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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS
LEGISLATION AMENDMENT (FURTHER 2007 BUDGET MEASURES)
BILL 2007**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
the Hon Mal Brough MP)**

**FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS
LEGISLATION AMENDMENT (FURTHER 2007 BUDGET MEASURES)
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OUTLINE

This bill gives effect to a number of measures announced in the 2007-08 Budget.

Pension bonus scheme

This measure increases the flexibility of the pension bonus scheme (PBS) and makes it easier for members to access their accrued pension bonus. From 1 January 2008, the changes mean that a PBS member will be entitled to a top up of the pension bonus in certain circumstances and there will be a new payment for surviving partners whose partner did not claim age pension or a pension bonus before he or she died. Centrelink and DVA decision makers will also have more discretion to accept late bonus claims in special circumstances.

Assurance of support

This measure is aimed at improving the operation of the assurance of support scheme and simplifying arrangements for people seeking to provide an assurance of support.

The measure commences on 1 January 2008.

Crisis payment

This measure establishes a further ground of qualification for crisis payment. Crisis payment will be payable to certain persons who have entered Australia for the first time on a qualifying humanitarian visa on or after 1 January 2008. Crisis payment is being extended to this group of people to help reduce the significant financial burden faced by humanitarian entrants during the initial settlement period.

Funeral investments

From 1 January 2008, the threshold for funeral investments that are exempt from the income and assets test will be raised from \$5,000 to \$10,000. The new threshold will also be subject to indexation in line with the Consumer Price Index. To allow people with existing investments to take advantage of the new threshold, a person or couple will be able to have up to two exempt investments under the changes.

Multiple birth allowance

From 1 January 2008, payment of multiple birth allowance will be extended to FTB children under 16 years of age and to older FTB children who are undertaking full-time study, until the end of the calendar year in which they turn 18. Multiple birth allowance is currently available in respect of multiple births of three or more children where the children are under the age of six years.

Financial impact statement

Pension bonus scheme	Total resourcing
	2007-08 \$ 9.1m
	2008-09 \$12.0m
	2009-10 \$12.4m
	2010-11 \$12.9m
Assurance of support	Total resourcing
	2007-08 \$5.6m
	2008-09 \$2.5m
	2009-10 \$2.5m
	2010-11 \$2.5m
Crisis payment	Total resourcing
	2007-08 \$1.4m
	2008-09 \$1.7m
	2009-10 \$1.7m
	2010-11 \$1.7m
Funeral investments	Total resourcing
	2007-08 \$1.5m
	2008-09 \$1.0m
	2009-10 \$0.9m
	2010-11 \$0.9m
Multiple birth allowance	Total resourcing
	2007-08 \$2.1m
	2008-09 \$2.6m
	2009-10 \$2.6m
	2010-11 \$2.7m

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NOTES ON CLAUSES

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

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

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

This Explanatory Memorandum uses the following abbreviations:

- ‘AoS’ means assurance of support;
- ‘DFISA’ means defence force income support allowance;
- ‘Legislative Instruments Act’ means the *Legislative Instruments Act 2003*;
- ‘Migration Act’ means the *Migration Act 1958*;
- ‘PBS’ means pension bonus scheme;
- ‘Social Security Act’ means the *Social Security Act 1991*;
- ‘Social Security Administration Act’ means the *Social Security (Administration) Act 1999*; and
- ‘Veterans’ Entitlements Act’ means the *Veterans’ Entitlements Act 1986*.

Schedule 1 – Amendments relating to pension bonus scheme

Summary

This measure increases the flexibility of the PBS for members, making it easier for members to access their accrued pension bonus. From 1 January 2008, the changes means that a PBS member will be entitled to a top up of the pension bonus in certain circumstances and there will be a new payment for surviving partners whose partner did not claim age pension or a pension bonus before he or she died. Centrelink and DVA decision makers will also have more discretion to accept late bonus claims in special circumstances.

Background

The PBS was introduced in July 1998 and was intended to encourage older Australians who might otherwise retire and claim age pension (or the equivalent Department of Veterans' Affairs (DVA) payments, age or partner service pension and income support supplement, collectively referred to under Part IIIAB of the Veterans' Entitlements Act as a designated pension) to defer claiming age pension (or a DVA payment), and keep working. It provides a tax-free lump sum bonus when a person eventually claims and receives age pension (or equivalent DVA payment). The PBS plays an important role in the overall retirement income system by providing a tax-free lump sum that can supplement the private retirement incomes of those with low superannuation balances.

Schedule 1 gives effect to a measure announced as part of the Government's 2007-08 Budget to allow more people access to any pension bonus they may have accrued. PBS members may be entitled to a top up of the pension bonus in certain circumstances. There is also a new payment, known as pension bonus bereavement payment, for surviving partners of people who had accrued a bonus but did not claim the relevant pension or their pension bonus before they died. Centrelink and DVA decision makers will also have more discretion to accept late bonus claims in special circumstances.

Explanation of the changes

Amendments to the *Income Tax Assessment Act 1997*

Item 1 makes a minor amendment to the table item headed 'social security or like payments' in section 11-15 and inserts a reference to 'DFISA bonus and DFISA bonus bereavement payment' under section 52-65.

Item 2 makes a minor amendment to the table item headed 'social security or like payments' in section 11-15 and replaces the reference to 'pension bonus' under sections 52-10 and 52-65 with 'pension bonus and pension bonus bereavement payment' under sections 52-10 and 52-65.

Item 3 inserts a reference to ‘pension bonus bereavement payment’ after the reference to ‘pension bonus’ in paragraph 52-10(1)(a). This amendment provides that a pension bonus bereavement payment under the Social Security Act is exempt from income tax. A pension bonus payment is already exempt from income tax.

Item 4 inserts a reference to ‘pension bonus bereavement payment’ after the reference to ‘pension bonus’ in subsection 52-10(1A). This amendment provides that a pension bonus bereavement payment under the Social Security Act is exempt from income tax. A pension bonus payment is already exempt from income tax.

Item 5 replaces the reference to ‘DFISA bonus’ with ‘pension bonus bereavement payment, DFISA bonus or DFISA bonus bereavement payment’ in paragraph 52-65(1)(a). This amendment provides that, in addition to the payments of DFISA bonus, the pension bonus bereavement payment and DFISA bonus bereavement payment under the Veterans’ Entitlements Act will also be exempt from income tax.

Item 6 repeals subsection 52-65(1A) and replaces it with a new subsection (1A). Repealed subsection 52-65(1A) had provided that payments of pension bonus under Part IIIAB and DFISA bonus under Part VIIAB were exempt from income tax. New subsection 52-65(1A) provides that the pension bonus and pension bonus bereavement payments under Part IIIAB and DFISA bonus and DFISA bonus bereavement payment under Part VIIAB of the Veterans’ Entitlements Act will all be exempt from income tax.

Amendments to the Social Security Act

Item 7 inserts a reference to pension bonus bereavement payment in subsection 11(3C), to provide that this payment is taken not to be an asset for the purposes of the Social Security Act.

Item 8 amends the definition of ‘pension bonus’ in subsection 23(1) to provide that this term does not include a pension bonus bereavement payment.

Item 9 inserts in subsection 23(1) a definition of ‘PBBP employment income’, providing that this term has the meaning given by new section 93WC.

Item 10 inserts in subsection 23(1) a definition of ‘pension bonus bereavement payment’, providing that this term means a pension bonus bereavement payment under Division 12 of Part 2.2A.

Item 11 amends subsection 92Q(1), giving the Secretary the discretion to make a declaration by way of a legislative instrument rather than ‘by written notice published in the *Gazette*’. This brings the administrative process for making declarations in line with the requirements of the Legislative Instruments Act.

