

Social Security Act 1991

Act No. 46 of 1991 as amended

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Chapter 2—Pensions, benefits and allowances

Part 2.3—Disability support pension

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Division 10—Bereavement payments

Subdivision A—Death of partner

146F Qualification for payments under this Subdivision

146F(1) If:

- (a) a person is receiving disability support pension; and
- (b) the person is a member of a couple; and
- (c) the person's partner dies; and
- (d) immediately before the partner died, the partner:
 - (i) was receiving a social security pension; or
 - (ii) was receiving a service pension or income support supplement; or
 - (iii) was a long-term social security recipient; and
- (e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
 - (i) the amount that would otherwise be payable to the person under section 146J (person's continued rate) on that payday; and
 - (ii) the amount that would otherwise be payable to the person under section 146G (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: section 146G provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: section 146H provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

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146F(1A) If:

- (a) a person is receiving a disability support pension; and
- (b) immediately before starting to receive the disability support pension the person was receiving partner bereavement payments; and
- (c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;

the person is qualified for payments under this Subdivision to cover the remainder of the bereavement period.

146F(2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

Note: if a person makes an election, the date of effect of any determination to increase the person's rate of age pension may, in some circumstances, be the day on which the person's partner died (see subsection 146D(5A)).

146F(3) An election under subsection (2):

- (a) must be made by written notice to the Secretary; and
- (b) may be made after the person has been paid an amount or amounts under this Subdivision; and
- (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

146F(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which disability support pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 146J.

146F(5) For the purposes of this section, a person is a *long-term social security recipient* if:

- (a) the person is receiving a social security benefit; and
- (b) in respect of the previous 12 months, the person:
 - (i) was receiving a social security pension; or
 - (ii) was receiving a social security benefit; or
 - (iia) was receiving a youth training allowance; or
 - (iii) was receiving a service pension or income support supplement.

- 146F(6) A person is taken to satisfy the requirements of paragraph (5)(b) if:
- (a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or
 - (b) the person was receiving one or a combination of the payments referred to in that paragraph for 46 weeks of the previous 52.

146G Continued payment of partner's pension or allowance

146G(1) If a person is qualified for payments under this Subdivision in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period:

- (a) where the partner was receiving a social security pension—the amount that would have been payable to the partner on the payday if the partner had not died; or
- (b) where the partner was receiving a service pension or income support supplement—the amount that would have been payable to the partner under Part III or IIIA of the Veterans' Entitlements Act on the service payday that:
 - (i) where the first Thursday after the partner's death was a service payday—precedes the partner's payday; or
 - (ii) in any other case—follows the partner's payday; if the partner had not died.

146G(2) For the purposes of subsection (1), if the couple were, immediately before the partner's death, an illness separated couple or a respite care couple, the amounts are to be worked out as if they were not such a couple.

146H Lump sum payable in some circumstances

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

LUMP SUM CALCULATOR

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

Method statement

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

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

Step 2. Work out the amount that would have been payable to the person's partner on the partner's payday or service payday immediately before the first available bereavement adjustment payday if:

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

Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

Step 4. Work out the amount that, but for section 146J, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.

- Step 5.* Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.
- Step 6.* Work out the number of paydays of the partner in the bereavement lump sum period.
- Step 7.* Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

146J Adjustment of person's disability support pension rate

If:

- (a) a person is qualified for payments under this Subdivision; and
- (b) the person does not elect under subsection 146F(2) not to receive payments under this Subdivision;

the rate of the person's disability support pension during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of disability support pension payable to the person is the rate at which the pension would have been payable to the person if:
 - (i) the person's partner had not died; and
 - (ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;
- (d) during the bereavement lump sum period (if any), the rate at which disability support pension is payable to the person is the rate at which the disability support pension would be payable to the person apart from this Subdivision.

146K Effect of death of person entitled to payments under this Subdivision

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and

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- (c) the Secretary does not become aware of the death of the person's partner before the person dies;
- there is payable, to such person as the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

LUMP SUM CALCULATOR

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

Method statement

Step 1. Work out the amount that would have been payable to the person on the person's payday immediately after the day on which the person died if:

- (a) neither the person nor the person's partner had died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Step 2. Work out the amount that would have been payable to the partner on the partner's payday or service payday immediately after the day on which the person died if:

- (a) neither the person nor the partner had died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

Step 4. Work out the amount that, but for section 140, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.

- Step 5.* Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.
- Step 6.* Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.
- Step 7.* Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

146L Matters affecting payment of benefits under this Subdivision

146L(1) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
- (e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

146L(2) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements

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Act, within the bereavement period, into an account with a bank; and

- (c) the bank pays to the person, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

Subdivision C—Death of recipient

146Q Death of recipient

146Q(1) If:

- (a) a person is receiving disability support pension; and

(b) either:

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

- (ii) the person is a member of a couple and the person's partner:

- (A) is not receiving a social security pension; and

- (C) is not receiving a service pension or income support supplement; and

- (c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the person's payday after the person's death if the person had not died.

146Q(2) If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1: for amounts owing to the recipient before the recipient's death see section 127.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 146K.

Division 11—Fringe benefits

146R Fringe benefits

146R(1) A person who:

- (a) is receiving disability support pension; and
- (b) is an Australian resident; and
- (c) is in Australia;

is qualified for fringe benefits.

Note: For *Australian resident* see subsections 7(2) and (3).

146R(2) If a person is qualified for fringe benefits, benefits and concessions of various kinds may be made available to the person by the Commonwealth, State and Territory governments and authorities and local authorities.

Note: for an example of Commonwealth benefits and concessions see the *National Health Act 1953*.

146T 12 month extension of fringe benefits—person ceasing to be on a disability support pension because of employment

146T(1) For the purposes of this Division, if:

- (a) a person is receiving disability support pension; and
- (b) the person ceases to be qualified for disability support pension because the person obtains work that is for at least 30 hours per week;

then, for the period of 12 months after the person ceases to be qualified for disability support pension:

- (d) the person is taken to be receiving disability support pension.

Note: a person who is taken to be receiving disability support pension is qualified for fringe benefits under section 146R.

146T(2) Subsection (1) ceases to apply to the person if the person ceases work.

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146U 12 month extension of fringe benefits—disability support pension ceasing to be payable because of employment income

For the purposes of this Division, if:

- (a) a person has been receiving disability support pension; and
- (b) disability support pension ceases to be payable to the person because of the income, or increased income, earned by the person from his or her employment;

the person is taken to be receiving disability support pension for the period of 12 months after the pension ceased to be payable to the person.

Note: A person who is taken to be receiving disability support pension is qualified for fringe benefits under section 146R.

Part 2.4—Wife pension

Division 1A—Time limit on grant of wife pension

146V Wife pension not to be granted after 30 June 1995

146V(1) In spite of any other provision of this Part, other than section 183, a woman is not to be granted a wife pension unless:

- (a) her claim for the pension was lodged on or before 30 June 1995 and she qualified for the pension on or before that date; or
- (b) all the following subparagraphs apply:
 - (i) she began to receive mature age partner allowance on or before 30 June 1995;
 - (ii) her partner was receiving a mature age allowance under Part 2.12A but has, after 30 June 1995, become qualified for an age pension and been automatically transferred to the age pension;
 - (iii) she received mature age partner allowance for a continuous period from the time when she began to receive the allowance until her partner was automatically transferred to the age pension as mentioned in subparagraph (ii).

146V(2) For the purposes of paragraph (1)(a), if subsection 150(2) applies, the woman is taken to have lodged her claim on the day on which she makes her initial claim.

146V(3) In subsection (2):

initial claim has the same meaning as in subsection 150(2).

Division 1—Qualification for and payability of wife pension

Subdivision A—Qualification

147 Qualification for wife pension

147(1) A woman is qualified for a wife pension if the woman:

- (a) is a member of a couple; and
- (b) has a partner who:
 - (i) is receiving an age pension, disability support pension or disability wage supplement; or
 - (ii) is receiving a rehabilitation allowance and was, immediately before he became qualified for that allowance, receiving an invalid pension.

Note: for *member of a couple* see section 4.

Subdivision B—Payability

148 Wife pension not payable if pension rate nil

148(1) Subject to subsection (2), a wife pension is not payable to a person if the person's wife pension rate would be nil.

148(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

151 Multiple entitlement exclusion

151(1) A wife pension is not payable to a woman if the woman is already receiving a service pension.

151(2) If:

- (a) a woman is receiving a wife pension; and

(b) another social security pension or a social security benefit or service pension becomes payable to the woman;
the wife pension is not payable to the woman.

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

Note 2: For *social security pension* and *social security benefit* see subsection 23(1).

Note 3: for the day on which the wife pension ceases to be payable see section 175A.

151(3) A wife pension is not payable to a person who:

- (a) is an armed services widow or an armed services widower;
and
- (b) is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
- (c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.

151(4) Subsection (3) does not apply if:

- (a) the person:
 - (i) was on 20 March 1995 receiving; and
 - (ii) has from that day continuously received; and
 - (iii) is receiving;
the wife pension; and
- (b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the wife pension.

151(5) Subsection (3) does not apply if:

- (a) before 20 March 1995, the person had made a claim for wife pension; and
- (b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and
- (c) on or after 20 March 1995, the person was granted wife pension; and

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

151(6) Subsection (3) does not apply if:

- (a) before 20 March 1995:
 - (i) the person had made a claim for wife pension; and
 - (ii) the claim had been rejected; and
 - (iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and
- (b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and
- (c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted wife pension; and
- (d) the person has since that time continued to receive, and is receiving, the pension.

151A Exclusion of certain participants in ABSTUDY Scheme

151A(1) If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and
- (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
- (d) the payment relates to a period;

wife pension is not payable to the person in respect of any part of the period.

151A(2) If:

- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
- (b) the payment for which the person is qualified is a payment that:
 - (i) is made on the basis that the person is a full-time student; and

- (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
- (iii) relates to a period;

wife pension is not payable to the person in respect of any part of the period.

151A(3) If:

- (a) a person may enrol in a full-time course of education; and
- (b) a payment referred to in subsection (2) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (2), wife pension is payable to the person before the person starts the course.

Division 4—Rate of wife pension

159 How to work out the rate of wife pension

A woman's wife pension rate is worked out using Pension Rate Calculator A at the end of section 1064 (see Part 3.2).

Division 9—Bereavement payments

Subdivision A—Continuation of wife pension where partner dies

186 Continuation of wife pension for bereavement period

186(1) If:

- (a) a woman is receiving a wife pension; and
- (b) the woman's partner dies;

the woman remains qualified for the wife pension during the bereavement period as if:

- (c) the partner had not died; and
- (d) the partner had continued to receive age or disability support pension, disability wage supplement or rehabilitation allowance; and
- (e) the woman and the partner had continued to be members of a couple.

Note: a woman who remains qualified for a wife pension for the bereavement period may, in some circumstances, be automatically transferred to a parenting payment after the end of the bereavement period without making a claim for that payment (see subsection 501(3)).

187 Continued wife pension rate

Where a woman is qualified for a wife pension because of section 186, the woman's wife pension rate is worked out as follows:

- (a) during the bereavement rate continuation period, the rate of wife pension is the rate that would have been payable to the woman if:
 - (i) her partner had not died; and
 - (ii) where the couple had been an illness separated couple or a respite care couple—they had not been such a couple;
- (b) during the bereavement lump sum period (if any), the rate of payments under this Subdivision is the rate at which a

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widow B pension would have been payable to the woman if she had been qualified for a widow B pension.

Subdivision B—Death of pensioner partner

188 Qualification for payments under this Subdivision

188(1) If:

- (a) a woman is receiving a wife pension; and
- (b) the woman's partner dies;

the woman is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: section 189 provides for the payment to the woman, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the woman's partner during that period if the partner had not died.

Note 2: section 190 provides for a lump sum that represents the instalments that would have been paid to the woman's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

188(2) A woman who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

188(3) An election under subsection (2):

- (a) must be made by written notice to the Secretary; and
- (b) may be made after the woman has been paid an amount or amounts under this Subdivision; and
- (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

189 Continued payment of partner's pension or allowance

If a woman is qualified for payments under this Subdivision in relation to the death of the woman's partner, there is payable to the woman, on each day that would have been a payday of the partner in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the woman's partner on that day if the partner had not died.

