less than 16 years and:
- (i) is receiving a widow B pension under this Act; or
 - (ii) is a sole parent and is receiving a special benefit under this Act; or
 - (iii) is receiving a widow allowance under this Act; or
 - (iv) is receiving a pension under Part II of the Veterans' Entitlements Act; or
 - (v) is receiving pension under Part IV of the Veterans' Entitlements Act.

1061PE(5) Subsection (3) applies to a person if:

- (a) the person cannot undertake the course as a full-time student because of:
 - (i) the relevant educational institution's usual requirements for the course; or

- (ii) a specific direction in writing to the person from the academic registrar or an equivalent officer; or
- (b) the academic registrar (or an equivalent officer) of the relevant educational institution recommends in writing that the person undertake less than the normal amount of full-time study in respect of the course for specified academic or vocational reasons for a period not exceeding half an academic year.

1061PF Normal amount of full-time study

1061PF(1) For the purposes of this Subdivision, the *normal amount of full-time study* in respect of a course is:

- (a) if the course is a designated course of study within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*—the standard student load determined in respect of the course by the institution in question under subsection 39(2) of that Act; or
- (b) if the course is not such a designated course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or
- (c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

1061PF(2) Without limiting subsection (1), the *normal amount of full-time study* in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

1061PG First fortnight of classes

A person is taken to be undertaking full-time study or a concessional study-load (as the case may be) in respect of a course during the period (the *relevant period*):

- (a) starting on the first day of classes in a study period; and

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- (b) ending on the Friday of the second week of classes in the study period;
- if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

1061PH Progress rules—secondary students

General rule

- 1061PH(1) Subject to subsection (2), a person enrolled in, or intending to enrol in, a secondary course satisfies the progress rules for the purposes of paragraph 1061PB(1)(d) if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

Students repeating year 12

- 1061PH(2) A person does not satisfy the progress rules if:
- (a) the person is enrolled in a secondary course that is at year 12 level, or the overall level of which is at year 12 level (see subsections (3) and (4)); and
 - (b) the person has been a full-time student in respect of a course at that level (a *previous course*) in each of 2 previous years; and
 - (c) none of the following circumstances apply:
 - (i) the person failed a previous course because of an illness that had not been diagnosed when the person began that course;
 - (ii) the person failed a previous course because of other circumstances beyond the person's control that were not apparent when the person began that course;
 - (iii) the person failed a previous course because English is not the person's native language;
 - (iv) the person completed or discontinued a previous course within 6 months after the relevant academic year started;
 - (v) each of the previous courses was undertaken more than 10 years before the present study.

Course at year 12 level

- 1061PH(3) A secondary course is at year 12 level if the institution in which the course is undertaken regards it as being at year 12 level.

Overall level of course at year 12 level

- 1061PH(4) The overall level of a secondary course is at year 12 level if the institution in which the course is undertaken regards at least 50% of the course as being at year 12 level.

Meaning of secondary course

- 1061PH(5) For the purposes of this section, a course is a *secondary course* if the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, that the course is a secondary course for the purposes of that Act.

1061PI Progress rules—tertiary students

Full-time students

- 1061PI(1) A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
 - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;
- the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.

Note: For allowable study time for a course see subsection (3).

Concessional study-load students

- 1061PI(2) A person who is a concessional study-load student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or

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- (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;

the time already spent by the person on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for the course.

Note: For allowable study time for a course see subsections (3) and (4).

Allowable study time—full-time students and 66% concessional study-load students

1061PI(3) The allowable study time for a course undertaken by a full-time student or a 66% concessional study-load student is:

- (a) if the minimum amount of time needed to complete the course as a full-time student is one year or less—that minimum amount of time; or
- (b) if the minimum amount of time needed to complete the course as a full-time student is more than 1 year and:
 - (i) the student is enrolled, or intends to enrol, in a year-long subject; or
 - (ii) the student's further progress in the course depends on passing a whole year's work in the course; the minimum amount of time plus 1 year; or
- (c) in any other case—the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

Allowable study time—25% concessional study-load students

1061PI(4) The allowable study time for a course undertaken by a 25% concessional study-load student is twice the minimum period in which it is possible to complete the course as a full-time student.

Time spent by person studying part-time

1061PI(5) If a student has studied part-time for a course over a certain period, the time spent by the student on that course is taken to be the proportion of that period calculated by using the formula:

Study undertaken

Normal full - time study

where:

normal full-time study means the normal amount of full-time study for the course.

study undertaken means the amount of study undertaken part-time by the student for the course.