Item 12 further amends subsection 92Q(1) to remove the words ‘The period must not begin before the publication of the notice’ so that the period covered by the determination under the subsection is no longer exclusively prospective.

Item 13 inserts a new subsection 92Q(1A) which provides that, despite subsection 12(2) of the Legislative Instruments Act, a period specified in the declaration made under subsection (1) may begin before the date on which the declaration is registered under that Act. The contrary intention to the Legislative Instruments Act embodied by this new subsection reflects the intention that any declaration made under the subsection will specifically provide that, where a PBS member would be disadvantaged by the declaration, it will apply to the member with effect from the date of registration, rather than from a date in the past. This is to ensure that no person affected by it will be disadvantaged through retrospective application of the declaration.

Item 14 repeals subsection 92Q(3), because the operation of the amended subsection 92Q(1) and new subsection 92Q(1A) effectively make this subsection redundant.

Items 15 to 23 substitute the term ‘date of grant of’ with ‘start day for’ and ‘that date’ with ‘that day’ throughout paragraphs 93H(a) and (b), paragraphs 93J(3)(a) and (b) and paragraphs 93J(4)(a) and (b).

Paragraphs 93H(a) and (b) and 93J (3)(a) and (b) will now provide that, for the purposes of calculating the amount of pension bonus to be paid, a person’s annual pension rate is worked out in accordance with the rules in paragraphs (a) and (b) from the start day of the person’s age pension. This clarifies, but does not change, the day that is used to calculate the amount of pension bonus to be paid.

Subsections 93J(3) and (4) define the terms ‘annual notional single pension rate’ and ‘annual notional partnered pension rate’ in terms corresponding to the definition of annual pension rate in section 93H, other than that the former term assumes that the person was single on the start day of the age pension and the latter assumes that the person was a member of a couple on that date.

Item 24 inserts new provisions in Division 6 of Part 2.2A of the Social Security Act.

New section 93K – Top up of pension bonus for increased rate of age pension

New section 93K provides for top ups of pension bonus where the person's rate of age pension increases within 13 weeks after the start day for their pension bonus due to a decrease in the value of their (and/or their partner's) income and/or assets that are assessed under the income and assets tests. This will deal with situations where people, who claim age pension and the pension bonus before their finances are settled, receive a lower rate of pension and bonus than they had anticipated. For example, this provision helps a person who claims age pension and their bonus before their superannuation investments are finalised or when they have leave payments still being paid to them by their employer, where their pension rate and, therefore, their pension bonus payment may be affected under the pension means test and be lower initially than it otherwise would have been.

New subsection 93K(1) provides that the Secretary may make a determination to increase a person's pension bonus if:

- (a) the Secretary makes a determination which increases the person's rate of age pension; and
- (b) the determination takes effect within 13 weeks from the start day of the person's pension bonus; and
- (c) the determination is made because of a reduction in the value of the person's assessed assets and/or assessed ordinary income since the start day.

Subsection 93K(1) requires a reduction in the value of the person's income and/or assets that are assessed under the income and assets tests before the person is entitled to a top up.

This new subsection includes a note to the effect that, in determining the reduction in the value of a person's assets or income, the tests to be applied are the assets test and the ordinary income test in Pension Rate Calculator A in Part 2.3 of the Social Security Act.

Subsection 93K(2) provides rules for establishing the amount of the increase in the person's pension bonus. The amount of the increase is the difference between:

- (a) the amount of pension bonus that was payable to the person on the start day; and
- (b) the amount that would have been payable to the person on the start day if the person's rate of age pension on that day had been the highest rate at which age pension was payable to the person during the 13 weeks after the start day.

For example, Mr S, a registered member of the PBS retires from work on 29 June. He claims age pension and pension bonus on 1 July and is granted both payments from 1 July at a reduced rate due to the level of his income. As part of Mr S's final termination payment, his employer made a payment of recreation leave for the period 30 June to 12 July. This is assessed under the means test for the first age pension payment and for calculating the pension bonus amount. From 13 July (the day after recreation leave ceases), Mr S's age pension rate increases. Because the pension rate increased within 13 weeks of the start day and the increase in rate was because of a decrease in Mr S's assessed income, the pension bonus amount can be topped up. It will be topped up by the difference between the amount paid and the amount that would have been payable using the higher rate of age pension.

Subsection 93K(3) provides for when a determination under subsection (1) takes effect. The date of effect of the determination is either the day on which the determination is made or any earlier or later day specified in the determination.

Subsection 93K(4) provides that a determination under subsection (1) is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. In other words, this provision is merely declaratory of the law.

New section 93L – Top up of pension bonus in specified circumstances

Section 93L provides for pension bonus to be topped up in circumstances specified in a legislative instrument. This would enable a top up to be made, for example, where an error has been made in calculating the rate of age pension at the time a PBS member made a claim for age pension and pension bonus.

New subsection 93L(1) provides that the Secretary may make a determination to increase a person's pension bonus if:

- (a) the Secretary makes a determination which increases the person's rate of age pension; and
- (b) the rate of age pension is increased in circumstances which are specified in an instrument made under subsection (6).

Subsection 93L(2) provides that the Secretary, when making the determination to top up the person's pension bonus, will specify the amount of increase of the person's pension bonus.

Subsection 93L(3) provides that the Secretary must not specify an increase that would be greater than the difference between:

- (a) the amount of pension bonus that was payable to the person on the pension bonus start day; and
- (b) the amount that would have been the person's amount of pension bonus on the start day if the person's rate of age pension on that day had been the rate specified in the rate determination by the Secretary (that is, the rate specified in a determination under paragraph 93L(1)(a)).

Subsection 93L(4) provides for when a determination about the top up under this section takes effect. The date of effect of the determination is the day on which the determination is made or on any earlier or later day specified in the determination.

Subsection 93L(5) provides that a top up determination under this section is not a legislative instrument. This provision is merely declaratory of the law and is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

For example, Mrs W claims age pension and pension bonus on 1 July 2008 and is granted a reduced rate of pension and pension bonus from 1 July 2008. On 1 August 2009, she notices that the wrong amount of income is being assessed for her pension and has been since it commenced. The pension rate is increased from the date Mrs W advises of the correct amount of income. Had the pension rate been correct from the start day, Mrs W would have received a higher bonus amount. In such a situation, the Secretary could make a determination that Mrs W's pension bonus is to be topped up. If so, the top up would be the difference between the amount of pension bonus paid and the amount that would have been payable if the new (higher) rate of pension had been paid at the start day.

Subsection 93L(6) provides that the Secretary may, by legislative instrument, specify circumstances, other than circumstances specified in subsection 93K(1), for the purposes of paragraph 93L(1)(b).

Item 25 provides an application provision, which sets out that new sections 93K and 93L of the Social Security Act apply where the start day for the pension bonus is on or after 1 January 2008.

Item 26 inserts a new Division 12 at the end of Part 2.2A of the Social Security Act.

New Division 12 – Pension bonus bereavement payment

New Division 12 provides for surviving partners to claim a one-off payment, which is equivalent to the pension bonus their deceased partner would have been entitled to receive, if their deceased partner was a PBS member who had accrued a bonus but had not claimed age pension and pension bonus before his or her death.

New section 93WA – Qualification for pension bonus bereavement payment

Section 93WA provides qualification requirements for claims for pension bonus bereavement payment.

New subsection 93WA(1) provides that a person is qualified for a pension bonus bereavement payment if:

- (a) the person is no longer a member of a couple because the person's partner died; and
- (b) immediately before the partner died, the partner was a registered member of the PBS; and
- (c) the partner had not made a claim for age pension or pension bonus before the partner died.

