

2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Families, Community Services and
Indigenous Affairs and Other Legislation
(2006 Budget and Other Measures) Bill
2006**

No. , 2006

(Families, Community Services and Indigenous Affairs)

**A Bill for an Act to amend the law relating to social
security, veterans' affairs, family assistance, family
law, child support and taxation, and for related
purposes**

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1 **A Bill for an Act to amend the law relating to social**
2 **security, veterans' affairs, family assistance, family**
3 **law, child support and taxation, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Families, Community Services and*
8 *Indigenous Affairs and Other Legislation (2006 Budget and Other*
9 *Measures) Act 2006.*

10 **2 Commencement**

11 (1) Each provision of this Act specified in column 1 of the table
12 commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 4	1 July 2006.	1 July 2006
3. Schedule 1, item 5	The day on which this Act receives the Royal Assent.	
4. Schedules 2 and 3	1 July 2006.	1 July 2006
5. Schedule 4	1 December 2006.	1 December 2006
6. Schedules 5 and 6	1 July 2006.	1 July 2006
7. Schedule 7	20 September 2006.	20 September 2006
8. Schedule 8	1 July 2006.	1 July 2006
9. Schedule 9	1 July 2005.	1 July 2005
10. Schedule 10	1 July 2006.	1 July 2006
11. Schedule 11	1 July 2002.	1 July 2002
12. Schedule 12, item 1	Immediately after the commencement of Schedule 9 to the <i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i> .	
13. Schedule 12, item 2	Immediately after the commencement of items 3 to 104 of Schedule 8 to the <i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i> .	
14. Schedule 12, item 3	Immediately after the commencement of Schedule 9 to the <i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i> .	
15. Schedule 13	The day on which this Act receives the Royal Assent.	

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Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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3 Schedule(s)

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

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Schedule 1—FTB Part A income free area

A New Tax System (Family Assistance) Act 1999

1 Clause 19 of Schedule 1

Omit “\$28,200”, substitute “\$40,000”.

2 Subclause 3(1) of Schedule 4 (table item 13)

Omit “1999”, substitute “2005”.

3 Application

- (1) The amendment made by item 1 applies in relation to family tax benefit for the 2006-2007 income year and later income years.
- (2) The amendment made by item 2 applies in relation to family tax benefit for the 2007-2008 income year and later income years.

4 Transitional

The amount referred to in column 1 of item 13 of the table in subclause 3(1) of Schedule 4 to the *A New Tax System (Family Assistance) Act 1999*, as amended by this Schedule, is not to be indexed on 1 July 2006.

*Family Assistance, Social Security and Veterans’ Affairs
Legislation Amendment (2005 Budget and Other
Measures) Act 2006*

5 Schedule 1

Repeal the Schedule.

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Schedule 2—Large family supplement

A New Tax System (Family Assistance) Act 1999

1 Clause 34 of Schedule 1

6 Omit “4 or more”, substitute “3 or more”.

2 Clause 35 of Schedule 1 (formula)

8 Omit “3”, substitute “2”.

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Schedule 3—Extension of eligibility for utilities allowance

Social Security Act 1991

1 Paragraphs 1061T(a) and (b)

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Repeal the paragraphs, substitute:

(a) either:

(i) has reached pension age and is receiving an income support payment; or

(ii) is receiving a widow allowance, a mature age allowance or a partner allowance; and

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2 **Schedule 4—Australian Government Disaster**
3 **Recovery Payment**

4 **Part 1—Main amendments**

5 *Social Security Act 1991*

6 **1 Subsection 23(1)**

7 Insert:

8 *adversely affected*, in relation to a major disaster, has the meaning
9 given by section 1061L.

10 **2 Subsection 23(1)**

11 Insert:

12 *AGDRP*: see Australian Government Disaster Recovery Payment.

13 **3 Subsection 23(1)**

14 Insert:

15 *Australian Government Disaster Recovery Payment* or *AGDRP*
16 means a payment under Part 2.24.

17 **4 Section 36**

18 Repeal the section, substitute:

19 **36 Major disaster**

- 20 (1) The Minister may determine in writing that an event is a major
21 disaster if the Minister is satisfied that the event is a disaster that
22 has such a significant impact on individuals that a government
23 response is required.
- 24 (2) Without limiting the matters to which the Minister may have
25 regard in considering the impact of the event on individuals, the
26 Minister must have regard to:
- 27 (a) the number of individuals affected; and
28 (b) the extent to which the nature or extent of the disaster is
29 unusual.

- 1 (3) The event:
2 (a) may be one that occurs naturally or otherwise; and
3 (b) may be one that occurs in Australia or outside Australia.
- 4 (4) If the same event has an impact in 2 or more locations, the Minister
5 may:
6 (a) make a single declaration under this section relating to some
7 or all of the locations; or
8 (b) make 2 or more declarations under this section, each relating
9 to one or more of the locations (whether or not the
10 declarations cover all of the locations).
- 11 However, the Minister must not make a determination that relates
12 both to a location in Australia and a location outside Australia.
- 13 (5) A determination made under this section is not a legislative
14 instrument.

15 **5 Part 2.24 of Chapter 2**

16 Repeal the Part, substitute:

17 **Part 2.24—Australian Government Disaster**
18 **Recovery Payment**

19 **Division 1—Qualification for Australian Government**
20 **Disaster Recovery Payment**

21 **1061K Qualification for Australian Government Disaster Recovery**
22 **Payment**

- 23 (1) A person is qualified for an Australian Government Disaster
24 Recovery Payment if:
25 (a) the person is at least 16 years old, or is receiving a social
26 security payment; and
27 (b) the person:
28 (i) is an Australian resident; or
29 (ii) is the holder of a visa that is in a class of visas
30 determined by the Minister for the purposes of
31 subparagraph 729(2)(f)(v); or
32 (iii) is receiving a social security payment; or

- 1 (iv) is an Australian citizen who is not an Australian resident
2 and who is covered by a determination under
3 subsection (3); and
4 (c) the person is adversely affected by a major disaster.
- 5 Note 1: For *Australian resident* see section 7.
6 Note 2: For *adversely affected* see section 1061L.
7 Note 3: For *major disaster* see section 36.
- 8 (2) The Minister may determine in writing that a specified class of
9 Australian citizens who are not Australian residents can qualify for
10 an AGDRP.
11 Note: For *Australian resident* see section 7.
- 12 (3) A determination made under subsection (2) is a legislative
13 instrument, but section 42 of the *Legislative Instruments Act 2003*
14 does not apply to the determination.
- 15 (4) A person cannot be qualified for more than one AGDRP in relation
16 to the same major disaster.

17 **1061L Meaning of *adversely affected***

- 18 (1) For the purposes of this Act, a person is *adversely affected* by a
19 major disaster if the person is affected by the disaster in a way
20 determined by the Minister in relation to the disaster.
- 21 (2) The Minister may determine in writing, in relation to a major
22 disaster, the circumstances in which persons are to be taken to be
23 adversely affected by the disaster.
- 24 (3) A determination made under this section is a legislative instrument,
25 but section 42 of the *Legislative Instruments Act 2003* does not
26 apply to the determination.

27 **Division 2—Amount of Australian Government Disaster**
28 **Recovery Payment**

29 **1061M Amount of payment for disasters in Australia**

- 30 (1) The amount of an AGDRP payable to a person in relation to a
31 major disaster that occurs in Australia is the sum of:

- 1 (a) the adult rate for the financial year in which the major
2 disaster is declared under section 36; and
3 (b) if the person is the principal carer of one or more children—
4 the amount worked out by multiplying the child rate for that
5 financial year by the number of children for whom the person
6 is the principal carer.
- 7 Note 1: For *major disaster* see section 36.
8 Note 2: For *principal carer* see subsections 5(15) to (24).
- 9 (2) For the purposes of this Division, the **adult rate** for a financial year
10 is:
11 (a) the amount that the Minister determines under subsection
12 1061P(1) to be the adult rate for the financial year; or
13 (b) if the Minister has not determined an adult rate for the
14 financial year—the amount that the Minister last determined
15 to be the adult rate for a previous financial year; or
16 (c) if the Minister has never determined an adult rate for any
17 financial year—\$1,000.
- 18 (3) For the purposes of this Division, the **child rate** for a financial year
19 is:
20 (a) the amount that the Minister determines under subsection
21 1061P(2) to be the child rate for the financial year; or
22 (b) if the Minister has not determined a child rate for the
23 financial year—the amount that the Minister last determined
24 to be the child rate for a previous financial year; or
25 (c) if the Minister has never determined a child rate for any
26 financial year—\$400.

27 **1061N Amount of payment for disasters outside Australia**

- 28 The amount of an AGDRP payable to a person in relation to a
29 major disaster that occurs outside Australia is the sum of:
30 (a) the amount that the Minister determines under subsection
31 1061P(4) in relation to the disaster; and
32 (b) if the person is the principal carer of one or more children—
33 the amount worked out by multiplying the amount that the
34 Minister determines under subsection 1061P(5) in relation to
35 the disaster by the number of children for whom the person is
36 the principal carer.

1 Note 1: For *major disaster* see section 36.

2 Note 2: For *principal carer* see subsections 5(15) to (24).

3 **1061P Determinations of rates**

4 (1) The Minister may determine in writing for the purposes of
5 subsection 1061M(2) the adult rate for a financial year.

6 (2) The Minister may determine in writing for the purposes of
7 subsection 1061M(3) the child rate for a financial year.

8 (3) A determination under subsection (1) or (2) must be made in the
9 financial year preceding the year to which the determination
10 relates.

11 (4) The Minister may determine in writing for the purposes of
12 paragraph 1061N(a) an amount not exceeding the adult rate for the
13 financial year in which the determination is made.

14 (5) The Minister may determine in writing for the purposes of
15 paragraph 1061N(b) an amount not exceeding the child rate for the
16 financial year in which the determination is made.

17 (6) A determination made under this section is a legislative instrument,
18 but section 42 of the *Legislative Instruments Act 2003* does not
19 apply to the determination.

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2 **Part 2—Other amendments**

3 *Income Tax Assessment Act 1997*

4 **6 Section 52-10 (after table item 2.1)**

5

Insert:

2AA.1	Australian Government Disaster Recovery Payment	Exempt	Exempt	Not applicable	Not applicable
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6 **7 Section 52-10 (table item 8.1)**

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Repeal the item.

8 **8 Section 52-40 (after table item 2)**

9

Insert:

2AA	Australian Government Disaster Recovery Payment	Part 2.24	Not applicable	Not applicable
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10 **9 Section 52-40 (table item 8)**

11

Repeal the item.

12 *Social Security Act 1991*

13 **10 Subsection 14A(1) (after paragraph (d) of the definition of**
14 ***liquid assets*)**

15

Insert:

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(da) an amount of an AGDRP that the person received, if the
17 Secretary is satisfied that the length of time since receiving
18 the payment is still reasonable in the circumstances; or

19 **11 Subsection 19B(1) (definition of *liquid assets*)**

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Omit all the words after paragraph (e), substitute:

- 1 but does not include:
2 (f) an amount that is a qualifying eligible termination payment
3 for the purposes of Subdivision AA of Division 2 of Part III
4 of the Income Tax Assessment Act; or
5 (g) an amount of an AGDRP that the person received, if the
6 Secretary is satisfied that the length of time since receiving
7 the payment is still reasonable in the circumstances.

8 **12 Subsection 746(2)**

9 Omit “Subject to Part 2.24 (major disaster), the”, substitute “The”.

10 **13 Subsection 746(2) (note)**

11 Repeal the note.

12 **14 Subsection 771KE(2)**

13 Omit “Subject to Part 2.24 (major disaster), the”, substitute “The”.

14 **15 Subsection 771KE(2) (note)**

15 Repeal the note.

16 **16 Section 1061JJ**

17 Before “A crisis payment”, insert “(1)”.

18 **17 Section 1061JJ**

19 Omit “a disaster relief payment”, substitute “an AGDRP or other
20 disaster relief payment”.

21 **18 At the end of section 1061JJ**

22 Add:

- 23 (2) However, this section does not affect a person’s entitlement to a
24 crisis payment in respect of an extreme circumstance if:
25 (a) the person has claimed the crisis payment; and
26 (b) the person subsequently qualifies for an AGDRP or other
27 disaster relief payment in respect of the same extreme
28 circumstance.

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

1 **19 Subsection 16(6)**

2 Repeal the subsection, substitute:

- 3 (6) The Secretary may approve a place or person outside Australia for
4 the purposes of subsection (4) for the lodgment of:
5 (a) claims made under a scheduled international social security
6 agreement; or
7 (b) claims for AGDRP in relation to a major disaster that
8 occurred outside Australia.

9 **20 After Subdivision F of Division 1 of Part 3**

10 Insert:

11 **Subdivision FA—Time limit for claims for AGDRP**

12 **27A Time limit for claim**

- 13 (1) A claim for an AGDRP relating to a major disaster must be lodged
14 within 6 months after the determination of the disaster under
15 section 36 of the 1991 Act.
- 16 (2) However, the claim may be lodged more than 6 months after the
17 declaration if the Secretary is satisfied that:
18 (a) there are special circumstances applying to the person's
19 claim that justify a late lodgment; and
20 (b) the claim is lodged within a reasonable period having regard
21 to those circumstances.

