

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EMPLOYMENT AND WORKPLACE RELATIONS AMENDMENT BILL  
2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and Workplace Relations  
and Minister for Education the Honourable Julia Gillard MP)

# EMPLOYMENT AND WORKPLACE RELATIONS AMENDMENT BILL 2008

## OUTLINE

The purpose of the amendments to the *Safety, Rehabilitation and Compensation Act 1988* is to increase benefits payable to an employee's dependants in the event of a work-related death.

The amendments will increase the lump sum compensation to \$400,000 and to \$110 a week for benefits paid to each prescribed child.

The benefits will be increased annually based on the Wage Price Index (WPI) or as prescribed.

The WPI uses total hourly rates of pay, excluding bonuses, to measure changes in employee wages paid by businesses in Australia. It is an appropriate index because the benefits provide compensation having regard to losses suffered by dependants as a result of the cessation of the employee's earnings.

By allowing for the index to be as prescribed, the index can be amended if the WPI has a change of name or a new or more appropriate index is developed.

The bill makes various changes to the social security law to amend incorrect references and clarify the operation of certain provisions in the *Social Security Act 1991*. The bill clarifies the method of calculating the amount of youth disability supplement that is to be added to a person's rate of youth allowance and the definition of a partner with a rent increased benefit.

The Bill will amend the *Social Security Act 1991* to extend to Sickness Allowance and Parenting Payment (single) the provisions which prevent a person from receiving payment while there is an Assurance of Support in force. This will mean that a person who is subject to an Assurance of Support will not be qualified for Sickness Allowance or Parenting Payment (single) where their assurer is willing and able to provide them with an adequate level of support and it would be reasonable for them to accept that support. In a small number of circumstances, migrants may qualify for Sickness Allowance or Parenting Payment (single) if their assurer is unwilling or unable to provide them with support or it would be unreasonable for them to accept that support.

## FINANCIAL IMPACT

Nil.

Note: In relation to the measure to increase death benefits under the *Safety, Rehabilitation and Compensation Act 1988*, the additional cost of premiums will be \$6.1 million over 4 years. There is no resourcing, fiscal or underlying cash impact on the Budget because the additional cost will be met through the premiums paid by Commonwealth authorities under the Comcare scheme.

# EMPLOYMENT AND WORKPLACE RELATIONS AMENDMENT BILL 2008

## NOTES ON CLAUSES

### Clause 1 - Short title

Provides for the Act to be cited as the *Employment and Workplace Relations Amendment Act 2008*.

### Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for sections 1-3, Schedules 1 and 4 and any provision not covered elsewhere in the table, to commence on Royal Assent; for Schedule 1 and items 1 to 25, 33 to 41 and items 43 and 44 to commence on the day after Royal Assent; for items 26 to 32 of Schedule 2 to commence on 1 January 2008; for item 42 of Schedule 2 to commence immediately after the commencement of item 18 of Schedule 2 to the *Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007* (i.e. 28 September 2007); and for items 45 and 46 of Schedule 2 to commence on 1 July 2009. However, if the *Social Security Legislation Amendment (Employment Services Reform) Act 2008* does not receive the Royal Assent before 1 July 2009, items 45 and 46 of Schedule 2 do not commence at all. This is because the provisions of the Social Security Act that are being amended by items 45 and 46 are also being amended by the *Social Security Legislation Amendment (Employment Services Reform) Act 2008* with effect from 1 July 2009.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information in this column is not part of the Act.

### Clause 3 - Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

For ease of description, this explanatory memorandum uses the following abbreviations:

‘SRC Act’ means the *Safety, Rehabilitation and Compensation Act 1988*;

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

‘Administration Act’ means the *Social Security (Administration) Act 1999*;

‘International Agreements Act’ means the *Social Security (International Agreements) Act 1999*.