New section 93WB sets out how the amount of pension bonus bereavement payment is to be calculated: under subsection (1), work out the amount of pension bonus that would have been payable to the legal representative of the partner if the partner had made claims for both age pension and pension bonus just before the partner died, but, in calculating the amount to be paid, disregard any PBBP employment income as defined by new section 93WC and any income of a kind specified in an instrument made under subsection 93WB(2). It should be noted that paragraph 93WB(1)(a) indicates that subsections 59(3) and (4) of the Social Security Administration Act are applied in working out the amount that would be payable to a person's legal personal representative in these circumstances.

Certain kinds of income will not be assessed for pension bonus bereavement payment purposes. This reflects the fact that, under normal circumstances, most people cease work before claiming their pension bonus and therefore they have no income from employment or leave payments being made which would affect the rate of their age pension and therefore the amount of their pension bonus.

New subsection 93WB(2) allows the Secretary, by legislative instrument, to specify kinds of income for the purposes of subparagraph 93WB(1)(b)(ii).

New subsection 93WC(1) provides that 'PBBP employment income' of a person:

- (a) means ordinary income that is, or is taken to be, earned, derived or received by the person or the person's partner from gainful work; and
- (b) includes, without limitation, any of the following that is earned, derived or received by both the person or the person's partner:
 - salary, wages, commissions and employment-related fringe benefits; and
 - leave payments; and
 - payments to the person or the person's partner by their former employer in relation to the termination of their employment.

New subsection 93WC(2) provides that a leave payment for the purposes of paragraph 93WC(1)(b):

- (a) includes, but is not limited to, a payment in respect of sick leave, annual leave, maternity leave, long service leave, carer's leave, special leave and personal leave; and
- (b) may be made as a lump sum payment, a series of regular payments or otherwise; and
- (c) is taken to have been made if it is made to another person at the discretion of the person or a court, on behalf of the person, for the benefit of the person, or if the person waives or assigns his or her right to the payment.

Item 27 specifies that Division 12 of Part 2.2A of the Social Security Act applies in relation to a person whose partner dies on or after 1 January 2008.

Item 28 makes a technical amendment, removing subsection number (1) because that provision is the only subsection in the section.

Item 29 makes a further technical amendment to paragraph 1224AA(a), removing the unnecessary reference in paragraph 1224AA(a) to a pension bonus that is paid by cheque as this is already covered by the term 'social security payment'.

Amendments to the Social Security (Administration) Act

Item 30 omits the word 'either' from subsection 17(1) because, with the addition of paragraph 17(1)(c), there are now three options for claims for pension bonus under the subsection.

Item 31 inserts new paragraph 17(1)(c), which provides that a claim for pension bonus can be the subject of a determination under subsection 17(5).

Item 32 adds new subsections (5) and (6) to section 17.

New subsection (5) provides that, if a registered member of the PBS lodges a claim for age pension, the person's claim for pension bonus was lodged after their claim for age pension, and the Secretary is satisfied after having regard to guidelines made under subsection 17(6) that special circumstances apply in relation to the claim for pension bonus, the Secretary may determine that the person is taken to have claimed the pension bonus at the same time as the person claimed age pension.

For example, Mr J, a PBS member, claims age pension on 1 July 2008 and intends to claim his pension bonus, but does not make a claim for pension bonus because of an error in how he completed the form. Two weeks later, Mr J asks when he will receive the pension bonus he thought he had claimed. A pension bonus claim is immediately lodged. The Secretary may make a determination that the pension bonus claim was lodged on 1 July 2008, the same day as the age pension claim was made, and grant a payment of pension bonus.

New subsection (6) allows the Secretary, by legislative instrument, to make guidelines for the purposes of subsection 17(5).

Item 33 provides that the amendments to section 17 of the Social Security Administration Act apply in relation to claims for pension bonus that are lodged on or after 1 January 2008.

Item 34 makes the words in the current section a new subsection 21(1), consequential on the addition of new subsection 21(2).

Item 35 adds a new subsection 21(2), which provides that the Secretary may in special circumstances, allow a person a longer period to make a claim than the period fixed by the Subdivision (that is, 13 weeks). This will allow discretion to accept a late claim from a person whose last bonus period is a full year period (there is already discretion to accept a late claim in special circumstances from a person whose last bonus period is a part-year period). It further provides that, if the Secretary does so, the lodgement period for the person's claim is the period allowed by the Secretary, and that the discretion allowed in this subsection does not override subsection 23(1), which covers calculation of bonus amounts for a person whose late claim has been accepted and whose last bonus period is a part-year period.

Item 36 provides that the amendments to section 21 of the Social Security Administration Act apply in relation to a claim for pension bonus lodged on or after 1 January 2008.

Item 37 inserts a new Subdivision EA, which provides for time limits for pension bonus bereavement payment.

New section 26A provides for a claim lodgement period of 26 weeks starting on the day of the death of the deceased PBS member.

New section 26B provides for the Secretary to provide for a longer period than that provided for in section 26A in special circumstances.

Item 38 inserts in the definition of 'lump sum benefit' at subsection 47(1) a new subparagraph, which refers to the pension bonus bereavement payment.

Item 39 inserts the words 'or pension bonus bereavement payment' after 'pension bonus' in paragraph 58(1)(a) so that pension bonus bereavement payment is also excluded from the operation of subsection 58(1).

Item 40 inserts the words 'or a pension bonus bereavement payment' in subsection 59(1) so that the circumstances set out in section 59 are relevant to the payability of that payment.

Item 41 inserts a new subsection 59(1A), which provides that, if a person claims a pension bonus, the person dies, at the time of their death, the person had received the bonus, and, after their death, the Secretary determines that the person's bonus is to be increased under section 93K or 93L, the increase is payable to the legal personal representative of the person.

Item 42 includes a reference to the pension bonus bereavement payment to paragraph 59(2)(a).

Item 43 adds a reference to the pension bonus bereavement payment to paragraph 59(2)(c).

Item 44 adds a reference to the pension bonus bereavement payment to subsection 59(2).

Item 45 adds a reference to the pension bonus bereavement payment to paragraph 59(3)(a).

Item 46 adds a reference to the pension bonus bereavement payment to paragraph 59(3)(e).

Item 47 inserts a new subsection 59(4A), which provides that, if a pension bonus is payable to the legal personal representative of a person under subsection 59(2) or 59(3), any increase in that bonus determined by the Secretary under section 93K or 93L is also payable to that legal personal representative.

Items 48 and 49 adds a reference to the pension bonus bereavement payment (and to 'payment') to subsection 59(5).

Item 50 adds a reference to the pension bonus bereavement payment to subsection 149(2).

Item 51 adds a reference to the pension bonus bereavement payment to subsection 149(3).

Item 52 adds a reference to the pension bonus bereavement payment to paragraphs 149(3)(a) and (b).

Amendments to the Veterans' Entitlements Act

Item 53 inserts a reference to 'pension bonus bereavement payment, DFISA bonus or DFISA bonus bereavement payment' in subsection 5L(3C), to clarify that the payment is taken not to be an asset for the purposes of the Veterans' Entitlements Act.

Items 54 and 56 repeal and substitute the definitions of the terms 'DFISA bonus' and 'pension bonus' in subsection 5Q(1).

The new definitions refer to a 'DFISA bonus' as being a DFISA bonus payable under Part VIIAB and not including a 'DFISA bonus bereavement payment' under Subdivision C of Division 5 of that Part and a 'pension bonus' as being a pension bonus payable under Part IIIAB and not including a 'pension bonus bereavement payment' under Division 11A of that Part.

Items 55 and 57 insert in subsection 5Q(1) a definition of the terms 'DFISA bonus bereavement payment' and 'pension bonus bereavement payment'.