Current full-time students who have previously undertaken courses as concessional study-load students

1061PI(6) If:

- (a) a person is undertaking a course as a full-time student; and
- (b) the person has previously undertaken:
 - (i) part of the course; or
 - (ii) one or more than one other course at the same level as that course;

as a concessional study-load student; and

- (c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the ***previous study***) is not to be disregarded under subsection (7);

the time spent by the person undertaking the previous study is taken to be equal to the minimum amount of time that a full-time student would have taken to complete the previous study.

Matters to be disregarded in determining whether someone has exceeded the allowable study time

1061PI(7) In determining whether a person has exceeded the allowable study time (for a full-time student or a concessional study-load student), disregard the following:

- (a) if the person has completed a course (a ***pre-requisite course***), the completion of which is the normal requirement for admission to the course in which the person is enrolled, or intends to enrol—time spent undertaking the pre-requisite course;

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- (b) a failed year of study, or a failed part of a year of study, if the failure is because of:
 - (i) the person's illness; or
 - (ii) other circumstances beyond the person's control;
- (c) time spent undertaking a course that has been permanently discontinued because of:
 - (i) the person's illness; or
 - (ii) other circumstances beyond the person's control;
- (d) time spent undertaking a course that has been completed but which, because of the person's illness, the person cannot use in any of the trades or profession to which the course is appropriate;
- (e) time spent undertaking a TAFE course if the normal length of the course for a full-time student is one year or less;
- (f) time spent undertaking a course more than 10 years ago, unless the course has since been completed;
- (g) time spent undertaking a course after 1973 if the course was not:
 - (i) approved for the Tertiary Education Assistance Scheme; or
 - (ii) approved for the AUSTUDY scheme; or
 - (iii) an approved course for the purposes of paragraph 541B(1)(c), 569A(b) or 1061PB(1)(b) of this Act;
- (h) time spent undertaking a course at a foreign institution;
- (i) time spent undertaking a subject from which the student withdrew, if the educational institution in which the subject was undertaken did not record the withdrawal from the subject as a failure;
- (j) any time spent undertaking a course during which the person was ineligible to receive:
 - (i) AUSTUDY; or
 - (ii) a benefit under the Tertiary Education Assistance Scheme; or
 - (iii) youth allowance; or
 - (iv) austudy payment;because of the application of rules in respect of academic progress.

Levels of tertiary courses

1061PI(8) There are 4 levels of tertiary courses—levels A, B, C and D.

Level A courses

1061PI(9) The following are Level A courses:

- (a) a postgraduate bachelor degree course, with or without honours;
- (b) a graduate or postgraduate diploma course;
- (c) a course of practical legal training at a higher education institution;
- (d) a course of advanced education regarded by an accrediting authority as being at PG1 level;
- (e) a graduate certificate course.

Level B courses

1061PI(10) The following are Level B courses:

- (a) a bachelor degree course (other than a postgraduate course), with or without honours;
- (b) the bachelor level component of a masters degree course with concurrent bachelor and masters level study;
- (c) a diploma course other than:
 - (i) a graduate or postgraduate diploma course; or
 - (ii) a course for which an entry requirement is successful completion of year 10 of secondary studies; or
 - (iii) a TAFE course;
- (d) a Master's qualifying course;
- (e) the Barristers or Solicitors Admission Board's course;
- (f) a course of advanced education regarded by an accrediting authority as being at UG1 or UG2 level.

Level C courses

1061PI(11) The following are Level C courses:

- (a) an associate degree course;
- (b) an associate diploma course;

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- (c) a diploma course at a TAFE institution for which an entry requirement is successful completion of year 12 of secondary studies;
- (d) a 2-year undergraduate diploma course.

Level D courses

1061PI(12) The following are Level D courses:

- (a) a TAFE course at a higher education institution;
- (b) a TAFE course, unless the course is in Level A, B or C.

Meaning of tertiary course

1061PI(13) For the purposes of this section, a course is a *tertiary course* if the Employment Minister has determined, under section 5D of the *Student Assistance Act 1973*, that the course is a tertiary course for the purposes of that Act.

Subdivision C—Payments attracting pensioner education supplement

1061PJ Payments attracting pensioner education supplement

General

- 1061PJ(1) A person is receiving a payment attracting pensioner education supplement if the person is receiving:
- (a) a payment under this Act set out in subsection (2); or
 - (b) a pension under the Veterans' Entitlements Act set out in subsection (3).

Payments under this Act

- 1061PJ(2) The payments under this Act are the following:
- (a) a disability support pension;
 - (b) in the case of a person whose partner is receiving a disability support pension—a wife pension;
 - (c) a carer payment;
 - (d) a pension (PP) single;
 - (e) a widow B pension;

- (f) a widow allowance;
- (g) in the case of a person who is a sole parent—a special benefit;
- (h) a rehabilitation allowance payable under clause 35 of Schedule 1A.