190 Lump sum payable in some circumstances

If:

- (a) a woman is qualified for payments under this Subdivision in relation to the death of the woman's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

LUMP SUM CALCULATOR

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

Method statement

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

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

Step 2. Work out the amount that would have been payable to the woman's partner on the first day that would have been a payday of the partner on or after the first available bereavement adjustment payday if:

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

Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined pensioner couple rate***.

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- Step 4.* Work out the amount of widow B pension that would have been payable to the woman on her payday immediately before the first available bereavement adjustment payday if a widow B pension had been payable to the woman on that payday: the result is called the *woman's individual rate*.
- Step 5.* Take the woman's individual rate away from the combined pensioner couple rate: the result is called the *partner's instalment component*.
- Step 6.* Work out the number of the partner's paydays in the bereavement lump sum period.
- Step 7.* Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the woman under this section.

191 Effect of death of person entitled to payments under this Subdivision

If:

- (a) a woman is qualified for payments under this Subdivision in relation to the death of the woman's partner; and
- (b) the woman dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the woman's partner before the woman dies;

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

LUMP SUM CALCULATOR

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

Method statement

- Step 1.* Work out the amount that would have been payable to the woman on the woman's payday immediately after the day on which the woman died if:

-
- (a) neither the woman nor the woman's partner had died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2.* Work out the amount that would have been payable to the partner on the first day that would have been a payday of the partner on or after the woman's payday referred to in Step 1 if:
- (a) neither the woman nor the partner had died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3.* Add the results of Step 1 and Step 2: the result is called the ***combined pensioner couple rate***.
- Step 4.* Work out the amount that, but for sections 186 and 187, would have been payable to the woman on the woman's payday immediately after the day on which the woman died if the woman had not died: the result is called the ***woman's individual rate***.
- Step 5.* Take the woman's individual rate away from the combined pensioner couple rate: the result is called the ***partner's instalment component***.
- Step 6.* Work out the number of the partner's paydays in the period that commences on the day on which the woman dies and ends on the day on which the bereavement period ends.
- Step 7.* Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.
-

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192 Matters affecting payment of benefits under this Subdivision

192(1) If:

- (a) a woman is qualified for payments under this Subdivision in relation to the death of the woman's partner; and
- (b) after the woman's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the woman has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the woman or from the personal representative of the woman's partner, except to the extent (if any) that the amount exceeds the amount payable to the woman under this Subdivision;
- (e) the amount payable to the woman under this Subdivision is to be reduced by the amount referred to in paragraph (b).

192(2) If:

- (a) a woman is qualified for payments under this Subdivision in relation to the death of the woman's partner; and
- (b) an amount to which the woman's partner would have been entitled if the woman's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and
- (c) the bank pays to the woman, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the woman's partner or anyone else in respect of the payment of that money to the woman.

Part 2.5—Carer payment

Division 1A—Interpretation

197 Definitions

197(1) In this Part, unless the contrary intention appears:

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

care includes attention and supervision.

care receiver has the meaning given by subsection 198(2).

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.

guardian, in relation to a profoundly disabled child or a disabled child, means a person who has been granted guardianship of the child under a law of the Commonwealth, a State or a Territory.

higher ADAT score adult means a disabled adult who is a care receiver because paragraph 198(2)(a) applies.

lower ADAT score adult means a disabled adult who is a care receiver because paragraph 198(2)(d) applies.

profoundly disabled child has the meaning given by subsection (2) or (2A).

197(2) A child is a *profoundly disabled child* if:

- (a) the child has either:
 - (i) a severe multiple disability; or
 - (ii) a severe medical condition; and
- (b) the child, because of that disability or condition, needs continuous personal care for:
 - (i) 6 months or more; or

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- (ii) if the child's condition is terminal and the child's life expectancy is less than 6 months—the remainder of the child's life; and
- (c) the child's disability or condition includes 3 or more of the following circumstances:
 - (i) the child receives all food and fluids by nasogastric or percutaneous enterogastric tube;
 - (ii) the child has a tracheostomy;
 - (iii) the child must use a ventilator for at least 8 hours each day;
 - (iv) the child:
 - (A) has faecal incontinence day and night; and
 - (B) if under 3 years of age, is expected to have faecal incontinence day and night at the age of 3;
 - (v) the child:
 - (A) cannot stand without support; and
 - (B) if under 2 years of age, is expected to be unable to stand without support at the age of 2;
 - (vi) a medical practitioner has certified in writing that the child has a terminal condition for which palliative care has replaced active treatment;
 - (vii) the child:
 - (A) requires personal care on 2 or more occasions between 10 pm and 6 am each day; and
 - (B) if under 6 months of age, is expected to require care as described in sub-subparagraph (A) at the age of 6 months.

197(2A) A child is a profoundly disabled child if a medical practitioner has certified in writing that:

- (a) the child:
 - (i) has a terminal condition; and
 - (ii) is in the advanced phase of that condition; and
- (b) either:
 - (i) the child has a life expectancy measured in weeks or months; or

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- (ii) it is possible that the child will live for more than 12 months but unlikely that he or she will live for a period substantially greater than 12 months; and
- (c) because of the condition referred to in paragraph (a), the child will need continuous personal care for the remainder of his or her life.

197(3) A reference in this Part to a *parent* includes a reference to a *guardian*.

Division 1—Qualification for and payability of carer payment

Subdivision A—Qualification

198 Qualification for carer payment

198(1) A person is qualified for a carer payment if the requirements of this section are met.

Note: Sections 198AA, 198AB and 198AC allow the person to qualify in certain short-term circumstances where the requirements would not be met.

Constant care of disabled etc. persons

198(2) The person must personally provide constant care for:

- (a) either:
 - (i) if the person is the only person providing the constant care—a disabled adult (the *care receiver*) who has been assessed and rated, and given a score of at least 25, under the Adult Disability Assessment Tool; or
 - (ii) if not—a disabled adult (the *care receiver*) who has been assessed and rated, and given a score of at least 80, under the Adult Disability Assessment Tool; or
- (b) a profoundly disabled child (the *care receiver*) aged under 16; or
- (c) 2 or more disabled children (the *care receivers*) aged under 16; or
- (d) a disabled adult and a dependent child of the adult (the *care receivers*), where:
 - (i) the disabled adult has been assessed and rated, and given a score of at least 20, under the Adult Disability Assessment Tool; and
 - (ii) the child is aged under 16; and
 - (iii) if the child is aged 6 or more—carer allowance is payable for the child.

Note 1: In a paragraph (c) case, subsection (8) contains an additional requirement about care that must be satisfied.

Note 2: In a paragraph (d) case, subsection (9) deems certain supervision to constitute care.

Care in home

198(3) The care must be provided in a private residence that is the home of the care receiver or care receivers.

Carer in Australia

198(4) The person must be an Australian resident, unless:

- (a) the person is in a country in which carer payment may be granted to the person under a scheduled international social security agreement; and
- (b) the scheduled international social security agreement entered into force on or before 24 December 1992.

Income and assets tests etc.

198(5) The care receiver or care receivers must:

- (a) if the care receiver is a profoundly disabled child or the care receivers are 2 or more disabled children—require constant care; and
- (b) subject to subsection (6), be Australian residents; and

Note: For *Australian resident* see section 7.

- (c) subject to subsection (7), pass the income test under section 198A; and
- (d) subject to subsection (7), either:
 - (i) pass the assets test under section 198D; or
 - (ii) be the subject of a decision in force under subsection 198N(2), (3) or (4) that subparagraph (i) does not disqualify the person providing the constant care from carer payment.

Alternative to Australian residence test for higher ADAT score adults

198(6) Paragraph (5)(b) does not apply if:

- (a) the care receiver is the higher ADAT score adult mentioned in paragraph (2)(a); and
- (b) the adult is receiving a social security pension; and

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- (c) carer payment may be granted to another person for the adult under a scheduled international social security agreement.

Alternative to income/assets test for higher ADAT score adults

198(7) Paragraphs (5)(c) and (d) do not apply if the care receiver is the higher ADAT score adult mentioned in paragraph (2)(a) and the adult:

- (a) is receiving a social security pension or benefit, a service pension or income support supplement; or
- (b) would be receiving a social security or service pension or income support supplement if he or she had been an Australian resident for a long enough period.

Level of care requirement for 2 or more disabled children

198(8) If the care receivers are the 2 or more disabled children mentioned in paragraph (2)(c), the Secretary must be of the opinion that the children require a level of care that is at least equivalent to the level of care required by a profoundly disabled child.

Deemed personal care of disabled adult and dependent child

198(9) For the purposes of paragraph (2)(d) and other references in this Part that relate to that paragraph, if a disabled adult is providing care of a dependent child of the adult at a particular time and another person is supervising the provision of that care at that time, the other person is taken personally to provide care of the adult and child at that time.

198AAA Continuation of qualification when person receiving care admitted to institution

198AAA(1) This section applies if:

- (a) carer payment is payable to a person who has ordinarily been providing constant care for a care receiver or care receivers; and
- (b) the person ceases to be qualified for the payment because he or she ceases to provide constant care for the care receiver or any of the care receivers as a result of the care receiver being

admitted permanently to an institution where care is provided for the care receiver.

198AAA(2) The carer payment continues to be payable to the person for 14 weeks after the person ceases to be qualified, and then ceases to be payable.

198AA Qualification for carer payment—hospitalisation

198AA(1) If:

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

then the carer qualifies for carer payment.

Limit on qualification under subsection (1)

198AA(2) However, the period, or the sum of the periods, for which the person can be qualified under subsection (1) is 63 days in any calendar year.

198AB Care not required to be in private residence during portability period

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 payment (within the meaning of that Division);

the person does not cease to be qualified for carer payment merely because the constant care of the care receiver or care receivers is

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not provided in a private residence that is the home of the care receiver or care receivers.

198AC Effect of cessation of care etc. on carer payment

Continuation of payment where temporary cessation of care

198AC(1) Subject to subsection (3), if:

- (a) a person is qualified for carer payment because the person is personally providing constant care for a care receiver or care receivers; and
- (b) the person temporarily ceases to provide that care for the care receiver or care receivers;

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

Continuation of payment after hospitalisation—section 198AA ceases to apply

198AC(2) Subject to subsection (3), if:

- (a) a person is qualified for carer payment under section 198AA because the person is participating in the care of an adult or child in hospital; and
- (b) apart from this subsection, the person would later cease to be qualified for carer payment under that section; and
- (c) the person would not cease to be qualified for carer payment if the person were providing constant care for the adult or child, or the adult or child and another person;

the person does not cease to be qualified for carer payment merely because of the lack of provision of constant care.

Limit on subsections (1) and (2)

198AC(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 constant personal care in order to undertake training etc.

198AC(4) If:

- (a) a person is qualified for carer payment because the person is personally providing constant care for a care receiver or care receivers; and
 - (b) the person temporarily ceases to provide that care in order to undertake training, education, unpaid voluntary work or paid employment; and
 - (c) the cessation does not exceed 20 hours per week;
- the person does not cease to be qualified for the carer payment merely because of the cessation.

Cessation of participation in hospital care in order to undertake training etc.

198AC(5) If:

- (a) a person is qualified for carer payment because the person is participating in the care of another person in hospital; and
 - (b) the person temporarily ceases to participate in the care in order to undertake training, education, unpaid voluntary work or paid employment; and
 - (c) the cessation does not exceed 20 hours per week;
- the person does not cease to be qualified for the carer payment merely because of the cessation.

198A Income test

[see Appendix for CPI adjusted figures]

Passing the income test

- 198A(1) A care receiver or care receivers pass the income test if the taxable income of the care receiver, or the sum of the taxable incomes of the care receivers, worked out under section 198B for the appropriate tax year determined under section 198C is not more than \$66,403 (the *income ceiling*).

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Income test failed where no taxable income for appropriate tax year

- 198A(2) A care receiver or care receivers do not pass the income test if any person (whether or not a care receiver) whose taxable income is required to be taken into account in applying section 198B does not have an assessed taxable income or an accepted estimated taxable income for the appropriate tax year.

198B Taxable income

Rules that apply for the purposes of this Subdivision

- 198B(1) For the purposes of this Subdivision, the rules set out in subsections (1A), (1B), (1BA), (1C) and (6) apply.