A 'DFISA bonus bereavement payment' is defined as being a payment made under Subdivision C of Division 3 of Part VIIAB.

A 'pension bonus bereavement payment' is defined as being a payment made under Division 11A of Part IIIAB.

Item 58 inserts in section 45TA a reference to the definition of the term 'PBBP employment income', being located in section 45UUC.

Item 59 amends subparagraphs 45TC(1)(f)(ii), (2)(f)(ii) and (3)(f)(ii) to replace references made in relation to the Social Security Act to 'pension bonus under Part 2.2A of' with references to 'pension bonus within the meaning of'.

The amendments will clarify that the references are to the pension bonus payable under Part 2.2A of the Social Security Act and will not include the 'pension bonus bereavement payment' payable under that Part.

Item 60 amends subsection 45TO(1), giving the Repatriation Commission the discretion to make a declaration by way of a legislative instrument rather than 'by written notice published in the Gazette'.

This brings the administrative process for making declarations in line with the requirements of the Legislative Instruments Act.

Item 61 further amends subsection 45TO(1) to remove the words ‘The period must not begin before the publication of the notice’ so that the period covered by the determination under the subsection is no longer exclusively prospective.

Item 62 inserts a new subsection 45TO(1A), which provides that, despite subsection 12(2) of the Legislative Instruments Act, a period specified in the declaration made under subsection (1) may begin before the date on which the declaration is registered under that Act. The contrary intention to the Legislative Instruments Act embodied by this new subsection reflects the Repatriation Commission’s intention that any declaration made under the subsection, will, on its terms, ensure that no person affected by it will be disadvantaged.

Item 63 repeals subsection 45TO(3). This is because the Legislative Instruments Act provides rules in relation to when an instrument comes into force.

Item 64 inserts new provisions in Division 6 of Part IIIAB of the Veterans’ Entitlements Act.

New section 45UIB – Top up of pension bonus for increased rate of designated pension

New section 45UIB provides for top ups of pension bonus for PBS members who have made a claim for the pension bonus where the member’s rate of designated pension increases within 13 weeks after the date of grant (effective date) of their designated pension due to a decrease in their (or their partner’s) income and/or assets. This will deal with situations such as where PBS members, who claim a designated pension and the pension bonus while their finances are unresolved, receive a lower rate of pension and bonus than they had anticipated.

For example, if a person claims age service pension and their bonus before their superannuation investments are finalised or when they have leave payments still being paid to them by their employer, their pension rate and, therefore, their bonus payment, may be affected under the pension means test and be lower than it otherwise would have been.

New subsection 45UIB(1) provides that the Repatriation Commission may make a determination to increase a person’s pension bonus if:

- (a) the Commission makes a determination which increases the person’s rate of designated pension; and
- (b) the determination takes effect within 13 weeks from the effective date of the person’s pension bonus; and

- (c) the determination is made because of a reduction in the value of the person's assessed assets and/or assessed ordinary income since the effective date.

Subsection 45UIB(1) requires a reduction in the value of the person's assets and income before the person is entitled to a top up, increases in the rate of designated pension due to normal pension indexation increases (that is, Consumer Price Index and Male Total Average Weekly Earnings) do not apply to enable top ups.

This new subsection inserts a note signposting that in determining the reduction in the value of a person's assets or income, the test to be applied is the assets and ordinary income test in the Rate Calculator in Schedule 6 of the Veterans' Entitlements Act.

Subsection 45UIB(2) provides rules for establishing the amount of the increase in the person's pension bonus. The amount of the increase is the difference between:

- (a) the amount of pension bonus that was payable to the person on the effective date; and
- (b) the amount that would have been payable to the person on the effective date if the person's rate of designated pension on that day had been the highest rate at which the designated pension was payable to the person during the 13 weeks after the effective date.

Subsection 45UIB(3) provides for when a determination under subsection (1) takes effect. The date of effect of the determination is either on the day on which the determination is made or on any earlier or later day specified in the determination.

Subsection 45UIB(4) provides that a determination under subsection (1) is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instructions Act. In other words, this provision is merely declaratory of the law.

New section 45UIC – Top up of pension bonus in specified circumstances

Section 45UIC provides for pension bonus to be topped up in circumstances specified in a legislative instrument. This would enable a top up to be made, for example, where an error has been made in calculating the rate of designated pension at the time a PBS member made a claim for a designated pension and pension bonus.

New subsection 45UIC(1) provides that the Repatriation Commission may make a determination to increase a person's pension bonus if:

- (a) the Commission makes a determination which increases the person's rate of designated pension; and
- (b) the rate of designated pension is increased in circumstances which are specified in an instrument made under subsection (6).

Subsection 45UIC(2) provides that the Repatriation Commission, when making the determination to top up the person's pension bonus, will specify the amount of increase of the person's pension bonus.

Subsection 45UIC(3) provides that the Repatriation Commission must not specify an increase that would be greater than the difference between:

- (a) the amount of pension bonus that was payable to the person on the pension bonus effective date; and
- (b) the amount that would have been the person's amount of pension bonus on the effective date if the person's rate of designated pension on that day had been the rate specified in the rate determination.

Subsection 45UIC(4) provides for when a determination about the top up under this section takes effect. The date of effect of the determination is either on the day on which the determination is made or on any earlier or later day specified in the determination.

Subsection 45UIC(5) provides that a determination about the top up under this section is not a legislative instrument. This provision is merely declaratory of the law and is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instructions Act.

Subsection 45UIC(6) provides that the Repatriation Commission may specify circumstances, other than circumstances specified in subsection 45UIC(1) for the purposes of paragraph 45UIC(1)(b), by legislative instrument.

Item 65 provides an application provision which sets out that new sections 45UIC and 45UIC of the Veterans' Entitlements Act apply where the effective date for the pension bonus is on or after 1 January 2008.

Items 66 to 70 amend section 45UK. **Items 66 to 68** are minor formatting amendments to provide for the insertion by **item 70** of new subsections 45UK(5) and (6).

Item 66 omits the word 'either' and substitutes the words 'one of the following' from paragraph 45UK(1)(c).

Item 67 omits a reference to 'pension; or' and substitutes a reference to 'pension;'

Item 68 omits a reference to '(3); and' and substitutes a reference to '(3)';

Item 69 adds a new subparagraph (iii) to paragraph 45UK(1)(c), which provides that a claim for pension bonus can be the subject of a determination under subsection 45UK(5).

Item 70 adds new subsections (5) and (6) to section 45UK.

New subsection (5) provides that, if a registered member of the PBS lodges a claim for a designated pension, the person's claim for pension bonus was lodged after their claim for a designated pension, and the Repatriation Commission is satisfied, after having regard to the guidelines made under subsection 45UK(6), that special circumstances apply in relation to the claim for pension bonus, the Commission may determine that the person is taken to have claimed the pension bonus at the same time as the person claimed a designated pension.

New subsection (6) allows the Commission, by legislative instrument, to make guidelines for the purposes of subsection 45UK(5).

Item 71 provides that the amendments of section 45UK of the Veterans' Entitlements Act apply in relation to claims for pension bonus that are lodged on or after 1 January 2008.

Item 72 adds new subsections 45UL(1A) and (1AB), which provide in subsection 45UL(1A) that the Repatriation Commission may allow a person a longer period to make a claim than 13 weeks, the period fixed by section. It further provides that, if the Commission does so, the lodgement period for the person's claim is the period allowed by the Commission. New subsection 45UL(1AB) provides that new subsection 45UL(1A) will not apply in relation to a claim for which the lodgement period is determined under subsection 45UL(3).

Item 73 provides that the amendments of section 45UL of the Veterans' Entitlements Act apply in relation to a claim for pension bonus lodged on or after 1 January 2008.