Pensions under the Veterans' Entitlements Act

- 1061PJ(3) The pensions under the Veterans' Entitlements Act are the following:
- (a) in the case of a person who has a dependent child—a pension under Part II of that Act;
 - (b) an invalidity service pension;
 - (ba) income support supplement;
 - (c) in the case of a person whose partner is receiving an invalidity service pension—a partner service pension;
 - (d) a carer service pension;
 - (e) in the case of a person who has a dependent child—a pension under Part IV of that Act.

Subdivision D—Pensioner education supplement age

1061PK Pensioner education supplement age

For the purposes of this Part, a person is of pensioner education supplement age if the person:

- (a) is at least 16 years old; or
- (b) is independent and has reached the minimum school leaving age for the State or Territory in which the person is living.

1061PL When a person is regarded as independent

Application

- 1061PL(1) This section applies to determine whether a person is to be regarded as independent for the purposes of this Part. A person is not to be regarded as independent except as provided by this section.

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Person with a dependent child

- 1061PL(2) A person is independent if:
- (a) the person has a natural or adopted child who is wholly or substantially dependent on the person or his or her partner; or
 - (b) the person previously had a natural or adopted child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner.

Orphan

- 1061PL(3) A person is independent if both the person's parents are dead, whether or not the person is dependent, or was last dependent, on someone other than his or her parents.

If parents cannot exercise responsibilities

- 1061PL(4) A person is independent if both of the person's parents are (or, if the person has only one parent, that parent is):
- (a) serving a prison sentence of at least 10 years; or
 - (b) mentally incapacitated and likely to remain so incapacitated for an indefinite period; or
 - (c) living in a nursing home and likely to remain there for an indefinite period; or
 - (d) missing;
- whether or not the person is dependent, or was last dependent, on someone other than a parent of the person.

Refugee

- 1061PL(5) A person is independent if the person:
- (a) is the holder, within the meaning of the Migration (1993) Regulations, of a Group 1.3 entry permit (permanent resident) (refugee and humanitarian); or
 - (b) while the holder of such a permit, was granted Australian citizenship.
- However, a person is not independent under this subsection if the person has a parent living in Australia, or is wholly or substantially dependent on someone else on a long-term basis.

Person in State care

- 1061PL(6) A person is independent if the person is not living with a parent, and:
- (a) the person is in the guardianship, care or custody of a court, a Minister, or a Department, of the Commonwealth, a State or a Territory; or
 - (b) there is a current direction from such a court, Minister or Department placing the person in the guardianship, care or custody of someone who is not the person's parent; or
 - (c) the person stopped being in a situation described in paragraph (a) or (b) only because of his or her age.

A person to whom this subsection applies is taken, for the purposes of this Part, to be *in State care*.

Unreasonable to live at home

- 1061PL(7) A person is independent if:
- (a) the person cannot live at the home of either or both of his or her parents:
 - (i) because of extreme family breakdown or other similar exceptional circumstances; or
 - (ii) because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar exceptional circumstances; and
 - (b) the person is not receiving continuous support, whether directly or indirectly and whether financial 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
 - (c) the person is not receiving, on a continuous basis, any payments in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

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Subdivision E—Residency

1061PM Residency requirements

For the purposes of this Part, a person meets the residency requirements if the person:

- (a) is an Australian resident; and
- (b) subject to section 1061PN, is in Australia.

1061PN Absence of persons overseas

General

1061PN(1) A person who is undertaking qualifying study is taken to be in Australia while the person:

- (a) is absent from Australia for the purpose of undertaking part of the studies for the course of education in respect of which the person is undertaking qualifying study; or
- (b) is absent from Australia, for any other purpose, for not more than 26 weeks.

Temporary return to Australia

1061PN(2) If the person:

- (a) returns to Australia after having been outside Australia (whether before or after the commencement of this section) for more than 13 weeks; and
- (b) leaves Australia before the end of 13 weeks after he or she so returned to Australia;

the person is taken to have continued to be absent from Australia throughout the period from the time of the person's return to the time when the person so left Australia.

Division 2—Situations in which pensioner education supplement is not payable

Subdivision C—Newly arrived resident’s waiting period

1061PT Pensioner education supplement not payable during newly arrived resident’s waiting period

A pensioner education supplement is not payable to a person while the person is subject to a newly arrived resident’s waiting period (see sections 1061PU and 1061PV).