## **Schedule 1—Amendments relating to compensation**

### ***Safety, Rehabilitation and Compensation Act 1988***

#### **Item 1 – Subsection 13(1) (definition of ‘relevant amount’)**

Amends the definition of ‘relevant amount’ in subsection 13(1) to remove all references to the death benefit provisions of the SRC Act to reflect that compensation for injuries resulting in death is to be indexed by the Wage Price Index in accordance with proposed section 13AA inserted by item 2, rather than by the Consumer Price Index. The Consumer Price Index will still be used to index compensation in respect of funeral expenses under section 18.

The heading to section 13 is altered to reflect this change.

#### **Item 2 – After section 13**

Inserts a new section 13AA to provide for the automatic indexation of death benefits set out in subsections 17(3), (4) and (5) by the Wage Price Index rather than by the Consumer Price Index under section 13.

The new section is similarly structured to the current section 13 except that paragraph 13AA(1)(b) provides some additional flexibility by allowing for a new index number to be prescribed by regulation, if the Wage Price Index ceases to be published by the Australian Statistician, or in some other way is no longer appropriate to use.

Subsection 13AA(1) provides for the definitions of ‘index number’, ‘relevant amount’ and ‘relevant year’ for section 13AA. ‘Index number’ means the Wage Price Index number, or another prescribed index number, published by the Australian Statistician. The ‘relevant amount’ means the amounts referred to in the death benefit provisions (subsections 17(3), (4) and (5)) and the ‘relevant year’ means the financial year starting on 1 July 2009 or a later financial year.

Subsection 13AA(2) provides for the increasing of the relevant amount, by multiplying it by the indexation factor for a relevant year, where the indexation factor for that year is greater than one. In circumstances where this section has already been used to substitute another amount for the relevant amount, the substituted amount will be used.

Subsections 13AA(3)-(6) set out the method for calculating the indexation factor, including dealing with decimal places and specifying the index number to be used.

#### ***Prescribing the Index***

The Australian Statistician on occasion may vary an indexation series, including by renaming it. For example, the Wage Price Index was previously the Wage Cost Index. In order to allow some flexibility, paragraph 13AA(1)(b) allows for the index number to be prescribed by regulation. This will still allow for Parliamentary scrutiny of the index, as the regulation would be subject to disallowance by Parliament under the *Legislative Instruments Act 2003*.

It would be expected that if at some future time an index was prescribed, it would be the one that most closely reflected the Wage Price Index.

**Items 3 to 5 – Subsection 17(3), paragraph 17(4)(a) and subsection 17(5)**

These items increase the amounts payable as death benefits to dependents of an employee. The lump sum benefit increases to \$400,000 and the weekly benefit for dependent children increases to \$110 a week. Both these amounts will be subject to annual indexation increases under the provisions of new section 13AA.

*Note: The amounts of \$120,000 and \$40 referred to in items 3, 4, and 5 are the base rates that applied when the sections were proclaimed in 1988. These base amounts are subject to CPI indexation increases and currently are \$225,594.33 and \$75.10.*

**Item 6 – Application – compensation for the benefit of dependants**

An application provision that has the effect of providing that the amendments made by items 1 and 2 (to the extent that they relate to subsections 17(3) and (4) of the SRC Act) and items 3 and 4 apply in relation to the death of an employee that occurs at or after the commencement of this item. In other words the increased lump sum payments are payable in relation to the death of an employee that occurs at or after that commencement (which will be the day after the Act receives the Royal Assent).

**Item 7 – Application – compensation for the benefit of children**

An application provision that has the effect of providing that the amendments made by items 1 and 2 (to the extent that they relate to subsection 17(5) of the SRC Act) and item 5 apply in relation to a payment for a week that begins at or after the commencement of this item. In other words the increase in the weekly payment for a prescribed child is payable from the start of the pay week that begins at or after that commencement (which will be the day after the Act receives the Royal Assent). This item also applies to the prescribed children of an employee, where the employee has died before the commencement of this item, and those children are in receipt of weekly payments.