Taxable income of higher ADAT score adult

- 198B(1A) If a care receiver who is a higher ADAT score adult is a member of a couple, the care receiver's taxable income includes the taxable income of the care receiver's partner.

Taxable income of profoundly disabled child or disabled child

- 198B(1B) If a care receiver is a profoundly disabled child, or a disabled child, who lives with his or her parent, the taxable income of the care receiver includes the taxable income of the following people:

- (a) the parent;
- (b) if the parent is a member of a couple—the parent's partner;
- (c) if the parent or the partner has one or more FTB children—the FTB children (other than any who are care receivers).

However, if the care receiver is a disabled child who is one of 2 or more care receivers, the taxable income of the same person is not to be included in the taxable income of any of the other care receivers.

Taxable income of lower ADAT score adult

- 198B(1BA) If a care receiver is a lower ADAT score adult, the care receiver's taxable income includes the taxable income of the following people:

- (a) if the adult is a member of a couple—the adult’s partner and any FTB child (except the other care receiver) of the adult or of the partner;
- (b) in any other case—any FTB child (except the other care receiver) of the adult.

Taxable income

198B(1C) A person’s **taxable income** for a tax year is:

- (a) the person’s assessed taxable income for the tax year; or
- (b) if the Commissioner of Taxation has not made an assessment of the person’s taxable income for the tax year—the person’s accepted estimated taxable income for the tax year.

Note: For **accepted estimated taxable income** see subsection (5).

Assessed taxable income

198B(2) At a particular time, a person’s **assessed taxable income** for a tax year is the taxable income according to whichever of the following was made most recently:

- (a) an assessment of the person’s taxable income for the tax year made by the Commissioner of Taxation;
- (b) an amended assessment of the person’s taxable income for the tax year made by the Commissioner of Taxation;
- (c) an amendment made by a tribunal of an assessment or amended assessment of the person’s taxable income for the tax year made by the Commissioner of Taxation;
- (d) an amendment made by a court of:
 - (i) an assessment or amended assessment of the person’s taxable income for the tax year made by the Commissioner of Taxation; or
 - (ii) an amended assessment of the person’s taxable income for the tax year made by a tribunal.

Estimating taxable income

198B(3) A person, or, if the person is a child—the child’s parent or carer, may give the Secretary a written estimate of the person’s taxable income for a tax year.

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Accepting estimate of taxable income

198B(4) The Secretary may accept the estimate only if:

- (a) the person does not have an assessed taxable income for the tax year; and
- (b) one of the following applies:
 - (i) the tax year has not ended;
 - (ii) the Secretary is satisfied that the person is not required to lodge a return of income for the tax year under the Income Tax Assessment Act;
 - (iii) the Secretary is satisfied that the person has lodged, or proposes to lodge, a return of income for the tax year under the Income Tax Assessment Act; and
- (c) the Secretary is satisfied that the estimate is reasonable.

Accepted estimated taxable income

198B(5) A person's *accepted estimated taxable income* for a tax year is the taxable income according to the estimate that was most recently given to the Secretary under subsection (3) and accepted by the Secretary.

Nil amounts of taxable income

198B(6) A person's assessed taxable income or accepted estimate of taxable income may be a nil amount.

198C Appropriate tax year

Appropriate tax year in ordinary cases

198C(1) Subject to this section, the appropriate tax year for a day is the base tax year for that day.

Note: For *base tax year* see subsection (6).

198C(2) If:

- (a) carer payment would not be payable to a person because the care receiver or care receivers would not pass the income test under subsection 198A(1) apart from this subsection; and

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- (b) the Secretary is given a written request to treat the care receiver or care receivers as if the tax year in which the request is given were the appropriate tax year; and
- (c) the request is given to the Secretary by the person, any care receiver who is 16 or over or a parent of any care receiver who is under 16; and
- (d) the taxable income of the care receiver, or the sum of the taxable incomes of the care receivers, for the tax year in which the request is made is likely to be less than the income ceiling;

the appropriate tax year, for the purposes of applying subsection 198A(1) to the care receiver or care receivers on or after the day on which the request is given, is the tax year in which the request is made.

Note 1: For *taxable income* see section 198B.

Note 2: For *income ceiling* see subsection 198A(1).

198C(3) If:

- (a) an instalment of carer payment (the *first payment*) is paid to a person on a day in one calendar year; and
- (b) the next instalment of carer payment (the *second payment*) is paid to a person on a day in the next calendar year; and
- (c) the instalment period to which the second payment relates:
 - (i) commences immediately after the end of the instalment period to which the first payment related; and
 - (ii) includes the first day of the calendar year referred to in paragraph (b); and
- (d) the person's carer payment is payable in relation to the period referred to in subparagraph (c)(i) because, as a result of a request under paragraph (2)(b), the appropriate tax year is the tax year in which that period occurs (the *current tax year*); and
- (e) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the current tax year is less than the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the base tax year;

the care recipient's appropriate tax year, as from the beginning of the later calendar year, is the current tax year and not the base tax

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year unless the care recipient's taxable income for the base tax year is less than the income ceiling.

Note 1: For *base tax year* see subsection (6).

Note 2: For *income ceiling* see subsection 198A(1).

Change to appropriate tax year because of notifiable event

198C(4) For the purposes of section 198A, if:

- (a) a notifiable event occurs in relation to a care receiver or any of 2 or more care receivers; and
- (b) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year in which the notifiable event occurs exceeds the income ceiling;

the appropriate tax year is the tax year in which the notifiable event occurs.

Note 1: For *notifiable event* see subsection (6).

Note 2: For *taxable income* see section 198B.

Note 3: For *income ceiling* see subsection 198A(1).

Note 4: The effect of subsection (4) is that the person caring for the care receiver or care receivers will cease to be qualified for carer payment because the care receiver or care receivers will not pass the income test under subsection 198A(1).

Change to appropriate tax year because of effect of notifiable event on taxable income for later tax year

198C(5) For the purposes of section 198A, if:

- (a) a notifiable event occurs in relation to a care receiver or any of 2 or more care receivers; and
- (b) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year in which the notifiable event occurs (the *event tax year*) does not exceed the income ceiling; and
- (c) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year that follows the event tax year is likely to exceed the income ceiling;

the appropriate tax year is the year that follows the event tax year.

Note 1: For *notifiable event* see subsection (6).

Note 2: For *taxable income* see section 198B.

Definitions

198C(6) For the purposes of this section:

- (a) the **base tax year** for a day is the tax year that ended on 30 June in the calendar year immediately before the calendar year in which the day falls; and
- (b) a **notifiable event** is an event or change of circumstances that:
 - (i) is specified in a notice under subsection 222(1A); and
 - (ii) is described by the notice as a notifiable event.

Example: Suppose 4 April 1996 is a carer payment payday. It falls in the calendar year 1 January to 31 December 1996, so the base tax year for that payday is the tax year that ended on 30 June 1995 (i.e. the year of income beginning on 1 July 1994).

198D Assets test

[see Appendix for CPI adjusted figures]

Higher ADAT score adult passing the assets test

198D(1) A care receiver who is a higher ADAT score adult passes the assets test if the total value of the following assets is less than \$376,750:

- (a) the care receiver's assets;
- (b) if the care receiver has a partner—any assets of the partner;
- (c) if the care receiver or the care receiver's partner has one or more FTB children—any assets of the FTB children.

Note: The amount specified in subsection (1) is indexed on each 1 January (see sections 1190 and 1191).

Profoundly disabled child passing the assets test

198D(1A) A care receiver who is a profoundly disabled child passes the assets test if the total value of the following assets is less than \$410,000:

- (a) the disabled child's assets;
- (b) if the disabled child lives with his or her parent:
 - (i) the assets of the parent;
 - (ii) if the parent is a member of a couple—the assets of the parent's partner;

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- (iii) if the parent or the partner has one or more FA children—the assets of those FA children.

198D(1B) For the purposes of this Division (other than subsection (1A)), if the disabled child lives with his or her parent, the disabled child's assets are taken to include the assets listed in subsection (1A).

Disabled children passing the assets test

198D(1C) Care receivers who are 2 or more disabled children pass the assets test if the total value of the following assets is less than \$410,000:

- (a) the assets of all of the disabled children;
- (b) if any of the disabled children lives with his or her parent:
 - (i) the assets of the parent;
 - (ii) if the parent is a member of a couple—the assets of the parent's partner;
 - (iii) if the parent or the partner has one or more FTB children—the assets of those FTB children.

However, assets of the same person are not to be taken into account more than once.

198D(1D) For the purposes of this Division (other than subsection (1C)), if any of the disabled children lives with his or her parent, the disabled child's assets are taken to include the assets listed in paragraph (1C)(b) in relation to the child. However, assets of the same person are not to be included in the assets of more than one child.

Lower ADAT score adult and dependent child passing the assets test

198D(1E) Care receivers who are a lower ADAT score adult and a dependent child pass the assets test if the total value of the assets of the following people is less than \$410,000:

- (a) the adult;
- (b) the dependent child;
- (c) if the adult is a member of a couple—the adult's partner;
- (d) if the adult or the partner has one or more FTB children—the FTB children.

198E Working out the value of assets

For the purposes of subsection 198D(1), (1A), (1C) or (1E), the value of assets is to be worked out in accordance with:

- (a) Part 3.12, except Divisions 2, 3 and 4 of that Part; and
- (b) sections 198F to 198MA (inclusive); and
- (c) Part 3.18, except Division 9.

Note: Sections 198F to 198MA (inclusive) make special provision for the assets test for care receivers in relation to subjects covered more generally by Division 2 of Part 3.12.

198F Disposal of assets—care receiver assets test

198F(1) For the purposes of this Division, a person *disposes of assets* of the person if:

- (a) the person engages in a course of conduct that directly or indirectly:
 - (i) destroys all or some of the person's assets; or
 - (ii) disposes of all or some of the person's assets; or
 - (iii) diminishes the value of all or some of the person's assets; and
- (b) one of the following subparagraphs is satisfied:
 - (i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;
 - (ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;
 - (iii) the Secretary is satisfied that the person's purpose, or dominant purpose, in engaging in that course of conduct was to enable another person who provides care for the person to obtain a carer payment.

198F(1A) For the purposes of this Division, a person disposes of assets of a profoundly disabled child, a disabled child or a dependent child if:

- (a) the person engages in a course of conduct that directly or indirectly:
 - (i) destroys all or some of the child's assets; or
 - (ii) disposes of all or some of the child's assets; or

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- (iii) diminishes the value of all or some of the child's assets;
and
- (b) one of the following paragraphs is satisfied:
 - (i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;
 - (ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;
 - (iii) the Secretary is satisfied that the person's purpose, or dominant purpose, in engaging in that course of conduct was to enable the person who provides care for the child to obtain a carer payment.

Note: Subsections 198D(1B) and (1D) provide that if the child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be the assets of the child.

198F(2) If, under subsection 1147(1A), the value of a granny flat interest is less than the amount paid, or agreed to be paid, for the interest, then, for the purposes of this section, so much of the amount paid, or agreed to be paid, as exceeds the value of the interest is not consideration for the interest.

Note: For *granny flat interest* see subsection 12A(2).

198G Amount of disposition—care receiver assets test

If a person disposes of assets, the *amount of the disposition* is:

- (a) if the person receives no consideration for the destruction, disposal or diminution—an amount equal to:
 - (i) the value of the assets that are destroyed; or
 - (ii) the value of the assets that are disposed of; or
 - (iii) the amount of the diminution in the value of the assets whose value is diminished; or
- (b) if the person receives consideration for the destruction, disposal or diminution—an amount equal to:
 - (i) the value of the assets that are destroyed; or
 - (ii) the value of the assets that are disposed of; or

- (iii) the amount of the diminution in the value of the assets whose value is diminished;
less the amount of the consideration received by the person in respect of the destruction, disposal or diminution.

198H Disposal of assets in pre-pension years—individual higher ADAT score adults

198H(1) This section applies in determining whether a person (the *carer*) qualifies for a carer payment when claiming it for caring for a care receiver who:

- (a) is a higher ADAT score adult; and
- (b) is not a member of a couple when the claim is made.

198H(1A) This section applies only to disposals of assets that took place before 1 July 2002.