22 **21 Before subsection 31(2)**

23 Insert:

- 24 (1) Section 29 does not apply to a claim for an AGDRP if the claim
25 relates to a major disaster that occurred outside Australia.

26 **22 After section 46**

27 Insert:

28 **46A Payment of AGDRP**

- 29 (1) Unless the Secretary makes a determination under subsection (2), a
30 person's AGDRP is to be paid in accordance with section 47.

1 (2) If the Secretary considers that it is appropriate for a person's
2 AGDRP to be paid by instalments, the Secretary may determine
3 that the person's AGDRP is to be so paid.

4 **23 Subsection 47(1) (after paragraph (a) of the definition of**
5 ***lump sum benefit*)**

6 Insert:

7 (aa) AGDRP, except where the Secretary has made a
8 determination under subsection 46A(2); or

9 **24 Subsection 47(1) (paragraph (c) of the definition of *lump***
10 ***sum benefit*)**

11 Repeal the paragraph.

12 **25 Paragraph 13(a) of Schedule 2**

13 Omit "a disaster relief payment", substitute "an AGDRP".

14 Note: The heading to clause 13 of Schedule 2 is altered by omitting "**disaster relief**
15 **payment**" and substituting "**AGDRP**".

16 **26 After paragraph 13(b) of Schedule 2**

17 Insert:

18 (ba) is in Australia when making that claim; and

19 **27 Clause 13 of Schedule 2**

20 Omit "the disaster relief payment", substitute "the AGDRP".

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2 **Schedule 5—Maintenance income credit**
3 **balances**

4 **Part 1—Amendments**

5 *A New Tax System (Family Assistance) Act 1999*

6 **1 Subsection 3(1)**

7 Insert:

8 *maintenance income credit balance* has the meaning given by
9 clause 24A of Schedule 1.

10 **2 Subsection 3(1)**

11 Insert:

12 *registered entitlement*, of an individual, means the individual's
13 entitlement to receive maintenance income from a particular payer,
14 if the payer's liability to pay that maintenance income is an
15 enforceable maintenance liability within the meaning of the *Child*
16 *Support (Registration and Collection) Act 1988*.

17 **3 Before clause 19A of Schedule 1**

18 Insert:

19 **Subdivision A—Maintenance income test**

20 **4 Clause 20 of Schedule 1**

21 Before "This is", insert "(1)".

22 **5 Clause 20 of Schedule 1 (method statement, paragraph (b)**
23 **of step 1)**

24 Omit "paragraph (a).", substitute "paragraph (a); and".

25 **6 Clause 20 of Schedule 1 (method statement, at the end of**
26 **step 1)**

27 Add:

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(c) disregard any amount that, for the income year for which the individual's reduction for maintenance income is being worked out, is required under clause 24E to be depleted from a maintenance income credit balance of the individual and, if the individual is a member of a couple, from a maintenance income credit balance of the individual's partner.

9 **7 At the end of clause 20 of Schedule 1**

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Add:

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(2) Paragraph (c) of step 1 of the method statement in subclause (1) does not apply unless and until the individual has satisfied the FTB reconciliation conditions in section 32B of the Family Assistance Administration Act for all of the same-rate benefit periods (within the meaning of that section) that are included in the income year for which the individual's reduction for maintenance income is being worked out.

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8 At the end of Division 5 of Part 2 of Schedule 1

Add:

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Subdivision B—Maintenance income credit balances

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24A Maintenance income credit balances

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- (1) A *maintenance income credit balance*, for a registered entitlement of an individual, is, at any particular time, the balance at that time of the accruals under clause 24B and the depletions under clause 24E in relation to that entitlement.
- (2) Despite subclause (1), a maintenance income credit balance for a registered entitlement at any particular time cannot exceed the total arrears owing from that registered entitlement for all income years for which the entitlement has existed.
- (3) If:
- (a) but for the condition in subclause 24B(3) not being met in relation to an income year, there would be an accrual to a

- 1 maintenance income credit balance of an individual for a day
2 in that income year; and
- 3 (b) after there has been an accrual under clause 24C for a day in
4 a later income year or a depletion under clause 24E for a later
5 income year, that condition is met in relation to the earlier
6 income year;
- 7 the maintenance income credit balance is recalculated, taking into
8 account the accrual for the day in the earlier income year before
9 taking into account the accrual or depletion mentioned in
10 paragraph (b).
- 11 (4) This Subdivision continues to apply in relation to a maintenance
12 income credit balance of an individual whether or not the
13 individual or the individual's partner continues to be eligible for
14 family tax benefit.

15 **24B Accruals to a maintenance income credit balance**

16 *Accrual if conditions are satisfied*

- 17 (1) There is an accrual to a maintenance income credit balance for a
18 registered entitlement of an individual, for a day in an income year,
19 of the amount worked out under clause 24C for that day, if all the
20 conditions in this clause are satisfied.

21 *Conditions that must be satisfied*

- 22 (2) Either or both of the following must apply:
- 23 (a) the individual is eligible for family tax benefit for the day;
- 24 (b) if the individual is a member of a couple on the day—the
25 individual's partner is eligible for family tax benefit for the
26 day.
- 27 (3) The eligible person must have satisfied the FTB reconciliation
28 conditions in section 32B of the Family Assistance Administration
29 Act for all of the same-rate benefit periods (within the meaning of
30 that section) that are included in the income year.
- 31 (4) The annualised amount of the maintenance income of the eligible
32 person for the day must be less than the maintenance income free
33 area that applied to the eligible person for that day.

- 1 (5) The maintenance income that the individual received in the income
2 year from the registered entitlement must be less than the amount
3 due in the income year from the registered entitlement.

4 **24C Amount of accrual to a maintenance income credit balance**

- 5 (1) This is how to work out the amount of the accrual under
6 clause 24B, for a day in an income year, to a maintenance income
7 credit balance for a registered entitlement of an individual who is,
8 or is the partner of, an eligible person under subclause 24B(2):

9 *Method statement*

10 *Step 1.* Work out the global maintenance entitlement of the
11 eligible person for the day using clause 24D.

12 *Step 2.* Identify the lower of:

- 13 (a) that global maintenance entitlement; and
14 (b) the maintenance income free area that applied to
15 the eligible person for the day.

16 *Step 3.* Subtract from the lower amount identified in step 2 the
17 annualised amount of the maintenance income of the
18 eligible person for the day.

19 *Step 4.* Divide the result of step 3 by 365.

20 *Step 5.* Unless subclause (2) applies to the individual, the amount
21 that accrues to the maintenance income credit balance of
22 the individual for the day is the amount worked out under
23 step 4.

24 If subclause (2) applies to the individual, take the amount
25 worked out under step 4 and apply the method statement
26 in subclause (2).

- 27 (2) If either or both of the following apply:
28 (a) the individual has more than one registered entitlement for
29 the day in respect of which the condition in subclause 24B(5)
30 is met;

1 (b) if the individual is a member of a couple on the day—the
2 individual's partner has one or more registered entitlements
3 for the day in respect of which the condition in subclause
4 24B(5) is met;

5 this is how to work out the amount of the accrual under clause 24B,
6 for a day in an income year, to each of the maintenance income
7 credit balances (the *relevant balances*) for those entitlements:

8 *Method statement*

9 *Step 1.* Work out the daily cap for each relevant balance. The
10 *daily cap* for a relevant balance is the excess of the
11 amount due in the income year from the registered
12 entitlement to which the balance relates over the
13 maintenance income received in the income year from
14 the registered entitlement, divided by 365.

15 *Step 2.* Distribute the amount worked out under step 4 of the
16 method statement in subclause (1) equally among each
17 relevant balance, up to the amount of the daily cap for the
18 relevant balance.

19 *Step 3.* Distribute any remaining amount equally among each
20 relevant balance for which the daily cap has not been
21 reached, up to the amount of the daily cap for the relevant
22 balance.

23 *Step 4.* Reapply step 3 to any remaining amount until:

24 (a) there is no remaining amount to distribute; or

25 (b) the daily cap for each relevant balance is reached.

26 *Step 5.* The amount that accrues to each of the relevant balances
27 for the day is the sum of the amount distributed under
28 step 2 and any additional amounts distributed under steps
29 3 and 4.

30 (3) To avoid doubt, clauses 24B and 24C apply only once for a day in
31 relation to any relevant balance.

1 **24D Global maintenance entitlement of an eligible person**

2 (1) For the purposes of step 1 of the method statement in subclause
3 24C(1), the *global maintenance entitlement* of the eligible person
4 under subclause 24B(2) for the day is the sum of:

5 (a) the amounts worked out using the formula in subclause (2)
6 for:

7 (i) each registered entitlement for the day of the eligible
8 person; and

9 (ii) if the eligible person is a member of a couple on the
10 day—each registered entitlement for the day of the
11 eligible person's partner; and

12 (b) any amounts worked out under subclause (3); and

13 (c) the annualised amount of any capitalised maintenance
14 income of the eligible person and, if the eligible person is a
15 member of a couple on the day, of the eligible person's
16 partner, for the day; and

17 (d) the annualised amount of any maintenance income of the
18 eligible person and, if the eligible person is a member of a
19 couple on the day, of the eligible person's partner, for the
20 day:

21 (i) that is not from a registered entitlement; and

22 (ii) that is not capitalised maintenance income.

23 (2) For the purposes of paragraph (1)(a), the formula is:

$$\frac{\text{Amount due in the income year from the registered entitlement}}{\times} \frac{\text{Number of days in the income year}}{\text{Number of days in the income year for which the eligible person or partner had the registered entitlement}}$$

24
25 (3) If:

26 (a) in respect of:

27 (i) a registered entitlement for the day of the eligible
28 person; or

29 (ii) if the eligible person is a member of a couple on the
30 day—a registered entitlement for the day of the eligible
31 person's partner;

32 the maintenance income received by the eligible person or
33 partner for the income year exceeds the amount due in the
34 income year from the entitlement; and

1 (b) that excess, or any part of it (the *relevant excess*), is not
2 disregarded for the purposes of paragraph (c) of step 1 of the
3 method statement in clause 20;

4 an amount for the purposes of paragraph (1)(b) is worked out by
5 using this formula:

$$\begin{array}{l} \text{Amount of the relevant} \\ \text{excess in respect of the} \\ \text{registered entitlement} \end{array} \times \frac{\text{Number of days in the income year}}{\text{Number of days in the income year for} \\ \text{which the eligible person or partner} \\ \text{had the registered entitlement}}$$

6

7 **24E Depletions from a maintenance income credit balance**

8 (1) There is a depletion from the maintenance income credit balance
9 for a registered entitlement of an individual, for an income year, of
10 the amount worked out under subclause (2), if:

11 (a) the income year has ended; and

12 (b) the maintenance income that the individual received in the
13 income year from the entitlement is more than the amount
14 due in the income year from the entitlement.

15 (2) The amount by which the maintenance income credit balance is
16 depleted is the lower of:

17 (a) the excess of the maintenance income that the individual
18 received in the income year from the entitlement over the
19 amount due in the income year from the entitlement; and

20 (b) the amount of the maintenance income credit balance.

21 (3) For the purposes of paragraphs (1)(b) and (2)(a), in working out the
22 maintenance income received in an income year or the amount of
23 maintenance income due in an income year:

24 (a) disregard any maintenance income received or due for an
25 FTB child for whom the FTB child rate under clause 7 does
26 not exceed the base FTB child rate (see clause 8); and

27 (b) disregard the operation of clause 11 (sharing of family tax
28 benefit) in applying paragraph (a).

1

2 **Part 2—Application and transitional provisions**

3 **9 Application**

- 4 (1) Paragraph (c) of step 1 of the method statement in subclause 20(1) of
5 Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*
6 applies to family tax benefit for the 2006-2007 income year and later
7 income years.
- 8 (2) Subdivision B of Division 5 of Part 2 of Schedule 1 to the *A New Tax*
9 *System (Family Assistance) Act 1999* applies to the 2000-2001 income
10 year and later income years.

11 **10 Transitional**

- 12 (1) In working out whether there is an accrual to a maintenance income
13 credit balance for a day in the 2000-2001, 2001-2002 or 2002-2003
14 income year, the condition in subclause 24B(3) of Schedule 1 to the *A*
15 *New Tax System (Family Assistance) Act 1999* is taken to require that,
16 in relation to the income year for which the accrual is being worked out,
17 the eligible person under subclause 24B(2) of Schedule 1 to that Act
18 does not have a non-lodger debt.
- 19 (2) For the purposes of subitem (1), an eligible person has a non-lodger
20 debt in relation to an income year if:
- 21 (a) the conditions in subsection 28(1) of the *A New Tax System*
22 *(Family Assistance) (Administration) Act 1999* are satisfied
23 for a determination that relates to the eligible person; and
- 24 (b) the Secretary has varied the determination under subsection
25 28(2) or (6) of that Act; and
- 26 (c) because of that variation, the amount of family tax benefit
27 paid in respect of the income year has become a debt under
28 section 71 of that Act; and
- 29 (d) as at 1 July 2006, the Secretary has not varied that
30 determination under subsection 28(3) or (4) of that Act.