1061PU Newly arrived resident’s waiting period

Basic rule

- 1061PU(1) Subject to this section, a person is subject to a newly arrived resident’s waiting period if the person:
- (a) has entered Australia on or after 4 March 1997; and
 - (b) has not been an Australian resident in Australia for a period of, or periods totalling, 104 weeks.

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

Exception—qualifying resident exemption

- 1061PU(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for an austudy payment.

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

Exception—person already subject to waiting period etc.

- 1061PU(3) Subsection (1) does not apply to a person if:
- (a) the person has been subject to:
 - (i) a newly arrived resident’s waiting period under this Act; or
 - (ii) a waiting period under Part 2 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; or

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- (iii) a newly arrived resident's waiting period under Part 8 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; and
- (b) that period has ended.

1061PU(4) Subsection (1) does not apply to a person if:

- (a) the person would:
 - (i) if the person had made a claim under this Act for a social security payment other than youth allowance—have been subject to a newly arrived resident's waiting period under this Act; or
 - (ii) if the person had, before 1 July 1998, made a claim under the *Student Assistance Act 1973*—have been subject to a waiting period under Part 2 of that Act or a newly arrived resident's waiting period under Part 8 of that Act;and that period would have ended; or
- (b) the person has had:
 - (i) a qualifying residence exemption for a newstart allowance or a sickness allowance under this Act; or
 - (ii) a qualifying residence exemption for a youth training allowance under the *Student Assistance Act 1973*; or
- (c) in the case of an AUSTUDY allowance recipient—the person was not subject to a waiting period.

1061PV Length of newly arrived resident's waiting period

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day on which the person first entered Australia; and
- (b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 104 weeks after that day.

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

Subdivision D—Multiple entitlement exclusion

1061PW Meaning of multiple entitlement exclusion

For the purposes of this Division, a person is subject to a multiple entitlement exclusion if the person is receiving a pensioner education supplement under the ABSTUDY scheme.

1061PX Multiple entitlement exclusion

A pensioner education supplement is not payable to a person if the person is subject to a multiple entitlement exclusion.

Division 5—Rate of pensioner education supplement

1061PZG Rate of pensioner education supplement

- (1) If a person:
 - (a) is a sub-50% concessional study-load student in respect of a course; and
 - (b) is not receiving any of the following:
 - (i) a disability support pension under this Act;
 - (ii) an invalidity service pension under the Veterans' Entitlements Act;
 - (iii) an income support supplement under the Veterans' Entitlements Act granted on the ground set out in subparagraph 45A(1)(b)(iii) of that Act;

the pensioner education supplement fortnightly rate for the person is \$31.20.
- (2) The pensioner education supplement fortnightly rate for a person to whom subsection (1) does not apply is \$62.40.
- (3) The rate of pensioner education supplement for a person is a daily rate worked out by dividing the person's fortnightly rate by 14.
- (4) For the purposes of this section, a person is a ***sub-50% concessional study-load student*** in respect of a course if the person is a 25% concessional study-load student in respect of the course for the purposes of Subdivision B of Division 1 of this Part who is undertaking, or who intends to undertake, less than one half of the normal amount of full-time study, determined in accordance with section 1061PF, in respect of that course.

Part 2.25—Telephone allowance

Division 1—Qualification for and payability of telephone allowance

1061Q Qualification for telephone allowance

1061Q(1) A person is qualified for a telephone allowance if:

- (a) the person is receiving a social security pension; and
- (c) the person is a telephone subscriber.

Note 1: for *telephone subscriber* see subsection (5).

1061Q(3) A person is qualified for a telephone allowance if:

- (a) the person is receiving widow allowance newstart allowance, sickness allowance, partner allowance, benefit PP (partnered) or special benefit; and
- (b) the person has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph); and

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

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

- (c) the person has turned 60; and
- (d) the person is a telephone subscriber.

Note: for *telephone subscriber* see subsection (5).

1061Q(3A) A person is qualified for telephone allowance if:

- (a) the person is receiving partner allowance or benefit PP (partnered); and
- (b) the person is a telephone subscriber; and
- (c) the person's partner has turned 60; and
- (d) the person's partner is receiving job search allowance, newstart allowance or sickness allowance; and

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- (e) the person's partner has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph).

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

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

Note 1: For *telephone subscriber* see subsection (5).

Note 2: For *income support payment* see subsection 23(1).

1061Q(3B) A person is qualified for telephone allowance if:

- (a) the person is receiving a mature age allowance under Part 2.12B; and
- (b) the person is a telephone subscriber.