198H(2) If:

- (a) the care receiver has disposed of an asset of the care receiver during a pre-pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pre-pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the care receiver's assets for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

198H(3) In this section:

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

- (a) the 12 months ending on the carer's provisional commencement day for carer payment; or

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- (b) any preceding period of 12 months.

198HA Disposal of assets in pre-pension years—profoundly disabled child or disabled children

198HA(1) This section applies in determining whether a person (the *carer*) qualifies for a carer payment when claiming it for caring for a care receiver who is a profoundly disabled child or care receivers each of whom is a disabled child.

198HA(1A) This section applies only to disposals of assets that took place before 1 July 2002.

198HA(2) If:

- (a) a person has disposed of one or more of the child's assets during a pre-pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of the child's assets previously made during that pre-pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the child's assets for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

Note 3: Subsections 198D(1B) and (1D) provide that if the child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be assets of the child.

198HA(3) In this section:

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

- (a) the 12 months ending on the carer's provisional commencement day for carer payment; or
- (b) any preceding period of 12 months.

198HB Disposal of assets in pre-pension years—lower ADAT score adult and dependent child

Application

198HB(1) This section applies in determining whether a person (the *carer*) qualifies for a carer payment when claiming it for caring for care receivers who are a lower ADAT score adult and a dependent child.

Disposals before 1 July 2002

198HB(1A) This section applies only to disposals of assets that took place before 1 July 2002.

Increase in value of assets of lower ADAT score adult

198HB(2) Subject to subsection (3), if:

- (a) there has been a disposal, during a pre-pension year of the carer, of an asset of any of the following persons (a **qualifying person**):
 - (i) the lower ADAT score adult;
 - (ii) the dependent child;
 - (iii) if the adult is a member of a couple—the adult’s partner and any FTB child of the adult or of the partner;
 - (iv) if the adult is not a member of a couple—any FTB child of the adult; and
- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets of any of the qualifying persons during the pre-pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the assets of the lower ADAT score adult, for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets of the qualifying persons during that pre-pension year exceeds \$10,000.

Note 1: For *disposition of assets* see section 198F.

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Note 2: For *amount of disposition* see section 198G.

Effect of ceasing to be member of couple or death of FTB child after disposal of assets

198HB(3) If:

- (a) an amount is included under subsection (2) in the value of the assets of the lower ADAT score adult because of the disposition of an asset of any of the qualifying persons; and
- (b) if the lower ADAT score adult is a member of a couple—either:
 - (i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or
 - (ii) any of the FTB children dies; and
- (c) if the lower ADAT score adult is not a member of a couple—any of the FTB children dies;

then, for the purposes of subsection (2), the following are to be disregarded:

- (d) in a subparagraph (b)(i) case—the partner and any FTB child of the partner and any disposition of their assets; or
- (e) in a subparagraph (b)(ii) or paragraph (c) case—the FTB child and any disposition of his or her assets.

Pre-pension year

198HB(4) In this section:

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

- (a) the 12 months ending on the carer's provisional commencing day for the carer payment; or
- (b) any preceding period of 12 months.

198J Disposal of assets before 1 July 2002—individual higher ADAT score adults

198J(1) This section applies in determining whether a person (the *carer*) who has been receiving a carer payment for caring for a care receiver who:

- (a) is a higher ADAT score adult; and
- (b) is not a member of a couple;

continues to qualify for the pension.

198J(1A) This section applies only to disposals of assets that took place before 1 July 2002.

198J(2) If:

- (a) the care receiver has disposed of an asset of the care receiver during a pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the care receiver's assets for the period of 5 years that starts on the day on which the disposition takes place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets, and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

198J(3) In this section:

pension year, in relation to a carer, means:

- (a) the 12 months starting on the day the carer payment first became payable to the carer; or
- (b) any preceding or following period of 12 months.

198JA Disposal of assets before 1 July 2002—profoundly disabled children or disabled children

198JA(1) This section applies in determining whether a person (the *carer*) who has been receiving a carer payment for caring for a care receiver who is a profoundly disabled child or care receivers each of whom is a disabled child continues to qualify for the pension.

198JA(1A) This section applies only to disposals of assets that took place before 1 July 2002.

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198JA(2) If:

- (a) a person has disposed of one or more of the child's assets during a pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of the child's assets previously made during that pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the child's assets for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made during that pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

Note 3: Subsections 198D(1B) and (1D) provide that if the child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be assets of the child.

198JA(3) In this section:

pension year, in relation to a carer, means:

- (a) the 12 months starting on the day the carer payment first became payable to the carer; or
- (b) any preceding or following period of 12 months.

198JB Disposal of assets before 1 July 2002—lower ADAT score adult and dependent child

Application

198JB(1) This section applies in determining whether a person (the *carer*) who has been receiving a carer payment for caring for care receivers who are a lower ADAT score adult and a dependent child continues to qualify for the pension.

198JB(1A) This section applies only to disposals of assets that took place before 1 July 2002.

Increase in value of assets of lower ADAT score adult

198JB(2) Subject to subsection (3), if:

- (a) there has been a disposal, during a pension year of the carer, of an asset of any of the following persons (a **qualifying person**):
 - (i) the lower ADAT score adult;
 - (ii) the dependent child;
 - (iii) if the adult is a member of a couple—the adult’s partner and any FTB child of the adult or of the partner;
 - (iv) if the adult is not a member of a couple—any FTB child of the adult; and
- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets of any of the qualifying persons during the pension year exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the assets of the lower ADAT score adult, for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets of the qualifying persons during that pension year exceeds \$10,000.

Note 1: For **disposition of assets** see section 198F.

Note 2: For **amount of disposition** see section 198G.

Effect of ceasing to be member of couple or death of FTB child after disposal of assets

198JB(3) If:

- (a) an amount is included under subsection (2) in the value of the assets of the lower ADAT score adult because of the disposition of an asset of any of the qualifying persons; and
- (b) if the lower ADAT score adult is a member of a couple—either:
 - (i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or
 - (ii) any of the FTB children dies; and

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(c) if the lower ADAT score adult is not a member of a couple—any of the FTB children dies;

then, for the purposes of subsection (2), the following are to be disregarded:

(d) in a subparagraph (b)(i) case—the partner and any FTB child of the partner and any disposition of their assets; or

(e) in a subparagraph (b)(ii) or paragraph (c) case—the FTB child and any disposition of his or her assets.

Pension year

198JB(4) In this section:

pension year, in relation to a carer, means:

(a) the 12 months starting on the day the carer payment first became payable to the carer; or

(b) any preceding or following period of 12 months.

198JC Disposal of assets in income year—individual higher ADAT score adults

Application

198JC(1) This section has effect in determining whether a person (the *carer*) who has been receiving a carer payment for caring for a care receiver who:

(a) is a higher ADAT score adult; and

(b) is not a member of a couple;

continues to qualify for the payment.

Disposals to which section applies

198JC(2) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 by the care receiver of an asset of the care receiver.

Increase in value of assets of higher ADAT score adult

198JC(3) If the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the care receiver during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the

purposes of this Act, the lesser of the following amounts is to be included in the value of the care receiver's assets for the period of 5 years starting on the day on which the relevant disposal took place:

- (a) the amount of the relevant disposal;
- (b) the amount by which the sum of the amount of the relevant disposal, and the amounts (if any) of other disposals of assets previously made by the care receiver during the income year in which the relevant disposal took place, exceeds \$10,000.

198JD Disposal of assets in 5 year period—individual higher ADAT score adults

Application

198JD(1) This section also has effect in determining whether a person (the *carer*) who has been receiving a carer payment for caring for a care receiver who:

- (a) is a higher ADAT score adult; and
- (b) is not a member of a couple;

continues to qualify for the payment.

Disposals to which section applies

198JD(2) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 by the care receiver of an asset of the care receiver.

Increase in value of assets of higher ADAT score adult

198JD(3) If:

- (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals during the rolling period by the care receiver of assets of the care receiver;

less

- (b) the sum of any amounts included in the value of the care receiver's assets during the rolling period under section 198JC or any previous application or applications of this section;

exceeds \$30,000, then, for the purposes of this Act, an amount equal to the excess is to be included in the value of the care

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receiver's assets for the period of 5 years starting on the day on which the relevant disposal took place.

Rolling period

198JD(4) For the purposes of this section, the **rolling period** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

198JE Disposal of assets in income year—profoundly disabled children

Application

198JE(1) This section has effect in determining whether a person who has been receiving a carer payment for caring for a care receiver who is a profoundly disabled child continues to qualify for the payment.

Disposals to which section applies

198JE(2) This section applies to a disposal (the **relevant disposal**) on or after 1 July 2002 by a person of one or more of the disabled child's assets.

Increase in value of assets of profoundly disabled child

198JE(3) If the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of the disabled child's assets previously made by a person during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the disabled child's assets for the period of 5 years starting on the day on which the relevant disposal took place:

- (a) the amount of the relevant disposal;
- (b) the amount by which the sum of the amount of the relevant disposal, and the amounts (if any) of other disposals of the disabled child's assets previously made during the income year in which the relevant disposal took place, exceeds \$10,000.

198JF Disposal of assets in 5 year period—profoundly disabled children

Application

198JF(1) This section also has effect in determining whether a person who has been receiving a carer payment for caring for a care receiver who is a profoundly disabled child continues to qualify for the payment.

Disposals to which section applies

198JF(2) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 by a person of one or more of the disabled child's assets.

Increase in value of assets of profoundly disabled child

198JF(3) If:

- (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals during the rolling period by a person of any of the disabled child's assets;

less

- (b) the sum of any amounts included in the value of the disabled child's assets during the rolling period under section 198JE or any previous application or applications of this section;
- exceeds \$30,000, then, for the purposes of this Act, an amount equal to the excess is to be included in the value of the disabled child's assets for the period of 5 years starting on the day on which the relevant disposal took place.

Rolling period

198JF(4) For the purposes of this section, the *rolling period* is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

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198JG Disposal of assets in income year—lower ADAT score adult and dependent child

Application

198JG(1) This section has effect in determining whether a person (the *carer*) who has been receiving a carer payment for caring for care receivers who are a lower ADAT score adult and a dependent child continues to qualify for the payment.

Disposals to which section applies

198JG(2) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset of any of the following persons (each of whom is called a *qualifying person*):

- (a) the lower ADAT score adult;
- (b) the dependent child;
- (c) if the adult is a member of a couple—the adult’s partner and any FTB child of the adult or of the partner;
- (d) if the adult is not a member of a couple—any FTB child of the adult.

Increase in value of assets of lower ADAT score adult

198JG(3) Subject to subsection (4), if the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets of any of the qualifying persons previously made during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the lower ADAT score adult for the period of 5 years starting on the day on which the relevant disposal took place:

- (a) the amount of the relevant disposal;
- (b) the amount by which the sum of the amount of the relevant disposal and the amounts (if any) of other disposals of assets of the qualifying persons previously made during the income year in which the relevant disposal took place, exceeds \$10,000.

*Effect of ceasing to be member of couple or death of FTB child
after disposal of assets*

198JG(4) If:

- (a) an amount is included under subsection (3) in the value of the assets of the lower ADAT score adult because of the relevant disposal; and
- (b) if the lower ADAT score adult is a member of a couple—either:
 - (i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or
 - (ii) any of the FTB children dies; and
- (c) if the lower ADAT score adult is not a member of a couple—any of the FTB children dies;

then, for the purposes of subsection (3), the following are to be disregarded:

- (d) in a subparagraph (b)(i) case—the partner and any FTB child of the partner and any disposal of their assets; or
- (e) in a subparagraph (b)(ii) or paragraph (c) case—the FTB child and any disposal of his or her assets.

198JH Disposal of assets in 5 year period—lower ADAT score adult and dependent child

Application

198JH(1) This section also has effect in determining whether a person (the *carer*) who has been receiving a carer payment for caring for care receivers who are a lower ADAT score adult and a dependent child continues to qualify for the payment.

Disposals to which section applies

198JH(2) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset of any of the following persons (each of whom is called a *qualifying person*):

- (a) the lower ADAT score adult;
- (b) the dependent child;
- (c) if the adult is a member of a couple—the adult's partner and any FTB child of the adult or of the partner;

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- (d) if the adult is not a member of a couple—any FTB child of the adult.