1
2 **Schedule 6—Extension of carer payment for**
3 **carers of severely disabled children**
4

5 *Social Security Act 1991*

6 **1 Subsection 197(1) (definition of *profoundly disabled child*)**

7 After “(2)”, insert “, (2AA)”.

8 **2 After subsection 197(2)**

9 Insert:

10 (2AA) A child is a *profoundly disabled child* if:

11 (a) the child has either:

12 (i) a severe intellectual, psychiatric or behavioural
13 disability; or

14 (ii) a severe intellectual, psychiatric or behavioural medical
15 condition; and

16 (b) the child, because of the disability or condition, needs
17 continuous personal care for:

18 (i) 6 months or more; or

19 (ii) if the child’s condition is terminal and the child’s life
20 expectancy is less than 6 months—the remainder of the
21 child’s life; and

22 (c) the child is at least 6, and under 16, years of age; and

23 (d) because of the child’s disability or condition, the child does
24 one or more of the following:

25 (i) repeatedly engages in dangerous behaviour that is, or
26 that gives rise to, a significant risk (whether immediate
27 or long-term) to the child’s health or safety and that,
28 without carer intervention, would result in the child
29 suffering sustained tissue or bodily damage, or death;

30 (ii) repeatedly engages in aggressive or violent behaviour
31 that is, or that gives rise to, a significant risk to the
32 health or safety of others, or that results in significant
33 property damage, as a result of which the child is
34 regularly or permanently excluded from community
35 programs, activities, services or facilities;

- 1 (iii) repeatedly engages in severe sexually deviant or
2 sexually inappropriate behaviour, as a result of which
3 the child is regularly or permanently excluded from
4 community programs, activities, services or facilities.

5 **3 Subsection 198(8)**

6 After “profoundly disabled child”, insert “within the meaning of
7 subsection 197(2) or (2A)”.

8 **4 At the end of section 198**

9 Insert:

10 *Carers of certain profoundly disabled children*

- 11 (10) If the care receiver is a profoundly disabled child within the
12 meaning of subsection 197(2AA):
13 (a) the person must provide continuous personal care for the
14 child within the meaning of paragraph (b) of that subsection;
15 and
16 (b) the provision of that care by the person must severely restrict
17 the person’s capacity to undertake paid employment.

1
2 **Schedule 7—Special disability trusts**

3 **Part 1—Amendment of the Social Security Act 1991**

4 **1 Subsection 23(1)**

5 Insert:

6 *immediate family member*, of a person, means an individual:

7 (a) who is a natural parent, adoptive parent or step-parent of the
8 person; or

9 (b) who is, or was when the person was under 18 years of age, a
10 legal guardian of the person; or

11 (c) who is a grandparent of the person; or

12 (d) who is a sibling of the person.

13 **2 Subsection 23(1)**

14 Insert:

15 *principal beneficiary*, of a special disability trust, has the meaning
16 given by subsection 1209M(1).

17 **3 Subsection 23(1)**

18 Insert:

19 *sibling*, of a person, includes a half-brother, half-sister, adoptive
20 brother, adoptive sister, stepbrother or stepsister of the person, but
21 does not include a foster-brother or foster-sister of the person.

22 **4 Subsection 23(1)**

23 Insert:

24 *special disability trust* has the meaning given by section 1209L.

25 **5 Subsection 1123(1) (note)**

26 Repeal the note, substitute:

27 Note 1: If Part 3.14A or 3.14B applies in relation to the transfer by a person of
28 a qualifying interest or an eligible interest in a farm or relevant farm
29 asset, that transfer and certain transfers by the person's partner are
30 taken not to be disposal of assets (see sections 1185D and 1185T).

1 **11 At the end of subsection 1207Y(1)**

2 Add:

3 Note: For attribution of the income of a special disability trust, see
4 section 1209V.

5 **12 At the end of subsection 1208E(1)**

6 Add:

7 Note: For attribution of the assets of a special disability trust, see
8 section 1209Y.

9 **13 After Part 3.18**

10 Insert:

11 **Part 3.18A—Private financial provision for certain**
12 **people with disabilities**

13 **Division 1—Special disability trusts**

14 **1209L What is a *special disability trust*?**

15 A trust is a *special disability trust* if the following requirements of
16 this Division are complied with:

- 17 (a) the beneficiary requirements (see section 1209M);
18 (b) the trust purpose requirements (see section 1209N);
19 (c) the trust deed requirements (see section 1209P);
20 (d) the trustee requirements (see section 1209Q);
21 (e) the trust property requirements (see section 1209R);
22 (f) the reporting requirements (see section 1209S);
23 (g) the audit requirements (see section 1209T).

24 Note: The Secretary may waive one or more requirements in certain
25 circumstances (see section 1209U).

26 **1209M Beneficiary requirements**

27 *Single beneficiary rule*

- 28 (1) The trust must have no more than one beneficiary (the *principal*
29 *beneficiary*), not including any residuary beneficiary.

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Impairment or disability conditions

- (2) If the principal beneficiary has reached 16 years of age:
- (a) the beneficiary must:
 - (i) have an impairment that would qualify the person for disability support pension; or
 - (ii) be receiving invalidity service pension under Part III of the Veterans' Entitlements Act; or
 - (iii) be receiving income support supplement granted on the ground set out in subparagraph 45A(1)(b)(iii) of the Veterans' Entitlements Act; and
 - (b) the beneficiary must:
 - (i) have a disability that would, if the person had a sole carer, qualify the carer for carer payment or carer allowance; or
 - (ii) be living in an institution, hostel or group home in which care is provided for people with disabilities, and for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the Secretary under subsection (3); and
 - (c) the beneficiary must have a disability as a result of which he or she is not working, and has no likelihood of working, for a wage that is at or above the relevant minimum wage.

Note: For *relevant minimum wage*, see subsection 23(1).

- (3) The Secretary may, by legislative instrument, nominate an agreement for the purpose of subparagraph (2)(b)(ii).
- (4) If the principal beneficiary is under 16 years of age, he or she must be a profoundly disabled child within the meaning of section 197.

Living beneficiary rule

- (5) A trust stops being a special disability trust when the principal beneficiary dies.

Single trust rule

- (6) A trust is not a special disability trust for a particular principal beneficiary if, at the time of its creation, there is already another trust in existence for that person that is:

- 1 (a) a special disability trust; or
2 (b) a special disability trust within the meaning of the Veterans'
3 Entitlements Act.

4 **1209N Trust purpose requirements**

5 *Sole purpose—care and accommodation for principal beneficiary*

- 6 (1) Subject to this section, the sole purpose of the trust during the
7 lifetime of the principal beneficiary, as provided by the trust deed
8 for the trust, must be to meet reasonable care and accommodation
9 needs of the beneficiary.

10 Note: The provision of care and accommodation for the principal
11 beneficiary is also dealt with at section 1209R.

- 12 (2) The trust may have purposes, ancillary to the purpose mentioned in
13 subsection (1), that are necessary or desirable to facilitate the
14 achievement of that purpose.

15 *Reasonable care and accommodation needs*

- 16 (3) If guidelines are made under subsection (4), for the purposes of this
17 section the reasonable care and accommodation needs of a
18 principal beneficiary of a special disability trust must be decided in
19 accordance with the guidelines.

- 20 (4) The Secretary may, by legislative instrument, make guidelines for
21 deciding what are, and what are not, reasonable care and
22 accommodation needs for principal beneficiaries of special
23 disability trusts.

24 **1209P Trust deed requirements**

25 *Compliance with determination*

- 26 (1) If a determination is made under subsection (2), the trust deed for
27 the trust must comply with the determination.

- 28 (2) The Secretary may, by legislative instrument, determine one or
29 more of the following:

- 30 (a) the form of the trust deed required for a special disability
31 trust;
32 (b) provisions which must be included in the trust deed;

- 1 (c) the form of those provisions;
2 (d) provisions which cannot be included in the trust deed.

3 *Contravention of trust deed*

- 4 (3) A person must not contravene a provision of the trust deed that is
5 required by this section to be included in the deed (whether or not
6 the provision is required to be included in any particular form).

7 **1209Q Trustee requirements**

- 8 (1) A trustee of the trust who is an individual must:
9 (a) be an Australian resident; and
10 (b) not have been convicted at any time (including a time before
11 the commencement of this section) of any of the following
12 offences:
13 (i) an offence of dishonest conduct against, or arising out
14 of, a law of the Commonwealth, a State, a Territory or a
15 foreign country;
16 (ii) an offence against, or arising out of, this Act, the
17 Administration Act or the Veterans' Entitlement Act;
18 and
19 (c) not have been disqualified at any time (including a time
20 before the commencement of this section) from managing
21 corporations under the *Corporations Act 2001*.
22 (2) In addition, if a trustee of the trust is a corporation, subsection (1)
23 applies to each director of the trustee.

24 **1209R Trust property requirements**

- 25 (1) The assets of the trust must not include any asset transferred to the
26 trust by the principal beneficiary of the trust, or the principal
27 beneficiary's partner, unless:
28 (a) the transferred asset is all or part of a bequest, or of a
29 superannuation death benefit; and
30 (b) the transferor received the bequest or superannuation death
31 benefit not more than 3 years before transferring the
32 transferred asset.
33 (2) The assets of the trust must not include any compensation received
34 by or on behalf of the principal beneficiary.

- 1 (3) The trust must not be used to pay an immediate family member, or
2 a child, of the principal beneficiary for the provision to the
3 beneficiary of:
4 (a) care services; or
5 (b) services for the repair or maintenance of the beneficiary's
6 accommodation.
- 7 Note: For *immediate family member*, see subsection 23(1).
- 8 (4) The trust must not be used to purchase or lease property from an
9 immediate family member, or a child, of the principal beneficiary,
10 even if the property is to be used for the beneficiary's
11 accommodation.
- 12 Note: For *immediate family member*, see subsection 23(1).
- 13 (5) In this section:
14 *child*, of a principal beneficiary, means the natural child, adopted
15 child or step-child of the beneficiary (no matter how old the child
16 or step-child is).
17 *property* includes:
18 (a) a right to accommodation for life in a residence; and
19 (b) a life interest in a residence.

20 **1209S Reporting requirements**

- 21 (1) The trustees of the trust must, on or before 31 March each year,
22 give the Secretary written financial statements about the trust in
23 relation to the financial year ending on 30 June in the previous
24 year.
- 25 (2) The financial statements must be prepared by:
26 (a) if a determination is made under subsection (4) that requires
27 such financial statements to be prepared by a person with
28 stated qualifications—such a person; or
29 (b) whether or not such a determination is made—a person
30 approved by the Secretary for the purpose.
- 31 (3) If a determination is made under subsection (4) that requires
32 financial statements to include information of a stated kind, the
33 financial statements must include information of that kind.

- 1 (4) The Secretary may, by legislative instrument, make determinations
2 for the purposes of this section.

3 **1209T Audit requirements**

4 *Trustee duties*

- 5 (1) The trustees of the trust must, within a reasonable time after
6 receiving a request under subsection (3):
7 (a) cause an audit of the trust to be carried out in relation to the
8 period mentioned in subsection (2); or
9 (b) if, at the time of the request for the audit, an audit (the *earlier*
10 *requested audit*) of the trust had already been carried out, or
11 was being carried out, for the purpose of this section in
12 relation to that period—give a copy of the report of the
13 earlier requested audit to the person making the request.

14 *Audit period*

- 15 (2) The audit must relate to:
16 (a) the financial year ending on the 30 June last preceding the
17 request; or
18 (b) if a determination is made under subsection (7) that provides
19 for a different period—that period.

20 *Who may request audit*

- 21 (3) The following persons may request an audit of the trust for the
22 purposes of this section:
23 (a) the principal beneficiary;
24 (b) an immediate family member of the principal beneficiary;
25 (c) a person who is, under the law of the Commonwealth, a State
26 or a Territory, the legal guardian or financial administrator of
27 the principal beneficiary;
28 (d) a person who is otherwise acting as the principal
29 beneficiary's guardian on a long-term basis;
30 (e) the Secretary.

31 Note: For *immediate family member*, see subsection 23(1).

1

Copies of audit report

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(4) If an audit report for a trust is given to the trustees for the purpose of subsection (1), the trustees must, within a reasonable time, give a copy of the report to:

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(a) the person requesting the audit; and

6

(b) if the guardian or administrator mentioned in paragraph (3)(c) did not request the audit—the guardian or administrator; and

7

8

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(c) if the Secretary did not request the audit—the Secretary.

10

Auditor qualifications and required information

11

(5) The audit must be prepared by:

12

(a) if a determination is made under subsection (7) that requires such audits to be prepared by a person with stated qualifications—such a person; or

13

14

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(b) whether or not such a determination is made—a person approved by the Secretary for the purpose.