1061Q(4) A person is qualified for a telephone allowance if:

- (a) the person is a person to whom any of the following provisions applies:
 - (ii) section 4AAA of the *National Health Act 1953*;
 - (iii) section 146T of this Act;
 - (iv) subsection 477(2) of this Act; and
- (b) the person is a telephone subscriber.

Note: for *telephone subscriber* see subsection (5).

1061Q(4A) A person is qualified for a telephone allowance if:

- (a) either:
 - (i) the person is the holder of a seniors health card; or
 - (ii) the person is temporarily absent from Australia for a continuous period not exceeding 26 weeks and was the holder of a seniors health card immediately before leaving Australia; and
- (b) the person is a telephone subscriber.

1061Q(5) In this section:

telephone subscriber means:

- (a) a person who has a telephone service connected in Australia in his or her name; or
- (b) a person:
 - (i) to whom paragraph (a) does not apply; and
 - (ii) who is a member of a couple (other than an illness separated, temporarily separated or respite care couple); and
 - (iii) whose partner has a telephone service connected in Australia in the partner's name.

Note: for *member of a couple, illness separated couple, temporarily separated couple* and *respite care couple* see section 4.

1061R Telephone allowance not payable in some circumstances

Even though a person is qualified for a telephone allowance, the allowance is not payable to the person:

- (b) if the person is receiving a telephone allowance under the Veterans' Entitlements Act; or
- (c) if:
 - (i) the person is a member of a couple (other than an illness separated, temporarily separated or respite care couple); and
 - (ii) the person's partner is receiving a telephone allowance because of:
 - (A) subsection 118Q(3) of the Veterans' Entitlements Act; or
 - (B) a determination under subsection 5R(1) of the Veterans' Entitlements Act.

Note 1: for *member of a couple, illness separated couple, temporarily separated couple* and *respite care couple* see section 4.

Note 2: subsection 118Q(3) of the Veterans' Entitlements Act covers certain categories of World War I veterans.

Note 3: the relevant determination under subsection 5R(1) of the Veterans' Entitlements Act provides eligibility for telephone allowance to certain categories of World War I Australian mariners.

Section 1061S

Division 2—Rate of telephone allowance

1061S Rate of telephone allowance [see Appendix for CPI adjusted figures]

1061S(1) A person's rate of telephone allowance is worked out using the following Table:

Telephone allowance rate table		
Column 1	Column 2	Column 3
Item	Person's situation	Rate per year
1.	Not member of a couple	\$51.80
2.	Partnered (partner getting neither social security pension nor social security benefit), partner not holder of a seniors health card and person getting pension or benefit before 12 March 1992	\$51.80
3.	Partnered (partner getting neither social security pension nor social security benefit), partner not holder of a seniors health card and person not getting pension or benefit before 12 March 1992	\$25.90
4.	Either: (a) partnered (partner getting pension or benefit); or (b) partnered and partner is a holder of a seniors health card; and partner not getting telephone allowance	\$51.80
5.	Either: (a) partnered (partner getting pension or benefit); or (b) partnered and partner is a holder of a seniors health card; and partner getting telephone allowance	\$25.90
6.	Member of an illness separated, temporarily separated or respite care couple	\$51.80

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Telephone allowance rate table		
Column 1	Column 2	Column 3
Item	Person's situation	Rate per year
7.	Partnered (partner not getting telephone allowance under the VEA)	\$51.80
8.	Partnered (partner getting telephone allowance under the VEA)	\$25.90
9.	Partnered (partner in gaol)	\$56.00

Note: the amounts in column 3 (except the item 2 amount) are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194).

1061S(2) If item 7 or 8 applies to a person, neither item 2 nor 3 applies to the person.

1061S(3) Item 2 does not apply to a person if the rate of telephone allowance that would be payable to the person if item 2 applied is less than the rate that would otherwise be payable.

Note: because the item 2 rate is not indexed it may eventually become a lower rate than other rates in the Table.

1061S(3A) For the purposes of working out a person's rate of telephone allowance under subsection (1), the person's partner is taken to be the holder of a seniors health card if the partner:

- (a) is temporarily absent from Australia for a continuous period not exceeding 26 weeks; and
- (b) was the holder of a seniors health card immediately before leaving Australia.

1061S(4) In this section:

person getting pension or benefit before 12 March 1992 means a person to whom clause 41 of Schedule 1A applies.

person not getting pension or benefit before 12 March 1992 means a person to whom clause 41 of Schedule 1A does not apply.

Note: clause 41 of Schedule 1A applies to people who were receiving social security pension or benefit before 12 March 1992 and who meet certain other conditions.