## **Schedule 2—Amendments relating to social security**

### **Part 1—General amendments**

#### ***Social Security Act 1991***

##### **Item 1 Subsection 5(8A)**

Amends subsection 5(8A) to reflect the technical change made in item 9. Subsection 5(8A) referred to subsection 37(3). Following the amendment in item 9, section 37 will no longer contain subsections. Therefore the reference to subsection 37(3) is to be replaced with a reference to section 37.

##### **Item 2 Subsection 5(9)**

Repeals subsection 5(9). Subsection 5(9) refers to determinations made under subsection 37(1) of the Social Security Act. Subsection 37(1) was repealed by *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.

##### **Item 3 Section 15**

Repeals section 15. Section 15 of the Social Security Act contains ‘NS activity test definitions’. Section 15 contains two definitions namely, ‘average male full-time weekly earnings’ and ‘qualified beneficiary’. This is a technical amendment to remove definitions of terms no longer used in the social security law.

Prior to 1 July 2006 persons over 50 were able to satisfy the newstart allowance activity test by undertaking work earning at least 35 per cent of average male full-time weekly earnings under section 602. Section 602 of the Social Security Act was repealed by the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005*. There is no other reference to average male full-time earnings in the social security law.

The reference to qualified beneficiary was removed when section 603AA of the Social Security Act was repealed and substituted in the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*. The new section 603AA does not contain reference to qualified beneficiary and there is no longer any reference in the social security law to qualified beneficiaries.

##### **Item 4 Subsection 17(1) (definition of *payment for a period*)**

Repeals the definition of ‘payment for a period’ in subsection 17(1). Subsection 17(1) of the Social Security Act provides that payment for a period has the meaning given by subsection 7. Subsection 17(7) of the Social Security Act was repealed by the *Family and Community Services Legislation (Simplification and Other Measures) Act*



2001. This is a technical amendment to remove reference to a definition which is no longer contained in the Social Security Act.

**Item 5 Subsection 17(3A)**

Repeals subsection 17(3A). Subsection 17(3A) of the Social Security Act refers to paragraph 17(3)(d) which does not exist in the Social Security Act. Subsection 17(3A) should instead refer to paragraph 17(2)(d). Amending the reference in subsection 17(3A) to refer to paragraph 17(2)(d) would replicate subsection 17(2A), therefore subsection 17(3A) has been repealed.

**Item 6 Subsection 23(1) (definition of *receive*)**

Omits '(3)' from the definition of 'receive' in subsection 23(1). Subsection 23(3) of the Social Security Act was repealed by the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998*. This is a technical amendment to the definition of 'receive' in subsection 23(1) of the Social Security Act to remove reference to a subsection that is no longer contained in the Social Security Act.

**Item 7 Subsection 23(1) (definition of *receive*)**

Inserts '(4A) and' in the definition of 'receive' in subsection 23(1). Subsection 23(4A) of the Social Security Act was inserted by the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003*. Subsection 23(4A) provides that despite subsection 23(4), the period for which a person is taken to be receiving a social security payment will be dependent on the matters contained in that subsection. Subsection 23(4A) is also supported by subsection 23(4AA) which identifies the provisions to which subsection 23(4A) applies. This is a technical amendment to include reference to subsection 23(4A) in the definition of 'receive' in subsection 23(1).

**Item 8 Subsection 23(1) (definition of *receive*)**

Omits 'and (4AB)' from the definition of 'receive' in subsection 23(1). Subsection 23(4AB) was omitted by the *Social Security (Home Child Care and Partner Allowances) Legislation Amendment Act 1994*. This is a technical amendment to the definition of 'receive' in subsection 23(1) of the Social Security Act to remove reference to a subsection that is no longer contained in the Social Security Act.

### **Item 9 Subsection 37(3)**

Omits '(3)' from subsection 37(3). The Social Security Act as introduced in 1991 contained three subsections to section 37. Subsections 37(1) and 37(2) were repealed by the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*. This is a technical amendment to reflect that there are no longer three subsections to section 37 of the Social Security Act.