16

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(6) If a determination is made under subsection (7) that requires audits requested under this section to include information of a stated kind, the audit must include information of that kind.

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(7) The Secretary may, by legislative instrument, make determinations for the purposes of this section.

21

22

1209U Waiver of contravention of this Division

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(1) A contravention of a requirement of this Division concerning a particular matter, in relation to a trust that would be a special disability trust if it were not for the contravention, does not prevent the trust being a special disability trust if:

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(a) the Secretary, by written notice (a *waiver notice*) to the trustees, waives the requirement as it concerns that matter; and

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(b) in a case where the waiver notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the time or times (if any) stated in the waiver notice.

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- 1 (2) A waiver notice has effect, subject to any conditions mentioned in
2 paragraph (1)(b):
3 (a) from:
4 (i) the time of the contravention; or
5 (ii) if the waiver notice states a time for the start of its
6 period of effect that is after the time of the
7 contravention—the stated time; and
8 (b) if the waiver notice states a time for the end of its period of
9 effect—until the stated time.
- 10 (3) If guidelines are made under subsection (4), a decision in relation
11 to giving a waiver notice to the trustees of the trust must be made
12 in accordance with the guidelines.
- 13 (4) The Secretary may, by legislative instrument, make guidelines for
14 deciding any or all of the following:
15 (a) whether or not to give waiver notices to trustees of trusts;
16 (b) what conditions to include in waiver notices;
17 (c) the periods during which waiver notices are to have effect.

18 **Division 2—Income of special disability trusts**

19 **1209V Attribution of income**

- 20 (1) For the purposes of this Act, an amount of income that a special
21 disability trust derives is taken not to be income received by any
22 individual.

23 Note: For *special disability trust*, see section 1209L.

- 24 (2) This section has effect despite Division 7 of Part 3.18 and any
25 other provisions of this Act.

26 **1209X Income amounts from special disability trusts**

27 An income amount that the principal beneficiary of a special
28 disability trust receives is not income of the beneficiary for the
29 purposes of this Act to the extent that consideration for the income
30 amount was provided by a distribution from the trust.

31 Note 1: For *income amount*, see section 8.

32 Note 2: For *special disability trust*, see section 1209L.

1 **Division 3—Assets of special disability trusts**

2 **1209Y Attribution of assets**

- 3 (1) For the purposes of this Act, the assets of a special disability trust
4 are not to be included in the assets of the principal beneficiary of
5 the trust.

6 Note: For *special disability trust*, see section 1209L.

- 7 (2) However, this section does not apply to the extent that the value of
8 the assets owned by the trust exceeds the trust's asset value limit.

- 9 (3) The *asset value limit* of a special disability trust is \$500,000.

10 Note: This amount is indexed annually on 1 July (see sections 1191 to
11 1194).

- 12 (4) For the purposes of subsection (2), disregard the value of any right
13 or interest of the trust in the principal home of the principal
14 beneficiary of the trust.

15 Note: For *principal home*, see subsections 11(5) to (7).

- 16 (5) This section has effect despite Division 8 of Part 3.18 and any
17 other provisions of this Act.

18 **Division 4—Transfers to special disability trusts**

19 **1209Z Effect of certain transfers to special disability trusts**

- 20 (1) If a person transfers an asset (the *transferred asset*) to a special
21 disability trust, the transfer is taken not to be a disposal of the asset
22 (within the meaning of section 1123) if:

23 (a) the person is an immediate family member of the principal
24 beneficiary of the trust; and

25 (b) the person, or the person's partner:

26 (i) is receiving a social security pension and has reached
27 pension age; or

28 (ii) is receiving a service pension and has reached pension
29 age within the meaning of the Veterans' Entitlements
30 Act; or

- 1 (iii) is receiving income support supplement and has reached
2 qualifying age within the meaning of subsection 45A(2)
3 of the Veterans' Entitlements Act; and
4 (c) the person receives no consideration, and is not entitled to
5 any consideration, for the transfer; and
6 (d) the transfer is unconditional; and
7 (e) the value of the transferred asset does not exceed \$500,000;
8 and
9 (f) in a case where there has already been a transfer to which this
10 section has applied (an *exempt transfer*), by that person or
11 any other person, to the trust or any other special disability
12 trust that had the same principal beneficiary—the sum of:
13 (i) the values of all of the assets transferred, by exempt
14 transfers that have already been made, to the trust or any
15 other special disability trust that had the same principal
16 beneficiary; and
17 (ii) the value of the transferred asset;
18 does not exceed \$500,000.
- 19 Note 1: For *special disability trust*, see section 1209L.
20 Note 2: For *immediate family member*, see subsection 23(1).
21 Note 3: For *pension age* (except for the purposes of subparagraph (1)(b)(ii) of
22 this section), see subsections 23(5A) to (5D).
23 Note 4: For *social security pension*, *service pension* and *income support*
24 *supplement*, see subsection 23(1).
- 25 (2) This section has effect subject to sections 1209ZA and 1209ZD.
26 (3) In this section:
27 *other special disability trust* includes a special disability trust
28 within the meaning of the Veterans' Entitlements Act.
29 *value*, of an asset transferred to a special disability trust, means the
30 market value of the asset at the time of the transfer.

31 **1209ZA The effect of exceeding the \$500,000 limit**

- 32 (1) If section 1209Z would apply to a transfer of an asset except for
33 the fact that the value of the transferred asset exceeds \$500,000,
34 that section does not prevent the transfer from being a disposal or

- 1 disposition of the asset, but the amount of the disposal or
2 disposition is taken to be the amount of the excess.
- 3 (2) If:
- 4 (a) section 1209Z would apply to a transfer of an asset but for
5 the fact that the sum of:
- 6 (i) the values of all of the exempt transfers that have
7 already been made to the trust or any other special
8 disability trust that had the same principal beneficiary;
9 and
- 10 (ii) the value of the transferred asset;
11 exceeds \$500,000; and
- 12 (b) that sum would not exceed \$500,000 if the value of the
13 transferred asset were disregarded;
- 14 that section does not prevent the transfer from being a disposal of
15 the asset, but the amount of the disposal or disposition is taken to
16 be the amount of the excess referred to in paragraph (a).
- 17 (3) This section has effect subject to section 1209ZD.
- 18 (4) In this section:
- 19 *other special disability trust* includes a special disability trust
20 within the meaning of the Veterans' Entitlements Act.
- 21 *value*, of an asset transferred to a special disability trust, means the
22 market value of the asset at the time of the transfer.

23 **1209ZB Transfers by the immediate family members prior to**
24 **reaching pension age etc.**

- 25 (1) If:
- 26 (a) an immediate family member of the principal beneficiary of a
27 special disability trust transfers an asset to the trust; and
- 28 (b) at the time of the transfer, neither the immediate family
29 member nor the partner of the immediate family member is a
30 person who:
- 31 (i) is receiving a social security pension and has reached
32 pension age; or
- 33 (ii) is receiving a service pension and has reached pension
34 age within the meaning of the Veterans' Entitlements
35 Act; or

1 (iii) is receiving income support supplement and has reached
2 qualifying age within the meaning of subsection 45A(2)
3 of the Veterans' Entitlements Act;
4 the immediate family member is taken for the purposes of this
5 Division only to transfer the asset to the trust at the earliest time at
6 which subparagraph (b)(i), (ii) or (iii) applies to the immediate
7 family member or partner.

8 Note 1: For *immediate family member*, see subsection 23(1).

9 Note 2: For *special disability trust*, see section 1209L.

10 Note 3: For *pension age* (except for the purposes of subparagraph (1)(b)(ii) of
11 this section), see subsections 23(5A) to (5D).

12 Note 4: For *social security pension, service pension and income support*
13 *supplement*, see subsection 23(1).

14 (2) However, if under subsection (1) transfers of assets to the trust by
15 different immediate family members are taken to have been made
16 on the same day, the transfers are taken to have been made on that
17 day in the order in which they would have been taken to be made
18 but for this Division.

19 Note: For *immediate family member*, see subsection 23(1).

20 (3) This section does not affect the operation of Part 3.12 or any other
21 provision of this Act outside of this Division.

22 **1209ZC Transfers by principal beneficiaries or partners**

23 (1) If a person transfers an asset to a special disability trust, the
24 transfer is taken not to be a disposal of the asset (within the
25 meaning of section 1123) if:
26 (a) the person is the principal beneficiary of the trust, or the
27 principal beneficiary's partner; and
28 (b) the person receives no consideration, and is not entitled to
29 any consideration, for the transfer; and
30 (c) the transfer is unconditional.

31 Note 1: For *special disability trust* see section 1209L.

32 Note 2: Section 1209R limits the circumstances in which the principal
33 beneficiary or the principal beneficiary's partner can transfer assets to
34 the trust.

35 (2) This section has effect subject to section 1209ZD.

1 **1209ZD Cessation of special disability trusts**

2 (1) If:

3 (a) a special disability trust ceases to exist or ceases to be a
4 special disability trust; and

5 (b) a person had transferred an asset to the trust during the period
6 of 5 years immediately preceding the cessation; and

7 (c) section 1209Z, 1209ZA or 1209ZC applied to the transfer;

8 then the transfer is taken, after the cessation, to be a disposal or
9 disposition of the asset that occurred at the time of the transfer.

10 (2) The amount of the disposal or disposition is taken to be the amount
11 worked out using the formula:

$$\left(\text{Asset value} \times \frac{\text{Final value of trust assets}}{\text{Initial value of trust assets}} \right) + \text{Subsection 1209ZA(2) amount}$$

12 where:

13 **asset value** means:

14 (a) if section 1209Z or 1209ZC applied to the transfer—the
15 value of the asset at the time of the transfer; or

16 (b) if subsection 1209ZA(1) applied to the transfer—\$500,000;
17 or

18 (c) if subsection 1209ZA(2) applied to the transfer—the
19 difference between the value of the asset at the time of the
20 transfer and the amount that was taken under that subsection
21 to be the amount of the disposal or disposition of the asset.
22

23 **final value of trust assets** means the value of all of the assets of the
24 trust at the time of the cessation.

25 **initial value of trust assets** means the value of all of the assets of
26 the trust at the time of the transfer.

27 **subsection 1209ZA(2) amount** means the amount (if any) that was
28 taken under subsection 1209ZA(2) to be the amount of the disposal
29 or disposition of the asset.

30 (3) If the special disability trust ceases to exist, or ceases to be a
31 special disability trust, because the principal beneficiary dies, the
32 value of the asset at the time of the transfer is taken for the
33 purposes of this section to be the value of so much (if any) of the

1 asset as has not been returned to the person who had transferred the
2 asset to the trust.

3 (4) This section does not affect the application of section 1209Z,
4 1209ZA or 1209ZC to the transfer prior to the cessation.

5 **1209ZE Effect of this Division**

6 This Division (other than section 1209ZB) has effect despite
7 Division 2 of Part 3.12 and any other provisions of this Act.

8 **14 Transitional—trusts created before 20 September 2006**

9 (1) For a trust created before 20 September 2006, a failure to comply with a
10 requirement of Division 1 of Part 3.18A of the *Social Security Act 1991*
11 concerning a particular matter does not prevent the trust being a special
12 disability trust if:

13 (a) the Secretary, by written notice (an *exemption notice*) to the
14 trustees, exempts the trust from the requirement as it
15 concerns that matter; and

16 (b) in a case where the exemption notice requires the trustees to
17 comply with any conditions relating to the matter—the
18 trustees comply with those conditions within the period (if
19 any) stated in the exemption notice.

20 Note: For *special disability trust*, see section 1209L of the *Social Security Act 1991*.

21 (2) A period stated in an exemption notice for the purpose of
22 paragraph (1)(b) must end at or before the end of 30 June 2007.

23 (3) An exemption notice has effect, subject to any conditions mentioned in
24 paragraph (1)(b):

25 (a) from:

26 (i) the start of 20 September 2006; or

27 (ii) if the exemption notice states a time for the start of its
28 period of effect that is after 20 September 2006—the
29 stated time; and

30 (b) until:

31 (i) the end of 30 June 2007; or

32 (ii) if the exemption notice states a time for the end of its
33 period of effect that is before the end of 30 June 2007—
34 the stated time.

- 1 (4) If guidelines are made under subitem (5), a decision in relation to giving
2 an exemption notice to the trustees of the trust must be made in
3 accordance with the guidelines.
- 4 (5) The Secretary may, by legislative instrument, make guidelines for
5 deciding any or all of the following:
- 6 (a) whether or not to give exemption notices to trustees of trusts;
7 (b) what conditions to include in exemption notices;
8 (c) the periods for compliance with conditions in exemption
9 notices;
10 (d) the periods during which exemption notices are to have
11 effect.