Item 74 inserts a note to the effect that a person's surviving partner may be qualified for a pension bonus bereavement payment under Division 11A of Part IIIAB.

Item 75 inserts a new subsection 45UR(1A), which provides that, if a person claims a pension bonus, the person dies, at the time of their death the person had received the bonus, and after their death the Repatriation Commission determines that the person's bonus is to be increased under section 45UIB or 45UIC, the increase is payable to the legal personal representative of the person.

Item 76 inserts a new subsection 45UR(4A), which provides that, if a pension bonus is payable to the legal personal representative of a person under subsection 45UR(2) or (3), any increase in that bonus determined by the Repatriation Commission under section 45UIB or 45UIC is also payable to that legal personal representative.

Item 77 inserts a new Division 11A into Part IIIAB of the Veterans' Entitlements Act.

New Division 11A – Pension bonus bereavement payment

New Division 11A provides for surviving partners to claim a one-off payment, which is equivalent to the pension bonus amount that the deceased partner would have been entitled to receive, if the deceased PBS member did not make a claim for a designated pension and pension bonus before his or her death.

New section 45UUA – Qualification for pension bonus bereavement payment

Section 45UUA provides qualification requirements for claims for pension bonus bereavement payment.

New section 45UUA provides that a person is qualified for a pension bonus bereavement payment if:

- (a) the person is no longer a member of a couple because the person's partner died; and
- (b) immediately before the partner died, the partner was a registered member of the PBS; and
- (c) the partner had not made a claim for a designated pension or pension bonus before the partner died.

New section 45UUB – Amount of pension bonus bereavement payment

New section 45UUB sets out how the amount of pension bonus bereavement payment is to be calculated: under subsection (1), work out the amount of pension bonus that would have been payable to the legal representative of the partner if the partner had made claims for both a designated pension and pension bonus just before the partner died but disregard any employment income as defined by new section 45UUC and any income of a kind specified in an instrument made under subsection 45UUB(2).

New subsection 45UUB(2) allows the Repatriation Commission, by legislative instrument, to specify kinds of income for the purposes of subparagraph 45UUB(1)(b)(ii).

New section 45UUC – Definition of ‘PBBP employment income’

New subsection 45UUC(1) defines PBBP employment income of a person to include:

- (a) ordinary income that is, or is taken to be, earned, derived or received by both the person and the person’s partner from remunerative work undertaken by either or both of them as an employee in an employer/employee relationship; and
- (b) without limitation, any of the following amount that are earned, derived or received by both the person and the person’s partner:
 - salary, wages, commissions and employment-related fringe benefits; and
 - leave payments; and
 - payments to the person or the person’s partner by a former employer of the person or person’s partner in relation to the termination of the person’s or partner’s employment.

New subsection 45UUC(2) defines leave payment for the purposes of paragraph 45UUC(1)(b):

- (a) to include a payment in respect of sick leave, personal leave, carer’s leave, annual leave, maternity leave, long service leave or special leave; and
- (b) to be a payment that is made by a lump sum payment, a series of regular payments or otherwise; and
- (c) as a payment taken to be made to a person if it is made to another person if the payment to the other person occurred: at the direction of the person or a court; on behalf of the person; for the benefit of the person; or if the person waives or assigns his or her right to the payment.

New section 45UUD – Need for a claim for pension bonus bereavement payment

New section 45UUD provides that in order for a person to be granted a pension bonus bereavement payment a proper claim (as set out in section 45UUE) must be made.

New section 45UUE – Proper claim

New section 45UUE sets out the requirements for a proper claim for the payment of pension bonus bereavement payment.

Subsection 45UUE(1) provides that for a proper claim the claim must be made in writing, in accordance with a form approved by the Repatriation Commission and lodged at an office of the Department of Veteran's Affairs in accordance with the requirements of section 5T within the applicable lodgement period set out in new section 45UUF.

Subsection 45UUE(2) provides that a claim for pension bonus bereavement payment lodged in accordance with section 5T will be taken to be made on a day that is determined under that section.

New section 45UUF – Lodgment period for claim

New section 45UUF sets out the lodgement period for a person's claim for pension bonus bereavement payment.

Subsection 45UUF(1) provides that the 'lodgement period' for a claim for a pension bonus bereavement payment is the period of 26 weeks that begins on the date of the death of the partner of the person qualified to receive the pension bonus bereavement payment.

Subsection 45UUF(2) provides that the Repatriation Commission may allow a person a longer period to make a claim than 26 weeks, the period fixed by subsection (1). It further provides that, if the Commission does so, the 'lodgement period' for the person's claim is the period allowed by the Commission.

New section 45UUG – Withdrawal of claim

New section 45UUG provides under subsection (1) that a person may withdraw a claim for a pension bonus bereavement payment that has not been determined.

Subsection 45UUG(2) provides that a claim that has been withdrawn will be regarded as not having been made.

Subsection 45UUG(3) provides that the withdrawal of the claim may be made orally or by a document lodged at an office of the Department of Veterans' Affairs in accordance with section 5T.

Subsection 45UUG(4) provides that a withdrawal made by the lodgement of a document in accordance with section 5T will be taken to have been made on a day determined under that section.

New section 45UUH – Secretary to investigate claim and submit it to Commission

New section 45UUH provides that where a person has made a proper claim for a pension bonus bereavement payment the Secretary must investigate matters raised in the claim. The Secretary will then submit the claim to the Repatriation Commission for consideration and determination.

When the claim is submitted to the Repatriation Commission, it will be accompanied by all the evidence the claimant has provided, all documents obtained by the Department in its investigations and any other documents under the control of the Department relevant to the claim.

New section 45UUI – Commission to determine claim

New section 45UUI provides that the Repatriation Commission must determine a claim for pension bonus bereavement payment in accordance with the Veterans' Entitlements Act.

New section 45UUJ – Grant of claim

New section 45UUJ provides that the Repatriation Commission must grant a claim for pension bonus bereavement payment if the Commission is satisfied that the person is qualified for the payment.

New section 45UUK – Payment of pension bonus bereavement payment

New section 45UUK provides for the payment of the pension bonus bereavement payment. The payment is to be made on the first pension payday after the grant of the payment or if not practicable to pay on that payday, the payment is to be made on the next practicable day.

New section 45UUL – Payment of pension bonus bereavement payment after death

New section 45UUL sets out the circumstances in subsections (2) and (3) in which a pension bonus bereavement payment will be payable after the death of the person claiming the payment.

Subsection 45UUL(2) provides that the payment of a pension bonus bereavement payment will be made to the legal representative of a deceased person in the circumstances where:

- the deceased person has claimed a pension bonus bereavement payment; and
- the death occurred after the claim had been granted, but before the payment had been received by the deceased.

Subsection 45UUL(3) provides that the payment of a pension bonus bereavement payment will be made to the legal representative of a deceased person in the circumstances where:

- the deceased person has claimed a pension bonus bereavement payment; and

- the death occurred before the claim had been determined and subsequently
- the Repatriation Commission determines the claim as if the person making the claim had not died; and
- grants the claim.

Subsection 45UUL(4) provides that the Commonwealth will have no further liability to any person following the payment of a pension bonus bereavement payment under subsections 45UUL(2) or (3).

Item 78 provides that the amendments inserted in Division 11A of Part IIIAB of the Veterans' Entitlements Act apply in relation to a person whose partner has died on or after 1 January 2008.

Item 79 inserts the words 'and pension bonus bereavement payment' in the subsection 57(3) reference to the payment types for which a review by the Repatriation Commission may be sought.

Item 80 is a technical amendment to section 58 repealing and replacing the section to include references to the payment of pension bonus and pension bonus bereavement payments under Part IIIAB.