Part 2.26—Fares allowance

Division 1—Qualification for fares allowance

1061ZAAA Qualification for fares allowance

1061ZAAA(1) A person is qualified for fares allowance for a journey by the person if:

- (a) during a period (the *relevant period*) that is the whole or a part of a study year the person undertakes an approved tertiary course (the *approved course*) at an educational institution in Australia (the *relevant educational institution*); and
- (b) during the relevant period the person is receiving one or more of the following forms of financial assistance:
 - (i) youth allowance because the person satisfies the activity test by undertaking full-time study;
 - (ii) youth allowance where the only term of the relevant Youth Allowance Activity Agreement is a term to the effect that the person has to undertake an approved course of education or study under subsection 541B(5);
 - (iii) austudy payment;
 - (iv) pensioner education supplement; and
- (c) during the relevant period the person's permanent home is in Australia; and
- (d) either:
 - (i) subsection (2) or (3) applies in respect of the person for the study year; or
 - (ii) subsection (4) or (5) applies in respect of the person in relation to the journey; and
- (e) either section 1061ZAAB or 1061ZAAC applies in respect of the journey; and
- (f) the journey has been made or, if it has not been made, the Secretary is satisfied that:
 - (i) the person intends to make the journey; and

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- (ii) the person's means of travel for the journey will be provided by a commercial operator.

Note: A person is taken to be receiving a form of financial assistance referred to in paragraph (b) even though the person has traded in, or traded back, the assistance to obtain a financial supplement.

1061ZAAA(2) This subsection applies in respect of the person for the study year if, during the relevant period, the person:

- (a) has a partner, or a dependent child, living at the person's permanent home; and
- (b) is required to live away from his or her permanent home in order to undertake the approved course.

1061ZAAA(3) This subsection applies in respect of the person for the study year if, during the relevant period, the person is enrolled as an external student for the approved course.

1061ZAAA(4) This subsection applies in respect of the person in relation to the journey if:

- (a) during the relevant period, the person:
 - (i) is receiving youth allowance as referred to in subparagraph (1)(b)(i) or (ii); and
 - (ii) is required to live away from home within the meaning of Part 3.5 (see section 1067D); and
- (b) the person is not independent when the journey is made.

1061ZAAA(5) This subsection applies in respect of the person in relation to the journey if:

- (a) during the relevant period, the person:
 - (i) is receiving youth allowance as referred to in subparagraph (1)(b)(i) or (ii); and
 - (ii) is required to live away from home within the meaning of Part 3.5 (see section 1067D); and
- (b) during the study year and before the journey was made the person became independent because of subsection 1067A(4) or (10); and
- (c) if the journey had been made in the study year before the person became independent, subsection (4) would have applied in respect of the person in relation to the journey.

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Part 2.26 Fares allowance

Division 2 Making and determination of claim for fares allowance

Section 1061ZAAB

Note: A person is not qualified for a fares allowance in respect of a journey made before the commencement of this section (see clause 126 of Schedule 1A).

1061ZAAB Journey by person who is not an external student

If the person is enrolled for the approved course as a student other than an external student, this section applies in respect of a journey only if the journey is one of the following:

- (a) a journey from the person's permanent home to the relevant educational institution to start the course;
- (b) a journey made, in the study year or before 1 April in the next year, from the relevant educational institution to the person's permanent home after the person has finished or discontinued the course;
- (c) a return journey during the study year between the relevant educational institution and the person's permanent home where the person:
 - (i) has, during the study year and before the making of the journey, received one or more of the forms of financial assistance referred to in paragraph 1061ZAAA(1)(b) for a total period of 6 months (whether continuous or not); and
 - (ii) is receiving one of those forms of financial assistance when the journey is made.

1061ZAAC Journey by person who is an external student

If the person is enrolled for the approved course as an external student, this section applies only in respect of one return journey by the person during the study year between the person's permanent home and the relevant educational institution in order to attend the institution for a period under a requirement that is a compulsory component of the course.

Division 2—Making and determination of claim for fares allowance

1061ZAAD Need for a claim

A person who wants fares allowance for a journey must make a proper claim for the allowance.

1061ZAAE Form of claim

To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

1061ZAAF Lodgment of claim

1061ZAAF(1) To be a proper claim, a claim must be lodged:

- (a) at an office of the Department; or
- (b) at a place in Australia approved for the purpose by the Secretary; or
- (c) with a person in Australia approved for the purpose by the Secretary.

1061ZAAF(2) If:

- (a) a person contacts the Department in relation to his or her claiming fares allowance; and
- (b) the person is, on the day on which he or she contacts the Department, qualified for fares allowance; and
- (c) the person lodges a claim for fares allowance within 14 days after the day on which he or she contacts the Department; and
- (d) the Department has a record of the person contacting the Department;

the person is taken to have lodged a claim for fares allowance on the day on which the person contacted the Department.