Increase in value of assets of lower ADAT score adult

198JH(3) Subject to subsection (4), if:

- (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals during the rolling period of assets of any of the qualifying persons;

less

- (b) the sum of any amounts included in the value of the assets of the lower ADAT score adult during the rolling period under section 198JG or any previous application or applications of this section;

exceeds \$30,000, then, for the purposes of this Act, an amount equal to the excess is to be included in the value of the assets of the lower of the ADAT score adult for the period of 5 years starting on the day on which the relevant disposal took place.

Effect of ceasing to be member of couple or death of FTB child after disposal of assets

198JH(4) If:

- (a) an amount is included under subsection (3) in the value of the assets of the lower ADAT score adult because of the relevant disposal; and
- (b) if the lower ADAT score adult is a member of a couple—either:
 - (i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or
 - (ii) any of the FTB children dies; and
- (c) if the lower ADAT score adult is not a member of a couple—any of the FTB children dies;

then, for the purposes of subsection (3), the following are to be disregarded:

- (d) in a subparagraph (b)(i) case—the partner and any FTB child of the partner and any disposal of their assets; or
- (e) in a subparagraph (b)(ii) or paragraph (c) case—the FTB child and any disposal of his or her assets.

Rolling period

198JH(5) For the purposes of this section, the *rolling period* is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

198K Disposal of assets in pre-pension years—members of couples including higher ADAT score adults

198K(1) This section applies in determining whether a person (the *carer*) qualifies for carer payment when claiming it for caring for a higher ADAT score adult who is a member of a couple when the claim is made.

198K(1A) This section applies only to disposals of assets that took place before 1 July 2002.

Increase in value of assets of care receiver and of care receiver's partner

198K(2) Subject to subsections (3) and (4), if:

- (a) the care receiver or the care receiver's partner has disposed of an asset during a pre-pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the care receiver or the partner during that pre-pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of both the assets of the care receiver and the assets of the partner, for the period of 5 years that starts on the day on which the disposition took place:

- (c) 50% of the amount of the first-mentioned disposition;
- (d) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

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Effect of separation of couple after disposal of care receiver's asset

198K(3) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the care receiver; and
- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the partner's assets because of that disposition is to be included in the assets of the care receiver.

Effect of separation of couple after disposal of partner's asset

198K(4) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the partner; and
- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the care receiver's assets because of that disposition is no longer to be included in the assets of the care receiver.

Pre-pension year

198K(5) In this section:

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

- (a) the 12 months ending on the carer's provisional commencement day for the carer payment; or
- (b) any preceding period of 12 months.

198L Disposal of assets before 1 July 2002—members of couples including higher ADAT score adults

198L(1) This section applies in determining whether a person (the *carer*) who has been receiving a carer payment for caring for a higher ADAT score adult who is a member of a couple continues to qualify for the pension.

198L(1A) This section applies only to disposals of assets that took place before 1 July 2002.

Increase in value of assets of care receiver and of care receiver's partner

198L(2) Subject to subsections (3) and (4), if:

- (a) the care receiver or the care receiver's partner disposed of an asset during a pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of both the assets of the care receiver and the assets of the partner, for the period of 5 years that starts on the day on which the disposition took place:

- (c) 50% of the amount of the first-mentioned disposition;
- (d) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

Effect of separation of couple after disposal of care receiver's asset

198L(3) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care

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receiver's partner because of a disposition of an asset by the care receiver; and

- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the partner's assets because of that disposition is to be included in the assets of the care receiver.

Effect of separation of couple after disposal of partner's asset

198L(4) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the partner; and
- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the care receiver's assets because of that disposition is no longer to be included in the assets of the care receiver.

Pension year

198L(5) In this section:

pension year, in relation to a carer, means:

- (a) the 12 months starting on the day the carer payment first became payable to the carer; or
- (b) any preceding or following period of 12 months.

198LA Disposal of assets in income year—members of couples including higher ADAT score adults

Application

- 198LA(1) This section has effect in determining whether a person (the *carer*) who has been receiving a carer payment for caring for a care receiver who is a higher ADAT score adult and is a member of a couple continues to qualify for the payment.

Disposals to which section applies

198LA(2) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset by the care receiver, the care receiver's partner, or the care receiver and the care receiver's partner.

Increase in value of assets

198LA(3) If the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the care receiver, the care receiver's partner, or the care receiver and the care receiver's partner (whether before or after they became members of the couple), during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the care receiver and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposal took place:

- (a) one-half of the amount of the relevant disposal;
- (b) one-half of the amount by which the sum of the amount of the relevant disposal and the amounts (if any) of other disposals of assets previously made by the care receiver, the partner, or the care receiver and the partner, during the income year in which the relevant disposal took place, exceeds \$10,000.

Effect of ceasing to be a member of couple after disposal by care receiver

198LA(4) If:

- (a) the relevant disposal is the disposal of an asset by the care receiver; and
- (b) after the relevant disposal, the care receiver and the care receiver's partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the assets of the partner because of the relevant disposal is to be included in the value of the assets of the care receiver.

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Effect of ceasing to be a member of couple after disposal by care receiver's partner

198LA(5) If:

- (a) the relevant disposal is the disposal of an asset by the care receiver's partner; and
- (b) after the relevant disposal, the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the assets of the care receiver because of the relevant disposal is no longer to be included in the value of the assets of the care receiver.

198LB Disposal of assets in 5 year period—members of couples including higher ADAT score adults

Application

198LB(1) This section also has effect in determining whether a person (the *carer*) who has been receiving a carer payment for caring for a care receiver who is a higher ADAT score adult and is a member of a couple continues to qualify for the payment.

Disposals to which section applies

198LB(2) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset by the care receiver, the care receiver's partner, or the care receiver and the care receiver's partner.

Increase in value of assets

198LB(3) If:

- (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals during the rolling period of assets by the care receiver, the care receiver's partner, or the care receiver and the care receiver's partner;

less

- (b) the sum of any amounts included in the value of the assets of the care receiver or the partner during the rolling period under a provision of this Subdivision other than this section

or under any previous application or applications of this section;

exceeds \$30,000, then, for the purposes of this Act, an amount equal to one-half of the excess is to be included in the value of the assets of the care receiver and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposal took place.

Effect of ceasing to be member of couple after disposal by care receiver

198LB(4) If:

- (a) the relevant disposal is a disposal of an asset by the care receiver; and
- (b) after the relevant disposal, the care receiver and the care receiver's partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the assets of the partner because of the relevant disposal is to be included in the value of the assets of the care receiver.

Effect of ceasing to be member of couple after disposal by care receiver's partner

198LB(5) If:

- (a) the relevant disposal is a disposal of an asset by the care receiver's partner; and
- (b) after the relevant disposal, the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the assets of the care receiver because of the relevant disposal is no longer to be included in the value of the assets of the care receiver.

Rolling period

198LB(6) For the purposes of this section, the **rolling period** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

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198M Certain dispositions to be disregarded for care receiver assets test

This Division does not apply to a disposition of an asset by a person (the *disposer*):

- (a) more than 5 years before the time when another person (the *carer*) became qualified for a carer payment:
 - (i) because the carer was providing care for the disposer and the disposer was a care receiver or one of 2 or more care receivers; or
 - (ii) because the carer was providing care for the person who was the disposer's partner at the time of the disposition and that person was a care receiver or one of 2 or more care receivers; or
- (b) less than 5 years before the time referred to in paragraph (a) but before the time when the disposer could, in the Secretary's opinion, reasonably have expected that the carer would become qualified for carer payment for a reason described in paragraph (a); or
- (c) before 9 May 1995.

198MA Other dispositions to be disregarded for care receiver assets test

This Division does not apply to a disposition of an asset of a profoundly disabled child, a disabled child or a dependent child by a person (the *disposer*):

- (a) more than 5 years before the carer became qualified for a carer payment because:
 - (i) the carer was providing care for the profoundly disabled child, and the child was a care receiver; or
 - (ii) the carer was providing care for the disabled child, and the child and one or more other disabled children were care receivers; or
 - (iii) the carer was providing care for the dependent child and a lower ADAT score adult and the dependent child and adult were care receivers; or
- (b) less than 5 years before the time referred to in paragraph (a) but before the time when the disposer could, in the

Secretary's opinion, reasonably have expected that the carer would become qualified for carer payment because the carer was providing care to the child.

Note: Subsections 198D(1B) and (1D) provide that if the profoundly disabled child or the disabled child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be the assets of the child.

198N Exemption from care receiver assets test

[see Appendix for CPI adjusted figures]

Application by higher ADAT score adult

198N(1) If:

- (a) subparagraph 198(5)(d)(i) would disqualify for carer payment a person caring for a care receiver who is a higher ADAT score adult; and
- (b) the higher ADAT score adult lodges with the Department, in a form approved by the Secretary, a request that the adult not be disqualified by that subparagraph; and
- (c) the request includes a written estimate of the higher ADAT score adult's taxable income for the current financial year under subsection 198B(3); and
- (d) the Secretary accepts the estimate under subsection 198B(4); subsections (2), (3), (4), (5) and (6) have effect.

Application by parent or carer of profoundly disabled child or disabled child

198N(1A) If:

- (a) subparagraph 198(5)(d)(i) would disqualify from carer payment a person caring for a care receiver who is a profoundly disabled child or care receivers each of whom is a disabled child; and
- (b) the parent or the carer of the profoundly disabled child or of any of the disabled children lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and
- (c) the request includes a written estimate of the taxable income of the profoundly disabled child, or written estimates of the

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taxable incomes of the disabled children, for the current financial year under subsection 198B(3); and

(d) the Secretary accepts the estimate under subsection 198B(4); subsections (2), (3), (4), (5) and (6) have effect.

Application by lower ADAT score adult

198N(1B) If:

- (a) subparagraph 198(5)(d)(i) would disqualify from carer payment a person caring for care receivers who are a lower ADAT score adult and a dependent child; and
- (b) the lower ADAT score adult lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and
- (c) the request includes written estimates of the taxable incomes of the lower ADAT score adult and the dependent child under subsection 198B(3); and
- (d) the Secretary accepts the estimate under subsection 198B(4); subsections (2), (3), (4), (5) and (6) have effect.

Failing assets test but passing special income test

198N(2) The Secretary may decide that subparagraph 198(5)(d)(i) does not disqualify the person from carer payment if:

- (a) the value of the assets of the care receiver or the sum of the values of the assets of the care receivers is more than \$410,000 but not more than \$608,500; and
- (b) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is less than the liquid assets limit; and
- (c) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the current financial year is less than the threshold amount worked out under subsection (6).

Note 1: The amounts specified in paragraph (2)(a) are indexed each year on 1 January (see sections 1190 and 1191).

Note 2: For calculating the value of assets and liquid assets, see paragraph (5)(a).

Note 3: For *liquid assets* see subsection 19B(1).

Note 4: For *liquid assets limit* see paragraph (5)(b).

Note 5: For *accepted estimated taxable income* see subsection 198B(5).

Failing assets and special income tests

198N(3) The Secretary may decide that subparagraph 198(5)(d)(i) does not disqualify the person from carer payment if the value of the assets of the care receiver, or the sum of the values of the assets of the care receivers, is more than \$410,000 and not more than \$608,500 and:

- (a) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is equal to or greater than the liquid assets limit; or
- (b) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the current financial year is equal to or more than the threshold amount worked out under subsection (6).

Note 1: The amounts specified in subsection (3) are indexed each year on 1 January (see sections 1190 and 1191).

Note 2: For calculating the value of assets and liquid assets, see paragraph (5)(a).

Note 3: For *liquid assets* see subsection 19B(1).

Note 4: For *liquid assets limit* see paragraph (5)(b).

Note 5: For *accepted estimated taxable income* see subsection 198B(5).

Failing assets test by large margin but passing special income test

198N(4) The Secretary may decide that subparagraph 198(5)(d)(i) does not disqualify the person from carer payment if:

- (a) the value of the assets of the care receiver, or the sum of the values of the assets of the care receivers, is more than \$608,500; and
- (b) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is less than the liquid assets limit; and
- (c) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the

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current financial year is less than the threshold amount worked out under subsection (6).