### **Item 10 Paragraph 38B(6)(b)**

Repeals and substitutes paragraph 38B(6)(b). Paragraph 38B(6)(b) of the Social Security Act currently refers to sections which are no longer contained in the Social Security Act. Section 38B of the Social Security Act provides for situations in which a person will be treated as having been in receipt of an income support payment for a continuous period even though that person was not actually receiving an income support payment during a part or parts of that period. Paragraph 38B(6)(b) provides for continuous receipt of an income support payment even though a period of non-payment occurred during the operation of specific provisions. Item 10 repeals and substitutes paragraph 38B(6)(b) to remove references to repealed sections and subsections relevant to non-payment periods. The amended paragraph 38B(6)(b) refers to a compliance penalty period which is defined in subsection 23(1) of the Social Security Act. New paragraph 38B(6)(c) also provides that a person will be deemed to have continued receipt if the following subsections apply:

- subsection 547AA(1) which provides that youth allowance is not payable in the circumstance prescribed by paragraphs 547AA(1)(a) to (d); or
- subsection 615(1) which provides that newstart allowance is not payable in the circumstance prescribed by paragraphs 615(1)(a) to (c); or
- subsection 771HF(1) which provides that partner allowance is not payable to a person if the value of the person's assets exceeds the person's assets value limit.

### **Item 11 Subparagraph 408BA(2)(e)(ii)**

Omits the phrase 'throughout the period, she' from subparagraph 408BA(2)(e)(ii) of the Social Security Act. This amendment removes words that are used at the start of paragraph 408BA(2)(e) and then repeated in subparagraph 408BA(2)(e)(ii).

### **Item 12 Subsection 500(1) (note 2)**

Omits 'section 1208A' and substitutes 'section 10 of the *Social Security (International Agreements) Act 1999*' to note 2 of subsection 500(1) of the Social Security Act. This amendment reflects the movement of provisions relating to international agreements into the International Agreements Act. Section 10 of the International Agreements Act replaced section 1208A of the Social Security Act, and

this amendment corrects the relevant legislative reference in note 2 to subsection 500(1) of the Social Security Act.

### **Item 13 Section 500B**

Omits 'who is a member of a couple' from section 500B. The effect of the amendment is to disqualify all people who have assurances of support from parenting payment, not just people who are members of couples. The amendment brings parenting payment (single) into line with parenting payment (partnered) and other income support payments such as widow allowance, youth allowance, Austudy and newstart allowance.

### **Item 14 At the end of Subdivision A of Division 1 of Part 2.14**

Inserts new section 676A. New section 676A provides that a person is not qualified for sickness allowance where an assurance of support is in force in respect of that person. This allowance brings sickness allowance in line with other payments such as widow allowance, youth allowance, Austudy, newstart allowance and parenting payment (partnered), for which a person is not qualified if they have an assurance of support in force.

### **Item 15 Paragraph 685(2)(a)**

Amends paragraph 685(2)(a) to omit the words 'that the Secretary has required the person to undertake under section 697' and to substitute the words 'that the person is undertaking as mentioned in paragraph 667(3)(b).' Item 15 amends paragraph 685(2)(a) which was intended to refer to section 697 as it read before its repeal in 1999. In its previous form, section 697 provided that the Secretary may request a person who is receiving sickness allowance to undertake a rehabilitation program. Therefore, the correct reference in paragraph 685(2)(a) should be to paragraph 667(3)(b) which enables a person to qualify for sickness allowance by undertaking a rehabilitation program. As the ability for the Secretary to *require* or *request* a person to undertake a rehabilitation program no longer exists, the words of paragraph 685(2)(a) were also amended to reflect this change.