New section 58 provides that Subdivision A of Division 17 of Part IIIB concerning the general administration of pension payments will be applicable to pensions payable under Part III, income support supplement payable under Part IIIA and pension bonus and pension bonus bereavement payments under Part IIIAB.

Items 81 and 82 amend subsection 58J(2). **Item 81** inserts a reference to 'or pension bonus bereavement payment' in the subsection 58J(2) reference to the payments for which amounts may be deducted for payment to the Commissioner of Taxation under the *Taxation Administration Act 1953*. **Item 82** inserts a reference to 'or payment' after the reference to 'bonus' in paragraph 58J(2)(a).

Items 83 and 84 amend the simplified outline set out in section 118N concerning the payment of Defence Force Income Support Allowance and related payments under Part VIIAB.

Item 83 inserts a reference at new paragraph (ba) to the payment of a 'DFISA bonus bereavement payment'.

Item 84 inserts a provision to state a DFISA bonus bereavement payment may be payable to the partner of a person if a DFISA bonus would have been payable to the person if the person had died before claiming a social security pension bonus. The provision also states that the payment of a DFISA bonus bereavement payment is automatic.

Item 85 inserts in section 118NA a definition of the term ‘social security pension bonus bereavement payment’ for the purposes of the DFISA provisions of Part VIIAB.

Item 86 inserts a Note to subsection 118NH signposting that a person’s surviving partner may be qualified for a DFISA bonus bereavement payment under new Subdivision C of Part VIIAB.

Item 87 inserts new subsection 118NH(1A).

New subsection 118NH(1A) provides that a top up of the DFISA bonus under new section 118NIA will be payable to the legal personal representative of the person eligible for the DFISA bonus top up if it is paid subsequent to the death of that person.

Item 88 inserts new subsection 118NH(2A).

New subsection 118NH(2A) provides that where a DFISA bonus is payable to the legal representative of the person eligible for the bonus under subsection 118NH(2), any subsequent increase in the bonus will also be payable to that legal representative.

Item 89 is a minor formatting amendment to subsection 118NI(1) removing the incorrect reference to subsection ‘(1)’.

Item 90 inserts new section 118NIA.

New Section 118NIA – Top up of DFISA bonus for social security top up

Subsection 118NIA(1) provides that the amount of a person’s DFISA bonus is to be increased if a ‘top up determination’ is made under section 93K or 93L of the Social Security Act in relation to the social security pension bonus payable to that person.

Subsection 118NIA(2) provides that the amount of the increase is the excess (if any) of the amount of the person’s DFISA bonus worked out under section 118NI taking into account the top up determination over the amount of the person’s DFISA bonus worked out under 118NI without taking into account the top up determination.

Item 91 inserts new Subdivision C of Division 3 of Part VIIAB.

New Subdivision C – DFISA bonus bereavement payment

New Subdivision C of Division 3 of Part VIIAB provides for surviving partners to claim a one-off payment, which is equivalent to the DFISA bonus amount that the deceased partner would have been entitled to receive, if the deceased PBS member had made a claim for an age pension and pension bonus before his or her death.

New section 118NIB – Qualification for DFISA bonus bereavement payment

Section 118NIB provides qualification requirements for claims for DFISA bonus bereavement payment.

New subsection 118NIB(1) provides that a person is qualified for a DFISA bonus bereavement payment if:

- (a) the person is qualified for a social security pension bonus bereavement payment under Part 2.2A of the *Social Security Act 1991*; and
- (b) in determining what would have been the person's partner's pension bonus for the purposes of determining the amount of the pension bonus bereavement payment, the amount of the pension bonus is reduced by adjusted disability pension payable under the *Veterans' Entitlements Act 1986* to the person or the person's partner.

New subsection 118NIB(2) provides that a person is qualified for a DFISA bonus bereavement payment if:

- (a) the person would have been qualified for a social security pension bonus bereavement payment under Part 2.2A of the *Social Security Act 1991* except that the amount of the bonus that would have been payable to the legal personal representative of the person's partner for the purposes of paragraph 93WA(1)(d) of the *Social Security Act 1991* would be nil; and
- (b) the amount would be nil because it was reduced by adjusted disability pension payable under the *Veterans' Entitlements Act* to the person or the person's partner.

New section 118NIC – Amount of DFISA bonus bereavement payment

New section 118NIC provides that the amount of the DFISA bonus bereavement payment to the partner of the deceased person is the amount that would have been the DFISA bonus payable to the deceased person if the deceased person had made a claim under the *Social Security Act* for age pension and pension bonus before they had died.

New section 118NID – Payment of DFISA bonus bereavement payment

New section 118NID provides for the payment of the DFISA bonus bereavement payment. The payment is to be made on the first pension payday after the grant of the social security pension bonus bereavement payment or if not practicable to pay on that payday, the payment is to be made on the next practicable day.

New Section 118NIE – Payment of DFISA bonus bereavement payment after death

New subsection 118NIE(1) provides that section 118NIE sets out the only circumstances in which a DFISA bonus bereavement payment will be payable after the death of the person concerned.

Subsection 118NIE(2) provides that the payment of a DFISA bonus bereavement payment will be made to the legal representative of a deceased person in the circumstances where:

- the DFISA bonus bereavement payment is payable to a person who has died; and
- the death occurred after the claim had been granted, but before the payment had been received by the deceased.

Subsection 118NIE(3) provides that the Commonwealth will have no further liability to any person following the payment of a DFISA bonus bereavement payment under subsection 118NIE(2).

Item 92 inserts a reference to 'pension bonus bereavement payment' in paragraph 119(1)(ba).

Item 93 inserts a reference to 'pension bonus bereavement payment' in the subsection 119(2) definition of 'claim'.

Items 94 to 96 amend section 122D.

Item 94 inserts a reference to 'or DFISA bonus bereavement payment' in the subsection 122D(2) reference to the payments for which amounts may be deducted for payment to the Commissioner of Taxation under the *Taxation Administration Act 1953*.

The Item also makes formatting changes to the headings of section 122D and subsection 122D(2) to include references to 'DFISA bonus bereavement payment'.

Item 95 inserts a reference to 'or payment' after the reference to 'bonus' in paragraph 122D(2)(a).

Item 96 inserts a reference to 'or DFISA bonus bereavement payment' in the subsection 122D(4) reference to the payments for which amounts may be deducted for payment to the Commissioner of Taxation under the *Taxation Administration Act 1953*.

The item also makes formatting changes to the heading of subsection 122D(4) to include a reference to 'DFISA bonus bereavement payment'.

Schedule 2 – Amendments relating to assurance of support

Summary

This measure is aimed at improving the operation of the AoS scheme and simplifying arrangements for people seeking to provide an AoS.

Background

The Government announced, as part of its 2007-08 Budget, a number of measures designed to simplify application requirements for potential assurers and improve the efficiency of the AoS scheme.

The AoS scheme allows entry to Australia by migrants who are more likely than others to claim social security payment, while protecting social security outlays. These migrants are permitted to migrate to Australia on condition that the person providing the assurance (the assurer) undertakes:

- financial responsibility for the new arrival's (the assuree's) support for the duration of the AoS period; and
- responsibility for the repayment of any recoverable social security payments which may be paid to the assuree during the AoS period.

Responsibility for the AoS scheme was transferred from the Department of Immigration and Citizenship (DIAC) to the Department of Families, Community Services and Indigenous Affairs (FaCSIA) on 1 July 2004. Chapter 2C of the Social Security Act now provides for the implementation and administration of the AoS scheme under the social security law, although DIAC continues to determine when new migrants are to be subject to an AoS.