- Note 1: The amount specified in paragraph (4)(a) is indexed each year on 1 January (see sections 1190 and 1191).
- Note 2: For calculating the value of assets and liquid assets, see paragraph (5)(a).
- Note 3: For *liquid assets* see subsection 19B(1).
- Note 4: For *liquid assets limit* see paragraph (5)(b).
- Note 5: For *accepted estimated taxable income* see subsection 198B(5).

Definitions—assets and income

198N(5) For the purposes of this section:

- (a) the value of the assets or liquid assets of a care receiver who is a higher ADAT score adult is the sum of the values of the assets or liquid assets (as the case requires) of the following people:
 - (i) the care receiver;
 - (ii) if the care receiver has a partner—the partner;
 - (iii) if the care receiver or the care receiver’s partner has one or more FTB children—those FTB children; and
- (aa) the value of the liquid assets of a care receiver who is a profoundly disabled child or a disabled child is the sum of the values of the liquid assets of the following people:
 - (i) the care receiver;
 - (ii) if the care receiver lives with his or her parent—the parent;
 - (iii) if the parent with whom the care receiver lives is a member of a couple—the parent’s partner;
 - (iv) if the parent with whom the care receiver lives or the parent’s partner has one or more FTB children—those FTB children.

However, if the care receiver is one of 2 or more care receivers each of whom is a disabled child, liquid assets of the same person are not to be taken into account in respect of any of the other care receivers; and

- (ab) the value of the liquid assets of a care receiver who is a lower ADAT score adult is the sum of the values of the liquid assets of the following people:

- (i) the care receiver;
- (ii) if the care receiver is a member of a couple—the care receiver's partner and any FTB child (except the dependent child who is the other care receiver) of the care receiver or the care receiver's partner;
- (iii) if the care receiver is not a member of a couple—any FTB child (except the dependent child who is the other care receiver); and

Note: The value of the liquid assets of the dependent child who is the other care receiver is not adjusted by adding any other person's liquid assets.

- (b) the *liquid assets limit* is \$10,000 if the care receiver or any of the care receivers is a member of a couple, or \$6,000 if not; and
- (c) the *taxable income* of a care receiver or of any of 2 or more care receivers for a particular financial year is the taxable income of the care receiver for that year as worked out under section 198B.

Note 1: For *liquid assets* see subsection 19B(1).

Note 2: Subsections 198D(1B) and (1D) provide that if a profoundly disabled or a disabled child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be assets of the child.

Working out the threshold amount

198N(6) For the purposes of paragraphs (2)(c), (3)(b) and (4)(c), the threshold amount is the amount worked out using the following formula:

$$MBR \times 2 + \$24 \times FPC$$

where:

MBR is the maximum basic rate of age pension payable, as at the last 1 January, to a person who has a partner.

FPC is:

- (a) in the case of a care receiver who is a higher ADAT score adult—the number of FA children of the care receiver or the care receiver's partner (if the care receiver has a partner); or
- (b) in the case of a care receiver who is a profoundly disabled child who lives with his or her parent—the number of FA

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children of the parent or the parent's partner (if the parent has a partner); or

- (c) in the case of a care receiver who is a profoundly disabled child who does not live with his or her parent—0; or
- (d) in the case of care receivers who are 2 or more disabled children:
 - (i) if any of the children lives with his or her parent—the sum of the number of FTB children of each such parent or of the partner (if the parent has a partner) of each such parent; or
 - (ii) in any other case—0; or
- (e) in the case of care receivers who are a lower ADAT score adult and a dependent child—the number of FTB children of the care receiver or the care receiver's partner (if the care receiver has a partner).

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

198P Date of effect of favourable decision under section 198N

Date of effect

198P(1) If the Secretary decides under subsection 198N(2), (3) or (4) that subparagraph 198(5)(d)(i) does not disqualify a person from carer payment, the day on which the decision takes effect is worked out under this section.

Basic rule

198P(2) Subject to subsections (3), (4) and (5), the decision takes effect on the day on which the decision was made or on such later or earlier day (not being a day more than 3 months before the decision was made) as is specified in the decision.

Notified decision—review sought within 3 months

198P(3) If:

- (a) a decision (the *previous decision*) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and
- (b) notice of the making of the previous decision is given:

- (i) in the case of a care receiver who is a higher ADAT score adult—to the adult or the person caring for the adult; or
 - (ii) in the case of a care receiver who is a profoundly disabled child—to the parent or carer of the disabled child; or
 - (iii) in the case of care receivers who are 2 or more disabled children—to the carer of the children or to the parent of any of the children; or
 - (iv) in the case of care receivers who are a lower ADAT score adult and a dependent child—to the lower ADAT score adult or the person caring for that adult; and
- (c) within 3 months after the notice is given, a person applies to the Secretary under section 1240 for review of the previous decision; and
- (d) a decision favourable to the person caring for the care receiver or care receivers (the *favourable decision*) is made as a result of the application for review;
- the favourable decision takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 3 months

198P(4) If:

- (a) a decision (the *previous decision*) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and
- (b) notice of the making of the previous decision is given:
 - (i) in the case of a care receiver who is a higher ADAT score adult—to the adult or the person caring for the adult; or
 - (ii) in the case of a care receiver who is a profoundly disabled child—to the parent of the disabled child or the person who is caring for the disabled child; or
 - (iii) in the case of care receivers who are 2 or more disabled children—to the carer of the children or to the parent of any of the children; or

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- (iv) in the case of care receivers who are a lower ADAT score adult and a dependent child—to the lower ADAT score adult or the person caring for that adult; and
 - (c) more than 3 months after the notice is given, a person applies to the Secretary under section 1240 for review of the previous decision; and
 - (d) a decision favourable to the person caring for the care receiver or care receivers (the *favourable decision*) is made as a result of the application for review;
- the favourable decision takes effect on the day on which the person sought the review.

Decision not notified

198P(5) If:

- (a) a decision (the *previous decision*) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and
- (b) notice of the making of the previous decision is not given to a person specified in paragraph (4)(b) as a person to whom notice is to be given; and
- (c) a person applies to the Secretary under section 1240 for review of the previous decision; and
- (d) a decision favourable to the person caring for the care receiver or care receivers (the *favourable decision*) is made as a result of the application for review;

the favourable decision takes effect on the day on which the previous decision took effect.

198Q Date of effect of adverse decision under section 198N

If the Secretary decides under subsection 198N(2), (3) or (4) that subparagraph 198(5)(d)(i) disqualifies a person from carer payment, the decision takes effect:

- (a) on the day on which the request under section 198N in respect of the care receiver or care receivers was lodged with the Department; or
- (b) if the request was lodged after the Secretary rejected a claim for carer payment by a person caring for the care receiver or

care receivers—on the day on which the decision to reject the claim took effect.

Subdivision B—Payability

199 Carer payment not payable if payment rate nil

199(1) Subject to subsection (2), a carer payment is not payable to a person if the person's carer payment rate would be nil.

199(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

201AA Newly arrived resident's waiting period

201AA(1) A person is subject to a newly arrived resident's waiting period if the person:

- (a) enters Australia on or after 4 March 1997; and
- (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

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

201AA(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a carer payment.

201AA(3) Subsection (1) does not apply to a person who is:

- (a) the holder of a subclass 104 visa—Preferential family; and
- (b) either a carer or a special need relative.

201AA(4) Subsection (1) does not apply to a person who is:

- (a) the holder of a subclass 806 visa—Family; and
- (b) either a carer or a special need relative.

201AA(5) Subsection (1) does not apply to a person if:

- (a) the person is already subject to a newly arrived resident's waiting period; or

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- (b) the person has already served a newly arrived resident's waiting period; or
- (c) at the commencement of this subsection, the person has already been an Australian resident for a period of, or periods totalling, 104 weeks; or
- (d) the person holds a visa that is in a class of visas determined in writing by the Minister for the purposes of this paragraph.

201AA(6) In this section:

carer has the same meaning as in the Migration Regulations.

special need relative has the same meaning as in the Migration Regulations as in force on 30 November 1998.

201AB Duration of newly arrived resident's waiting period

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

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

202 Multiple entitlement exclusion

202(1) A carer payment is not payable to a person if the person is already receiving a service pension.

202(2) If:

- (a) a person is receiving a carer payment; and
- (b) another social security pension or a social security benefit or service pension becomes payable to the person;

the carer payment is not payable to the person.

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

Note 2: For *social security pension* and *social security benefit* see subsection 23(1).

Note 3: for the day on which the carer payment ceases to be payable see section 225A.

202(3) A carer payment is not payable to a person who:

- (a) is an armed services widow or an armed services widower;
and
- (b) is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
- (c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.

202(4) Subsection (3) does not apply if:

- (a) the person:
 - (i) was on 20 March 1995 receiving; and
 - (ii) has from that day continuously received; and
 - (iii) is receiving;
the carer payment; and
- (b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the carer payment.

202(5) Subsection (3) does not apply if:

- (a) before 20 March 1995, the person had made a claim for carer payment; and
- (b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and
- (c) on or after 20 March 1995, the person was granted carer payment; and
- (d) the person has since that time continued to receive, and is receiving, the pension.

202(6) Subsection (3) does not apply if:

- (a) before 20 March 1995:
 - (i) the person had made a claim for wife pension; and
 - (ii) the claim had been rejected; and
 - (iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and

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- (b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and
- (c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted wife pension; and
- (d) the person has since that time continued to receive, and is receiving, the pension.

202A Exclusion of certain participants in ABSTUDY Scheme

202A(1) If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and
- (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
- (d) the payment relates to a period;

carer payment is not payable to the person in respect of any part of the period.

202A(2) If:

- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
- (b) the payment for which the person is qualified is a payment that:
 - (i) is made on the basis that the person is a full-time student; and
 - (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
 - (iii) relates to a period;

carer payment is not payable to the person in respect of any part of the period.

202A(3) If:

- (a) a person may enrol in a full-time course of education; and
- (b) a payment referred to in subsection (2) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (2), carer payment is payable to the person before the person starts the course.

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Division 4 Rate of carer payment

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Division 4—Rate of carer payment

210 How to work out a person's carer payment rate

A person's carer payment rate is worked out using Pension Rate Calculator A at the end of section 1064 (see Part 3.2).

Division 9—Bereavement payments

Subdivision A—Continuation of carer payment

235 Continuation of carer payment for bereavement period where person cared for dies

235(1) If:

- (a) a person is receiving carer payment because he or she ordinarily cares for a care receiver or care receivers; and
 - (b) the person is caring for the care receiver or care receivers or has temporarily ceased to care for the care receiver or care receivers; and
 - (c) the care receiver or any of the care receivers dies; and
 - (d) the care receiver who dies is not the person's partner; and
 - (e) because of the death, the person would, apart from this subsection, cease to be qualified for the carer payment;
- the person remains qualified for the carer payment during the bereavement period as if the death had not occurred.

235(1A) If:

- (a) a person (the *carer*) is receiving a carer payment only because section 198AA or subsection 198AC(2) applies; and
 - (b) the death occurs of:
 - (i) the person or any of the persons for whom the person would qualify for carer payment as mentioned in paragraph 198AA(1)(b); or
 - (ii) the person or any of the persons for whom the constant care mentioned in paragraph 198AC(2)(c) is assumed to be provided; and
 - (c) the person who dies is not the carer's partner;
- the carer remains qualified for carer payment during the bereavement period as if the death had not occurred.

235(3) A person to whom subsection (1) applies may, by written notice to the Secretary, choose not to receive payments under this Subdivision and to receive instead any payments to which the person would be otherwise entitled.

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235(4) If a person makes an election under subsection (3):

- (a) this Act, or Part III or IIIA of the Veterans' Entitlements Act, has effect accordingly; and
- (b) the person may not withdraw the election after the Department has taken all the action required to give effect to the election.

236 Continued carer payment rate

If a person is qualified for a carer payment solely because of section 235, the rate at which the pension is payable is to be determined having regard to the person's actual circumstances.

236A Lump sum payable in some circumstances

236A(1) A lump sum is payable to a person under this section if:

- (a) the person remains qualified for carer payment because subsection 235(1) or (1A) applies; and
- (b) immediately before the death of the person mentioned in that subsection, the person who died was not a member of a couple, or was a member of a couple and his or her partner:
 - (i) was not receiving a social security pension; and
 - (ii) was not receiving a social security benefit; and
 - (iii) was not receiving a service pension or income support supplement.