### **Items 16 and 17 Subsection 1061EE(6)**

Amend subsection 1061EE(6) of the Social Security Act. Section 1061EE of the Social Security Act outlines the method of calculating the amount of advance payment for widow allowance, benefit PP (partnered), youth allowance, Austudy, mature age allowance and newstart allowance. The maximum amount payable under section 1061EE is a percentage of the 'fortnightly payment rate' which is defined in subsection 1061EE (6). The original advance payment provisions introduced by the *Social Security Amendment (Carer Pension and Other Measures) Act 1995* applied to various payments with the fortnightly payment rate calculated by reference to the 'relevant rate calculator'. For example, at that time for a person on newstart under 18

years of age, the relevant calculator was Benefit Rate Calculator A and for people over the age of 18, the rate calculator was Benefit Rate Calculator B.

The references to youth allowance and austudy payment were first inserted into subsection 1061EE(1) by the *Social Security Legislation Amendment (Youth Allowance and Related Measures) Act 1998* as a consequence of the creation of youth allowance and austudy payment in the Social Security Act. In the same 1998 amending Act, the reference to 'relevant rate calculator' was replaced with 'Benefit Rate Calculator B' in subsection 1061EE(6). However, youth allowance and austudy were calculated by new rate calculators and a reference to these was not included.

Item 16 amends paragraph 1061EE(6)(b) to omit 'youth allowance, Austudy,'. Item 17 amends subsection 1061EE(6) to include reference to the Youth Allowance Rate Calculator in relation to the youth allowance fortnightly rate and the Austudy Payment Rate Calculator in relation to the Austudy payment fortnight rate.

### **Item 18 Subsection 1067G(3)**

Repeals subsection 1067G(3). Subsection 1067G(3) was inserted in 2005 as part of the introduction of the youth disability supplement. The insertion of subsection 1067G(3) was to ensure parity between people who receive disability support pension and those who receive youth allowance and the youth disability supplement. However, the introduction of subsection 1067G(3) actually had the effect of reducing the payment rate for all people on youth allowance. That is, in situations where a calculation under Benefit Rate Calculator B would result in the rate of benefit being less than the rate of allowance under the Youth Allowance Rate Calculator, the person would receive the amount as determined under Benefit Rate Calculator B (i.e. the rate of benefit).

A key difference between the two rate calculators is found in the application of the income tests (step 12 in the Youth Allowance Rate Calculator and step 5 in the Benefit Rate Calculator B). For example, if a person's ordinary income was \$100 per fortnight, under the Youth Allowance Rate Calculator, there would be no reduction of the maximum basic rate. Whereas, under the Benefit Rate Calculator B, the person's maximum basic rate would be reduced by \$38 (i.e. the provisional payment rate would be the maximum basic rate minus \$38). As the maximum basic rate under Benefit Rate Calculator B is higher than the maximum basic rate under the Youth Allowance Rate Calculator, the provisional fortnightly payment rate under Benefit Rate Calculator B will still remain higher than the provisional fortnightly payment rate under the Youth Allowance Rate Calculator. Accordingly, subsection 1067G(3) will not be relevant. Therefore, subsection 1067G(3) has been repealed and a new point has been inserted to point 1067G-D1 by item 19.

**Item 19 After point 1067G-D1**

Inserts new point 1067G-D2 which provides that if an amount of youth disability supplement is to be added to a recipient's rate of youth allowance under point 1067G-D1 and the sum of the person's maximum basic rate of youth allowance and the amount of youth disability supplement exceeds the maximum basic rate of newstart allowance for that person with partial capacity to work, the rate of the youth disability supplement is to be reduced by the amount that it exceeds the basic rate of new start allowance. The amount of youth disability supplement cannot be reduced below zero.

**Item 20 Point 1068-A1 (note 1)**

Amends note 1 to point 1068-A1 so that it refers to the appropriate step in the method statement and refers to section 1210 which deals with reductions required by the income test module.