1061ZAAF(3) In this section:

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contacts the Department includes contacts the Department by post or telephone or by the transmission of a message by the use of facsimile, computer equipment or any other electronic means.

1061ZAAG Time limit for claim

1061ZAAG(1) Subject to this section, to be a proper claim, the claim must be lodged in the study year concerned or before 1 April next following the end of that year (the *final date*).

1061ZAAG(2) A claim lodged on or after the final date is a proper claim if the Secretary is satisfied that the claimant took reasonable steps to ensure that it would be lodged before the final date.

1061ZAAG(3) Also, a claim lodged on or after the final date is a proper claim if the Secretary is satisfied that:

- (a) circumstances beyond the claimant's control prevented the claimant from taking reasonable steps to lodge the claim before the final date; and
- (b) the claimant lodged the claim as soon as practicable after the circumstances stopped.

1061ZAAH Claim may be withdrawn

1061ZAAH(1) A claimant for fares allowance, or a person on behalf of a claimant, may withdraw a claim that has not been determined.

1061ZAAH(2) A claim that is withdrawn is taken not to have been made.

1061ZAAH(3) A withdrawal may be made orally or in writing.

1061ZAAI Determination of claim

1061ZAAI(1) The Secretary is to determine a person's claim for fares allowance.

1061ZAAI(2) The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that the person is qualified for the fares allowance to which the claim relates.

Division 3—Amount of fares allowance

1061ZAAJ Fares allowance for public transport

- 1061ZAAJ(1) If the Secretary is satisfied that it is practicable for the person to make the entire journey by public transport, the amount of fares allowance for the entire journey is worked out using this section.
- 1061ZAAJ(2) If the Secretary is satisfied that it is practicable for the person to make part of the journey by public transport, the amount of fares allowance for that part of the journey is worked out using this section.
- 1061ZAAJ(3) The amount of fares allowance is the cost of making the journey, or the part of the journey, using a reasonable route and the least expensive form of public transport that is reasonable.
- 1061ZAAJ(4) The cost is to be based on the cost of any concessional fare available to the person.
- 1061ZAAJ(5) The cost of a sleeping berth is to be included only if it is reasonable for the person to travel by rail and for the person to have the berth.
- 1061ZAAJ(6) In deciding what is practicable or reasonable for the purposes of this section, the period of time needed for the entire journey, and any illness or incapacity of the person, must be taken into account.
- 1061ZAAJ(7) The amount of fares allowance to be paid is to be worked out using this section whether or not the person chooses to make the journey, or the part of the journey, in the way described in this section.

1061ZAAK Fares allowance for private transport

- 1061ZAAK(1) If the Secretary is satisfied that it is not practicable for the person to make any part of the journey by public transport, the amount of fares allowance for the entire journey is worked out using this section.

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1061ZAAK(2) If the Secretary is satisfied that it is not practicable for the person to make a part of the journey by public transport, the amount of fares allowance for that part of the journey is worked out using this section.

1061ZAAK(3) If the person makes the journey, or the part of the journey, by taxi, the fares allowance is 63 cents per kilometre travelled by taxi.

1061ZAAK(4) If the person makes the journey, or the part of the journey, by another vehicle, the fares allowance is worked out in accordance with the following table:

Table of rates of allowance			
Item	Kind of engine in the vehicle the person uses	Capacity of the vehicle's engine (cubic centimetres)	Allowance per kilometre (cents)
1	Rotary	not more than 800	45.7
2	Rotary	more than 800 but not more than 1,300	51.9
3	Rotary	more than 1,300	53.8
4	Not rotary	not more than 1,600	45.7
5	Not rotary	more than 1,600 but not more than 2,600	51.9
6	Not rotary	more than 2,600	53.8

1061ZAAK(5) If the Secretary is satisfied that:

- (a) it is unreasonable for the person to make the journey or the part of the journey by taxi or another vehicle because of abnormal travel hazards (for example, bushfire or flood); and
- (b) the person makes the journey or the part of the journey by another form of transport that is reasonable because of the distance travelled and the cost of the transport;

the amount of fares allowance for the journey or that part of the journey is the actual cost to the person of making the journey or that part of the journey.

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1061ZAAK(6) In deciding what is practicable or reasonable for the purposes of this section, the period of time needed for the entire journey, and any illness or incapacity of the person, must be taken into account.

1061ZAAK(7) For the purposes of this section, a vehicle that is registered as a taxi in a State or Territory is to be taken to be a taxi only while it is used in the State or Territory.