1

2 **Part 2—Amendment of the Veterans' Entitlements**
3 **Act 1986**

4 **15 Section 5 (index of definitions)**

5 Insert the following entry in its appropriate alphabetical position, as
6 determined on a letter-by-letter basis:

immediate family member 5Q(1)

7 **16 Section 5 (index of definitions)**

8 Insert the following entry in its appropriate alphabetical position, as
9 determined on a letter-by-letter basis:

principal beneficiary 5Q(1)

10 **17 Section 5 (index of definitions)**

11 Insert the following entry in its appropriate alphabetical position, as
12 determined on a letter-by-letter basis:

sibling 5Q(1)

13 **18 Section 5 (index of definitions)**

14 Insert the following entry in its appropriate alphabetical position, as
15 determined on a letter-by-letter basis:

special disability trust 5Q(1)

16 **19 Subsection 5Q(1)**

17 Insert:

18 *immediate family member*, of a person, means an individual:

- 19 (a) who is a natural parent, adoptive parent or step-parent of the
20 person; or
21 (b) who is, or was when the person was under 18 years of age, a
22 legal guardian of the person; or
23 (c) who is a grandparent of the person; or
24 (d) who is a sibling of the person.

25 **20 Subsection 5Q(1)**

26 Insert:

1 *principal beneficiary*, of a special disability trust, has the meaning
2 given by subsection 52ZZZWA(1).

3 **21 Subsection 5Q(1)**

4 Insert:

5 *sibling*, of a person, except for the purposes of sections 123 to
6 123E, includes a half-brother, half-sister, adoptive brother,
7 adoptive sister, stepbrother or stepsister of the person, but does not
8 include a foster-brother or foster-sister of the person.

9 Note: For the meaning of *sibling* in sections 123 to 123E, see subsection
10 123(1).

11 **22 Subsection 5Q(1)**

12 Insert:

13 *special disability trust* has the meaning given by section 52ZZZW.

14 **23 Subsection 52E(1)**

15 Omit "(1)".

16 **24 Subsection 52E(1) (note)**

17 Repeal the note, substitute:

18 Note 1: If Division 8 or 8A applies in relation to the transfer by a person of a
19 qualifying interest or an eligible interest in a farm or relevant farm
20 asset, that transfer and certain transfers by the person's partner are
21 taken not to be disposal of assets (see sections 49C and 49S).

22 Note 2: Under Subdivision B of Division 11A of Part IIIB, certain transfers of
23 assets to special disability trusts can be taken not to be disposals of the
24 assets (but this can be subject to a limit on the aggregate value of the
25 transfers).

26 **25 At the end of section 52F**

27 Add:

28 Note: If subsection 52ZZZWM(2) applies in relation to the transfer of an
29 asset to a special disability trust, that subsection has the effect of
30 reducing the amount of the disposal or disposition.

31 **26 After subsection 52ZZJ(2)**

32 Insert:

1 (2A) The only *attributable stakeholder* of a special disability trust is the
2 principal beneficiary of the trust.

3 Note 1: For *special disability trust*, see section 52ZZZW.

4 Note 2: For *principal beneficiary* of a special disability trust, see subsection
5 52ZZZWA(1).

6 **27 At the end of subsection 52ZZK(1)**

7 Add:

8 Note: For attribution of the income of a special disability trust, see
9 section 52ZZZWI.

10 **28 At the end of subsection 52ZZR(1)**

11 Add:

12 Note: For attribution of the assets of a special disability trust, see
13 section 52ZZZWK.

14 **29 After Division 11A of Part IIIB**

15 Insert:

16 **Division 11B—Private financial provision for certain**
17 **people with disabilities**

18 **Subdivision A—Special disability trusts**

19 **52ZZZW What is a *special disability trust*?**

20 A trust is a *special disability trust* if the following requirements of
21 this Subdivision are complied with:

- 22 (a) the beneficiary requirements (see section 52ZZZWA);
23 (b) the trust purpose requirements (see section 52ZZZWB);
24 (c) the trust deed requirements (see section 52ZZZWC);
25 (d) the trustee requirements (see section 52ZZZWD);
26 (e) the trust property requirements (see section 52ZZZWE);
27 (f) the reporting requirements (see section 52ZZZWF);
28 (g) the audit requirements (see section 52ZZZWG).

29 Note: The Commission may waive one or more requirements in certain
30 circumstances (see section 52ZZZWH).

1 **52ZZZWA Beneficiary requirements**

2 *Single beneficiary rule*

- 3 (1) The trust must have no more than one beneficiary (the *principal*
4 *beneficiary*), not including any residuary beneficiary.

5 *Impairment or disability conditions*

- 6 (2) If the principal beneficiary has reached 16 years of age:
7 (a) the beneficiary must:
8 (i) be eligible for invalidity service pension; or
9 (ii) be eligible for income support supplement on the
10 ground set out in subparagraph 45A(1)(b)(iii); or
11 (iii) have an impairment that would qualify the person for
12 disability support pension under the Social Security Act;
13 and
14 (b) the beneficiary must:
15 (i) have a disability that would, if the person had a sole
16 carer, qualify the carer for carer payment, or carer
17 allowance, under the Social Security Act; or
18 (ii) be living in an institution, hostel or group home in
19 which care is provided for people with disabilities, and
20 for which funding is provided (wholly or partly) under
21 an agreement, between the Commonwealth, the States
22 and the Territories, nominated by the Commission under
23 subsection (3); and
24 (c) the beneficiary must have a disability as a result of which he
25 or she is not working, and has no likelihood of working, for a
26 wage that is at or above the relevant minimum wage within
27 the meaning of subsection 23(1) of the Social Security Act.
- 28 (3) The Commission may, by legislative instrument, nominate an
29 agreement for the purpose of subparagraph (2)(b)(ii).
- 30 (4) If the principal beneficiary is under 16 years of age, he or she must
31 be a profoundly disabled child within the meaning of section 197
32 of the Social Security Act.

1 *Living beneficiary rule*

- 2 (5) A trust stops being a special disability trust when the principal
3 beneficiary dies.

4 *Single trust rule*

- 5 (6) A trust is not a special disability trust for a particular principal
6 beneficiary if, at the time of its creation, there is already another
7 trust in existence for that person that is:
8 (a) a special disability trust; or
9 (b) a special disability trust within the meaning of the Social
10 Security Act.

11 **5ZZZZWB Trust purpose requirements**

12 *Sole purpose—care and accommodation for principal beneficiary*

- 13 (1) Subject to this section, the sole purpose of the trust during the
14 lifetime of the principal beneficiary, as provided by the trust deed
15 for the trust, must be to meet reasonable care and accommodation
16 needs of the beneficiary.

17 Note: The provision of care and accommodation for the principal
18 beneficiary is also dealt with at section 5ZZZZWE.

- 19 (2) The trust may have purposes, ancillary to the purpose mentioned in
20 subsection (1), that are necessary or desirable to facilitate the
21 achievement of that purpose.

22 *Reasonable care and accommodation needs*

- 23 (3) If guidelines are made under subsection (4), for the purposes of this
24 section the reasonable care and accommodation needs of a
25 principal beneficiary of a special disability trust must be decided in
26 accordance with the guidelines.
- 27 (4) The Commission may, by legislative instrument, make guidelines
28 for deciding what are, and what are not, reasonable care and
29 accommodation needs for principal beneficiaries of special
30 disability trusts.

1 **52ZZZWC Trust deed requirements**

2 *Compliance with determination*

- 3 (1) If a determination is made under subsection (2), the trust deed for
4 the trust must comply with the determination.
- 5 (2) The Commission may, by legislative instrument, determine one or
6 more of the following:
- 7 (a) the form of the trust deed required for a special disability
8 trust;
 - 9 (b) provisions which must be included in the trust deed;
 - 10 (c) the form of those provisions;
 - 11 (d) provisions which cannot be included in the trust deed.

12 *Contravention of trust deed*

- 13 (3) A person must not contravene a provision of the trust deed that is
14 required by this section to be included in the deed (whether or not
15 the provision is required to be included in any particular form).

16 **52ZZZWD Trustee requirements**

- 17 (1) A trustee of the trust who is an individual must:
- 18 (a) be an Australian resident; and
 - 19 (b) not have been convicted at any time (including a time before
20 the commencement of this section) of any of the following
21 offences:
 - 22 (i) an offence of dishonest conduct against, or arising out
23 of, a law of the Commonwealth, a State, a Territory or a
24 foreign country;
 - 25 (ii) an offence against, or arising out of, this Act, the Social
26 Security Act or the *Social Security (Administration) Act*
27 *1999*; and
 - 28 (c) not have been disqualified at any time (including a time
29 before the commencement of this section) from managing
30 corporations under the *Corporations Act 2001*.
- 31 (2) In addition, if a trustee of the trust is a corporation, subsection (1)
32 applies to each director of the trustee.

1 **52ZZZWE Trust property requirements**

- 2 (1) The assets of the trust must not include any asset transferred to the
3 trust by the principal beneficiary of the trust, or the principal
4 beneficiary's partner, unless:
5 (a) the transferred asset is all or part of a bequest, or of a
6 superannuation death benefit; and
7 (b) the transferor received the bequest or superannuation death
8 benefit not more than 3 years before transferring the
9 transferred asset.
- 10 (2) The assets of the trust must not include any compensation received
11 by or on behalf of the principal beneficiary.
- 12 (3) The trust must not be used to pay an immediate family member, or
13 a child, of the principal beneficiary for the provision to the
14 beneficiary of:
15 (a) care services; or
16 (b) services for the repair or maintenance of the beneficiary's
17 accommodation.
- 18 Note: For *immediate family member*, see subsection 5Q(1).
- 19 (4) The trust must not be used to purchase or lease property from an
20 immediate family member, or a child, of the principal beneficiary,
21 even if the property is to be used for the beneficiary's
22 accommodation.
- 23 Note: For *immediate family member*, see subsection 5Q(1).
- 24 (5) In this section:
- 25 *child*, of a principal beneficiary, means the natural child, adopted
26 child or step-child of the beneficiary (no matter how old the child
27 or step-child is).
- 28 *property* includes:
29 (a) a right to accommodation for life in a residence; and
30 (b) a life interest in a residence.

31 **52ZZZWF Reporting requirements**

- 32 (1) The trustees of the trust must, on or before 31 March each year,
33 give the Commission written financial statements about the trust in

- 1 relation to the financial year ending on 30 June in the previous
2 year.
- 3 (2) The financial statements must be prepared by:
4 (a) if a determination is made under subsection (4) that requires
5 such financial statements to be prepared by a person with
6 stated qualifications—such a person; or
7 (b) whether or not such a determination is made—a person
8 approved by the Commission for the purpose.
- 9 (3) If a determination is made under subsection (4) that requires
10 financial statements to include information of a stated kind, the
11 financial statements must include information of that kind.
- 12 (4) The Commission may, by legislative instrument, make
13 determinations for the purposes of this section.

14 **52ZZZWG Audit requirements**

15 *Trustee duties*

- 16 (1) The trustees of the trust must, within a reasonable time after
17 receiving a request under subsection (3):
18 (a) cause an audit of the trust to be carried out in relation to the
19 period mentioned in subsection (2); or
20 (b) if, at the time of the request for the audit, an audit (the *earlier*
21 *requested audit*) of the trust had already been carried out, or
22 was being carried out, for the purpose of this section in
23 relation to that period—give a copy of the report of the
24 earlier requested audit to the person making the request.

25 *Audit period*

- 26 (2) The audit must relate to:
27 (a) the financial year ending on the 30 June last preceding the
28 request; or
29 (b) if a determination is made under subsection (7) that provides
30 for a different period—that period.

31 *Who may request audit*

- 32 (3) The following persons may request an audit of the trust for the
33 purposes of this section:

- 1 (a) the principal beneficiary;
2 (b) an immediate family member of the principal beneficiary;
3 (c) a person who is, under the law of the Commonwealth, a State
4 or a Territory, the legal guardian or financial administrator of
5 the principal beneficiary;
6 (d) a person who is otherwise acting as the principal
7 beneficiary's guardian on a long-term basis;
8 (e) the Commission.

9 Note: For *immediate family member*, see subsection 5Q(1).

10 *Copies of audit report*

- 11 (4) If an audit report for a trust is given to the trustees for the purpose
12 of subsection (1), the trustees must, within a reasonable time, give
13 a copy of the report to:
14 (a) the person requesting the audit; and
15 (b) if the guardian or administrator mentioned in
16 paragraph (3)(c) did not request the audit—the guardian or
17 administrator; and
18 (c) if the Commission did not request the audit—the
19 Commission.

20 *Auditor qualifications and required information*

- 21 (5) The audit must be prepared by:
22 (a) if a determination is made under subsection (7) that requires
23 such audits to be prepared by a person with stated
24 qualifications—such a person; or
25 (b) whether or not such a determination is made—a person
26 approved by the Commission for the purpose.
- 27 (6) If a determination is made under subsection (7) that requires audits
28 requested under this section to include information of a stated kind,
29 the audit must include information of that kind.
- 30 (7) The Commission may, by legislative instrument, make
31 determinations for the purposes of this section.