236A(1A) However, if subsection (1) would apply where 2 or more persons die at the same time, only one payment is payable under that subsection.

236A(2) The amount of the lump sum under this section is the lesser of the amount worked out under subsection (3) and the amount worked out under subsection (4).

236A(3) The amount under this subsection is:

Partnered MBR \times 7

where:

partnered MBR is the maximum basic rate applicable, on the day that the person dies, to a person covered by item 2 of the Maximum

Basic Rate Table in point 1064-B1 of Pension Rate Calculator A in section 1064.

236A(4) The amount under this subsection is:

Carer's current instalment $\times 7$

where:

carer's current instalment is the amount of the last instalment of carer payment paid to the carer before the person died.

236B Subdivision not to apply in certain cases involving simultaneous death

If:

- (a) a lower ADAT score adult and a dependent child of the adult die at the same time; and
- (b) apart from this subsection and section 243, because of those deaths, a person would continue to qualify for carer payment under section 235 and would be qualified for payments under Subdivision B; and
- (c) the sum of the carer payments for which the person would continue to qualify under section 235 and any lump sum payable to the person under section 236A is less than the sum of the amounts payable to the person under Subdivision B;

the person does not continue to qualify for carer payment under section 235 and no lump sum is payable to the person under section 236A.

Subdivision B—Death of partner

237 Qualification for payments under this Subdivision

237(1) If:

- (a) a person is receiving a carer payment; and
- (b) the person is a member of a couple; and
- (c) the person's partner dies; and
- (d) immediately before the partner died, the partner:
 - (i) was receiving a social security pension; or

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- (ii) was receiving a service pension or income support supplement; or
- (iii) was a long-term social security recipient; and
- (e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
 - (i) the amount that would otherwise be payable to the person under section 238 (continued payment of partner's pension or allowance); and
 - (ii) the amount that would otherwise be payable to the person under section 240 (person's continued rate);the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: section 238 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: section 239 provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: a person who is qualified for payments under this Subdivision for the death of the person's partner may, in some circumstances, be automatically transferred to a parenting payment after the end of the bereavement period without making a claim for that payment (see subsection 501(4)).

237(1A) If:

- (a) a person is receiving a carer payment; and
- (b) immediately before starting to receive the carer payment the person was receiving partner bereavement payments; and
- (c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;

the person is qualified for payments under this Subdivision to cover the remainder of the bereavement period.

237(1B) Subsection (1) or (1A) does not apply if:

- (a) the person is receiving carer payment under section 235 because of the death of a care receiver who is a dependent child of a lower ADAT score adult; and

(b) the person's partner is the lower ADAT score adult.

237(2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

Note: if a person makes an election, the date of effect of any determination to increase the person's rate of age pension may, in some circumstances, be the day on which the person's partner died (see subsection 233(5A)).

237(3) An election under subsection (2):

- (a) must be made by written notice to the Secretary; and
- (b) may be made after the person has been paid an amount or amounts under this Subdivision; and
- (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

237(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which carer payment is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 240.

237(5) For the purposes of this section, a person is a *long-term social security recipient* if:

- (a) the person is receiving a social security benefit; and
- (b) in respect of the previous 12 months, the person:
 - (i) was receiving a social security pension; or
 - (ii) was receiving a social security benefit; or
 - (iii) was receiving a youth training allowance; or
 - (iv) was receiving a service pension or income support supplement.

237(6) A person is taken to satisfy the requirements of paragraph (5)(b) if:

- (a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or
- (b) the person was receiving one or a combination of the payments referred to in that paragraph for 46 weeks of the previous 52.

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238 Continued payment of partner's pension or allowance

238(1) If a person is qualified for payments under this Subdivision in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period:

- (a) where the partner was receiving a social security pension or social security benefit—the amount that would have been payable to the partner on the payday if the partner had not died; or
- (b) where the partner was receiving a service pension or income support supplement—the amount that would have been payable to the partner under Part III or IIIA (as the case may be) of the Veterans' Entitlements Act on the service payday that:
 - (i) where the first Thursday after the partner's death was a service payday—precedes the pension payday; or
 - (ii) in any other case—follows the pension payday;if the partner had not died.

Note: For *bereavement rate continuation period* see section 21.

238(2) For the purposes of subsection (1), if the couple were, immediately before the partner's death, an illness separated couple or a respite care couple, the amounts are to be worked out as if they were not such a couple.

239 Lump sum payable in some circumstances

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

LUMP SUM CALCULATOR

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

Method statement

- Step 1.* Work out the amount that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if:
- (a) the person's partner had not died; and
 - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2.* Work out the amount that would have been payable to the person's partner on the partner's payday or service payday immediately before the first available bereavement adjustment payday if:
- (a) the partner had not died; and
 - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3.* Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
- Step 4.* Work out the amount that, but for section 240, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.
- Step 5.* Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.
- Step 6.* Work out the number of the partner's paydays in the bereavement lump sum period.

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

240 Adjustment of person's carer payment rate

If:

- (a) a person is qualified for payments under this Subdivision; and
- (b) the person does not elect under subsection 237(2) not to receive payments under this Subdivision;

the rate of the person's carer payment during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of carer payment payable to the person is the rate at which the pension would have been payable to the person if:
 - (i) the person's partner had not died; and
 - (ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;
- (d) during the bereavement lump sum period (if any), the rate at which carer payment is payable to the person is the rate at which the carer payment would be payable to the person apart from this Subdivision.

241 Effect of death of person entitled to payments under this Subdivision

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

LUMP SUM CALCULATOR

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

Method statement

Step 1. Work out the amount that would have been payable to the person on the person's payday immediately after the day on which the person died if:

- (a) neither the person nor the person's partner had died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Step 2. Work out the amount that would have been payable to the partner on the partner's payday or service payday immediately after the day on which the person died if:

- (a) neither the person nor the partner had died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

Step 4. Work out the amount that, but for section 240, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.

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

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- Step 6.* Work out the number of partner's paydays in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.
- Step 7.* Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

242 Benefits under this Subdivision

242(1) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the *Veterans' Entitlements Act*; and
- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
- (e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

242(2) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III or IIIA of the *Veterans' Entitlements Act 1986*, within the bereavement period, into an account with a bank; and

- (c) the bank pays to the person, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

243 Subdivision not to apply in certain cases involving simultaneous death

If:

- (a) a lower ADAT score adult and a dependent child of the adult die at the same time; and
- (b) apart from this subsection and section 236B, because of those deaths a person would be qualified for payments under this Subdivision and would continue to qualify for carer payment under section 235; and
- (c) the sum of the amounts payable to the person under this Subdivision is less than or equal to the sum of the carer payments for which the person would continue to qualify under section 235 and any lump sum payable to the person under section 236A;

no amounts are payable to the person under this Subdivision.

Subdivision D—Death of recipient

246 Death of recipient

246(1) If:

- (a) a person is receiving carer payment; and
- (b) either:
 - (i) the person is not a member of a couple; or
 - (ii) the person is a member of a couple and the person's partner:
 - (A) is not receiving a social security pension; and
 - (C) is not receiving a service pension or income support supplement; and

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(c) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the person's payday after the person's death if the person had not died.

246(2) If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 1: for amounts owing to the recipient before the recipient's death see section 219.

Note 2: for death of a person qualified for bereavement payments under Subdivision B see section 241.

Part 2.7—Bereavement allowance

Division 1—Qualification for and payability of bereavement allowance

Subdivision A—Qualification

315 Qualification for bereavement allowance

315(1) A person is qualified for a bereavement allowance on a day if:

- (a) the person:
 - (i) was a member of a couple; and
 - (ii) stopped being a member of a couple because the person's partner died; and
- (b) the person is not a member of a couple; and
- (c) the person is not qualified for a parenting payment; and
- (d) at least one of the following conditions is satisfied:
 - (i) when the person's partner died, both the person and the person's partner were Australian residents;
 - (ii) the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks; or
 - (iii) the person has a qualifying residence exemption for a bereavement allowance;
 - (iv) the person is a woman:
 - (A) to whom a wife pension, or a partner service pension under Part III of the Veterans' Entitlements Act, was payable immediately before her partner died; and
 - (B) who was not in Australia when her partner died; and
- (e) the day occurs:
 - (i) if the person is a man, or a woman who was not pregnant when her partner died—in the period of 14 weeks starting on the day of the death of the partner; or

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- (ii) if the person is a woman who was pregnant when her partner died:
 - (A) in the period of 14 weeks starting on the day of the death of the partner; or
 - (B) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;whichever ends later.

Note: For *Australian resident* and *qualifying residence exemption* see section 7.

Subdivision B—Payability

316 Bereavement allowance not payable if allowance rate nil

316(1) Subject to subsection (2), a bereavement allowance is not payable to a person if the person's bereavement allowance rate would be nil.

316(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

321 Multiple entitlement exclusion

321(1) A bereavement allowance is not payable to a person if the person is already receiving a service pension.

321(2) If:

- (a) a person is receiving a bereavement allowance; and
- (b) another social security pension or a social security benefit or service pension becomes payable to the person;

the bereavement allowance is not payable to the person.

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

Note 2: For *social security pension* and *social security benefit* see subsection 23(1).

Note 3: for the day on which the bereavement allowance ceases to be payable see section 344A.

- 321(3) A bereavement allowance is not payable to a woman if:
- (a) the woman is an armed services widow; and
 - (b) the woman is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note: for *armed services widow* see subsection 4(1).

- 321(4) A bereavement allowance is not payable to a man if:
- (a) the man is an armed services widower; and
 - (b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note: for *armed services widower* see subsection 4(1).

321A Exclusion of certain participants in ABSTUDY Scheme

321A(1) If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and
- (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
- (d) the payment relates to a period;

bereavement allowance is not payable to the person in respect of any part of the period.

321A(2) If:

- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
- (b) the payment for which the person is qualified is a payment that:
 - (i) is made on the basis that the person is a full-time student; and
 - (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
 - (iii) relates to a period;

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Part 2.7 Bereavement allowance

Division 1 Qualification for and payability of bereavement allowance

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bereavement allowance is not payable to the person in respect of any part of the period.

321A(3) If:

- (a) a person may enrol in a full-time course of education; and
- (b) a payment referred to in subsection (2) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (2), bereavement allowance is payable to the person before the person starts the course.

Division 4—Rate of bereavement allowance

329 How to work out a person's bereavement allowance rate

A person's rate of bereavement allowance is worked out using Pension Rate Calculator C at the end of section 1066 (see Part 3.4).

Division 9—Bereavement payments

Subdivision B—Death of recipient

359 Death of recipient

359(1) If:

- (a) a person is receiving bereavement allowance; and
- (b) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the person's payday after the person's death if the person had not died.

359(2) If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note: for amounts owing to the recipient before the recipient's death see section 338.

Part 2.8—Widow B pension

Division 1—Qualification for and payability of widow B pension

Subdivision A—Qualification

362A Widow B pension not to be granted in certain cases

362A(1) In spite of anything else in this Part, a widow B pension must not be granted to a woman unless:

- (a) the woman's claim for the pension is lodged before 20 March 1997; and
- (b) the woman is qualified for the pension before that day.

362(2) If subsection 366(2) applies to a woman, the woman is taken, for the purposes of subsection (1) of this section, to have lodged a claim on the day on which the initial claim was made.

362(3) This section does not apply in relation to a determination by the Secretary under section 401.

362(4) In this section:

initial claim has the same meaning as in subsection 366(2).