1061ZAAK(8) The Minister may make written determinations:

- (a) varying the amount referred to in subsection (3); or
- (b) amending the table in subsection (4) or omitting that table and substituting another table.

1061ZAAK(9) A determination under subsection (8) is a disallowable instrument.

Division 4—Payment of fares allowance

1061ZAAL Timing of payment

1061ZAAL(1) Subject to subsection (2), fares allowance for a journey by a person is to be paid as a reimbursement after the journey is made.

1061ZAAL(2) If the journey has not been made, the fares allowance for the journey is to be paid before the journey is made.

1061ZAAM To whom fares allowance is to be paid

1061ZAAM(1) Subject to subsection (4), if the person is or was receiving youth allowance at the time of the making of the journey, fares allowance is to be paid to the person to whom instalments of the youth allowance are or were being paid under section 559D or 559E.

1061ZAAM(2) Subject to subsection (4), if the person is or was receiving austudy payment at the time of the making of the journey, fares allowance is to be paid to the person to whom instalments of the austudy payment are or were being paid under section 584D.

1061ZAAM(3) Subject to subsection (4), if the person is or was receiving pensioner education supplement at the time of the making of the journey, fares allowance is to be paid to the person to whom instalments of the pensioner education supplement are or were being paid under section 1061PZK.

1061ZAAM(4) If the fares allowance is to be paid as referred to in subsection 1061ZAAL(2), it is to be paid, on behalf of the person, to the commercial operator who provides the person's means of travel.

1061ZAAM(5) This section has effect subject to section 1061ZAAO.

1061ZAAN Payment into bank account

1061ZAAN(1) If an amount of fares allowance is to be paid to a person, it is to be paid in the way described by this section.

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1061ZAAN(2) Subject to this section, fares allowance is to be paid to the credit of the bank account into which payments of youth allowance, austudy payment or pensioner education supplement are or were made.

1061ZAAN(3) If a payment referred to in subsection (2) is not paid into an account referred to in that section, because of a direction given under subsection 559F(4), 584E(4) or 1061PZL(4), then, subject to subsection (5), fares allowance is to be paid to the credit of a bank account nominated and maintained by the person.

1061ZAAN(4) The person's account may be maintained by the person alone or jointly or in common with someone else.

1061ZAAN(5) The Secretary may direct that all or part of the amount is to be paid in a different way than to the credit of the bank account and, if the Secretary does so, the amount is to be paid in accordance with the direction.

1061ZAAO Payment of allowance after death

1061ZAAO(1) If:

- (a) a person (the *student*) has died; and
- (b) fares allowance was payable to the student at the time of his or her death; and
- (c) the allowance was not paid before that time;

a person may apply to receive the allowance.

1061ZAAO(2) Without limiting the effect that paragraph (1)(b) has apart from this subsection, fares allowance is taken for the purposes of that paragraph to have been payable to the student at the time of his or her death if:

- (a) at that time the student was qualified for the fares allowance but had not made a proper claim for the allowance; and
- (b) a person has applied at a later time to receive the allowance; and
- (c) if the student had not died and had made a claim for the allowance at the later time, the claim would have been a proper claim.

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Division 4 Payment of fares allowance

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1061ZAAO(3) If one or more people apply to receive the allowance, the Secretary may pay the allowance to the applicant who, in the Secretary's opinion, is best entitled to it.

1061ZAAO(4) However, an application to receive the allowance is to be made:

- (a) within 6 months after the student died; or
- (b) within a longer period allowed by the Secretary in special circumstances.

1061ZAAO(5) If the Secretary pays an amount of fares allowance under subsection (3), the Commonwealth has no liability to anyone else for the amount.

Division 5—Protection of fares allowance

1061ZAAP Fares allowance absolutely inalienable

A payment of fares allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

1061ZAAQ Effect of garnishee or attachment order

1061ZAAQ(1) This section applies if:

- (a) a person has an account with a financial institution (whether the account is maintained by the person alone, or jointly or in common with someone else); and
- (b) a court order in the nature of a garnishee order comes into force for the account; and
- (c) an amount of fares allowance has been paid to the credit of the account in the 4 weeks immediately before the court order came into force.

1061ZAAQ(2) The court order does not apply to the saved amount (if any) in the account.

1061ZAAQ(3) The *saved amount* is the amount worked out using the following Method statement.

Method statement

Step 1. Work out the amount of fares allowance paid to the credit of the account in the 4 weeks.

Step 2. Subtract the total amount withdrawn from the account in the 4 weeks.

The *saved amount* is the amount left.