OUTLINE

This bill introduces a new payment, child disability assistance, into the social security law. Child disability assistance would be available to carers of disabled children under the age of 16 in respect of whom the carer receives carer allowance for the relevant 1 July (starting 1 July 2007). The payment would be an annual, tax free payment of, generally, $1,000.

Financial impact statement

<table>
<thead>
<tr>
<th>Year</th>
<th>Total resourcing</th>
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<tr>
<td>2007-08</td>
<td>$135.3m</td>
</tr>
<tr>
<td>2008-09</td>
<td>$138.6m</td>
</tr>
<tr>
<td>2009-10</td>
<td>$143.7m</td>
</tr>
<tr>
<td>2010-11</td>
<td>$148.9m</td>
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</table>
NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Act 2007*.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

This explanatory memorandum uses the following abbreviations:

- ‘Social Security Act’ means the *Social Security Act 1991*; and

- ‘Social Security Administration Act’ means the *Social Security (Administration) Act 1999*. 
Schedule 1 – Amendments

Summary

This schedule introduces a new payment, child disability assistance, into the social security law. Child disability assistance would be available to carers of disabled children under the age of 16 in respect of whom the carer receives carer allowance (CA) for the relevant 1 July (starting 1 July 2007). The payment would be an annual, tax free payment of, generally, $1,000.

Background

Children with disability have diverse needs that may change over time. Young children with disability can benefit from early intervention and therapy to maximise their early childhood development and learning. Some families and children will benefit from a break such as respite care. As they develop, older children may outgrow aids and equipment, which will need to be replaced. Home or vehicle modifications such as a hoist in the home or help to travel in the family car, may be necessary.

The new child disability assistance will assist carers with the purchase of this type of assistance or other assistance that best suits the needs of the family.

Explanation of the changes

Part 1 – Main amendments

Social Security Act 1991

Item 1 inserts a definition of child disability assistance into subsection 23(1) of the Social Security Act. The term means child disability assistance under Part 2.19AA.

Item 2 inserts a new Part 2.19AA into the Social Security Act.

Section 992MA - Child disability assistance definitions

New section 992MA inserts definitions for terms used in new Part 2.19AA. These definitions are referred to below when the substantive provision using the term is explained.

Section 992MB - Qualification for child disability assistance

The qualification rules for child disability assistance are set out in new section 992MB.
Child disability assistance will be a lump sum, annual payment. Qualification for the payment will therefore be linked to a person’s circumstances at a point in time each year, that is, 1 July 2007 and then again on each subsequent 1 July.

A person will qualify for child disability assistance in respect of a particular 1 July if the following conditions, set out in new subsection 992MB(1), are met in relation to one or more instalments of CA.

The person must be paid the instalment of CA in respect of a period that included the relevant 1 July. This would include situations where arrears of instalments of CA are paid to the person, including for a period covering the relevant 1 July, as a result of the application of the backdating rules for CA (see clause 16 of Schedule 2 to the Social Security Administration Act) or because of a successful review.

The instalment must also be for a care receiver who is a disabled child or for care receivers who are two disabled children.

The term disabled child is defined in new section 992MA as having the same meaning as in Part 2.19 of the Social Security Act. The relevant provision is section 952 of the Social Security Act, which defines a disabled child to mean a person aged under 16 who has a physical, intellectual or psychiatric disability and who is likely to suffer from that disability permanently or for an extended period. The section 952 definition is also relevant for the purposes of qualification for CA in section 953, which sets out the circumstances in which a person can qualify for CA in respect of a disabled child or, in certain circumstances, two disabled children.

The term care receiver is defined in new section 992MA as having the same meaning as in Part 2.19 of the Social Security Act. Again, the relevant provision is section 952 of the Social Security Act. In the context of these amendments, a care receiver is a disabled child in respect of whom a person is qualified for CA.

New subsection 992MB(2) provides that each instalment in respect of which the above conditions are satisfied is termed a qualifying instalment.

Section 992MC - Eligible care receivers

New section 992MC defines the concept of an eligible care receiver. The term generally refers to a person to whose care a qualifying instalment relates.
However, it is possible for a person to qualify for CA in respect of two disabled children, where neither child alone would qualify the carer for CA. The relevant qualification rules for this category of CA are in subsection 953(2) of the Social Security Act. In this situation, the carer would be entitled to CA in respect of the two disabled children together. Similarly, where subsection 953(2) applies, new subsection 992MC(2) ensures that the two disabled children who together attract CA for the carer are treated as though they were a single eligible care receiver.