362 Qualification for widow B pension

362(1) A woman is qualified for a widow B pension if:

- (a) the woman:
 - (i) was, immediately before 1 July 1987, receiving a widow's pension as a class B widow under the 1947 Act; or
 - (ii) on 1 July 1987 had turned 45 years old and:
 - (A) was receiving a supporting parent's benefit or a widow's pension as a class A widow on or after that day; or

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- (B) was receiving a sole parent's pension after 1 March 1989; or
 - (iii) on 1 July 1987 had turned 50 years old; and
 - (b) the woman is not qualified for parenting payment; and
 - (c) the woman:
 - (i) was legally married and her husband has died; or
 - (ii) was a *dependent female*, that is:
 - (A) she was a member of a couple and her partner has died; and
 - (B) she was a member of the couple for 3 years immediately before her partner died; and
 - (C) she was wholly or mainly financially maintained by him; or
 - (iii) is divorced from her husband; or
 - (iv) was legally married and her husband has deserted her without just cause for a period of at least 6 months; or
 - (v) is legally married to a man who is in gaol and has been in gaol continuously for at least 6 months; or
 - (vi) was:
 - (A) a party to a purported marriage that is void; and
 - (B) the man who was the other party to the purported marriage has deserted her without just cause for a period of at least 6 months; and
 - (C) in the Secretary's opinion, she believed that the purported marriage was valid when it took place; and
 - (d) the woman is not a member of another couple; and
 - (e) either:
 - (i) the woman had been an Australian resident for a continuous period of at least 5 years immediately before the day she lodged the claim for the widow B pension; or
 - (ii) the woman has, at any time, been an Australian resident for a continuous period of at least 10 years; or
 - (iia) the woman has a qualifying residence exemption for a widow B pension; or
 - (iii) both the woman and her partner were Australian residents at the time:
-

- (A) if she was legally married and her husband has died—when he died; or
- (B) if she was a dependent female—when her partner died; or
- (C) if she is divorced—when she became divorced; or
- (D) if she was legally married and her husband has deserted her—when she was deserted; or
- (E) if she was a party to a purported marriage and the man who was the other party has deserted her—when she was deserted; or
- (F) if she was legally married and her husband has been in gaol for a period of at least 6 months—when that period began.

Note: For *Australian resident* and *qualifying residence exemption* see section 7.

- 362(2) A woman does not have to satisfy paragraph (1)(e) in order to be qualified for a widow B pension if:
- (a) the woman became a person to whom paragraph (1)(c) applied because of the death of a man; and
 - (b) the woman was, immediately before the man died, receiving:
 - (i) a wife pension because the man was receiving:
 - (A) an age pension; or
 - (B) an invalid pension or a disability support pension; or
 - (C) a special needs age pension; or
 - (D) a special needs invalid pension or a special needs disability support pension; or
 - (ii) a partner service pension under Part III of the Veterans' Entitlements Act because the man was receiving a service pension under that Part; and
 - (c) the woman was not in Australia at the time when the man died.
- 362(3) Subsection (1) has effect subject to:
- (a) sections 1215 to 1216B (limits on portability); and
 - (b) sections 1218, 1218A, 1218B, 1218C and 1219 (departure certificate requirements for people leaving Australia).
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Chapter 2 Pensions, benefits and allowances

Part 2.8 Widow B pension

Division 1 Qualification for and payability of widow B pension

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Note: a person who is receiving a widow B pension may be automatically transferred to the age pension if the person becomes qualified for the age pension (see subsection 48(3)).

Subdivision B—Payability

364 Widow B pension not payable if pension rate nil

364(1) Subject to subsection (2), a Widow B pension is not payable to a person if the person's Widow B pension rate would be nil.

364(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

368 Multiple entitlement exclusion

368(1) A widow B pension is not payable to a woman if the woman is already receiving a service pension.

368(2) If:

- (a) a woman is receiving a widow B pension; and
- (b) another social security pension or a social security benefit or service pension becomes payable to the woman;

the widow B pension is not payable to the woman.

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

Note 2: For *social security pension* and *social security benefit* see subsection 23(1).

Note 3: for the day on which the widow B pension ceases to be payable see section 392A.

368(3) A widow B pension is not payable to a woman if:

- (a) the woman is an armed services widow; and
- (b) the woman is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note: for *armed services widow* see subsection 4(1).

368A Exclusion of certain participants in ABSTUDY Scheme

368A(1) If:

- (a) a payment is made in respect of a person under the ABSTUDY Scheme; and
- (b) the payment is made on the basis that the person is a full-time student; and
- (c) in the calculation of the payment, an amount identified as living allowance (the *basic payment*) is included; and
- (d) the payment relates to a period;

widow B pension is not payable to the person in respect of any part of the period.

368A(2) If:

- (a) a person is qualified for a payment under the ABSTUDY Scheme; and
- (b) the payment for which the person is qualified is a payment that:
 - (i) is made on the basis that the person is a full-time student; and
 - (ii) is calculated on the basis that an amount identified as living allowance (the *basic payment*) is included; and
 - (iii) relates to a period;

widow B pension is not payable to the person in respect of any part of the period.

368A(3) If:

- (a) a person may enrol in a full-time course of education; and
- (b) a payment referred to in subsection (2) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (2), widow B pension is payable to the person before the person starts the course.

Division 4—Rate of widow B pension

376 How to work out the rate of widow B pension

A woman's widow B pension rate is worked out using Pension Rate Calculator C at the end of section 1066 (see Part 3.4).

Division 9—Bereavement payments

Subdivision B—Death of recipient

407 Death of recipient

407(1) If:

- (a) a person is receiving widow B pension; and
- (b) the person dies;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the person's payday after the person's death if the person had not died.

407(2) If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note: for amounts owing to the recipient before the recipient's death see section 386.

Chapter 2 Pensions, benefits and allowances

Part 2.8A Widow allowance

Division 1 Time limit on grants of widow allowance

Section 408AA

Part 2.8A—Widow allowance

Division 1—Time limit on grants of widow allowance

408AA Time limit on grants

A woman is not to be granted widow allowance on or after 1 July 2005 unless she was born on or before 1 July 1955.

Division 2—Qualification for and payability of widow allowance

Subdivision A—Qualification

408BA Qualification for widow allowance

408BA(2) Subject to section 408BB, a woman is qualified for widow allowance in respect of a period if:

- (a) she has turned 50; and
- (b) she was a member of a couple and since turning 40:
 - (i) her partner died; or
 - (ii) she separated from her partner; or
 - (iii) she divorced from her husband; and
- (c) she satisfies the Secretary that she has no recent workforce experience on the day when she makes her claim for the allowance; and
- (d) at least one of the following is satisfied:
 - (i) if the woman entered Australia before 1 April 1996—the woman has been an Australian resident for a continuous period of at least 26 weeks immediately before the day she lodged the claim for the allowance; or
 - (ia) if the woman entered Australia on or after 1 April 1996 and before the commencement day—the woman has been an Australian resident for a period of, or periods totalling, 104 weeks before the day she lodged the claim for the allowance; or
 - (ib) if the woman entered Australia on or after the commencement day—the woman has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks before the day she lodged the claim for the allowance; or
 - (ii) she has 10 years qualifying Australian residence; or
 - (iii) she has a qualifying residence exemption for widow allowance; or

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Part 2.8A Widow allowance

Division 2 Qualification for and payability of widow allowance

Section 408BB

- (iv) both the woman and her partner were Australian residents at the time when the qualifying event under paragraph (b) occurred; and
- (e) throughout the period, she:
 - (i) is not a member of a couple; and
 - (ii) throughout the period, she is an Australian resident.

Note 1: For *recent workforce experience* see subsection (3).

Note 2: For *Australian resident* and *qualifying residence exemption* see section 7.

Note 4: For *member of a couple* see section 4.

408BA(3) For the purposes of subsection (2), *recent workforce experience* is employment of 20 hours or more a week for a total of 13 weeks or more at any time during the 12 months immediately before the day the woman lodged the claim for the allowance.

408BA(6) In this section:

commencement day means the day on which Schedule 5 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* commences.

408BB Assurance of support

A woman is not qualified for widow allowance in respect of a period if the Secretary is satisfied that:

- (a) an assurance of support is in force in respect of the woman for that period; and
- (b) throughout the period the person who gave the assurance of support is likely to be willing and able to provide an adequate level of support to the woman; and
- (c) throughout the period it would be reasonable for the woman to accept that support.

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

Subdivision B—Payability

408CA Widow allowance not payable if allowance rate nil

408CA(1) Subject to subsection (2), a widow allowance is not payable to a person if the person's widow allowance rate would be nil.

408CA(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

408CE Assets test—allowance not payable if assets value limit exceeded [see Appendix for CPI adjusted figures]

408CE(1) Widow allowance is not payable to a woman if the value of her assets exceeds her assets value limit.

408CE(2) A woman's assets value limit is worked out using the following Table:

Assets value limit table		
Column 1	Column 2	Column 3
Item	Woman's situation	Assets value limit
1	Woman is a homeowner	\$115,000
2	Woman is not a homeowner	\$197,000

Note 1: For *homeowner* see section 11.

Note 2: The assets value limit in column 3 of item 1 is indexed annually in line with CPI increases (see sections 1190 to 1194).

Note 3: The assets value limit in column 3 of item 2 is adjusted annually (see subsection 1204(1)).

Note 4: If widow allowance is not payable to a woman because of the value of the her assets, she may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).

Section 408CF

408CF Multiple entitlement exclusion

408CF(1) Widow allowance is not payable to a woman if she is already receiving a service pension or income support supplement.

408CF(2) If:

- (a) a woman is receiving widow allowance; and
- (b) a social security pension, another social security benefit, a service pension or income support supplement becomes payable to her;

widow allowance is not payable to her.

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

Note 2: For the day on which the widow allowance ceases to be payable see section 408KA.

408CF(3) Widow allowance is not payable to a woman if:

- (a) she is an armed services widow; and
- (b) she is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act;

unless:

- (c) she has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and
- (d) before 1 November 1986 she was also receiving a social security benefit.

Note 1: For *armed services widow* see subsection 4(1).

Note 2: A widow receiving a payment under the Veterans' Entitlements Act who is not covered by paragraph (b) may be paid at a lower rate—see subsection 1068(3).

408CF (4) Subject to subsections (5) and (6), widow allowance is not payable to a woman for a period if a payment has been or may be made in respect of the woman for that period under:

- (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or
- (b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees.

Note 1: For *prescribed educational scheme* see section 5.

408CF(5) If:

- (a) a woman enrolls in a full-time course of education; and
- (b) a payment under a scheme referred to in subsection (4) may be made in respect of her;

the Secretary may decide that, in spite of subsection (4), widow allowance is payable to her for a period before she starts the course.

408CF(6) If:

- (a) a woman enrolls in a full-time course of education; and
- (b) the course is to last for 6 months or more; and
- (c) an application is made for a payment in respect of her under:
 - (ii) the ABSTUDY Schools Scheme; or
 - (iii) the ABSTUDY Tertiary Scheme; and
- (d) she was receiving widow allowance immediately before the start of the course;

the Secretary may decide that, in spite of subsection (4), widow allowance is payable to her until:

- (e) the application is determined; or
- (f) the end of 3 weeks commencing on the day on which the course starts;

whichever happens first.

408CG Maximum basic rate and remote area allowance not payable to CDEP Scheme participant

The maximum basic rate, and the remote area allowance, of widow allowance for a period are not payable to a woman who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module J of Benefit Rate Calculator B.

Note 2: For *CDEP Scheme participant* see subsection 23(1).

408CH Seasonal workers

408CH(1) This section applies if, at any time during the 6 months immediately before the day on which a woman lodges a claim for widow allowance, she has been engaged in seasonal work.

Chapter 2 Pensions, benefits and allowances

Part 2.8A Widow allowance

Division 2 Qualification for and payability of widow allowance

Section 408CH

Note: For *seasonal work* see subsection 16A(1).

408CH(2) Widow allowance is not payable to the woman:

- (a) if she is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to her—for her seasonal work preclusion period; or
- (b) if the Secretary has made a determination under subsection (3) in relation to her—for that part (if any) of her seasonal work preclusion period to which she is subject as a result of the determination.

Note: For *seasonal work preclusion period* see subsection 16A(1).

408CH(3) If the Secretary is satisfied that a woman is in severe financial hardship because she has incurred unavoidable or reasonable expenditure while she is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):

- (a) the Secretary may determine that she is not subject to the whole, or any part, of the preclusion period; and
- (b) the determination has effect accordingly.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple).

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

Division 5—Rate of widow allowance

408FA How to work out a woman's widow allowance rate

A woman's widow allowance rate is worked out using the Benefit Rate Calculator B at the end of section 1068.

408GI CDEP Scheme participant may accumulate widow allowance

- (1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any widow allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
 - (a) unless paragraph (b) applies, the last day of the quarter; or
 - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- (3) In this section:

quarter means a CDEP Scheme quarter.

Note 1: For ***CDEP Scheme participant*** see section 1188B.

Note 2: For ***CDEP Scheme quarter*** see subsection 23(1).

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Table of Acts