Explanation of the changes

Amendments to the Social Security Act

Item 1 inserts paragraph 729(2)(h), which sets out an additional condition that must be satisfied for the Secretary to exercise his or her discretion to determine that a person is entitled to a special benefit for a period. Paragraph (h) provides the requirement that an AoS does not apply to the person at any time during that period.

Item 2 inserts subsection 729(2C), which (for the purposes of paragraph 729(2)(h)) disqualifies a person from special benefit at a particular time if an assurance of support is in force in respect of the person at that time, the assurer was willing and able to provide an adequate level of support to the assuree, and it was reasonable for the assuree to accept that support

This new subsection includes a note signposting the definition of 'assurance of support' in subsection 23(1).

Item 3 provides an application provision, setting out that the amendments to section 729 of the Social Security Act apply in relation to claims for special benefit where the start day for the benefit is on or after 1 January 2008.

Item 4 repeals subsection 1061ZZGE(3) (including the note) and substitutes a new subsection (3). This new subsection requires the Secretary to notify the assurer, in writing, of the fact that an assurance of support has ceased to be in force in respect of the assuree at a time determined by the Secretary under subparagraph 1061ZZGF(1)(b)(ii) or new subparagraph (iii).

Item 5 inserts new section 1061ZZGEA, which provides that, once an assurance has been accepted under Chapter 2C of the Social Security Act and the person who is the subject of that assurance becomes a holder (under the Migration Act) of a visa granted in connection with the assurance, the assurance cannot be withdrawn by the person who gave that assurance. Section 1061ZZGEA prevents an assurer from withdrawing an assurance which has been accepted under Part 2C.2 once a visa has been issued to the assuree by DIAC. This rule will apply even if the assurance is not yet in force.

For example, if an assurance of support has been accepted for a migrant and DIAC has subsequently granted the visa, the assurer may not then decide that they wish to withdraw the assurance of support prior to the migrant's arrival in Australia.

Item 6 provides an application provision, which sets out that section 1061ZZGEA only applies to assurances that are accepted on or after 1 January 2008.

Item 7 makes a minor consequential amendment, substituting the words 'the earlier' with 'the earliest'. This is due to a new subparagraph being inserted in paragraph 1061ZZGF(1)(b). The effect of the amendment is that an assurance remains in force until the earliest of the times specified in this paragraph.

Item 8 inserts a new subparagraph 1061ZZGF(1)(b)(iii), which provides a further provision relating to how long an assurance remains in force. Subparagraph 1061ZZGF(1)(b)(iii) provides that, if the Secretary determines a time at which an assurance ceases because of a circumstance specified in a determination under section 1061ZZGH, the assurance remains in force until that time. This is subject to that time being the earliest time under paragraph 1061ZZGF(1)(b).

Item 9 repeals subsection 1061ZZGF(4) and inserts a new subsection (4). New subsection 1061ZZGF(4) provides that, except as provided by paragraph 1061ZZGF(1)(b), an assurance of support that came into force in respect of a person under paragraph 1061ZZGF(1)(a) remains in force in respect of the person, regardless of any change of circumstances that may occur (including any purported withdrawal of an assurance). As a result of the operation of this provision, the assurance cannot be withdrawn after the assurance has come into force except in circumstances that are specified in a determination under 1061ZZGH.

Item 10 inserts a new item 6 into the table in subsection 1061ZZGH(1), which requires that the Minister must specify circumstances in which assurances accepted under Chapter 2C cease to be in force under new subparagraph 1061ZZGF(1)(b)(iii) in respect of persons for whom the assurances were given.

Schedule 3 – Crisis payments for humanitarian entrants

Summary

This measure establishes a further ground of qualification for crisis payment. Crisis payment will be payable to certain people who have entered Australia for the first time on a qualifying humanitarian visa on or after 1 January 2008. Crisis payment is being extended to this group of people to help reduce the significant financial burden faced by humanitarian entrants during the initial settlement period.

Background

Crisis payment was introduced in November 1999 to assist eligible people suffering severe financial hardship. Currently, Division 1 of Part 2.23A of the Social Security Act makes provision for people who have been released from gaol or from psychiatric confinement, people who have been forced to leave their home and establish a new home due to an extreme circumstance such as a natural disaster or domestic violence, and people who have been subjected to domestic or family violence and who choose to remain in the home after removal of a family member due to domestic or family violence, to claim crisis payment.

Schedule 3 gives effect to a measure announced in the 2007 Budget and extends crisis payment to certain people who have entered Australia for the first time on a qualifying humanitarian visa on or after 1 January 2008. Crisis payment is being extended to this group of people to help reduce the significant financial burden faced by humanitarian entrants during the initial settlement period.

Explanation of the changes

One of the qualification criteria for crisis payment requires the person to be in *severe financial hardship* on the day the person claims crisis payment as defined in section 19D of the Social Security Act. **Item 1** amends subsection 19D(1) consequential to **item 2**. This amendment ensures that the definition of severe financial hardship applies to the new section 1061JI. (New section 1061JI contains the qualification criteria applicable to humanitarian entrants to Australia.)

Item 2 adds a new section 1061JI, which contains the qualification criteria applicable to a humanitarian entrant to Australia.

New subsection 1061JI(1) provides that a person is qualified for a crisis payment on this basis if:

- (a) the person arrives in Australia; and

- (b) the arrival referred to in paragraph 1061JI(1)(a) is the first time the person has arrived in Australia as the holder of a qualifying humanitarian visa; and
- (c) the person makes a claim for a crisis payment within seven days of that arrival; and
- (d) on the day on which the claim is made, the person is in severe financial hardship as defined in section 19D, the person has made a claim for a social security pension or benefit, and the person is qualified for the pension or benefit.

Paragraphs 1061JI(1)(b) and (c) limit claims for crisis payment under new section 1061JI to within seven days of the person's first arrival into Australia on a qualifying humanitarian visa. This means that crisis payment is not payable, for example, in circumstances where a person has entered Australia on a qualifying humanitarian visa and then departs Australia again on that humanitarian visa for a holiday and then claims crisis payment when they return to Australia after the holiday.

New subsection 1061JI(2) enables the Minister, by legislative instrument, to specify visas that are qualifying humanitarian visas for the purposes of paragraph 1061JI(1)(b).

Item 3 sets out the application provision for the amendments made by Schedule 3. These amendments apply in relation to a person who arrives in Australia as the holder of a qualifying humanitarian visa on or after 1 January 2008.

Schedule 4 – Amendments relating to exempt funeral investments

Summary

From 1 January 2008, the threshold for funeral investments that are exempt from the income and assets test will be raised from \$5,000 to \$10,000. The new threshold will also be subject to indexation in line with the Consumer Price Index. To allow people with existing investments to take advantage of the new threshold, a person or couple will be able to have up to two exempt investments under the changes.

Background

Funeral investments allow an individual or a couple to set aside money for the payment of their funeral expenses. Moneys invested in certain funeral investments are currently exempt from the income and assets tests, provided that contributions to the investment do not exceed \$5,000 per person or couple. Funeral investments are only redeemable on the death of the investment holder or their partner. The income and asset test exemption of funeral investments has been in place since 1991.

Explanation of the changes

Amendments to the Social Security Act

Subsection 8(8) of the Social Security Act lists a number of classes of income that are exempt from the income test for social security payments. One of these is income from an exempt funeral investment. **Item 1** replaces a reference in a note under paragraph 8(8)(ma) to the old definition of 'exempt funeral investment' in subsection 23(1) with a reference to the new definition provided by new section 19E.

Item 2 inserts a new section into the Social Security Act, section 19E, which provides a new definition of, and new rules for, exempt funeral investments.