This is to be distinguished from the situation where a carer qualifies for CA for two disabled children, where each child qualifies the carer for CA. In this situation, the carer would be entitled to CA for each disabled child, and each disabled child would be an eligible care receiver for the purposes of new section 992MC.

New section 992MD - Amount of child disability assistance

The amount of child disability assistance applicable to a qualified person would be the sum of the amounts applicable to the person for each relevant care receiver.

The amount for a relevant care receiver is $1,000. However, if the Secretary has made a declaration under subsection 981(1) of the Social Security Act, specifying a share of CA for the relevant care receiver that the person is to receive, then the amount of child disability assistance applicable to the person in relation to the relevant care receiver is that share of $1,000.

Item 3 is an application provision. It provides that new section 992MB (qualification for child disability assistance) applies in relation to 1 July 2007 and each subsequent 1 July.

Overpayments and debt recovery

Qualification for child disability assistance will be linked to payment of CA. It follows that, if a person is paid child disability assistance because they were paid CA for the relevant 1 July, and it is subsequently determined that CA should not have been paid for that 1 July and is a debt, then the amount of child disability assistance paid because of that CA payment should also be a debt. Similarly, if an overpayment of CA arises because a person’s share of CA, as determined under subsection 981(1) of the Social Security Act, is varied such that the person has an overpayment of CA for the relevant 1 July, then there would also be an overpayment of child disability assistance. Item 5 inserts a new section 1223ABB into the Social Security Act that has this effect.

The table in subsection 1222(2) sets out the ways in which debts can be recovered. Item 4 makes a consequential amendment to add a reference to child disability assistance debts into the table, with the usual debt recovery methods being available to recover this type of debt.
The amendments made to the Social Security Act commence on 1 October 2007.

**Social Security (Administration) Act 1999**

A person will not be required to claim child disability assistance. Item 6 inserts a new section 12E into the Social Security Administration Act that has this effect.

Item 7 makes a consequential amendment to the definition of lump sum benefit in subsection 47(1) of the Social Security Administration Act to include child disability assistance within that definition.

In terms of payment, the Secretary would be required to pay child disability assistance to the qualified person in a single lump sum. The lump sum would be paid on the date the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made, and in such manner as the Secretary considers appropriate. These rules are set out in new section 50A of the Social Security Administration Act, inserted by item 8.

Payment of child disability assistance in respect of 1 July 2007 would be made from October 2007. However, in subsequent years, child disability assistance would be paid from the relevant July.

The amendments made to the Social Security Administration Act by items 6 to 8 commence on 1 October 2007, consistent with the commencement of amendments to the Social Security Act.

An income management regime is being introduced into the Social Security Administration Act by the forthcoming Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007. Included are a number of definitions listing categories of welfare payments that are relevant in determining whether the income management regime applies to a person and the payments that can be subject to income management.

Child disability assistance will be a payment that can be subject to income management. Child disability assistance will be treated in the same way as CA for the purposes of income management relating to child protection, school enrolment and attendance and the Queensland Commission. As the new child disability assistance is an annual lump sum payment, 100 per cent of the payment would be subject to income management under the rules relating to the Northern Territory, consistent with the treatment of annual family tax benefit lump sums and social security advances.

This effect is achieved by items 9 to 13, which insert references to child disability assistance into the definitions of category C welfare payment, category G welfare payment, category I welfare payment, category Q welfare payment and category S welfare payment in section 123TC of the Social Security Administration Act (as amended).
The amendments made by items 9 to 13 commence on the later of 1 October 2007 or immediately after the commencement of item 17 of Schedule 1 to the Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007.

**Part 2 – Related amendments**

*Income Tax Assessment Act 1936*

The separate net income (SNI) of the dependants of a taxpayer is used to determine the taxpayer’s eligibility for certain dependant offsets. SNI is income and other specified amounts earned, derived or received, less certain expenses incurred in earning that income.

A payment of CA is not included as part of SNI. Similarly, it is not intended that child disability assistance form part of SNI. Item 14 makes the necessary amendment to subsection 159J(6) of the *Income Tax Assessment Act 1936* to achieve this outcome.

*Income Tax Assessment Act 1997*

Child disability assistance will be exempt from income tax. Amendments are made to section 52-10 of the *Income Tax Assessment Act 1997*, by items 16 and 17, to achieve this.

A consequential amendment is also made by item 15 to the table in section 11-15 to add a reference to the new child disability assistance.

These tax-related amendments commence on 1 October 2007.