**Item 21 Point 1068-A1 (note 3)**

Amends note 3 to point 1068-A1. The note is amended to omit 'Step 8 only if the person's rate of benefit after Step 5 is greater than nil' and substitute 'paragraph (c) of step 7 only if the conditions in point 1068-J1 are satisfied'.

**Item 22 Point 1068-B1 (note 4)**

Repeals note 4 to point 1068-B1. The note refers to items 1, 2, 6 and 8 in Table B of point 1068-B1 which were repealed in 2000.

**Item 23 Point 1068-B1 (note 5)**

Amends note 5 to point 1068-B1 to omit 'the other rates' and substitute 'the rates in column 3'.

**Item 24 Point 1068-B1 (note 6)**

Repeals note 6 to point 1068-B1. The note is repealed as it refers to item 6 in Table B of point 1068-B1 which was repealed in 2000.

**Item 25 Point 1068-B2**

Amends point 1068-B2 to reflect changes made to Table B in point 1068-B1.

**Items 26 to 32 Section 1070X**

These items amend section 1070X. Part 3.7 of the Social Security Act contains provisions relating to rent assistance. The *Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007* contained amendments to Part 3.7 of the Social Security Act to extend rent assistance to Austudy recipients. Specifically, amendments were made to sections 1070, 1070H and 1070Q to include references to the Austudy Payment Rate Calculator. Subsection 1070Q(2) provides for the calculation of a person's rate of rent assistance which is payable. Included in the table in subsection 1070Q(2) is the calculation of rent assistance for a person who has a partner with a rent increased benefit. Section 1070X defines, for the purposes of Part 3.7, a partner with a rent increased benefit. Following the 2007 amendments to include Austudy recipients, amendments to section 1070X were overlooked. Item 32 inserts new subsection (4) to identify when a person receiving a social security payment in accordance with the Austudy Payment Rate Calculator has a partner with a rent increased benefit.

Subsections 1070X (1), (2) and (3) have been amended in items 26 to 31 in order to remove inconsistencies between these subsections. Prior to the insertion of Part 3.7 in the Social Security Act, the rent assistance provisions were contained in the individual rate calculators for each payment. As a result, the provisions relating to a partner with a rent increased benefit were drafted slightly differently but were intended to have the same effect. New paragraph (b) in subsections 1070X(1), (2) and (3) make it clear that a partner will have a rent increased benefit where they are either receiving the social security payment or are taken to be receiving the social security payment because of the operation of subsection 23(4A) and 23(4AA).

Section 1070X has also been amended to clarify that a person will have a partner with a rent increased benefit where that partner receives a ***designated ABSTUDY payment***. A ***designated ABSTUDY payment*** is a payment under the scheme known as the ABSTUDY scheme which includes an amount identified as living allowance and which has been increased to take into account of rent.

### **Item 33 Subsection 1188F(7)**

Amends subsection 1188F(7) to clarify that the relevant payment period does not occur within the types of periods to which the subsection refers. That is, the relevant payment period should not occur during a period in which a person is not payable due to seasonal or intermittent work or assets.

### **Item 34 Section 1190 (table item 3)**

Repeals item 3 of the table in section 1190. This item is being repealed as it refers to items in Table B of point 1068-B1 which were repealed in 2000.

## ***Social Security (Administration) Act 1999***

### **Item 35 Subsection 18(2)**

Amends subsection 18(2) of the Administration Act to correct an erroneous reference to the 'special employment advance qualifying entitlement'. That is because, pursuant to paragraph 1061EM(2)(a) of the Social Security Act, it is not the effect of unreceived income on a special employment advance that is relevant, but the effect of unreceived income on a special employment advance qualifying entitlement. Subsection 18(2) has been amended to omit 'for which special employment advance is not payable' and substitute 'for which the entitlement is not payable'.