New subsection 19E(1) provides that, to work out whether a funeral investment is an exempt funeral investment, the rules set out in the subsection should be applied. Paragraph 19(1)(a) provides that the expenses for the funeral must not be prepaid. This ensures that a person claiming an exemption under the income and assets tests for a funeral bond will not be able also to claim an exemption for pre-paid funeral expenses related to the same funeral.

Paragraph (1)(b) contains the rule for how to determine whether an investment is an exempt funeral investment in two scenarios. The first scenario covers investors with a single investment: it will be exempt if below the new threshold. The second scenario covers investors with two or more investments: up to two will be exempt if, when aggregated, they are less than the new threshold. Investors can nominate which of their funeral investments will be exempt, subject to those investments meeting the definition of an exempt funeral investment.

New subsection 19E(2) provides that any return on an investment is disregarded in determining the amount of an investment for the purposes of section 19E. This ensures that only the purchase price is taken into account.

Subsection (3) combines the old definitions of type A and type B funeral investments into one. It provides that, for the above rule to apply, a funeral investment must be an investment that cannot be realised before maturity and the return on which is not payable before maturity. In addition, the investment must mature on the death of whichever member of a couple dies first or last and is to be applied on maturity to the expenses of the funeral of a member of the couple. Alternatively, the investment must mature on the death of the investor or, if the investor is a member of a couple at the time the investment is made, the investor's partner at that time, and is to be applied on maturity to the expenses of the funeral of the person on whose death it matures.

Item 3 repeals the old definition in subsection 23(1) of 'exempt funeral investment' and substitutes the new definition in section 19E.

Items 4 and 5 repeal the old definitions of type A and type B funeral investments, because of the insertion of new section 19E.

Subsection 1118(1) of the Social Security Act lists a number of asset types that are exempt from the asset test for social security payments. One of these is an exempt funeral investment. **Item 6** replaces a reference in a note in that subsection to the old definition of 'exempt funeral investment' in subsection 23(1) with a reference to the new definition provided by new section 19E.

Item 7 inserts in the indexed and adjusted amounts table the exempt funeral investment threshold as an amount to be indexed.

Item 8 inserts into the Consumer Price Index (CPI) Indexation Table the method for indexing the exempt funeral investment threshold. The indexation day is 1 July. The reference quarter is December. The base quarter is the most recent December quarter before the reference quarter. The rounding base is \$250.

The combined effect of **items 7 and 8** is that the exempt funeral investment threshold is indexed in line with inflation, and rounded to the nearest \$250 on the indexation day.

Amendments to the Veterans' Entitlements Act

Although the amendments to the Veterans' Entitlements Act made by this legislation will mirror the amendments to the Social Security Act made by the preceding Items in Schedule 4, there are a number of minor variations within the legislation necessary to reflect differences in legislative formats.

Set out below is a comparative table of the items, referring to the amendments made under Schedule 4. The explanation provided for an item in the amendments to the Social Security Act made in Schedule 4 is to be read as the explanation for the equivalent amendment to the Veterans' Entitlements Act in a later item of Schedule 4.

Comparative Table of Provisions

Schedule 4 (VEA) Item Number	Description	Schedule 4 (SSA) Item Number
9	Amendment to insert a Note to paragraph 5H(8)(zj) referring the reader to the definition of 'exempt funeral investment' being located in section 5PC.	1
10	Amendment to insert new section 5PC.	2
11	Amendment to repeal and substitute the reference to the definition of 'exempt funeral investment' in subsection 5Q(1).	3
12	Repeal of the definition of 'type A funeral investment' in subsection 5Q(1)	4
13	Repeal of the definition of 'type B funeral investment' in subsection 5Q(1)	5
14	Amendment to insert a Note to paragraph 52(1)(ja) referring the reader to the definition of 'exempt funeral investment' being located in section 5PC.	6
15	Amendment to insert a listing of the 'exempt funeral investment threshold' in the section 59A table of indexed and adjusted amounts.	7
16	Amendment to insert a listing of the 'exempt funeral investment threshold' in the section 59B Indexation table.	8
17	Application provision. The amendments made by the Schedule are to apply from 1 January 2008 in relation to investments made before or after that date.	Applies to both the SSA and VEA.

Schedule 5 – Extension of multiple birth allowance

Summary

From 1 January 2008, payment of multiple birth allowance will be extended to FTB children under 16 years of age and to older FTB children who are undertaking full-time study until the end of the calendar year in which they turn 18. Multiple birth allowance is currently available in respect of multiple births of three or more children where the children are under the age of six years.

Background

Multiple birth allowance (MBA) is a possible component of FTB Part A. Clauses 3 and 25 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) set out the various components of rate that make up an individual's maximum rate of FTB Part A.

Under the current rules, MBA can be added in working out an individual's maximum rate if the individual has three or more FTB children and at least three of those children were born during the same multiple birth and are under the age of six years. The relevant eligibility rule is set out in clause 36 of Schedule 1 to the Family Assistance Act. The amount of MBA is dependent on the number of FTB children born during the same multiple birth (clause 37 of Schedule 1 refers).

Families currently experience a significant drop in assistance when their multiple birth children turn six and MBA ceases to be added to their rate of FTB Part A. However, the cost of raising multiple birth children does not diminish once they turn six. The entry to full-time education is likely to result in additional costs. Families do not have the benefit of handing down school uniforms, shoes, textbooks and other school items. Instead, these costs are all incurred at the same time for three or more children. There are also multiple birth children who require extra assistance with a physical, intellectual, social or behavioural disorder due to premature birth, which is an additional expense for families.

Extending payment of MBA to include FTB children under 16 years of age and older FTB children who are undertaking full-time study until the end of the calendar year in which they turn 18 will help to ease the financial burden for these families until the children have generally completed their secondary schooling. It will also include children who turn 18 during the first year of full-time tertiary study.

Explanation of the changes

Items 1 to 3 amend clause 36 of Schedule 1 to the Family Assistance Act to expand the category of FTB children that can attract payment of MBA.

Item 1 makes a minor consequential change so that existing clause 36 becomes subclause 36(1).

Item 2 repeals the requirement for the multiple birth children to be under six years of age and inserts instead a cross reference to new subclause 36(2).

The expanded eligibility requirements for MBA are set out in new subclause 36(2), inserted by **item 3**.

A multiple birth child meets those requirements if the child is aged under 16 years (new paragraph 36(2)(a) refers).

A child also meets the requirements if both:

- the child has turned 16 and is undertaking full-time study; and
- the calendar year has not ended in which the first born of the multiple birth children who are undertaking full-time study turns 18.

This rule is set out in paragraph 36(2)(b).

The reference in paragraph 36(2)(b) to the first born of the relevant children covers the possibility of multiple birth children turning 18 in different calendar years and makes it clear that the last calendar year for payment of MBA in respect of the relevant children is the calendar year in which the first born of those children turns 18.

Multiple birth children can be a combination of children covered by new paragraphs 36(2)(a) and (b). This might occur where, for example, triplets are born on different days and one child has not turned 16, whereas the other two children are 16 and in full-time study. In this situation, the triplets would continue to attract MBA at the rate set out in paragraph 37(a) of Schedule 1.

The concept of 'undertaking full-time study' is defined in subsection 3(1) of the Family Assistance Act by reference to the equivalent definition in the Social Security Act.

The rate of MBA is specified in clause 37 of Schedule 1 to the Family Assistance Act and is dependent on the number of FTB children born during the same multiple birth. **Item 4** amends this provision to make it clear that the multiple birth children counted for the purposes of determining the rate of MBA are those children who satisfy the eligibility criteria in new subclause 36(2).

Item 5 sets out the application provision for the amendments to MBA. The amendments apply to MBA included in an individual's Part A rate of FTB on or after 1 January 2008, for the 2007-08 income year or a later income year.