32 **5ZZZWH Waiver of contravention of this Division**

- 33 (1) A contravention of a requirement of this Division concerning a
34 particular matter, in relation to a trust that would be a special

- 1 disability trust if it were not for the contravention, does not prevent
2 the trust being a special disability trust if:
- 3 (a) the Commission, by written notice (a *waiver notice*) to the
4 trustees, waives the requirement as it concerns that matter;
5 and
- 6 (b) in a case where the waiver notice requires the trustees to
7 comply with any conditions relating to the matter—the
8 trustees comply with those conditions within the time or
9 times (if any) stated in the waiver notice.
- 10 (2) A waiver notice has effect, subject to any conditions mentioned in
11 paragraph (1)(b):
- 12 (a) from:
- 13 (i) the time of the contravention; or
14 (ii) if the waiver notice states a time for the start of its
15 period of effect that is after the time of the
16 contravention—the stated time; and
- 17 (b) if the waiver notice states a time for the end of its period of
18 effect—until the stated time.
- 19 (3) If guidelines are made under subsection (4), a decision in relation
20 to giving a waiver notice to the trustees of the trust must be made
21 in accordance with the guidelines.
- 22 (4) The Commission may, by legislative instrument, make guidelines
23 for deciding any or all of the following:
- 24 (a) whether or not to give waiver notices to trustees of trusts;
25 (b) what conditions to include in waiver notices;
26 (c) the periods during which waiver notices are to have effect.

27 **Subdivision B—Income of special disability trusts**

28 **52ZZZWI Attribution of income**

- 29 (1) For the purposes of this Act, an amount of income that a special
30 disability trust derives is taken not to be income received by any
31 individual.

32 Note: For *special disability trust*, see section 52ZZZW.

- 33 (2) This section has effect despite Subdivision G of Division 11A of
34 Part IIIB and any other provisions of this Act.

1 **52ZZZWJ Income amounts from special disability trusts**

2 An income amount that the principal beneficiary of a special
3 disability trust receives is not income of the beneficiary for the
4 purposes of this Act to the extent that consideration for the income
5 amount was provided by a distribution from the trust.

6 Note 1: For *income amount*, see section 5H.

7 Note 2: For *special disability trust*, see section 52ZZZW.

8 **Subdivision C—Assets of special disability trusts**

9 **52ZZZWK Attribution of assets**

10 (1) For the purposes of this Act, the assets of a special disability trust
11 are not to be included in the assets of the principal beneficiary of
12 the trust.

13 Note: For *special disability trust*, see section 52ZZZW.

14 (2) However, this section does not apply to the extent that the value of
15 the assets owned by the trust exceeds the trust's asset value limit.

16 (3) The *asset value limit* of a special disability trust is \$500,000.

17 Note: This amount is indexed annually on 1 July (see sections 59B to 59E).

18 (4) For the purposes of subsection (2), disregard the value of any right
19 or interest of the trust in the principal home of the principal
20 beneficiary of the trust.

21 Note: For *principal home*, see subsections 5L(5) to (7).

22 (5) This section has effect despite Subdivision H of Division 11A of
23 Part IIIB and any other provisions of this Act.

24 **Subdivision D—Transfers to special disability trusts**

25 **52ZZZWL Effect of certain transfers to special disability trusts**

26 (1) If a person transfers an asset (the *transferred asset*) to a special
27 disability trust, the transfer is taken not to be a disposal of the asset
28 (within the meaning of section 52E) if:

29 (a) the person is an immediate family member of the principal
30 beneficiary of the trust; and

31 (b) the person, or the person's partner:

- 1 (i) is receiving a service pension and has reached pension
2 age; or
3 (ii) is receiving income support supplement and has reached
4 qualifying age within the meaning of subsection
5 45A(2); or
6 (iii) is receiving a social security pension and has reached
7 pension age within the meaning of the Social Security
8 Act; and
9 (c) the person receives no consideration, and is not entitled to
10 any consideration, for the transfer; and
11 (d) the transfer is unconditional; and
12 (e) the value of the transferred asset does not exceed \$500,000;
13 and
14 (f) in a case where there has already been a transfer to which this
15 section has applied (an *exempt transfer*), by that person or
16 any other person, to the trust or any other special disability
17 trust that had the same principal beneficiary—the sum of:
18 (i) the values of all of the assets transferred, by exempt
19 transfers that have already been made, to the trust or any
20 other special disability trust that had the same principal
21 beneficiary; and
22 (ii) the value of the transferred asset;
23 does not exceed \$500,000.
- 24 Note 1: For *special disability trust*, see section 52ZZZW.
25 Note 2: For *immediate family member*, see subsection 5Q(1).
26 Note 3: For *pension age* (except for the purposes of subparagraph (1)(b)(iii) of
27 this section), see subsection 5Q(1).
28 Note 4: For *service pension* and *social security pension*, see subsection
29 5Q(1).
30 Note 5: Part IIIA deals with income support supplement.
- 31 (2) This section has effect subject to sections 52ZZZWM and
32 52ZZZWP.
- 33 (3) In this section:
34 *other special disability trust* includes a special disability trust
35 within the meaning of the Social Security Act.
36 *value*, of an asset transferred to a special disability trust, means the
37 market value of the asset at the time of the transfer.

1 **52ZZZW The effect of exceeding the \$500,000 limit**

2 (1) If section 52ZZZWL would apply to a transfer of an asset except
3 for the fact that the value of the transferred asset exceeds \$500,000,
4 that section does not prevent the transfer from being a disposal of
5 the asset, but the amount of the disposal or disposition is taken to
6 be the amount of the excess.

7 (2) If:

8 (a) section 52ZZZWL would apply to a transfer of an asset but
9 for the fact that the sum of:

10 (i) the values of all of the exempt transfers that have
11 already been made to the trust or any other special
12 disability trust that had the same principal beneficiary;
13 and

14 (ii) the value of the transferred asset;
15 exceeds \$500,000; and

16 (b) that sum would not exceed \$500,000 if the value of the
17 transferred asset were disregarded;

18 that section does not prevent the transfer from being a disposal or
19 disposition of the asset, but the amount of the disposal or
20 disposition is taken to be the amount of the excess referred to in
21 paragraph (a).

22 (3) This section has effect subject to section 52ZZZWP.

23 (4) In this section:

24 *other special disability trust* includes a special disability trust
25 within the meaning of the Social Security Act.

26 *value*, of an asset transferred to a special disability trust, means the
27 market value of the asset at the time of the transfer.

28 **52ZZZWN Transfers by the immediate family members prior to**
29 **reaching pension age etc.**

30 (1) If:

31 (a) an immediate family member of the principal beneficiary of a
32 special disability trust transfers an asset to the trust; and

- 1 (b) at the time of the transfer, neither the immediate family
2 member nor the partner of the immediate family member is a
3 person who:
4 (i) is receiving a service pension and has reached pension
5 age; or
6 (ii) is receiving income support supplement and has reached
7 qualifying age within the meaning of subsection
8 45A(2); or
9 (iii) is receiving a social security pension and has reached
10 pension age within the meaning of the Social Security
11 Act;

12 the immediate family member is taken for the purposes of this
13 Division only to transfer the asset to the trust at the earliest time at
14 which subparagraph (b)(i), (ii) or (iii) applies to the immediate
15 family member or partner.

16 Note 1: For *special disability trust*, see section 52ZZZW.

17 Note 2: For *immediate family member*, see subsection 5Q(1).

18 Note 3: For *pension age* (except for the purposes of subparagraph (1)(b)(iii) of
19 this section), see subsection 5Q(1).

20 Note 4: For *service pension* and *social security pension*, see subsection
21 5Q(1).

22 Note 5: Part IIIA deals with income support supplement.

- 23 (2) However, if under subsection (1) transfers of assets to the trust by
24 different immediate family members are taken to have been made
25 on the same day, the transfers are taken to have been made on that
26 day in the order in which they would have been taken to be made
27 but for this Division.

28 Note: For *immediate family member*, see subsection 5Q(1).

- 29 (3) This section does not affect the operation of Division 11 of
30 Part IIIB or any other provision of this Act outside of this Division.

31 **52ZZZWO Transfers by principal beneficiaries or partners**

- 32 (1) If a person transfers an asset to a special disability trust, the
33 transfer is taken not to be a disposal of the asset (within the
34 meaning of section 52E) if:
35 (a) the person is the principal beneficiary of the trust, or the
36 principal beneficiary's partner; and

1 (b) the person receives no consideration, and is not entitled to
2 any consideration, for the transfer; and

3 (c) the transfer is unconditional.

4 Note 1: For *special disability trust*, see section 52ZZZW.

5 Note 2: Section 52ZZZWE limits the circumstances in which the principal
6 beneficiary or the principal beneficiary's partner can transfer assets to
7 the trust.

8 (2) This section has effect subject to section 52ZZZW.

9 **52ZZZW Cessation of special disability trusts**

10 (1) If:

11 (a) a special disability trust ceases to exist or ceases to be a
12 special disability trust; and

13 (b) a person had transferred an asset to the trust during the period
14 of 5 years immediately preceding the cessation; and

15 (c) section 52ZZZWL, 52ZZZWM or 52ZZZWO applied to the
16 transfer;

17 then the transfer is taken, after the cessation, to be a disposal or
18 disposition of the asset that occurred at the time of the transfer.

19 (2) The amount of the disposal or disposition is taken to be the amount
20 worked out using the formula:

$$\left(\text{Asset value} \times \frac{\text{Final value of trust assets}}{\text{Initial value of trust assets}} \right) + \text{Subsection 52ZZZWM(2) amount}$$

21

22

23

where:

24

asset value means:

25

(a) if section 52ZZZWL or 52ZZZWO applied to the transfer—
the value of the asset at the time of the transfer; or

26

27

(b) if subsection 52ZZZWM(1) applied to the transfer—
\$500,000; or

28

29

(c) if subsection 52ZZZWM(2) applied to the transfer—the
difference between the value of the asset at the time of the
transfer and the amount that was taken under that subsection
to be the amount of the disposal or disposition of the asset.

30

31

32

1 *final value of trust assets* means the value of all of the assets of the
2 trust at the time of the cessation.

3 *initial value of trust assets* means the value of all of the assets of
4 the trust at the time of the transfer.

5 *subsection 52ZZZW(2) amount* means the amount (if any) that
6 was taken under subsection 52ZZZW(2) to be the amount of the
7 disposal or disposition of the asset.

8 (3) If the special disability trust ceases to exist, or ceases to be a
9 special disability trust, because the principal beneficiary dies, the
10 value of the asset at the time of the transfer is taken for the
11 purposes of this section to be the value of so much (if any) of the
12 asset as has not been returned to the person who had transferred the
13 asset to the trust.

14 (4) This section does not affect the application of section 52ZZZWL,
15 52ZZZW or 52ZZZO to the transfer prior to the cessation.

16 **52ZZZQ Effect of this Subdivision**

17 This Subdivision (other than section 52ZZZN) has effect despite
18 Subdivision B of Division 11 of Part IIIB and any other provisions
19 of this Act.

20 **30 Section 59A (after table item 13)**

21 Insert:

13A.	Assets value limit of special disability trust	special disability trust AVL	subsection 52ZZWK(3)
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22 **31 Subsection 59B(1) (after table item 8)**

23 Insert:

8A.	special disability trust AVL	1 July	December	most recent December quarter before reference quarter	\$250.00
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24 **32 After subsection 59C(2)**

25 Insert:

1 (2A) The first indexation of an amount under item 8A of the CPI
2 Indexation Table in subsection 59B(1) is to take place on 1 July
3 2007.

4 **33 Transitional—trusts created before 20 September 2006**

5 (1) For a trust created before 20 September 2006, a failure to comply with a
6 requirement of Subdivision A of Division 11B of Part IIIB of the
7 *Veterans' Entitlements Act 1986* concerning a particular matter does not
8 prevent the trust being a special disability trust if:

9 (a) the Commission, by written notice (an *exemption notice*) to
10 the trustees, exempts the trust from the requirement as it
11 concerns that matter; and

12 (b) in a case where the exemption notice requires the trustees to
13 comply with any conditions relating to the matter—the
14 trustees comply with those conditions within the period (if
15 any) stated in the exemption notice.

16 Note: For *special disability trust*, see section 52ZZZW of the *Veterans' Entitlements Act*
17 *1986*.

18 (2) A period stated in an exemption notice for the purpose of
19 paragraph (1)(b) must end at or before the end of 30 June 2007.

20 (3) An exemption notice has effect, subject to any conditions mentioned in
21 paragraph (1)(b):

22 (a) from:

23 (i) the start of 20 September 2006; or

24 (ii) if the exemption notice states a time for the start of its
25 period of effect that is after 20 September 2006—the
26 stated time; and

27 (b) until:

28 (i) the end of 30 June 2007; or

29 (ii) if the exemption notice states a time for the end of its
30 period of effect that is before the end of 30 June 2007—
31 the stated time.

32 (4) If guidelines are made under subitem (5), a decision in relation to giving
33 an exemption notice to the trustees of the trust must be made in
34 accordance with the guidelines.