### ***Social Security (International Agreements) Act 1999***

#### **Items 36 to 41 Paragraphs 10(1)(d) and (e) and paragraphs 10(2)(c) and (d)**

Amend section 10 of the International Agreements Act. In its previous form, paragraph 10(1)(d) provided that a person would qualify for parenting payment but for the operation of subparagraph 500(1)(d)(ii) of the Social Security Act. However, subparagraph 500(1)(d)(ii) is not a requirement for a person to qualify but instead is a provision which allows qualification. Accordingly, item 36 amends paragraph 10(1)(d) to omit 'but for the operation of' and substitute 'if the following provisions had not been enacted'.

Item 38 amends subparagraph 10(1)(d)(ii) to omit 'to the extent that it requires a person to have been in Australia for the period specified in the subparagraph'. Item 38 amends paragraph 10(1)(e) by repealing the paragraph and substituting a new paragraph (e). The amendment clarifies that the effect of paragraph (e) is not that the provisions identified in paragraph 10(1)(d) do not apply but in the circumstances prescribed in subsection 10(1) assume the provisions identified in paragraph 10(1)(d) had not been enacted.

Item 40 amends paragraph 10(2)(c) to omit 'but for the operation of subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* to the extent it requires a person to have been in Australia for the period specified in the subparagraph' and substitute 'if subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* had not been enacted'.

Item 41 repeals and substitutes paragraph 10(2)(d) to reflect the wording of the new paragraph 10(1)(e).

### ***Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007***

#### **Item 42 Item 18 of Schedule 2**

Amends item 18 of Schedule 2 to the *Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007*. The amendment is to clarify that the amendments made in the *Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007* apply from 1 January 2008 in relation to the calculation of the Austudy payment daily rate.

## **Part 2—Amendments relating to the requirement to apply for job vacancies**

### **Division 1—Amendments commencing on the day after Royal Assent**

#### ***Social Security Act 1991***

##### **Item 43 Paragraph 541A(g)**

Amends paragraph 541A(g). Section 541A provides circumstances where a person cannot be taken to satisfy the activity test in respect of a period. Paragraph 541A(g) identifies that a person cannot be taken to satisfy the activity test where a person fails to comply with a notice given to the person under the repealed subsection 541C(1). Item 43 amends paragraph 541A(g) to refer to subsection 550A(1) rather than the repealed subsection 541C(1). Subsection 550A(1) contains the requirements which were previously contained in subsection 541C(1).

##### **Item 44 Paragraph 541A(h)**

Amends paragraph 541A(h). Section 541A provides circumstances where a person cannot be taken to satisfy the activity test in respect of a period. Paragraph 541A(h) identifies that a person cannot be taken to satisfy the activity test where a person contravenes subsection 541C(2). Item 44 amends paragraph 541A(h) to refer to subsection 550A(2) rather than the repealed subsection 541C(2). Subsection 550A(2) contains the requirements which were previously contained in subsection 541C(2).



## **Division 2—Amendments commencing on 1 July 2009**

### ***Social Security Act 1991***

#### **Item 45 Paragraph 541A(g)**

Amends paragraph 541A(g). This amendment will commence on 1 July 2009 following the proposed commencement of the *Social Security Legislation Amendment (Employment Services Reform) Act 2008*. That Act repeals section 550A of the Social Security Act and inserts section 42F into the Administration Act, with effect from 1 July 2009. Section 42F of the Administration Act contains the requirements previously contained in section 550A. This item amends paragraph 541A(g) to refer to subsection 42F(1) of the Administration Act rather than the repealed subsection 550A(1).

#### **Item 46 Paragraph 541A(h)**

Amends paragraph 541A(h). This amendment will commence on 1 July 2009 following the proposed commencement of the *Social Security Legislation Amendment (Employment Services Reform) Act 2008*. That Act repeals section 550A of the Social Security Act and inserts section 42F into the Administration Act, with effect from 1 July 2009. Item 46 amends paragraph 541A(h) to refer to subsection 42F(2) of the Administration Act rather than the repealed subsection 550A(2).