35 (5) The Commission may, by legislative instrument, make guidelines for
36 deciding any or all of the following:

- 1 (a) whether or not to give exemption notices to trustees of trusts;
- 2 (b) what conditions to include in exemption notices;
- 3 (c) the periods for compliance with conditions in exemption
- 4 notices;
- 5 (d) the periods during which exemption notices are to have
- 6 effect.

1
2 **Schedule 8—Australian Institute of Family**
3 **Studies**

4 **Part 1—Amendments**

5 *Family Law Act 1975*

6 **1 Section 114A (definition of *Board*)**

7 Repeal the definition.

8 **2 Section 114A (definition of *member*)**

9 Repeal the definition.

10 **3 After subsection 114B(1)**

11 Insert:

12 (1A) There is to be a Director of the Institute.

13 (1B) The Institute consists of:

14 (a) the Director; and

15 (b) the staff referred to in section 114M.

16 Note: The Institute does not have a legal identity separate from the
17 Commonwealth.

18 **4 Subsection 114B(2)**

19 Omit “Institute”, substitute “Director”.

20 **5 After subsection 114B(2)**

21 Insert:

22 (2A) The function of the Institute (other than the Director) is to assist the
23 Director in the performance of his or her functions.

24 **6 Paragraph 114B(3)(a)**

25 Omit “Board”, substitute “Director”.

26 **7 Paragraph 114B(3)(b)**

27 Omit “Board”, substitute “Director”.

1 **8 Subsection 114B(4)**

2 Repeal the subsection.

3 **9 Sections 114BA, 114BB, 114C, 114D, 114E, 114F, 114G,**
4 **114H, 114J, 114K and 114L**

5 Repeal the sections, substitute:

6 **114C Minister may give directions to Director**

7 (1) Subject to subsection (2), the Minister may, by legislative
8 instrument, give directions to the Director as to the performance of
9 his or her functions.

10 (2) Directions given by the Minister under subsection (1) must be of a
11 general nature only.

12 (3) The Director must comply with any direction given by the Minister
13 under subsection (1).

14 **114D Appointment of Director**

15 (1) The Director is to be appointed by the Minister by written
16 instrument.

17 Note: The Director is eligible for reappointment: see subsection 33(4A) of
18 the *Acts Interpretation Act 1901*.

19 (2) The Director is to be appointed on a full-time basis.

20 **114E Term of appointment**

21 The Director holds office for the period specified in the instrument
22 of appointment. The period must not exceed 5 years.

23 **114F Acting appointments**

24 (1) The Minister may appoint a person to act as the Director:

25 (a) during a vacancy in the office of Director, whether or not an
26 appointment has previously been made to the office; or

27 (b) during any period, or during all periods, when the Director is
28 absent from duty or from Australia, or is, for any reason,
29 unable to perform the duties of the office.

- 1 (2) Anything done by or in relation to a person purporting to act under
2 an appointment is not invalid merely because:
3 (a) the occasion for the appointment had not arisen; or
4 (b) there was a defect or irregularity in connection with the
5 appointment; or
6 (c) the appointment had ceased to have effect; or
7 (d) the occasion to act had not arisen or had ceased.

8 **114G Director's remuneration**

- 9 (1) The Director is to be paid the remuneration that is determined by
10 the Remuneration Tribunal. If no determination of that
11 remuneration by the Tribunal is in operation, the Director is to be
12 paid the remuneration that is prescribed.
13 (2) The Director is to be paid the allowances that are prescribed.
14 (3) This section has effect subject to the *Remuneration Tribunal Act*
15 *1973*.

16 **114H Outside employment**

17 The Director must not engage in paid employment outside the
18 duties of the Director's office without the Minister's approval.

19 **114J Leave of absence**

- 20 (1) The Director has the recreation leave entitlements that are
21 determined by the Remuneration Tribunal.
22 (2) The Minister may grant the Director leave of absence, other than
23 recreation leave, on the terms and conditions as to remuneration or
24 otherwise that the Minister determines.

25 **114K Disclosure of interests**

26 The Director must give written notice to the Minister of all
27 interests, pecuniary or otherwise, that the Director has or acquires
28 and that could conflict with the proper performance of the
29 Director's functions.

1 **114L Other terms and conditions**

2 The Director holds office on the terms and conditions (if any) in
3 relation to matters not covered by this Act that are determined by
4 the Minister.

5 **114LA Resignation**

6 (1) The Director may resign his or her appointment by giving the
7 Minister a written resignation.

8 (2) The resignation takes effect on the day it is received by the
9 Minister or, if a later day is specified in the resignation, on that
10 later day.

11 **114LB Termination of appointment**

12 (1) The Minister may terminate the appointment of the Director for
13 misbehaviour or physical or mental incapacity.

14 (2) The Minister may terminate the appointment of the Director if:

15 (a) the Director:

16 (i) becomes bankrupt; or

17 (ii) applies to take the benefit of any law for the relief of
18 bankrupt or insolvent debtors; or

19 (iii) compounds with his or her creditors; or

20 (iv) makes an assignment of his or her remuneration for the
21 benefit of his or her creditors; or

22 (b) the Director is absent, except on leave of absence, without
23 reasonable excuse; or

24 (c) the Director fails, without reasonable excuse, to comply with
25 section 114H (outside employment); or

26 (d) the Director fails, without reasonable excuse, to comply with
27 section 114K (disclosure of interests).

28 **114LC Annual reports**

29 The Director must, as soon as practicable after 30 June in each
30 year, prepare and give to the Minister, for presentation to the
31 Parliament, a report on the Institute's operations during the year
32 ending on that 30 June.

1 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
2 contains extra rules about annual reports.

3 **114LD Delegation**

4 (1) The Director may delegate all or any of his or her functions or
5 powers under this Part to an SES employee, or an acting SES
6 employee, of the Institute. The delegation must be in writing.

7 Note: For other powers of delegation, see section 53 of the *Financial*
8 *Management and Accountability Act 1997* and section 78 of the
9 *Public Service Act 1999*.

10 (2) In performing a delegated function or exercising a delegated
11 power, a delegate must comply with any written directions of the
12 Director.

13 **10 Subsection 114M(3)**

14 Omit “on behalf of the Institute and”.

15 **11 Sections 114MA, 114MC, 114MD, and 114MF**

16 Repeal the sections.

1

2 **Part 2—Transitional provisions**

3 **Division 1—Preliminary**

4 **12 Definitions**

5 (1) In this Part:

6 *acquisition of property* has the same meaning as in paragraph 51(xxxi)
7 of the Constitution.

8 *amend* includes repeal and remake.

9 *asset* means:

10 (a) any legal or equitable estate or interest in real or personal
11 property, whether actual, contingent or prospective; and

12 (b) any right, power, privilege or immunity, whether actual,
13 contingent or prospective.

14 *assets official*, in relation to an asset other than land, means the person
15 or authority who, under a law of the Commonwealth, a State or a
16 Territory, under a trust instrument or otherwise, has responsibility for
17 keeping a register in relation to assets of the kind concerned.

18 *Board* means the Board of Management of the old Institute.

19 *commencement time* means the time when this Part commences.

20 *instrument*:

21 (a) includes:

22 (i) a contract, deed, undertaking or agreement; and

23 (ii) a notice, authority, order or instruction; and

24 (iii) an instrument made under an Act or regulations; and

25 (iv) regulations; but

26 (b) does not include an Act.

27 *just terms* has the same meaning as in paragraph 51(xxxi) of the
28 Constitution.

29 *land* means any legal or equitable estate or interest in real property,
30 whether actual, contingent or prospective.

31 *land registration official*, in relation to land, means the Registrar of
32 Titles or other proper officer of the State or Territory in which the land
33 is situated.

- 1 *liability* means any liability, duty or obligation, whether actual,
2 contingent or prospective.
- 3 *new Institute* means the Australian Institute of Family Studies
4 established by the new law.
- 5 *new law* means the *Family Law Act 1975* as in force immediately after
6 the commencement time.
- 7 *old Institute* means the Australian Institute of Family Studies
8 established by the old law.
- 9 *old law* means the *Family Law Act 1975* as in force immediately before
10 the commencement time.
- 11 (2) Subject to subitem (1), an expression used in this Part that is also used
12 in the new law has the same meaning in this Part as it has in the new
13 law.

14 **Division 2—Assets, liabilities and legal proceedings**

15 **13 Vesting of assets of old Institute**

- 16 (1) This item applies to the assets of the old Institute immediately before
17 the commencement time.
- 18 (2) At the commencement time, the assets to which this item applies cease
19 to be assets of the old Institute and become assets of the
20 Commonwealth without any conveyance, transfer or assignment. The
21 Commonwealth becomes the successor in law in relation to these assets.

22 **14 Vesting of liabilities of old Institute**

- 23 (1) This item applies to the liabilities of the old Institute immediately
24 before the commencement time.
- 25 (2) At the commencement time, the liabilities to which this item applies
26 cease to be liabilities of the old Institute and become liabilities of the
27 Commonwealth without any conveyance, transfer or assignment. The
28 Commonwealth becomes the successor in law in relation to these
29 liabilities.

30 **15 Certificates relating to vesting of land**

- 31 (1) This item applies if:
32 (a) any land vests in the Commonwealth under this Division; and

- 1 (b) there is lodged with a land registration official a certificate
2 that:
3 (i) is signed by the Minister; and
4 (ii) identifies the land, whether by reference to a map or
5 otherwise; and
6 (iii) states that the land has become vested in the
7 Commonwealth under this Division.

8 Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 27.

- 9 (2) The land registration official may:
10 (a) register the matter in a way that is the same as, or similar to,
11 the way in which dealings in land of that kind are registered;
12 and
13 (b) deal with, and give effect to, the certificate.

14 **16 Certificates relating to vesting of assets other than land**

- 15 (1) This item applies if:
16 (a) any asset other than land vests in the Commonwealth under
17 this Division; and
18 (b) there is lodged with an assets official a certificate that:
19 (i) is signed by the Minister; and
20 (ii) identifies the asset; and
21 (iii) states that the asset has become vested in the
22 Commonwealth under this Division.

23 Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 27.

- 24 (2) The assets official may:
25 (a) deal with, and give effect to, the certificate as if it were a
26 proper and appropriate instrument for transactions in relation
27 to assets of that kind; and
28 (b) make such entries in the register as are necessary having
29 regard to the effect of this Part.

30 **17 Substitution of Commonwealth as a party to pending** 31 **proceedings**

32 If any proceedings to which the old Institute was a party were pending
33 in any court or tribunal immediately before the commencement time,
34 the Commonwealth is substituted for the old Institute, from the
35 commencement time, as a party to the proceedings.

1 **18 Transfer of custody of old Institute records**

2 (1) This item applies to any records or documents that, immediately before
3 the commencement time, were in the custody of the old Institute.

4 (2) The records and documents are to be transferred into the custody of the
5 Director at or after the commencement time.

6 **19 Access by Board members to records**

7 For the purposes of the operation of subsection 27L(4) of the
8 *Commonwealth Authorities and Companies Act 1997* in relation to the
9 books of the old Institute, the reference in that subsection to a
10 Commonwealth authority is to be read, after the commencement time,
11 as a reference to the Director.

12 **Division 3—Reference to, and things done by or in**
13 **relation to, old Institute**

14 **20 References in instruments**

15 *References to old Institute taken to be references to Director or*
16 *Commonwealth*

- 17 (1) If:
- 18 (a) an instrument is in force immediately before the
 - 19 commencement time; and
 - 20 (b) the instrument contains a reference to the old Institute
 - 21 (including a reference to the Board);

22 the instrument has effect from the commencement time as if the
23 reference were a reference to the Director.

- 24 (2) However, if:
- 25 (a) an instrument is in force immediately before the
 - 26 commencement time; and
 - 27 (b) the instrument relates to assets or liabilities covered by
 - 28 item 13 or 14; and
 - 29 (c) the instrument refers to the old Institute (including a
 - 30 reference to the Board);

31 the reference is to be read as a reference to the Commonwealth as
32 necessary to give effect to item 13 or 14, as the case requires.

1 *References to staff of old Institute taken to be references to staff*
2 *of new Institute*

- 3 (3) If:
- 4 (a) an instrument is in force immediately before the
5 commencement time; and
- 6 (b) the instrument contains a reference to a member of the staff
7 of the old Institute;
- 8 the instrument has effect from the commencement time as if the
9 reference to the member of the staff of the old Institute were a reference
10 to a member of the staff of the new Institute.

11 *Minister and regulations may provide otherwise*

- 12 (4) The Minister may, by legislative instrument, determine that subitem (1),
13 (2) or (3):
- 14 (a) does not apply in relation to a specified reference; or
- 15 (b) applies as if:
- 16 (i) in the case of subitem (1)—the reference in that subitem
17 to the Director were a reference to the Commonwealth;
18 or
- 19 (ii) in the case of subitem (2)—the reference in that subitem
20 to the Commonwealth were a reference to the Director;
21 or
- 22 (iii) in the case of subitem (3)—the reference in that subitem
23 to a member of the staff of the new Institute were a
24 reference to the Director.

25 A determination under this subitem has effect accordingly.

- 26 (5) The regulations may provide that an instrument containing a reference
27 specified in a determination under paragraph (4)(a) has effect from the
28 commencement time as if:
- 29 (a) in the case of an instrument covered by subitem (1) or (2)—
30 the reference were a reference to a specified person or body
31 other than the Commonwealth or the Director; or
- 32 (b) in the case of an instrument covered by subitem (3)—the
33 reference were a reference to a specified person or body other
34 than the Director or a member of the staff of the new
35 Institute.

36 **21 Operation of laws**

1 *Things done by old Institute taken to be done by Director*

- 2 (1) If, before the commencement time, a thing was done by, or in relation
3 to, the old Institute (including the Board), then, for the purposes of the
4 operation of any law of the Commonwealth after the commencement
5 time, the thing is taken to have been done by, or in relation to, the
6 Director.
- 7 (2) For the purposes of subitem (1), a thing done before the commencement
8 time under a provision that is amended by this Schedule has effect from
9 that time as if it were done under that provision as amended. However,
10 this is not taken to change the time at which the thing was actually
11 done.

12 *Minister and regulations may provide otherwise*

- 13 (3) The Minister may, by legislative instrument, determine that subitem (1):
14 (a) does not apply in relation to a specified thing done by, or in
15 relation to, the old Institute; or
16 (b) applies as if the reference in that subitem to the Director were
17 a reference to the Commonwealth.

18 A determination under this subitem has effect accordingly.

- 19 (4) The regulations may provide for a thing specified in a determination
20 under paragraph (3)(a) to be taken to have been done by, or in relation
21 to, a specified person or body other than the Commonwealth or the
22 Director.

23 *Meaning of **doing***

- 24 (5) To avoid doubt, for the purposes of this item, **doing** a thing includes
25 making an instrument.

26 **22 Financial statements and other reporting requirements**

27 *Reporting requirements*

- 28 (1) If:
29 (a) immediately before the commencement time, a law required
30 the old Institute (including the Director) to provide a report
31 (whether financial statements or otherwise) for a period; and
32 (b) the period ends after the commencement time;

1 the Director must provide the report, as required, for so much of the
2 period as occurs before the commencement time.

3 (2) If:

4 (a) under subitem (1), the Director is required to provide a report
5 for a part of a period; and

6 (b) the Director is also required to provide a similar report for
7 the remainder of the period;

8 the Director may meet the requirements in a single report for the period.

9 *Outstanding reporting requirements*

10 (3) If:

11 (a) a law required the old Institute (including the Director) to
12 provide a report (whether financial statements or otherwise)
13 for a period that ended before the commencement time; and

14 (b) the report has not been provided by the commencement time;
15 the Director must provide the report as required.

16 **23 Director**

17 (1) The person holding office as Director under subsection 114C(4) of the
18 old law immediately before the commencement time continues, on and
19 after that time, by force of this item, to hold office as the Director.

20 (2) The person referred to in subitem (1):

21 (a) is taken to have been duly appointed by the Minister under
22 subsection 114D(1) of the new law for the balance of the
23 term of appointment under section 114E of the old law; and

24 (b) is taken to have been so appointed on the same terms and
25 conditions as applied to the person immediately before the
26 commencement time.

27 **Division 4—Miscellaneous**

28 **24 Appropriation of money**

29 (1) For the purposes of the operation of an Appropriation Act after the
30 commencement time, references to the old Institute are to be read as
31 references to the new Institute.

1 (2) If an amount of money (the *original amount*) becomes an asset of the
2 Commonwealth under item 13 of this Schedule, an amount equal to the
3 original amount may be paid out of the Consolidated Revenue Fund,
4 which is appropriated accordingly, for the purposes of the new Institute.

5 (3) In this item:
6 *Appropriation Act* means an Act appropriating money for expenditure
7 out of the Consolidated Revenue Fund.

8 **25 Exemption from stamp duty and other State or Territory** 9 **taxes**

10 No stamp duty or other tax is payable under a law of a State or Territory
11 in respect of, or in respect of anything connected with:

- 12 (a) the transfer of an asset or liability under this Part; or
13 (b) the operation of this Part in any other respect.

14 **26 Constitutional safety net—acquisition of property**

15 (1) If the operation of this Part would result in an acquisition of property
16 from a person otherwise than on just terms, the Commonwealth is liable
17 to pay a reasonable amount of compensation to the person.

18 (2) If the Commonwealth and the person do not agree on the amount of the
19 compensation, the person may institute proceedings in a court of
20 competent jurisdiction for the recovery from the Commonwealth of
21 such reasonable amount of compensation as the court determines.

22 **27 Certificates taken to be authentic**

23 A document that appears to be a certificate made or issued under a
24 particular provision of this Part:

- 25 (a) is taken to be such a certificate; and
26 (b) is taken to have been properly given;

27 unless the contrary is established.

28 **28 Delegation by Minister**

29 (1) The Minister may delegate all or any of his or her powers and functions
30 under this Part to the Secretary of the Department or to the Director.
31 The delegation must be in writing.

1 (2) In exercising or performing powers or functions under a delegation, the
2 delegate must comply with any directions of the Minister.

3 (3) A power or function delegated to the Director under subitem (1) must
4 not be sub-delegated under subsection 114LD(1) of the new law.

5 **29 Regulations**

6 (1) The Governor-General may make regulations prescribing matters:
7 (a) required or permitted by this Part to be prescribed; or
8 (b) necessary or convenient to be prescribed for carrying out or
9 giving effect to this Part.

10 (2) In particular, regulations may be made prescribing matters of a
11 transitional nature (including prescribing any saving or application
12 provisions) relating to the amendments or repeals made by this
13 Schedule.

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3 **Schedule 9—FTB Part B quarantining**

4 ***A New Tax System (Family Assistance) Act 1999***

5 **1 Paragraph 3B(3)(c)**

6 Repeal the paragraph, substitute:

7 (c) the Secretary is notified in writing that the individual
8 returned to paid work during that year:

9 (i) during the income year following that year and in
10 accordance with subsection (4); or

11 (ii) if a claim is made under the Family Assistance
12 Administration Act for payment of family tax benefit
13 for a past period that occurs in that year and the claim is
14 made during the second income year following that
15 year—in accordance with subsection (5).

16 **2 Subsection 3B(4)**

17 Omit “subsection (3)”, substitute “subparagraph (3)(c)(i)”.

18 **3 At the end of section 3B**

19 Add:

20 (5) For the purposes of subparagraph (3)(c)(ii), the Secretary is
21 notified in accordance with this subsection if the Secretary is
22 notified in the claim that the individual returned to paid work
23 during that year.

24 **4 Paragraph 29A(1)(b) of Schedule 1**

25 Omit “(7)”, substitute “(8)”.

26 **5 After subclause 29A(4) of Schedule 1**

27 Insert:

28 (4A) If, in different income years, more than one secondary earner
29 returns to paid work for the first time in respect of the same child,
30 the Part B rate of the individual is not calculated under this clause
31 in respect of a return to paid work that is not the earliest return to
32 paid work.

1 (4B) If, in the same income year, more than one secondary earner
2 returns to paid work for the first time in respect of the same child,
3 the Part B rate of the individual is not calculated under this clause
4 in respect of a secondary earner for whom the period mentioned
5 under paragraph 29C(1)(a) does not begin first.

6 **6 Subclause 29A(7) of Schedule 1**

7 Omit “Either”, substitute “If subclause (8) does not apply—either”.

8 **7 At the end of clause 29A of Schedule 1**

9 Add:

10 (8) If, during the second income year following a particular income
11 year, a claim is made under the Family Assistance Administration
12 Act for payment of family tax benefit for a past period that occurs
13 in the particular income year, the Secretary is notified in the claim
14 that the secondary earner returned to paid work during the
15 particular income year.

16 **8 Application of amendments**

17 (1) Subject to subitem (2), the amendments made by this Schedule apply in
18 respect of the 2005-2006 income year and later income years.

19 (2) Subclause 29A(4A) of Schedule 1 to the *A New Tax System (Family*
20 *Assistance) Act 1999* (as inserted by item 5 of this Schedule) applies in
21 respect of a return to paid work whether the return happens before, on
22 or after 1 July 2005.

1
2 **Schedule 10—Technical amendments relating**
3 **to income estimates**
4

5 ***A New Tax System (Family Assistance) (Administration) Act***
6 ***1999***

7 **1 Subsection 20C(3)**

8 Repeal the subsection, substitute:

9 (3) The reference is taken to be a reference to eligibility for, or rate of,
10 family tax benefit being determined or worked out on the basis of
11 the indexed estimate, or the indexed actual income, for that
12 individual or stated in that notice, combined with:

13 (a) the most recent indexed estimate or indexed actual income
14 for the individual's partner (see subsection (6)); or

15 (b) if there is no such indexed estimate or indexed actual
16 income—a reasonable estimate of the adjusted taxable
17 income of the individual's partner (disregarding the effect of
18 clause 3 of Schedule 3 to the Family Assistance Act) that has
19 been given to the Secretary by the individual.

20 **2 At the end of paragraph 20C(5)(b)**

21 Add "or, if there is no such indexed estimate or indexed actual income,
22 a reasonable estimate of the adjusted taxable income of the individual's
23 partner (disregarding the effect of clause 3 of Schedule 3 to the Family
24 Assistance Act) that has been given to the Secretary by the individual".

25 **3 Subsection 55AC(3)**

26 Repeal the subsection, substitute:

27 (3) The reference is taken to be a reference to CCB % being
28 determined or worked out on the basis of the indexed estimate, or
29 the indexed actual income, for that individual or stated in that
30 notice, combined with:

31 (a) the indexed estimate or indexed actual income for the
32 individual's partner stated in a notice given to:

33 (i) if the individual is the claimant for child care benefit—
34 the individual; or

- 1 (ii) if the individual is the partner of the claimant for child
2 care benefit—the individual’s partner;
3 under subsection 55AA(2) or 55AB(2) with a start day that
4 has arrived or passed (or, if the Secretary has given more
5 than one such notice—the notice with the most recent start
6 day); or
7 (b) if there is no such indexed estimate or indexed actual
8 income—a reasonable estimate of the adjusted taxable
9 income of the individual’s partner (disregarding the effect of
10 clause 3 of Schedule 3 to the Family Assistance Act) that has
11 been given to the Secretary by the individual.

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Schedule 11—Definition

4 *A New Tax System (Family Assistance) (Administration) Act*
5 *1999*

6 **1 Subsection 3(1) (definition of *income tax refund*)**

7 Repeal the definition, substitute:

8 *income tax refund* means an amount payable to a person:

- 9 (a) in respect of an overpayment of income tax imposed by the
10 *Income Tax Act 1986*; or
11 (b) in respect of an overpayment of Medicare levy payable in
12 accordance with Part VIIB of the *Income Tax Assessment Act*
13 *1936*; or
14 (c) in respect of an overpayment of an amount payable by the
15 person by an assessment made under Part IV of the *Income*
16 *Tax Assessment Act 1936* because of:
17 (i) subsection 106U(1) of the *Higher Education Funding*
18 *Act 1988*; or
19 (ii) section 154-60 of the *Higher Education Support Act*
20 *2003*; or
21 (iii) subsection 12ZN(1) of the *Student Assistance Act 1973*;
22 or
23 (d) as a refund of a tax offset that is subject to the refundable tax
24 offset rules under Division 67 of the *Income Tax Assessment*
25 *Act*.

26 **2 Application of amendment**

- 27 (1) The amendment made by this Schedule applies in relation to a debt
28 owed in respect of family tax benefit against which an income tax
29 refund is to be applied, if the income tax refund is determined on or
30 after 1 July 2002 (irrespective of the income year to which the refund
31 relates or when the debt is determined).
- 32 (2) The amendment made by this Schedule applies in relation to a debt
33 owed in respect of child care benefit against which an income tax
34 refund is to be applied, if both:
35 (a) the debt is determined on or after 1 July 2006; and

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(b) the income tax refund is determined on or after 1 July 2007
(irrespective of the income year to which the refund relates).

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Schedule 12—Shared parental responsibility

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1) (paragraph (b) of the definition of *family law order*)

7 Omit “section 60D”, substitute “section 4”.

2 Paragraph 22(3)(c)

9 Omit “have contact”, substitute “spend time”.

Child Support (Assessment) Act 1989

3 Subsection 8A(7) (paragraph (b) of the definition of *court order*)

13 Omit “section 60D”, substitute “section 4”.

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Schedule 13—Other amendments

Social Security Act 1991

1 Subsection 19B(1)

Omit “(1)”.

Social Security (Administration) Act 1999

2 Subparagraph 212(1)(d)(iii)

Omit “person; or”, substitute “person.”.

3 Subparagraph 212(1)(d)(iv)

Repeal the subparagraph.

4 Paragraph 212(2)(d)

Repeal the paragraph.